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**SUBSTITUTE HOUSE BILL 1491**

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**State of Washington 66th Legislature 2019 Regular Session**

**By** House Labor & Workplace Standards (originally sponsored by Representatives Macri, Lekanoff, Frame, Davis, Fitzgibbon, and Cody)

AN ACT Relating to secure scheduling; adding a new chapter to Title 49 RCW; and prescribing penalties.

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

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

(1) "At the time of hire" means the period after offer and acceptance of employment, and on or before the commencement of employment.

(2) "Bona fide business reason" means:

(a) An action that would cause the employer to violate a law, statute, ordinance, code, governmental executive order, or rule;

(b) A significant and identifiable burden of additional costs to the employer;

(c) A significant insufficiency of work during the periods the employee proposes to work; or

(d) A significant and identifiable detrimental effect on the employer's ability to meet organizational demands, including:

(i) A significant inability of the employer, despite best efforts, to reorganize work among existing employees;

(ii) A significant detrimental effect on business performance;

(iii) A significant inability to meet customer needs or demands; or

(iv) A significant insufficiency of work during the periods the employee proposes to work.

(3) "Career-related educational or training program" means:

(a) An educational or training program;

(b) A preapprenticeship or apprenticeship program; or

(c) A program of study offered by a public, private, or nonprofit career and technical education school, institution of higher education, or other entity that provides academic, education, career and technical education, or training including, but not limited to, remedial education or English as a second language, as appropriate.

(4) "Caregiver" means an employee who has the responsibility of providing:

(a) Ongoing care or education, including responsibility for securing the ongoing care or education, of a child;

(b) Ongoing care, including the responsibility for securing ongoing care, of:

(i) An individual with a serious health condition who is in a family relationship with the employee; or

(ii) A parent of the individual.

(5) "Child" includes a biological, adopted, or foster child, a stepchild, or a child to whom the employee stands in loco parentis, is a legal guardian, or is a de facto parent, regardless of age or dependency status.

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

(7) "Director" means the director of the department.

(8) "Employ" includes to permit to work.

(9) "Employee" means any individual employed by an employer, as defined in subsection (10) of this section, and as limited by RCW 49.46.010 who works at a fixed point-of-sale location of an employer.

(10)(a) "Employer" means any employer as defined in RCW 49.46.010, except an employer located in a rural county as defined in RCW 82.14.370(5), that is a food service, hospitality, or retail establishment that employs two hundred fifty or more employees worldwide, including chains, integrated enterprises, or franchises associated with a franchisor or network of franchises that employ more than two hundred fifty employees in the aggregate, except that:

(i) A full service restaurant must also have forty or more full service restaurant locations worldwide;

(ii) A franchisee employing fewer than twenty-five employees aggregated across all locations operated by that franchisee is not an employer; and

(iii) "Employer" does not include a nonprofit service organization or temporary service contractor as defined in RCW 19.31.020(12).

(b) To determine the number of employees for the current calendar year, the calculation shall be based on:

(i) The average number per calendar week of employees who worked for compensation during the preceding calendar year for any and all weeks during which at least one employee worked for compensation. For employers that did not have any employees during the previous calendar year, the number of employees shall be calculated based upon the average number per calendar week of employees who worked for compensation during the first ninety calendar days of the current year in which the employer engaged in business; and

(ii) All hours worked for compensation by all employees.

(c) Separate entities are an integrated enterprise and a single employer where a separate entity controls the operation of another entity. The factors to consider include:

(i) Degree of interrelation between the operations of multiple entities;

(ii) Degree to which the entities share common management;

(iii) Centralized control of labor relations; and

(iv) Degree of common ownership or financial control over the entities.

(d) For purposes of this subsection (10) only, "employee" means any individual employed by an employer.

(11) "Family relationship" means a relationship with:

(a) A child, spouse, parent, grandchild, grandparent, sibling, or parent of a spouse of the employee; or

(b) Any individual related to the employee involved by blood or affinity, whose close association with the employee is the equivalent of a family relationship as described in (a) of this subsection.

