

SB 5720 - S AMD 81
By Senator Hawkins

ADOPTED 03/03/2017

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** A new section is added to chapter 49.48
4 RCW to read as follows:

5 (1)(a) To encourage and expedite full compensation for break
6 times or rest and recovery periods that occurred prior to the
7 effective date of this section for employees paid on a production
8 basis or piece work basis in connection with work related to the
9 growing, production, handling, or storage of farm products as defined
10 in RCW 7.48.310(4) or in performing agricultural activities as
11 defined in RCW 7.48.310(1), employers may elect to pursue one of the
12 two following remedies:

13 (i) The employer may make payments, including interest at the
14 rate of twelve percent per annum from the date the payments were due,
15 to each of its employees for previously uncompensated or
16 undercompensated break times or rest and recovery periods for the
17 prior three years from the effective date of this section; or

18 (ii) The employer may pay each employee an amount equal to four
19 and thirty-five one-hundredths percent of the employee's gross
20 earnings, including interest at the rate of twelve percent per annum
21 from the date the wages were due to the employee, for work performed
22 on a production basis or piece work basis during the three-year
23 period prior to the effective date of this section, less the amounts
24 previously and separately paid to that employee for break times or
25 rest and recovery periods, if any.

26 (b) Employers must make reasonable and good faith efforts to
27 locate and pay employees the amounts required under this section, and
28 if after reasonable and good faith efforts, employers are unable to
29 locate any employees entitled to the payments described in (a) of
30 this subsection, employers must pay the amounts due the employees
31 under (a) of this subsection to the department of labor and
32 industries, with the supporting records of the employees entitled to
33 this compensation, which, if paid, shall have the same effect as

1 though the compensation was paid to the employees entitled to that
2 compensation and shall satisfy the remedies under (a) of this
3 subsection as to those employees.

4 (i) Funds collected under this subsection (1)(b) must be held in
5 a separate trust on behalf of agricultural employees. The department
6 of labor and industries shall act as trustee and administrator of
7 such trust and shall establish a system for tracking, locating, and
8 paying out funds to these employees. The department may contract with
9 a nonprofit entity in Washington state to achieve the purposes of
10 this section.

11 (ii) If, after January 30, 2021, moneys are still available in
12 the trust established under (b)(i) of this subsection, a committee
13 consisting of the director of the department of labor and industries
14 or the director's designee, the chair and ranking member on the
15 senate and house of representatives committees on agriculture, and a
16 representative from an association representing agricultural workers
17 and a labor union association appointed by the director shall
18 determine how the moneys should be spent on behalf of agriculture
19 employees in the state.

20 (2) Employers that have paid the compensation as provided in
21 subsection (1) of this section by January 1, 2018, shall not be held
22 liable for any claim or cause of action arising under this chapter or
23 chapter 49.52 RCW, based solely upon the employer's failure to timely
24 pay the employee compensation for break times or rest and recovery
25 periods during the three-year period prior to the effective date of
26 this section.

27 (3) An employer who makes a reasonable and good faith effort to
28 pay the compensation as provided in subsection (1) of this section,
29 but who solely through good faith error fails to make a payment to
30 one or more employees shall not be held liable for any claim or cause
31 of action arising under this chapter or chapter 49.52 RCW, based
32 solely upon the employer's failure to timely pay the employee
33 compensation for break times or rest and recovery periods during the
34 three-year period prior to the effective date of this section, if the
35 employer, within thirty days of discovery or notice of the error,
36 pays the compensation as described in subsection (1) of this section
37 to the employee.

38 NEW SECTION. **Sec. 2.** This act is necessary for the immediate
39 preservation of the public peace, health, or safety, or support of

1 the state government and its existing public institutions, and takes
2 effect immediately."

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3 On page 1, line 3 of the title, after "products;" strike the
4 remainder of the title and insert "adding a new section to chapter
5 49.48 RCW; and declaring an emergency."

EFFECT: Establishes that an employer that paid employees for agricultural-related work on a production basis or piece rate basis may pay compensation to their employees for previously uncompensated or undercompensated break times or rest and recovery time for the prior three years and shall not be liable for failure to pay wages for break times or rest and recovery time for the prior three years.

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