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**HOUSE BILL 2275**

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**State of Washington 65th Legislature 2018 Regular Session**

**By** Representatives Eslick, Van Werven, Young, and Lovick

AN ACT Relating to creating the youth internship opportunity act; amending RCW 49.46.010 and 49.46.010; adding a new section to chapter 49.12 RCW; adding a new section to chapter 51.16 RCW; adding a new section to chapter 50.04 RCW; creating a new section; providing an effective date; and providing expiration dates.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.**  A new section is added to chapter 49.12 RCW to read as follows:

(1)(a) The director shall establish a youth internship pilot program until December 31, 2021, for qualified restaurant and grocery store employers to employ youth interns under special certificates at wages authorized by the department and subject to limitations in this section. An intern may be paid at wages specified in the certificate only during the effective period of the certificate and for the duration of the internship.

(b) The certificates to be issued in the pilot project are limited to restaurant and grocery store employers located in cities with a population of seventy-five thousand or less.

(2) A restaurant or grocery store employer must apply for a special certificate on a form made available by the director. The application must set forth:

(a) The name of the restaurant or grocery store employer;

(b) The type of work to be performed by the youth intern;

(c) A description of the internship program;

(d) A period of time for which the certificate is sought and the duration of the internship;

(e) The wages that will be paid to the intern;

(f) The number of interns for which a certificate is sought; and

(g) The total number of workers employed at the restaurant or grocery store.

(3) Upon receipt of an application, the department shall review the application and issue a special certificate to the requesting restaurant or grocery store employer within fifteen days if the department finds that:

(a) The applicant qualifies as a restaurant or grocery store employer;

(b) There have been no serious violations of chapter 49.46 RCW or Title 51 RCW that provide reasonable grounds to believe that the terms of an internship agreement may not be complied with;

(c) The issuance of a certificate will not create unfair competitive labor cost advantages nor have the effect of impairing or depressing wage or working standards established for experienced workers for work of a like or comparable character in the industry or occupation at which the intern is to be employed;

(d) An intern will not displace an experienced worker; and

(e) The restaurant or grocery store employer demonstrates that the intern will perform work under an internship program that: (i) Has a curriculum and supervised participation reasonably designed to provide interns with vocational knowledge and skills in the restaurant industry and culinary arts or grocery store industry, as appropriate; and (ii) is based on the bona fide curriculum of an educational or vocational institution. In assessing an internship program, the department may consult with relevant college departments and extension programs and state and local government agencies involved in the regulation of the food industry.

(4) If the department denies an application for a special certificate, notice of denial must be mailed to the restaurant or grocery store employer. The employer listed on the application may, within fifteen days after notice of such action has been mailed, file with the director a petition for review of the denial, setting forth grounds for seeking such a review. If reasonable grounds exist, the director or the director's authorized representative may grant such a review and, to the extent deemed appropriate, afford all interested persons an opportunity to be heard on such review.

(5) Before employing an intern, a restaurant or grocery store employer must submit a statement on a form made available by the director stating that it understands: The requirements of this chapter, the industrial welfare act, that apply to interns; that the employer must pay workers' compensation premiums in the assigned intern risk class and must pay workers' compensation premiums for nonintern work hours in the applicable risk class; and that if the employer does not comply with subsection (6) of this section, the director may revoke the special certificate.

(6) The director may revoke a special certificate issued under this section if a restaurant or grocery store employer fails to: Comply with the requirements of this chapter, the industrial welfare act, that apply to interns; pay workers' compensation premiums in the assigned intern risk class; or pay workers' compensation premiums in the applicable risk class for nonintern work hours.

(7) Before the start of an internship, the restaurant or grocery store employer and the intern must sign a written agreement and send a copy of the agreement to the department. The written agreement must, at a minimum:

(a) Describe the internship program offered by the restaurant or grocery store employer, including the skills and objectives the program is designed to teach and the manner in which those skills and objectives will be taught;

(b) Explicitly state that the intern is not entitled to unemployment benefits or minimum wages for work and activities conducted pursuant to the internship program for the duration of the internship;

(c) Describe the responsibilities, expectations, and obligations of the intern and the restaurant or grocery store employer, including the anticipated number of hours of activities to be performed by and the anticipated number of hours of curriculum instruction provided to the intern per week;

(d) Describe the activities of the restaurant or grocery store employer and the type of work to be performed by the intern; and

(e) Describe any wages or other remuneration the employer will provide to the intern.

(8) The department must limit the administrative costs of implementing the internship pilot program by relying on restaurant and grocery store organizations and other stakeholders to perform outreach and inform the restaurant and grocery community of the program and by limiting employee travel to the investigation of allegations of noncompliance with program requirements.

(9) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Grocery store employer" means an establishment that: (i) Sells food to the public primarily for off-premises consumption that is within 2017 North American industry classification system code 445 except for beer, wine, and liquor stores within code 4453; and (ii) has one hundred or fewer employees.

