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**SENATE BILL 5528**

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**State of Washington 65th Legislature 2017 Regular Session**

**By** Senators Hasegawa, Keiser, Conway, and Kuderer

AN ACT Relating to the employment antiretaliation act; amending RCW 49.46.010, 49.46.100, and 39.12.010; reenacting and amending RCW 49.48.082; adding new sections to chapter 49.46 RCW; adding a new section to chapter 49.12 RCW; adding new sections to chapter 49.48 RCW; adding new sections to chapter 39.12 RCW; adding new sections to chapter 49.52 RCW; creating a new section; and prescribing penalties.

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

NEW SECTION. **Sec.**  The legislature finds that many workers are unable to exercise their wage and hour rights because of fear of adverse action or actual adverse action by unscrupulous employers. Employers should not gain a competitive advantage against law-abiding business by retaliating or discriminating against their employees. No employee should have to fear adverse action simply for engaging in rights the state of Washington has deemed so important that they are protected by law. It is in the public interest of the state of Washington that employees be able to report concerns to their employers without fear of retaliation or discrimination. The legislature finds that strong, clear, and effective protections for employees will help address the problems of employer retaliation.

**MINIMUM WAGE ACT**

**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 or the director's authorized representative;

(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;

(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;

(8) "Adverse action" means discharging, denying a promotion, demoting, failing to rehire after a seasonal interruption of work, threatening, penalizing, retaliating, engaging in unfair immigration-related practices, filing a false report with a government agency, changing an employee's status to a nonemployee, or otherwise discriminating against an employee. "Adverse action" may involve any aspect of employment, including pay, work hours, responsibilities, or other material change in the terms and condition of employment;

(9) "Department" means the department of labor and industries;

(10) "Front pay" means the compensation the employee would earn if reinstated to his or her former position;

(11) "Interested party" includes: A contractor or subcontractor or an employee of a contractor or subcontractor; the director or the director's designee; an organization whose members' wages, benefits, and conditions of employment are affected by this chapter, including a labor union; or any other organization of workers that exists for the purpose, in whole or in part, of interacting with employers;

(12)(a) "Pattern or practice" means that, in addition to the current violation, within the previous ten years the employer was:

(i) Convicted of a criminal violation of a state or local law concerning retaliation;

(ii) Subject to a court order entering final judgment for a violation of section 3, 9, 14, or 19 of this act, and the judgment was not satisfied or current within thirty days of the later of:

(A) The expiration of the time for appealing the order; or

(B) If a timely appeal was made, the date of the final resolution of the appeal; or

(iii) Subject to a final and binding citation and notice of assessment from the department for a violation of section 3, 9, 14, or 19 of this act, and the citation and penalty were not satisfied or current within thirty days of the date the citation became final and binding.

(b) For the purposes of this subsection (12), an employer includes a successor employer, as defined in RCW 49.48.082;

(13)(a) "Unfair immigration-related practice" includes any of the following practices:

(i) Requesting more or different documents than are required under 8 U.S.C. Sec. 1324a(b), or a refusal to honor documents tendered pursuant to that section that on their face reasonably appear to be genuine;

(ii) Using the federal E-Verify system to check the employment authorization status of a person at a time or in a manner not required under 8 U.S.C. Sec. 1324a(b), or not authorized under any memorandum of understanding governing the use of the federal E-Verify system;

(iii) Threatening to file or the filing of a false police report;

(iv) Threatening to contact or contacting immigration authorities;

(v) Withholding or threatening to destroy documents related to a person's immigration status.

(b) "Unfair immigration-related practice" does not include conduct undertaken at the express and specific direction or request of the federal government.

NEW SECTION. **Sec.**  A new section is added to chapter 49.46 RCW to read as follows:

(1) An employer, any of its agents, or any person acting on behalf of the employer may not take adverse action against any individual or individuals because:

(a) An employee or former employee has informed any other person or made a complaint, or the employer believes an employee has informed any other person or made a complaint, including to the employer, the department, the attorney general, or any other person that the employer engaged in conduct that an employee reasonably believes violates this chapter;

(b) An employee or former employee demands from the employee's employer a lawful claim under this chapter;

(c) An employee or former employee has caused to be instituted, or is about to cause to be instituted, a proceeding under or related to this chapter;

(d) An employee or former employee has testified or is about to testify in a proceeding under or related to this chapter;

(e) An employee has refused to participate in an activity that would result in a violation of state or federal wage and hour law;

(f) An employee or former employee has sought information about his or her rights under this chapter or informed others about their rights under this chapter;

(g) An employee or former employee has, or the employer believes an employee has, otherwise exercised rights protected by this chapter; or

(h) An employee or former employee filed a complaint with the department or brought suit in court where the employer was determined to have violated this chapter.

(2) If an employer takes adverse action against an employee or former employee within ninety days of an activity described in subsection (1) of this section, the employer is presumed to have acted in retaliation in violation of subsection (1) of this section. However, in the case of seasonal work that ended before the close of the ninety day period, the presumption also applies if the employer fails to rehire a former employee at the next opportunity for work in the same position. The employer may rebut the presumption with clear and convincing evidence that the adverse action was taken for a permissible purpose.