(12) "Food services establishment" means a business that sells prepared foods or beverages, including: Food services contractors; caterers and mobile food services; drinking places that serve alcoholic beverages; full service restaurants; limited service restaurants, cafeterias, grill buffets, and buffets; and snack and nonalcoholic beverage bars. These businesses include, but are not limited to, those described in the 2017 North American classification system code 722.

(13) "Franchise," "franchisee," and "franchisor" have the same meanings as in RCW 19.100.010.

(14) "Grandchild" means the child of a child of the employee.

(15) "Grandparent" means a parent of a parent of the employee.

(16) "Hospitality establishment" means a business that provides lodging on a short-term basis, including hotels, motels, and casino hotels including, but not limited to, those businesses described under the 2017 North American classification system codes 721110 and 721120.

(17) "Interactive process" means a timely, good faith process that includes a discussion between the employer and the employee for the purpose of arriving at a mutually beneficial arrangement of a work schedule that meets the needs of the employee and the employer. The discussion may include the proposal of alternatives by the employer and the employee.

(18) "Major life event" means a major event related to the employee's access to the workplace due to: Changes in the employee's transportation or housing; the employee's own serious health condition; the employee's responsibilities as a caregiver; the employee's enrollment in a career-related educational or training program; or the employee's other job or jobs.

(19) "On-call shift" means any time that the employer requires the employee to be available to work, contact the employer or the employer's designee, or wait to be contacted by the employer or the employer's designee, for the purpose of determining whether the employee must report to work. During such time, on-call status applies regardless of whether the employee is located on or off the employer's premises.

(20) "Parent" means a biological, adoptive, de facto, or foster parent, stepparent, or legal guardian of an employee or the employee's spouse or a person who stood in loco parentis to the employee when the employee was a child.

(21) "Regular rate of pay" means the hourly rate that is used to determine the employee's overtime pay under RCW 49.46.130.

(22) "Retail establishment" means an entity that is engaged primarily in the sale of consumer goods at one or more stores within the state. For the purposes of this subsection, "consumer goods" means products that are primarily for personal, household, or family purposes, including but not limited to appliances, clothing, electronics, groceries, and household items. These entities include, but are not limited to, those described in the 2017 North American classification system codes 44110 through 453998.

(23) "Seasonal employment" means a period of employment that is cyclical in nature, occurs at approximately the same time each year, often to accommodate a seasonal increase in business, and lasts for a duration of less than twelve months during any year.

(24) "Serious health condition" means an illness, injury, impairment, or physical or mental condition that involves:

(a) Inpatient care in a hospital, hospice, or residential medical care facility, including any period of incapacity; or

(b) Continuing treatment by a health care provider.

(25) "Sibling" means a brother or sister, whether related by half blood, whole blood, or adoption, or as a stepsibling.

(26) "Spouse" means a husband, wife, or state-registered domestic partner.

(27) "Wage" has the same meaning as in RCW 49.46.010.

(28) "Work schedule" means the hours, days, and times, including regular and on-call work shifts, when the employee is required by the employer to perform duties of employment for which the employee will receive compensation for a given period of time.

(29) "Work schedule change" means any employer-requested modification to the employee's work schedule that occurs after the advance notice required by section 5 of this act, including: The addition or reduction of hours; cancellation of a work shift or portion of a work shift; a change in the date or time of a work shift by the employer; or scheduling the employee for an on-call work shift for which the employee does not need to report to work.

(30) "Written" or "writing" means a printed or printable communication in physical or electronic format including a communication that is transmitted through email, text message, or a computer system, or is otherwise sent and maintained electronically.

NEW SECTION. **Sec.**  GOOD FAITH ESTIMATE OF WORK SCHEDULE. (1) At the time of hire, an employer must provide a new employee a written good faith estimate of the employee's work schedule, in English and the employee's primary language. The estimate must include the median number of hours the employee is expected to work each workweek, whether the employee is expected to work on-call shifts, and a subset of days and a subset of times or work shifts that the employee may expect to work, or days of the week and times or work shifts on which the employee will not be scheduled to work.