(b) "Intern" means an individual who is under the age of eighteen and provides services to a restaurant or grocery store employer under a written agreement and primarily as a means of learning about the restaurant industry and culinary arts or the grocery store industry, as appropriate.

(c) "Internship program" means an internship program described under subsection (3)(e) of this section.

(d) "Restaurant employer" means an establishment that: (i) Sells food to the public primarily for on-premises consumption that is within 2017 North American industry classification codes 7225, 72231, or 72233; and (ii) has fifty or fewer employees.

**Sec.**  RCW 49.46.010 and 2015 c 299 s 3 are each amended to read as follows:

As used in this chapter:

(1) "Director" means the director of labor and industries;

(2) "Employ" includes to permit to work;

(3) "Employee" includes any individual employed by an employer but shall not include:

(a) Any individual (i) employed as a hand harvest laborer and paid on a piece rate basis in an operation which has been, and is generally and customarily recognized as having been, paid on a piece rate basis in the region of employment; (ii) who commutes daily from his or her permanent residence to the farm on which he or she is employed; and (iii) who has been employed in agriculture less than thirteen weeks during the preceding calendar year;

(b) Any individual employed in casual labor in or about a private home, unless performed in the course of the employer's trade, business, or profession;

(c) Any individual employed in a bona fide executive, administrative, or professional capacity or in the capacity of outside salesperson as those terms are defined and delimited by rules of the director. However, those terms shall be defined and delimited by the human resources director pursuant to chapter 41.06 RCW for employees employed under the director of personnel's jurisdiction;

(d) Any individual engaged in the activities of an educational, charitable, religious, state or local governmental body or agency, or nonprofit organization where the employer-employee relationship does not in fact exist or where the services are rendered to such organizations gratuitously. If the individual receives reimbursement in lieu of compensation for normally incurred out-of-pocket expenses or receives a nominal amount of compensation per unit of voluntary service rendered, an employer-employee relationship is deemed not to exist for the purpose of this section or for purposes of membership or qualification in any state, local government, or publicly supported retirement system other than that provided under chapter 41.24 RCW;

(e) Any individual employed full time by any state or local governmental body or agency who provides voluntary services but only with regard to the provision of the voluntary services. The voluntary services and any compensation therefor shall not affect or add to qualification, entitlement, or benefit rights under any state, local government, or publicly supported retirement system other than that provided under chapter 41.24 RCW;

(f) Any newspaper vendor, carrier, or delivery person selling or distributing newspapers on the street, to offices, to businesses, or from house to house and any freelance news correspondent or "stringer" who, using his or her own equipment, chooses to submit material for publication for free or a fee when such material is published;

(g) Any carrier subject to regulation by Part 1 of the Interstate Commerce Act;

(h) Any individual engaged in forest protection and fire prevention activities;

(i) Any individual employed by any charitable institution charged with child care responsibilities engaged primarily in the development of character or citizenship or promoting health or physical fitness or providing or sponsoring recreational opportunities or facilities for young people or members of the armed forces of the United States;

(j) Any individual whose duties require that he or she reside or sleep at the place of his or her employment or who otherwise spends a substantial portion of his or her work time subject to call, and not engaged in the performance of active duties;

(k) Any resident, inmate, or patient of a state, county, or municipal correctional, detention, treatment or rehabilitative institution;

(l) Any individual who holds a public elective or appointive office of the state, any county, city, town, municipal corporation or quasi municipal corporation, political subdivision, or any instrumentality thereof, or any employee of the state legislature;

(m) All vessel operating crews of the Washington state ferries operated by the department of transportation;

(n) Any individual employed as a seaman on a vessel other than an American vessel;

(o) Any farm intern providing his or her services to a small farm which has a special certificate issued under RCW 49.12.470;

(p) An individual who is at least sixteen years old but under twenty-one years old, in his or her capacity as a player for a junior ice hockey team that is a member of a regional, national, or international league and that contracts with an arena owned, operated, or managed by a public facilities district created under chapter 36.100 RCW;

(q) Any intern providing his or her services to a restaurant or grocery store employer that has a special certificate issued under section 1 of this act;

(4) "Employer" includes any individual, partnership, association, corporation, business trust, or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee;

(5) "Occupation" means any occupation, service, trade, business, industry, or branch or group of industries or employment or class of employment in which employees are gainfully employed;

(6) "Retail or service establishment" means an establishment seventy-five percent of whose annual dollar volume of sales of goods or services, or both, is not for resale and is recognized as retail sales or services in the particular industry;

(7) "Wage" means compensation due to an employee by reason of employment, payable in legal tender of the United States or checks on banks convertible into cash on demand at full face value, subject to such deductions, charges, or allowances as may be permitted by rules of the director.