(3) A complaint or other communication by an employee triggers the protections of this section regardless of whether the complaint or communication is in writing or makes explicit reference to this chapter.

(4) A violation of this section is a gross misdemeanor. The presumption created in subsection (2) of this section does not apply to this subsection.

NEW SECTION. **Sec.**  A new section is added to chapter 49.46 RCW to read as follows:

(1) An individual aggrieved or an interested party filing on behalf of an individual aggrieved by section 3 of this act may file a complaint with the director.

(2) If an individual aggrieved or an interested party filing on behalf of an individual aggrieved files a complaint with the department, the director may investigate the complaint. If, following an investigation, the director determines that an employer violated section 3 of this act, the director may order the employer to comply with any one or more of the following, unless prohibited by federal law:

(a) Pay a civil penalty of not less than one thousand dollars and not more than ten thousand dollars per individual aggrieved. The department must deposit civil penalties under this section in the supplemental pension fund established under RCW 51.44.033.

(b)(i) Subject to (b)(ii) of this subsection, pay any aggrieved individual not less than one thousand dollars and not more than ten thousand dollars.

(ii) If an employee or former employee is the aggrieved individual, pay the individual the greater of:

(A) The amount of any civil penalty imposed under (a) of this subsection; or

(B) Three times the amount of any wages, salary, and employment benefits unlawfully denied or withheld, except benefits under Title 50 or 51 RCW.

(c) If the aggrieved individual is a former employee of the violating employer, reinstate the aggrieved individual as an employee at not less than the most recent rate of pay received by the employee. The director may award front pay in lieu of reinstatement.

(3) An appeal from the director's determination may be taken in accordance with chapter 34.05 RCW, with the prevailing party entitled to recover reasonable costs and attorneys' fees.

(4) The director may not investigate any alleged violation under this section that occurred more than three years before the date that the employee filed the complaint. This period is tolled during any period of time that an employer, any of its agents, or any person acting on behalf of the employer deters an individual from filing a complaint.

NEW SECTION. **Sec.**  A new section is added to chapter 49.46 RCW to read as follows:

(1) An individual aggrieved by a violation of section 3 of this act may bring suit on behalf of himself or herself or on behalf of any other individuals similarly situated.

(2) If a court determines that an employer violated section 3 of this act, the court, unless prohibited by federal law:

(a)(i) Shall award statutory damages for each individual aggrieved by the violation. Subject to (a)(ii) of this subsection, statutory damages must not be less than one thousand dollars and not more than ten thousand dollars per individual, unless the employer engaged in a pattern or practice of violations, in which case the statutory damages must be not less than ten thousand dollars and not more than twenty-five thousand dollars per individual;

(ii) If an employee or former employee is the individual subject to adverse action, the court shall award the greater of:

(A) The amounts specified in (a)(i) of this subsection; or

(B) Three times the amount of any wages, salary, and employment benefits unlawfully denied or withheld, except benefits under Title 50 or 51 RCW;

(b) May award actual damages sustained by the individual;

(c) May order injunctive or other equitable relief if the aggrieved individual is an employee or former employee of the violating employer. The relief may include:

(i) Reinstatement of the former employee as an employee to his or her former position at not less than the most recent rate of compensation received by the employee, including the value of any benefits; or

(ii) Front pay in lieu of reinstatement;

(d)(i) For a first violation, may order the appropriate government agencies to suspend all licenses that are held by the violating party for a period of up to fourteen days. The licenses that are subject to suspension are all licenses, certifications, or registrations held by the violating party specific to the business location or locations where the adverse action occurred;

(ii) For a second violation, the court may order the appropriate government agencies to suspend all licenses that are held by the violating party for a period of up to thirty days. The licenses that are subject to suspension are all licenses held by the violating party specific to the business location or locations where the adverse action occurred;

(iii) For a third violation, the court may order the appropriate government agencies to suspend all licenses that are held by the violating party for a period of up to ninety days. The licenses that are subject to suspension are all licenses held by the violating party specific to the business location or locations where the adverse action occurred;

(e) Shall award attorneys' fees and costs.

(3) A civil action under this section must be brought no later than three years after the violation occurred. This period is tolled during any period of time that an employer, any of its agents, or any person acting on behalf of the employer deters an individual from bringing an action under this section.

**Sec.**  RCW 49.46.100 and 2010 c 8 s 12044 are each amended to read as follows:

((~~(1)~~)) Any employer who hinders or delays the director or his or her authorized representatives in the performance of his or her duties in the enforcement of this chapter, or refuses to admit the director or his or her authorized representatives to any place of employment, or fails to make, keep, and preserve any records as required under the provisions of this chapter, or falsifies any such record, or refuses to make any record accessible to the director or his or her authorized representatives upon demand, or refuses to furnish a sworn statement of such record or any other information required for the proper enforcement of this chapter to the director or his or her authorized representatives upon demand, or pays or agrees to pay wages at a rate less than the rate applicable under this chapter, or otherwise violates any provision of this chapter or of any regulation issued under this chapter shall be deemed in violation of this chapter and shall, upon conviction therefor, be guilty of a gross misdemeanor.

