
ENGROSSED SENATE BILL 5720

State of Washington

65th Legislature

2017 Regular Session

By Senators Hawkins, Hobbs, Takko, Baumgartner, Sheldon, King, Brown, and Schoesler

Read first time 02/06/17. Referred to Committee on Agriculture, Water, Trade & Economic Development.

1 AN ACT Relating to payment of production-based compensation wages
2 for the employment and use of labor in agricultural activities and in
3 the production, handling, and storage of farm products; adding a new
4 section to chapter 49.48 RCW; and declaring an emergency.

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

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 49.48
7 RCW to read as follows:

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

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

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

9 (b) Employers must make reasonable and good faith efforts to
10 locate and pay employees the amounts required under this section, and
11 if after reasonable and good faith efforts, employers are unable to
12 locate any employees entitled to the payments described in (a) of
13 this subsection, employers must pay the amounts due the employees
14 under (a) of this subsection to the department of labor and
15 industries, with the supporting records of the employees entitled to
16 this compensation, which, if paid, shall have the same effect as
17 though the compensation was paid to the employees entitled to that
18 compensation and shall satisfy the remedies under (a) of this
19 subsection as to those employees.

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

27 (ii) If, after January 30, 2021, moneys are still available in
28 the trust established under (b)(i) of this subsection, a committee
29 consisting of the director of the department of labor and industries
30 or the director's designee, the chair and ranking member on the
31 senate and house of representatives committees on agriculture, and a
32 representative from an association representing agricultural workers
33 and a labor union association appointed by the director shall
34 determine how the moneys should be spent on behalf of agriculture
35 employees in the state.

36 (2) Employers that have paid the compensation as provided in
37 subsection (1) of this section by January 1, 2018, shall not be held
38 liable for any claim or cause of action arising under this chapter or
39 chapter 49.52 RCW, based solely upon the employer's failure to timely
40 pay the employee compensation for break times or rest and recovery

1 periods during the three-year period prior to the effective date of
2 this section.

3 (3) An employer who makes a reasonable and good faith effort to
4 pay the compensation as provided in subsection (1) of this section,
5 but who solely through good faith error fails to make a payment to
6 one or more employees shall not be held liable for any claim or cause
7 of action arising under this chapter or chapter 49.52 RCW, based
8 solely upon the employer's failure to timely pay the employee
9 compensation for break times or rest and recovery periods during the
10 three-year period prior to the effective date of this section, if the
11 employer, within thirty days of discovery or notice of the error,
12 pays the compensation as described in subsection (1) of this section
13 to the employee.

14 NEW SECTION. **Sec. 2.** This act is necessary for the immediate
15 preservation of the public peace, health, or safety, or support of
16 the state government and its existing public institutions, and takes
17 effect immediately.

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