(2) An employer must revise the good faith estimate:

(a) Once every year calculated from the last good faith estimate; and

(b) When there is a significant change to the employee's work schedule due to changes in the employee's availability or the employer's business needs.

(3) The good faith estimate is not a contractual offer binding the employer, however, an estimate made without a good faith basis is a violation of this section.

(4) If there is a significant change to an employee's work schedule, an employer must initiate an interactive process with the employee to discuss the change and, if applicable, state a bona fide business reason for the change.

NEW SECTION. **Sec.**  WORK SCHEDULE INPUT. (1) At the time of hire and during employment, an employee may identify any limitations or changes in work schedule availability. An employee has the right to request not to be scheduled for work shifts during certain times or at certain locations and the right to identify preferences for the hours or locations of work.

(2) An employer must consider and respond to requests under subsection (1) of this section as follows:

(a) If the employee's request is due to a major life event, the employer must engage in an interactive process with the employee to discuss the request. The employer may require verifying information from the employee if the employer provides the employee with adequate notice and a reasonable time to respond. The employer must provide a written response to the request. The employer must grant the request unless the employer has a bona fide business reason for denial. If the employer denies a request in whole or in part, the response must include an explanation and the bona fide business reason for the denial.

(b) If the employee's request is not due to a major life event, the employer must engage in an interactive process with the employee to discuss the request, and may require verifying information from the employee if the employer provides the employee with adequate notice and a reasonable time to respond. The employer may grant or deny the request for any reason that is not unlawful.

(c) The requirement for an employee to provide verifying information may not exceed privacy or verification requirements otherwise established by law.

NEW SECTION. **Sec.**  REST BETWEEN WORK SHIFTS. (1) Unless the employee requests or consents to work such hours, an employer may not schedule or require an employee to work:

(a) Sooner than ten hours after the end of the previous calendar day's work shift; or

(b) Sooner than ten hours following the end of a work shift that spanned two calendar days.

(2) An employer must compensate an employee who works the hours described in subsection (1) of this section at one and one-half times the employee's regular rate of pay for the hours worked that are fewer than ten hours apart.

(3) Requests or consent to work shifts described in this section must be provided in writing, either for each such shift or for multiple shifts, and may be revoked in writing at any time during employment.

NEW SECTION. **Sec.**  ADVANCE NOTICE OF WORK SCHEDULE. (1) Subject to subsection (2) of this section, an employer shall provide employees with a written work schedule at least fourteen calendar days before the first day of the work schedule.

(2) For new employees at the time of hire and for existing employees returning to work after a leave of absence, an employer may provide a written work schedule that runs through the last date of the currently posted schedule. Thereafter, the employer must include these employees in the schedule for existing employees.

(3) The written work schedule shall include all regular and on-call work shifts for the work period.

(4) An employer shall post the written work schedule in a conspicuous and accessible location, in English and in the primary languages of all of the employees at the particular workplace. An employer shall transmit the written work schedule to each employee. The employer may transmit the written work schedule electronically if electronic means are regularly used to communicate scheduling information to employees. The written work schedule shall include the shifts of all current employees at that worksite, whether or not they are scheduled to work or be on call that week.

(5) An employer who fails to post a written work schedule at least fourteen calendar days before the first day of the work schedule must compensate each employee in the amount of one hundred dollars per day that the schedule is not posted.

NEW SECTION. **Sec.**  NOTICE OF WORK SCHEDULE CHANGES. (1) For an employer-requested change to the written work schedule that occurs after the advance notice required in section 5 of this act:

(a) The employer must provide the employee with timely notice of the change by in-person conversation, telephone call, email, text message, or other accessible electronic or written format; and

(b) An employee may decline to work any hours not included in the employee's work schedule.