((~~(2) Any employer who discharges or in any other manner discriminates against any employee because such employee has made any complaint to his or her employer, to the director, or his or her authorized representatives that he or she has not been paid wages in accordance with the provisions of this chapter, or that the employer has violated any provision of this chapter, or because such employee has caused to be instituted or is about to cause to be instituted any proceeding under or related to this chapter, or because such employee has testified or is about to testify in any such proceeding shall be deemed in violation of this chapter and shall, upon conviction therefor, be guilty of a gross misdemeanor.~~))

**INDUSTRIAL WELFARE ACT**

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

(1) An employer, any of its agents, or any person acting on behalf of the employer may not take adverse action against any individual or individuals because an employee has updated or attempted to update his or her personal information, unless the change is directly related to the skill set or knowledge required for the job.

(2) If an employer takes adverse action against an employee or former employee within ninety days of an activity described in subsection (1) of this section, the employer is presumed to have acted in retaliation in violation of subsection (1) of this section. However, in the case of seasonal work that ended before the close of the ninety day period, the presumption also applies if the employer fails to rehire a former employee at the next opportunity for work in the same position. The employer may rebut the presumption with clear and convincing evidence that the adverse action was taken for a permissible purpose.

(3) For the purposes of this section, "adverse action" has the same meaning as in RCW 49.46.010.

(4) An interested party or individual aggrieved by this section may file a complaint under section 4 of this act.

(5) An individual aggrieved by a violation of this section may also bring suit on behalf of himself or herself or on behalf of any other individuals similarly situated under section 5 of this act.

(6) A violation of this section is a gross misdemeanor. The presumption created in subsection (2) of this section does not apply to this subsection.

**WAGE PAYMENT ACT**

**Sec.**  RCW 49.48.082 and 2010 c 42 s 1 are each reenacted and amended to read as follows:

The definitions in this section apply throughout this section and RCW 49.48.083 through 49.48.086:

(1) "Citation" means a written determination by the department that a wage payment requirement has been violated.

(2) "Department" means the department of labor and industries.

(3) "Determination of compliance" means a written determination by the department that wage payment requirements have not been violated.

(4) "Director" means the director of the department of labor and industries, or the director's authorized representative.

(5) "Employee" has the meaning provided in: (a) RCW 49.46.010 for purposes of a wage payment requirement set forth in RCW 49.46.020 or 49.46.130; and (b) RCW 49.12.005 for purposes of a wage payment requirement set forth in RCW 49.48.010, 49.52.050, or 49.52.060.

(6) "Employer" has the meaning provided in RCW 49.46.010 for purposes of a wage payment requirement set forth in RCW 49.46.020, 49.46.130, 49.48.010, 49.52.050, or 49.52.060.

(7) "Notice of assessment" means a written notice by the department that, based on a citation, the employer shall pay the amounts assessed under RCW 49.48.083.

(8) "Repeat willful violator" means any employer that has been the subject of a final and binding citation and notice of assessment for a willful violation of a wage payment requirement within three years of the date of issue of the most recent citation and notice of assessment for a willful violation of a wage payment requirement.

(9) "Successor" means any person to whom an employer quitting, selling out, exchanging, or disposing of a business sells or otherwise conveys in bulk and not in the ordinary course of the employer's business, more than fifty percent of the property, whether real or personal, tangible or intangible, of the employer's business.

(10) "Wage" has the meaning provided in RCW 49.46.010.

(11) "Wage complaint" means a complaint from an employee to the department that asserts that an employer has violated one or more wage payment requirements and that is reduced to writing.

(12) "Wage payment requirement" means a wage payment requirement set forth in RCW 49.46.020, 49.46.130, 49.48.010, 49.52.050, or 49.52.060, and any related rules adopted by the department.

(13) "Willful" means a knowing and intentional action that is neither accidental nor the result of a bona fide dispute, as evaluated under the standards applicable to wage payment violations under RCW 49.52.050(2).

(14) "Adverse action" means discharging, denying a promotion, demoting, failing to rehire after a seasonal interruption of work, threatening, penalizing, retaliating, engaging in unfair immigration-related practices, filing a false report with a government agency, changing an employee's status to a nonemployee, or otherwise discriminating against an employee. "Adverse action" may involve any aspect of employment, including pay, work hours, responsibilities, or other material change in the terms and condition of employment.

(15) "Front pay" means the compensation the employee would earn if reinstated to his or her former position.

(16) "Interested party" includes: A contractor or subcontractor or an employee of a contractor or subcontractor; the director or the director's designee; an organization whose members' wages, benefits, and conditions of employment are affected by this chapter, including a labor union; or any other organization of workers that exists for the purpose, in whole or in part, of interacting with employers.