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As used in this chapter:

(1) "Director" means the director of labor and industries;

(2) "Employ" includes to permit to work;

(3) "Employee" includes any individual employed by an employer but shall not include:

(a) Any individual (i) employed as a hand harvest laborer and paid on a piece rate basis in an operation which has been, and is generally and customarily recognized as having been, paid on a piece rate basis in the region of employment; (ii) who commutes daily from his or her permanent residence to the farm on which he or she is employed; and (iii) who has been employed in agriculture less than thirteen weeks during the preceding calendar year;

(b) Any individual employed in casual labor in or about a private home, unless performed in the course of the employer's trade, business, or profession;

(c) Any individual employed in a bona fide executive, administrative, or professional capacity or in the capacity of outside salesperson as those terms are defined and delimited by rules of the director. However, those terms shall be defined and delimited by the human resources director pursuant to chapter 41.06 RCW for employees employed under the director of personnel's jurisdiction;

(d) Any individual engaged in the activities of an educational, charitable, religious, state or local governmental body or agency, or nonprofit organization where the employer-employee relationship does not in fact exist or where the services are rendered to such organizations gratuitously. If the individual receives reimbursement in lieu of compensation for normally incurred out-of-pocket expenses or receives a nominal amount of compensation per unit of voluntary service rendered, an employer-employee relationship is deemed not to exist for the purpose of this section or for purposes of membership or qualification in any state, local government, or publicly supported retirement system other than that provided under chapter 41.24 RCW;

(e) Any individual employed full time by any state or local governmental body or agency who provides voluntary services but only with regard to the provision of the voluntary services. The voluntary services and any compensation therefor shall not affect or add to qualification, entitlement, or benefit rights under any state, local government, or publicly supported retirement system other than that provided under chapter 41.24 RCW;

(f) Any newspaper vendor, carrier, or delivery person selling or distributing newspapers on the street, to offices, to businesses, or from house to house and any freelance news correspondent or "stringer" who, using his or her own equipment, chooses to submit material for publication for free or a fee when such material is published;

(g) Any carrier subject to regulation by Part 1 of the Interstate Commerce Act;

(h) Any individual engaged in forest protection and fire prevention activities;

(i) Any individual employed by any charitable institution charged with child care responsibilities engaged primarily in the development of character or citizenship or promoting health or physical fitness or providing or sponsoring recreational opportunities or facilities for young people or members of the armed forces of the United States;

(j) Any individual whose duties require that he or she reside or sleep at the place of his or her employment or who otherwise spends a substantial portion of his or her work time subject to call, and not engaged in the performance of active duties;

(k) Any resident, inmate, or patient of a state, county, or municipal correctional, detention, treatment or rehabilitative institution;

(l) Any individual who holds a public elective or appointive office of the state, any county, city, town, municipal corporation or quasi municipal corporation, political subdivision, or any instrumentality thereof, or any employee of the state legislature;

(m) All vessel operating crews of the Washington state ferries operated by the department of transportation;

(n) Any individual employed as a seaman on a vessel other than an American vessel;

(o) An individual who is at least sixteen years old but under twenty-one years old, in his or her capacity as a player for a junior ice hockey team that is a member of a regional, national, or international league and that contracts with an arena owned, operated, or managed by a public facilities district created under chapter 36.100 RCW;

(p) Any intern providing his or her services to a restaurant or grocery store employer that has a special certificate issued under section 1 of this act;

(4) "Employer" includes any individual, partnership, association, corporation, business trust, or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee;

(5) "Occupation" means any occupation, service, trade, business, industry, or branch or group of industries or employment or class of employment in which employees are gainfully employed;

(6) "Retail or service establishment" means an establishment seventy-five percent of whose annual dollar volume of sales of goods or services, or both, is not for resale and is recognized as retail sales or services in the particular industry;

(7) "Wage" means compensation due to an employee by reason of employment, payable in legal tender of the United States or checks on banks convertible into cash on demand at full face value, subject to such deductions, charges, or allowances as may be permitted by rules of the director.

NEW SECTION. **Sec.**  A new section is added to chapter 51.16 RCW to read as follows:

The department shall adopt rules to provide special workers' compensation risk class or classes for interns providing services under an internship program under section 1 of this act.

NEW SECTION. **Sec.**  A new section is added to chapter 50.04 RCW to read as follows:

Except for services subject to RCW 50.44.010, 50.44.020, 50.44.030, or 50.50.010, the term "employment" does not include service performed for a restaurant or grocery store employer by an intern providing his or her services under an internship program as established in section 1 of this act.

NEW SECTION. **Sec.**  This act may be known and cited as the youth internship opportunity act.

NEW SECTION. **Sec.**  (1) Section 2 of this act expires December 31, 2018.

(2) Section 3 of this act takes effect December 31, 2018.

NEW SECTION. **Sec.**  With the exception of section 2 of this act, this act expires December 31, 2021.

**--- END ---**