(2) For an employee-requested change to the written work schedule that occurs after the advance notice required in section 5 of this act:

(a) The employee must provide notice of the request according to the employer's usual, customary, and reasonable notice and procedural requirements for foreseeable changes, or as soon as practicable for unforeseeable circumstances; and

(b) The employee must comply with the employer's usual, customary, and reasonable normal notification requirements and call-in procedures, so long as these requirements do not interfere with the purposes for which the work schedule change is needed if the change is due to a reason covered by a state or federal law or a major life event.

(3) An employer may ask or require an employee to find a replacement employee for coverage of any hours during which the employee is unable to work a scheduled work shift only as follows:

(a) An employer may not ask or require an employee to find replacement coverage if another law prohibits asking such questions or protects the absence from employer interference, including work schedule changes related to the use of paid sick and safe leave under RCW 49.46.210.

(b) An employer may ask but may not require an employee to find replacement coverage if the reason is an emergency or major life event that prevents the employee from working the scheduled hours, unless the major life event is covered by another law under (a) of this subsection. An employer may require a written statement from the employee verifying that the employee is unable to work the scheduled hours due to an emergency or major life event. The employee shall not have to explain the nature of the emergency or major life event.

(c) An employer may ask and require an employee to find replacement coverage if the employee is unable to work the scheduled hours due to a reason other than a reason covered by (a) or (b) of this subsection.

NEW SECTION. **Sec.**  COMPENSATION FOR WORK SCHEDULE CHANGES. (1) Subject to subsection (2) of this section, an employer must compensate an employee for each employer-requested change to the employee's written work schedule that occurs after the advance notice required by section 5 of this act as follows:

(a) At least one hour of pay at the employee's regular rate of pay, in addition to wages earned, for adding hours of work or changing the date, start time, or end time of a work shift with no loss of hours, or changing the physical address of a work shift. This provision does not require the payment of any overtime pay that would not ordinarily be paid to the employee.

(b) At least one-half times the employee's regular rate of pay per hour for any scheduled hours the employee does not work because the employer: Subtracted hours from a regular work shift before or after the employee reported for duty; changed the date, start time, or end time of a work shift resulting in a loss of hours; canceled a work shift; or scheduled the employee for an on-call shift for which the employee does not need to report to work.

(2) The additional compensation requirements of subsection (1) of this section do not apply under the following circumstances:

(a) Mutually agreed upon work shift swaps or coverage among employees. An employer may require that it preapprove work shift swaps or coverage and may assist employees in finding such arrangements. Assistance is limited to helping an employee identify other employees who may be available to provide coverage or swap work shifts and does not include the employer arranging the shift swap or coverage;

(b) Additional hours that the employee volunteers to work in response to a mass communication, in writing from the employer, about the availability of additional hours, provided that the mass communication is:

(i) Only used for additional hours that are the result of another employee being unable to work scheduled hours; and

(ii) Is clear that accepting such hours is voluntary and the employee has the right to decline such hours;

(c) Additional hours that an employer requests employees who are currently working, through an in-person group communication, to work in order to address present and unanticipated customer needs, so long as the hours are consecutive to the hours the employee is currently working and the employee consents to take the hours;

(d) Employee-requested changes including additional or subtracted hours that the employee voluntarily makes to the employee's work schedule and documents in writing; or

(e) Operations cannot begin or continue due to:

(i) Threats to employees or property, or due to the recommendation of a public official that work may not begin or continue;

(ii) Failure of public utilities to supply electricity, water, or gas, or failure in the public utilities or sewer system; or

(iii) A state of emergency declared by the president of the United States, governor of Washington, or mayor of a city.

NEW SECTION. **Sec.**  UNDERSCHEDULING. An employer may not engage in a pattern or practice of systemic underscheduling in which the total hours actually worked are significantly greater than the hours in the written work schedule required by section 5 of this act. Pursuant to rules adopted by the department, an employer shall periodically provide the department with aggregate data on discrepancies between scheduled work hours and hours actually worked.

NEW SECTION. **Sec.**  ACCESS TO HOURS FOR EXISTING EMPLOYEES. (1) Subject to subsections (5) and (7) of this section, when additional hours of work become available, an employer must offer the additional hours to existing employees before hiring new employees from an external applicant pool or subcontractors, including hiring through the use of temporary services or staffing agencies, as provided in this section.