(17)(a) "Pattern or practice" means that, in addition to the current violation, within the previous ten years the employer was:

(i) Convicted of a criminal violation of a state or local law concerning retaliation;

(ii) Subject to a court order entering final judgment for a violation of section 3, 9, 14, or 19 of this act, and the judgment was not satisfied or current within thirty days of the later of:

(A) The expiration of the time for appealing the order; or

(B) If a timely appeal was made, the date of the final resolution of the appeal; or

(iii) Subject to a final and binding citation and notice of assessment from the department for a violation of section 3, 14, or 19 of this act, and the citation and penalty were not satisfied or current within thirty days of the date the citation became final and binding.

(b) For the purposes of this subsection (17), an employer includes a successor employer, as defined in this section.

(18)(a) "Unfair immigration-related practice" includes any of the following practices:

(i) Requesting more or different documents than are required under 8 U.S.C. Sec. 1324a(b), or a refusal to honor documents tendered pursuant to that section that on their face reasonably appear to be genuine;

(ii) Using the federal E-Verify system to check the employment authorization status of a person at a time or in a manner not required under 8 U.S.C. Sec. 1324a(b), or not authorized under any memorandum of understanding governing the use of the federal E-Verify system;

(iii) Threatening to file or the filing of a false police report;

(iv) Threatening to contact or contacting immigration authorities;

(v) Withholding or threatening to destroy documents related to a person's immigration status.

(b) "Unfair immigration-related practice" does not include conduct undertaken at the express and specific direction or request of the federal government.

NEW SECTION. **Sec.**  (1) An employer, any of its agents, or any person acting on behalf of the employer may not take adverse action against any individual or individuals because:

(a) An employee or former employee has informed any other person or made a complaint, or the employer believes an employee has informed any other person or made a complaint, including to the employer, the department, the attorney general, or any other person that the employer engaged in conduct that an employee reasonably believes violates this chapter;

(b) An employee or former employee demands from the employee's employer a lawful claim under this chapter;

(c) An employee or former employee has caused to be instituted, or is about to cause to be instituted, a proceeding under or related to this chapter;

(d) An employee or former employee has testified or is about to testify in a proceeding under or related to this chapter;

(e) An employee has refused to participate in an activity that would result in a violation of state or federal wage and hour law;

(f) An employee or former employee has sought information about his or her rights under this chapter or informed others about their rights under this chapter;

(g) An employee or former employee has, or the employer believes an employee has, otherwise exercised rights protected by this chapter; or

(h) An employee or former employee filed a complaint with the department or brought suit in court where the employer was determined to have violated this chapter.

(2) If an employer takes adverse action against an employee or former employee within ninety days of an activity described in subsection (1) of this section, the employer is presumed to have acted in retaliation in violation of subsection (1) of this section. However, in the case of seasonal work that ended before the close of the ninety day period, the presumption also applies if the employer fails to rehire a former employee at the next opportunity for work in the same position. The employer may rebut the presumption with clear and convincing evidence that the adverse action was taken for a permissible purpose.

(3) A complaint or other communication by an employee triggers the protections of this section regardless of whether the complaint or communication is in writing or makes explicit reference to this chapter.

(4) A violation of this section is a gross misdemeanor. The presumption created in subsection (2) of this section does not apply to this subsection.

NEW SECTION. **Sec.**  (1) An individual aggrieved or an interested party filing on behalf of an individual aggrieved by section 9 of this act may file a complaint with the director.

(2) If an individual aggrieved or an interested party filing on behalf of an individual aggrieved files a complaint with the department, the director may investigate the complaint. If, following an investigation, the director determines that an employer violated section 9 of this act, the director may order the employer to comply with any one or more of the following, unless prohibited by federal law:

(a) Pay a civil penalty of not less than one thousand dollars and not more than ten thousand dollars per individual aggrieved. The department must deposit civil penalties under this section in the supplemental pension fund established under RCW 51.44.033.

(b)(i) Subject to (b)(ii) of this subsection, pay any aggrieved individual not less than one thousand dollars and not more than ten thousand dollars.

(ii) If an employee or former employee is the aggrieved individual, pay the individual the greater of:

(A) The amount of any civil penalty imposed under (a) of this subsection; or

(B) Three times the amount of any wages, salary, and employment benefits unlawfully denied or withheld, except benefits under Title 50 or 51 RCW.

(c) If the aggrieved individual is a former employee of the violating employer, reinstate the aggrieved individual as an employee at not less than the most recent rate of pay received by the employee. The director may award front pay in lieu of reinstatement.

(3) An appeal from the director's determination may be taken in accordance with chapter 34.05 RCW, with the prevailing party entitled to recover reasonable costs and attorneys' fees.

(4) The director may not investigate any alleged violation under this section that occurred more than three years before the date that the employee filed the complaint. This period is tolled during any period of time that an employer, any of its agents, or any person acting on behalf of the employer deters an individual from filing a complaint.

NEW SECTION. **Sec.**  (1) An individual aggrieved by a violation of section 9 of this act may bring suit on behalf of himself or herself or on behalf of any other individuals similarly situated.