(2)(a) An employer must post written notice of available hours of work for at least five consecutive calendar days. The employer must post the notice in a conspicuous and accessible location where employee notices are customarily posted. If the employer posts the notice in electronic format, all employees in the workplace must have access to the notice on-site. The notice must be in English and the primary languages of all of the employees at the particular workplace. The notice must contain the following information:

(i) Description and title of the position;

(ii) Required qualifications for the position;

(iii) Total hours of work being offered;

(iv) Schedule of available work shifts;

(v) Whether the available work shifts will occur at the same time each week;

(vi) Length of time the employer anticipates requiring coverage of the additional hours; and

(vii) An advisement that an employee may accept a subset of the hours offered.

(b) An employer may post the notice concurrently to external candidates.

(3)(a) An employer must offer additional hours of work to an existing employee who responds to the offer of work and who, to a reasonable employer acting in good faith, is qualified with the skills and experience to perform the work. If more than one qualified employee responds to the offer, the employer may distribute the hours among interested employees or may offer all of the available hours to one qualified employee. The employer may choose among qualified internal candidates following the employer's usual and customary hiring procedures; however, the employer must first offer shifts to employees whose regular workplace is the location where the shifts described in the notice will be worked, and if no such employee accepts the shifts within the time defined in this section, to employees whose regular workplace is a location other than the location where such hours will be worked; or if no such employee accepts the hours described in the notice within the time defined in this section, to temporary or seasonal workers who have been continuously assigned for at least four weeks to the location where the shift described in the notice will be worked. An employee may accept an entire shift offered by an employer or any shift increment. An employer is not required to award an employee a shift increment when the remaining portion of the shift is three hours or less and was not accepted by another employee.

(b) An employer must give an employee at least five consecutive calendar days, starting from the date of the employer's offer, to accept the additional hours of work.

(c) If an employee accepts additional hours of work for seasonal employment, the employer may reasonably delay scheduling such hours and permit new employees to start working for training purposes, so long as the delay does not exceed two weeks, the employer follows the employer's usual and customary practices for training new employees, and the employer provides the existing employee with a prospective start date for the additional hours.

(4) If no employee responds to the written notice of additional hours of work following the five consecutive calendar day posting requirement or accepts an offer of additional hours during the five consecutive calendar day acceptance period, the employer may immediately proceed with hiring new employees from an external applicant pool or subcontractors to work the additional hours described in the notice posted pursuant to subsection (2)(a) of this section.

(5)(a) If an employer provides notice of additional hours of work to all employees and receives written confirmation from all such employees that they are not interested in accepting additional hours of work, the employer may immediately proceed with hiring new employees from an external applicant pool or subcontractors to work the additional hours.

(b) Employers must get written confirmation from all such employees that they are not interested every time they have additional hours they would like filled.

(6) An employee does not qualify for additional hours if:

(a) Overtime or pay under section 7 of this act would be required if the employee received the additional hours;

(b) The employee is barred by other laws from conducting the work required in the available hours.

(7) This section does not prohibit an employer from offering hours at the overtime rate.

(8) An employer is encouraged to make reasonable efforts to offer employees training opportunities to gain the skills and experience to perform work for which the employer typically has additional needs.

(9) An employer must notify an employee in writing of the employer's policy for offering and distributing work shifts under this section, at the time of hire and within twenty-four hours of any change, and must post the policy in an accessible location in the workplace. The policy shall be transmitted or made available electronically and shall communicate:

(a) Where employees may access written notices;

(b) The process by which employees may notify the employer of their desire to work the offered shifts; and

(c) How hours will be distributed among qualified and interested employees.

(10) An employer who fails to offer additional hours of work as required by this section must compensate each existing employee one hundred dollars for each such occurrence. An employer who fails to award hours to a qualified employee who is eligible to receive the hours under the policy provided pursuant to subsection (9) of this section must compensate the qualified employee in the amount of one thousand dollars.