(2) If a court determines that an employer violated section 9 of this act, the court, unless prohibited by federal law:

(a)(i) Shall award statutory damages for each individual aggrieved by the violation. Subject to (a)(ii) of this subsection, statutory damages must not be less than one thousand dollars and not more ten thousand dollars per individual, unless the employer engaged in a pattern or practice of violations, in which case the statutory damages must be not less than ten thousand dollars and not more than twenty-five thousand dollars per individual;

(ii) If an employee or former employee is the individual subject to adverse action, the court shall award the greater of:

(A) The amounts specified in (a)(i) of this subsection; or

(B) Three times the amount of any wages, salary, and employment benefits unlawfully denied or withheld, except benefits under Title 50 or 51 RCW;

(b) May award actual damages sustained by the individual;

(c) May order injunctive or other equitable relief if the aggrieved individual is an employee or former employee of the violating employer. The relief may include:

(i) Reinstatement of the former employee as an employee to his or her former position at not less than the most recent rate of compensation received by the employee, including the value of any benefits; or

(ii) Front pay in lieu of reinstatement;

(d)(i) For a first violation, may order the appropriate government agencies to suspend all licenses that are held by the violating party for a period of up to fourteen days. The licenses that are subject to suspension are all licenses, certifications, or registrations held by the violating party specific to the business location or locations where the adverse action occurred;

(ii) For a second violation, the court may order the appropriate government agencies to suspend all licenses that are held by the violating party for a period of up to thirty days. The licenses that are subject to suspension are all licenses held by the violating party specific to the business location or locations where the adverse action occurred;

(iii) For a third violation, the court may order the appropriate government agencies to suspend all licenses that are held by the violating party for a period of up to ninety days. The licenses that are subject to suspension are all licenses held by the violating party specific to the business location or locations where the adverse action occurred;

(e) Shall award attorneys' fees and costs.

(3) A civil action under this section must be brought no later than three years after the violation occurred. This period is tolled during any period of time that an employer, any of its agents, or any person acting on behalf of the employer deters an individual from bringing an action under this section.

NEW SECTION. **Sec.**  Sections 9 through 11 of this act are each added to chapter 49.48 RCW.

**PREVAILING WAGE**

**Sec.**  RCW 39.12.010 and 1989 c 12 s 6 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) The "prevailing rate of wage"((~~, for the intents and purposes of this chapter, shall be~~)) means the rate of hourly wage, usual benefits, and overtime paid in the locality, as ((~~hereinafter~~)) defined in this section, to the majority of workers, laborers, or mechanics, in the same trade or occupation. In the event that there is not a majority in the same trade or occupation paid at the same rate, then the average rate of hourly wage and overtime paid to such laborers, workers, or mechanics in the same trade or occupation shall be the prevailing rate. If the wage paid by any contractor or subcontractor to laborers, workers, or mechanics on any public work is based on some period of time other than an hour, the hourly wage for the purposes of this chapter shall be mathematically determined by the number of hours worked in such period of time.

(2) The "locality" ((~~for the purposes of this chapter shall be~~)) means the largest city in the county wherein the physical work is being performed.

(3) The "usual benefits" ((~~for the purposes of this chapter shall~~)) includes the amount of:

(a) The rate of contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a fund, plan, or program; and

(b) The rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing benefits to workers, laborers, and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program which was communicated in writing to the workers, laborers, and mechanics affected, for medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, for unemployment benefits, life insurance, disability and sickness insurance, or accident insurance, for vacation and holiday pay, for defraying costs of apprenticeship or other similar programs, or for other bona fide fringe benefits, but only where the contractor or subcontractor is not required by other federal, state, or local law to provide any of such benefits.

(4) ((~~An "interested party" for the purposes of this chapter shall include a contractor, subcontractor, an employee of a contractor or subcontractor, an organization whose members' wages, benefits, and conditions of employment are affected by this chapter, and the director of labor and industries or the director's designee.~~)) "Adverse action" means discharging, denying a promotion, demoting, failing to rehire after a seasonal interruption of work, threatening, penalizing, retaliating, engaging in unfair immigration-related practices, filing a false report with a government agency, changing an employee's status to a nonemployee, or otherwise discriminating against an employee. "Adverse action" may involve any aspect of employment, including pay, work hours, responsibilities, or other material change in the terms and condition of employment.

(5) "Department" means the department of labor and industries.

(6) "Front pay" means the compensation the employee would earn if reinstated to his or her former position.

(7) "Interested party" includes: A contractor or subcontractor or an employee of a contractor or subcontractor; the director or the director's designee; an organization whose members' wages, benefits, and conditions of employment are affected by this chapter, including a labor union; or any other organization of workers that exists for the purpose, in whole or in part, of interacting with employers.

(8)(a) "Pattern or practice" means that, in addition to the current violation, within the previous ten years the employer was:

(i) Convicted of a criminal violation of a state or local law concerning retaliation;

(ii) Subject to a court order entering final judgment for a violation of section 3, 9, 14, or 19 of this act, and the judgment was not satisfied or current within thirty days of the later of:

(A) The expiration of the time for appealing the order; or

(B) If a timely appeal was made, the date of the final resolution of the appeal; or

(iii) Subject to a final and binding citation and notice of assessment from the department for a violation of section 3, 9, or 19 of this act, and the citation and penalty were not satisfied or current within thirty days of the date the citation became final and binding.