NEW SECTION. **Sec.**  RECORDKEEPING. (1) An employer must retain records for a period of three years that document compliance with this chapter, including:

(a) Written good faith estimates of employee work schedules under section 5 of this act;

(b) Written documentation regarding the employer's bona fide reason for denying an employee's request for a limitation or change in work schedule due to a major life event under section 3 of this act;

(c) Work schedules, including work schedules provided under section 5 of this act and modifications to work schedules made under section 6 of this act;

(d) Payroll records that specify the amount of additional compensation paid to employees under sections 4 and 7 of this act;

(e) Written documentation of employee-requested changes to the employee's work schedule that do not require additional compensation under section 7 of this act;

(f) Written notices of additional hours of work available for employees under section 9 of this act;

(g) Written confirmation from all employees that they are not interested in accepting additional hours of work if the employer elects to reduce the notice requirements under section 9 of this act; and

(h) Other records that the director determines by rule are material and necessary to effectuate this chapter.

(2) If an employer fails to retain adequate records under this section, there shall be a presumption, rebuttable by clear and convincing evidence, that the employer violated this chapter for the periods and for each employee for whom records were not retained.

NEW SECTION. **Sec.**  RETALIATION. (1) An employer may not discharge or otherwise discriminate against an employee because the employee has filed a complaint, or instituted or caused to be instituted any proceeding under this chapter, or testified or is about to testify in any such proceeding, or because the employee exercised a right afforded by this chapter on behalf of himself or herself or others.

(2) Prohibited discrimination may include: Demoting, suspending, or harassing an employee; assigning an employee to a lesser position in terms of job classification, job security, or other condition of employment; reducing the hours or pay of an employee or denying the employee additional hours; and actions or threats related to perceived immigration status or work authorization. An adverse action against an employee within ninety calendar days of the employee's exercise of rights protected in this chapter shall give rise to a rebuttable presumption of retaliation.

NEW SECTION. **Sec.**  NOTICE AND POSTING. The department shall include notice of the provisions of this chapter in the next reprinting of employment posters.

NEW SECTION. **Sec.**  RULES/TECHNICAL ASSISTANCE. (1) The department shall adopt rules to implement this chapter.

(2) The department shall provide technical assistance to employers regarding compliance with this chapter.

NEW SECTION. **Sec.**  ADMINISTRATIVE ENFORCEMENT. (1) Upon complaint by an employee, the director must investigate to determine if there has been compliance with this chapter and the rules adopted under this chapter. The director may require the testimony of witnesses and production of documents as part of an investigation.

(2) If the director determines that a violation occurred, the director must attempt to resolve the violation by conference and conciliation.

(a) If no agreement is reached to resolve the violation, the director may issue a citation and notice of assessment and order:

(i) The employer to pay: To the complainant, unpaid compensation; interest of one percent per month on all compensation owed; an additional amount of statutory damages equal to twice the unpaid compensation; and to the department, the costs of the investigation and enforcement; and

(ii) Any other appropriate relief. If an employer is found to have violated section 11 of this act, the director must order additional payment to the complainant of up to five thousand dollars.

(b) In addition to the citation and notice of assessment, the director may order payment to the department of a civil penalty. The civil penalty must be not less than one thousand dollars per violation or an amount equal to ten percent of the total amount of unpaid wages, whichever is greater. The civil penalty may not exceed twenty thousand dollars per aggrieved party.

(c) The director may waive the civil penalty if the director determines that the employer paid the full remedy due to the employee within ten days of the final order.

(3) An appeal from the director's determination may be taken in accordance with chapter 34.05 RCW. An employee who prevails is entitled to costs and reasonable attorneys' fees.

(4) The department must deposit civil penalties paid under this section in the supplemental pension fund established under RCW 51.44.033.

(5) The collection procedures in RCW 49.48.086 apply if an employer defaults in any payments that are the subject of a final order under this section.

NEW SECTION. **Sec.**  PRIVATE CAUSE OF ACTION. (1) An employee or class of employees may bring a civil action against an employer for violation of this chapter for:

(a) Unpaid compensation;

(b) Statutory damages of up to twice the unpaid compensation;

(c) Interest of one percent per month on all compensation owed; and

(d) Costs and reasonable attorneys' fees.