(b) For the purposes of this subsection (8), an employer includes a successor employer, as defined in RCW 49.48.082.

(9)(a) "Unfair immigration-related practice" includes any of the following practices:

(i) Requesting more or different documents than are required under 8 U.S.C. Sec. 1324a(b), or a refusal to honor documents tendered pursuant to that section that on their face reasonably appear to be genuine;

(ii) Using the federal E-Verify system to check the employment authorization status of a person at a time or in a manner not required under 8 U.S.C. Sec. 1324a(b), or not authorized under any memorandum of understanding governing the use of the federal E-Verify system;

(iii) Threatening to file or the filing of a false police report;

(iv) Threatening to contact or contacting immigration authorities;

(v) Withholding or threatening to destroy documents related to a person's immigration status.

(b) "Unfair immigration-related practice" does not include conduct undertaken at the express and specific direction or request of the federal government.

NEW SECTION. **Sec.**  (1) An employer, any of its agents, or any person acting on behalf of the employer may not take adverse action against any individual or individuals because:

(a) An employee or former employee has informed any other person or made a complaint, or the employer believes an employee has informed any other person or made a complaint, including to the employer, the department, the attorney general, or any other person that the employer engaged in conduct that an employee reasonably believes violates this chapter;

(b) An employee or former employee demands from the employee's employer a lawful claim under this chapter;

(c) An employee or former employee has caused to be instituted, or is about to cause to be instituted, a proceeding under or related to this chapter;

(d) An employee or former employee has testified or is about to testify in a proceeding under or related to this chapter;

(e) An employee has refused to participate in an activity that would result in a violation of state or federal wage and hour law;

(f) An employee or former employee has sought information about his or her rights under this chapter or informed others about their rights under this chapter;

(g) An employee or former employee has, or the employer believes an employee has, otherwise exercised rights protected by this chapter; or

(h) An employee or former employee filed a complaint with the department or brought suit in court where the employer was determined to have violated this chapter.

(2) If an employer takes adverse action against an employee or former employee within ninety days of an activity described in subsection (1) of this section, the employer is presumed to have acted in retaliation in violation of subsection (1) of this section. However, in the case of seasonal work that ended before the close of the ninety day period, the presumption also applies if the employer fails to rehire a former employee at the next opportunity for work in the same position. The employer may rebut the presumption with clear and convincing evidence that the adverse action was taken for a permissible purpose.

(3) A complaint or other communication by an employee triggers the protections of this section regardless of whether the complaint or communication is in writing or makes explicit reference to this chapter.

(4) A violation of this section is a gross misdemeanor. The presumption created in subsection (2) of this section does not apply to this subsection.

NEW SECTION. **Sec.**  (1) An individual aggrieved or an interested party filing on behalf of an individual aggrieved by section 14 of this act may file a complaint with the director.

(2) If an individual aggrieved or an interested party filing on behalf of an individual aggrieved files a complaint with the department, the director may investigate the complaint. If, following an investigation, the director determines that an employer violated section 14 of this act, the director may order the employer to comply with any one or more of the following, unless prohibited by federal law:

(a) Pay a civil penalty of not less than one thousand dollars and not more than ten thousand dollars per individual aggrieved. The department must deposit civil penalties under this section in the supplemental pension fund established under RCW 51.44.033.

(b)(i) Subject to (b)(ii) of this subsection, pay any aggrieved individual not less than one thousand dollars and not more than ten thousand dollars.

(ii) If an employee or former employee is the aggrieved individual, pay the individual the greater of:

(A) The amount of any civil penalty imposed under (a) of this subsection; or

(B) Three times the amount of any wages, salary, and employment benefits unlawfully denied or withheld, except benefits under Title 50 or 51 RCW.

(c) If the aggrieved individual is a former employee of the violating employer, reinstate the aggrieved individual as an employee at not less than the most recent rate of pay received by the employee. The director may award front pay in lieu of reinstatement.

(3) An appeal from the director's determination may be taken in accordance with chapter 34.05 RCW, with the prevailing party entitled to recover reasonable costs and attorneys' fees.

(4) The director may not investigate any alleged violation under this section that occurred more than three years before the date that the employee filed the complaint. This period is tolled during any period of time that an employer, any of its agents, or any person acting on behalf of the employer deters an individual from filing a complaint.

NEW SECTION. **Sec.**  (1) An individual aggrieved by a violation of section 14 of this act may bring suit on behalf of himself or herself or on behalf of any other individuals similarly situated.

(2) If a court determines that an employer violated section 14 of this act, the court, unless prohibited by federal law:

(a)(i) Shall award statutory damages for each individual aggrieved by the violation. Subject to (a)(ii) of this subsection, statutory damages must not be less than one thousand dollars and not more ten thousand dollars per individual, unless the employer engaged in a pattern or practice of violations, in which case the statutory damages must be not less than ten thousand dollars and not more than twenty-five thousand dollars per individual;

(ii) If an employee or former employee is the individual subject to adverse action, the court shall award the greater of:

(A) The amounts specified in (a)(i) of this subsection; or

(B) Three times the amount of any wages, salary, and employment benefits unlawfully denied or withheld, except benefits under Title 50 or 51 RCW;

(b) May award actual damages sustained by the individual;

(c) May order injunctive or other equitable relief if the aggrieved individual is an employee or former employee of the violating employer. The relief may include:

(i) Reinstatement of the former employee as an employee to his or her former position at not less than the most recent rate of compensation received by the employee, including the value of any benefits; or

(ii) Front pay in lieu of reinstatement;

(d)(i) For a first violation, may order the appropriate government agencies to suspend all licenses that are held by the violating party for a period of up to fourteen days. The licenses that are subject to suspension are all licenses, certifications, or registrations held by the violating party specific to the business location or locations where the adverse action occurred;

(ii) For a second violation, the court may order the appropriate government agencies to suspend all licenses that are held by the violating party for a period of up to thirty days. The licenses that are subject to suspension are all licenses held by the violating party specific to the business location or locations where the adverse action occurred;

(iii) For a third violation, the court may order the appropriate government agencies to suspend all licenses that are held by the violating party for a period of up to ninety days. The licenses that are subject to suspension are all licenses held by the violating party specific to the business location or locations where the adverse action occurred;

(e) Shall award attorneys' fees and costs.

(3) A civil action under this section must be brought no later than three years after the violation occurred. This period is tolled during any period of time that an employer, any of its agents, or any person acting on behalf of the employer deters an individual from bringing an action under this section.

NEW SECTION. **Sec.**  Sections 14 through 16 of this act are each added to chapter 39.12 RCW.

**WAGE DEDUCTIONS**

NEW SECTION. **Sec.**  The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Adverse action" means discharging, denying a promotion, demoting, failing to rehire after a seasonal interruption of work, threatening, penalizing, retaliating, engaging in unfair immigration-related practices, filing a false report with a government agency, changing an employee's status to a nonemployee, or otherwise discriminating against an employee. "Adverse action" may involve any aspect of employment, including pay, work hours, responsibilities, or other material change in the terms and condition of employment.

(2) "Department" means the department of labor and industries.

(3) "Director" means the director of the department of labor and industries.

(4) "Front pay" means the compensation the employee would earn if reinstated to his or her former position.

(5) "Interested party" includes: A contractor or subcontractor or an employee of a contractor or subcontractor; the director or the director's designee; an organization whose members' wages, benefits, and conditions of employment are affected by this chapter, including a labor union; or any other organization of workers that exists for the purpose, in whole or in part, of interacting with employers.

(6)(a) "Pattern or practice" means that, in addition to the current violation, within the previous ten years the employer was:

(i) Convicted of a criminal violation of a state or local law concerning retaliation;

(ii) Subject to a court order entering final judgment for a violation of section 3, 9, 14, or 19 of this act, and the judgment was not satisfied or current within thirty days of the later of:

(A) The expiration of the time for appealing the order; or

(B) If a timely appeal was made, the date of the final resolution of the appeal; or

(iii) Subject to a final and binding citation and notice of assessment from the department for a violation of section 3, 9, or 15 of this act, and the citation and penalty were not satisfied or current within thirty days of the date the citation became final and binding.

(b) For the purposes of this subsection (6), an employer includes a successor employer, as defined in RCW 49.48.082.

(7)(a) "Unfair immigration-related practice" means any of the following practices:

(i) Requesting more or different documents than are required under 8 U.S.C. Sec. 1324a(b), or a refusal to honor documents tendered pursuant to that section that on their face reasonably appear to be genuine;

(ii) Using the federal E-Verify system to check the employment authorization status of a person at a time or in a manner not required under 8 U.S.C. Sec. 1324a(b), or not authorized under any memorandum of understanding governing the use of the federal E-Verify system;

(iii) Threatening to file or the filing of a false police report;

(iv) Threatening to contact or contacting immigration authorities;

(v) Withholding or threatening to destroy documents related to a person's immigration status.

(b) "Unfair immigration-related practice" does not include conduct undertaken at the express and specific direction or request of the federal government.

NEW SECTION. **Sec.**  (1) An employer, any of its agents, or any person acting on behalf of the employer may not take adverse action against any individual or individuals because:

(a) An employee or former employee has informed any other person or made a complaint, or the employer believes an employee has informed any other person or made a complaint, including to the employer, the department, the attorney general, or any other person that the employer engaged in conduct that an employee reasonably believes violates this chapter;

(b) An employee or former employee demands from the employee's employer a lawful claim under this chapter;

(c) An employee or former employee has caused to be instituted, or is about to cause to be instituted, a proceeding under or related to this chapter;

(d) An employee or former employee has testified or is about to testify in a proceeding under or related to this chapter;

(e) An employee has refused to participate in an activity that would result in a violation of state or federal wage and hour law;

(f) An employee or former employee has sought information about his or her rights under this chapter or informed others about their rights under this chapter;

(g) An employee or former employee has, or the employer believes an employee has, otherwise exercised rights protected by this chapter; or

(h) An employee or former employee filed a complaint with the department or brought suit in court where the employer was determined to have violated this chapter.