(2) If an employer is found to have violated section 11 of this act, the court shall order additional payment to the complainant of up to five thousand dollars. The court may also order reinstatement and injunctive relief.

NEW SECTION. **Sec.**  WHISTLEBLOWER ENFORCEMENT. (1) The civil penalties specified in section 14(2)(b) of this act may be recovered through a civil action brought by any employee allegedly harmed by a violation of this chapter, whether or not that person has received full or partial relief from the harm, on behalf of the director and other current and former employees, pursuant to the following procedures:

(a) The employee must give written notice to the director of the specific provisions of this chapter alleged to have been violated, including the facts and theories to support the alleged violation. The employee may also designate an organization, including a union or a nonprofit, to represent it in proceedings under this section, subject to rules adopted by the director.

(b) The director must notify the employee or representative organization that he or she does not intend to investigate the alleged violation within forty-five calendar days of the postmark date of the employee's notice. Upon receipt of the director's notice, or if no notice is provided within forty-five calendar days, of the postmark date of the notice, the aggrieved employee may commence a civil action under this subsection.

(c) If the director intends to investigate the alleged violation, he or she must notify the employee or representative of his or her decision within forty-five calendar days of the postmark date of the employee's notice. Within one hundred twenty calendar days of that decision, the director may investigate the alleged violation and issue any appropriate citation. If the director, during the course of the investigation, determines that additional time is necessary to complete the investigation, the director may extend the time by not more than sixty additional calendar days and must issue a notice of the extension. If the director determines that no citation will be issued, the director must notify the employee of that decision within five business days. Upon receipt of that notice or if no citation is issued by the director within the time limits prescribed by this subsection, or if the director fails to provide timely or any notification, the employee may commence a civil action under this subsection.

(2) No action may be brought under this section if the director, on the same facts and theories, cites a person within the time frames set forth in subsection (1) of this section for a violation of the same section or sections of this chapter under which the employee is attempting to recover a civil penalty, or files a proceeding to assess penalties or enforce other remedies.

(3) Any employee who prevails in any action under this section shall be entitled to an award of reasonable attorneys' fees and costs.

(4) Civil penalties recovered by aggrieved employees under this section shall be distributed as follows: Seventy percent to the director for enforcement of this chapter, and for education of employers and employees about their rights and responsibilities under this chapter, to be continuously appropriated to supplement and not supplant the funding to the director for those purposes; and thirty percent to the aggrieved employees. Twenty percent of the director's share of penalties recovered under this section shall be allocated to community-based enforcement partnerships.

(5) The right to bring an action under this section shall not be impaired by any private agreement.

(6) No employer or his or her agent or any other person shall retaliate in any manner, or threaten to retaliate, against an employee because the employee has, or is believed to have, participated in or cooperated with an action under this section. Any person so retaliated against may bring an action for compensatory and punitive damages or equitable relief, including restraint of prohibited acts, restitution of wages or benefits, reinstatement, costs, reasonable attorneys' fees, and other appropriate relief. There shall be a rebuttable presumption that any adverse action taken against an employee within ninety days after the employee has filed an action under this chapter is retaliatory.

NEW SECTION. **Sec.**  MORE GENEROUS POLICIES. (1) Nothing in this chapter shall be construed to discourage or prohibit an employer from the adoption or retention of scheduling policies more generous than those required by this chapter.

(2) Nothing in this chapter shall be construed to diminish the obligation of an employer to comply with any contract, collective bargaining agreement, employment benefit plan, or other agreement more generous than those required by this chapter.

NEW SECTION. **Sec.**  CONFLICT WITH FEDERAL REQUIREMENTS. If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state.

NEW SECTION. **Sec.**  SEVERABILITY. 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.

NEW SECTION. **Sec.**  CODIFICATION. Sections 1 through 18 of this act constitute a new chapter in Title 49 RCW.

**--- END ---**