(2) If an employer takes adverse action against an employee or former employee within ninety days of an activity described in subsection (1) of this section, the employer is presumed to have acted in retaliation in violation of subsection (1) of this section. However, in the case of seasonal work that ended before the close of the ninety day period, the presumption also applies if the employer fails to rehire a former employee at the next opportunity for work in the same position. The employer may rebut the presumption with clear and convincing evidence that the adverse action was taken for a permissible purpose.

(3) A complaint or other communication by an employee triggers the protections of this section regardless of whether the complaint or communication is in writing or makes explicit reference to this chapter.

(4) A violation of this section is a gross misdemeanor. The presumption created in subsection (2) of this section does not apply to this subsection.

NEW SECTION. **Sec.**  (1) An individual aggrieved or an interested party filing on behalf of an individual aggrieved by section 19 of this act may file a complaint with the director.

(2) If an individual aggrieved or an interested party filing on behalf of an individual aggrieved files a complaint with the department, the director may investigate the complaint. If, following an investigation, the director determines that an employer violated section 19 of this act, the director may order the employer to comply with any one or more of the following, unless prohibited by federal law:

(a) Pay a civil penalty of not less than one thousand dollars and not more than ten thousand dollars per individual aggrieved. The department must deposit civil penalties under this section in the supplemental pension fund established under RCW 51.44.033.

(b)(i) Subject to (b)(ii) of this subsection, pay any aggrieved individual not less than one thousand dollars and not more than ten thousand dollars.

(ii) If an employee or former employee is the aggrieved individual, pay the individual the greater of:

(A) The amount of any civil penalty imposed under (a) of this subsection; or

(B) Three times the amount of any wages, salary, and employment benefits unlawfully denied or withheld, except benefits under Title 50 or 51 RCW.

(c) If the aggrieved individual is a former employee of the violating employer, reinstate the aggrieved individual as an employee at not less than the most recent rate of pay received by the employee. The director may award front pay in lieu of reinstatement.

(3) An appeal from the director's determination may be taken in accordance with chapter 34.05 RCW, with the prevailing party entitled to recover reasonable costs and attorneys' fees.

(4) The director may not investigate any alleged violation under this section that occurred more than three years before the date that the employee filed the complaint. This period is tolled during any period of time that an employer, any of its agents, or any person acting on behalf of the employer deters an individual from filing a complaint.

NEW SECTION. **Sec.**  (1) An individual aggrieved by a violation of section 19 of this act may bring suit on behalf of himself or herself or on behalf of any other individuals similarly situated.

(2) If a court determines that an employer violated section 19 of this act, the court, unless prohibited by federal law:

(a)(i) Shall award statutory damages for each individual aggrieved by the violation. Subject to (a)(ii) of this subsection, statutory damages must not be less than one thousand dollars and not more than ten thousand dollars per individual, unless the employer engaged in a pattern or practice of violations, in which case the statutory damages must be not less than ten thousand dollars and not more than twenty-five thousand dollars per individual;

(ii) If an employee or former employee is the individual subject to adverse action, the court shall award the greater of:

(A) The amounts specified in (a)(i) of this subsection; or

(B) Three times the amount of any wages, salary, and employment benefits unlawfully denied or withheld, except benefits under Title 50 or 51 RCW;

(b) May award actual damages sustained by the individual;

(c) May order injunctive or other equitable relief if the aggrieved individual is an employee or former employee of the violating employer. The relief may include:

(i) Reinstatement of the former employee as an employee to his or her former position at not less than the most recent rate of compensation received by the employee, including the value of any benefits; or

(ii) Front pay in lieu of reinstatement;

(d)(i) For a first violation, may order the appropriate government agencies to suspend all licenses that are held by the violating party for a period of up to fourteen days. The licenses that are subject to suspension are all licenses, certifications, or registrations held by the violating party specific to the business location or locations where the adverse action occurred;

(ii) For a second violation, the court may order the appropriate government agencies to suspend all licenses that are held by the violating party for a period of up to thirty days. The licenses that are subject to suspension are all licenses held by the violating party specific to the business location or locations where the adverse action occurred;

(iii) For a third violation, the court may order the appropriate government agencies to suspend all licenses that are held by the violating party for a period of up to ninety days. The licenses that are subject to suspension are all licenses held by the violating party specific to the business location or locations where the adverse action occurred;

(e) Shall award attorneys' fees and costs.

(3) A civil action under this section must be brought no later than three years after the violation occurred. This period is tolled during any period of time that an employer, any of its agents, or any person acting on behalf of the employer deters an individual from bringing an action under this section.

NEW SECTION. **Sec.**  Sections 18 through 21 of this act are each added to chapter 49.52 RCW.

NEW SECTION. **Sec.**  If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

**--- END ---**