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**SENATE BILL 5690**

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

**By** Senators Saldaña, Keiser, Conway, and Nguyen

AN ACT Relating to creating the universal worker protections act; amending RCW 39.12.010, 49.46.010, 49.46.010, 50.04.100, 50.04.298, 50.12.070, 51.08.070, 51.08.180, and 51.12.020; reenacting and amending RCW 49.48.082; adding a new section to chapter 39.12 RCW; adding new sections to chapter 49.52 RCW; adding a new section to chapter 49.48 RCW; adding a new section to chapter 49.46 RCW; adding a new section to chapter 50.04 RCW; adding a new section to chapter 51.12 RCW; adding new chapters to Title 49 RCW; creating new sections; repealing RCW 39.12.100, 50.04.140, 50.04.145, 51.08.181, and 51.08.195; prescribing penalties; providing effective dates; and providing expiration dates.

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

NEW SECTION. **Sec.**  (1) The legislature finds that:

(a) In Washington and across our nation, the basic social safety net is intrinsically connected and derived from employment. However, as our economy has changed, the social contract that full-time work led to basic financial security, retirement benefits, and the ability to provide for one's family, is no longer true for too many people. Additionally, our economy continues to adapt and the circumstances of how and where work is performed, as well as the relationships of those benefiting from work, look very different than fifty years ago. As our communities and economies evolve, there emerge credible and constructive rationales for alternative pathways for performing work, other than the traditional employment model based on hours in a day and shifts in a week construct. However, current economic systems and regulatory frameworks have created an incentive structure that encourages companies to forego social responsibilities to their communities and those performing work for them, by classifying their workers as independent contractors rather than genuine employees. The financial incentives for classifying or misclassifying workers as independent contractors are compelling to even the most scrupulous of employers. Further, those workers that desire the flexibility and autonomy of a traditional employment model have no access to the legal protections, rights, and benefits of a traditional employee. Lastly, there are no ongoing systems or structures for nonemployee workers to come together and advocate for themselves and their work, or for the state to set industry-wide standards as quickly as technology adapts.

(b) Washington is uniquely positioned to address this urgent deficiency of our labor market. The nimble and innovative nature of our economy, coupled with our state's commitment to strong communities provides the expertise and capacity to set the standard nationwide for this century's social compact between an economy and the people that it serves.

(2) To provide Washington businesses the necessary legal clarity they require to thrive as companies and employers, and ensure a basic and adaptable social safety net is available to all workers, regardless of worker status, the legislature intends to further clarify the definition of "employee" in Washington state and provide a regulatory and benefits structure for nonemployee workers, and establish workers' boards for independent contractors and the companies that rely on their services.

**EMPLOYEE FAIR CLASSIFICATION ACT**

NEW SECTION. **Sec.**  The legislature finds that underground economic activity in this state results in millions of dollars of lost revenue to the state and is unfair to workers and law-abiding businesses. Misclassification is workplace fraud. Theft of wages by employers through misclassification is a significant problem, particularly in low-wage industries. The legislature intends to improve compliance with wage-related and employment-related benefit laws to help address the problems of the underground economy, level the playing field for honest employers and contractors, and protect workers.

NEW SECTION. **Sec.**  This chapter may be known and cited as the employee fair classification act.

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

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

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

(3) "Employ" means to suffer or permit to work.

(4)(a) "Employee" means a person, including a helper, who performs labor or services for an employer, and includes workers, laborers, and mechanics under RCW 39.12.010. A person may be an employee of two or more employers at the same time.

(b) "Employee" does not include an independent contractor.

(c) "Employee" also does not include, for purposes of sections 6, 7, 8, and 9 of this act only:

(i) 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;

(ii) Any individual employed in the capacity of an outside salesperson paid solely by way of commission, as defined and delimited by the director.

(iii) 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;

(iv) 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;

(v) 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;

(vi) Any carrier subject to regulation by part 1 of the interstate commerce act;

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

(viii) 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;

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

(x) 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;

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

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

(xiii) Any farm intern providing his or her services to a small farm that has a special certificate issued under RCW 49.12.470.

(5)(a) "Employer" means any of the following that employ a person: (i) An individual; (ii) any form of business entity, or the receiver, trustee, or successor of a business entity; (iii) an administrator or executor of an estate; or (iv) the state or any agency, instrumentality, or political subdivision of the state. "Employer" includes an individual or entity that acts directly or indirectly in the interest of an employer in relation to employing a person. More than one entity may be the "employer," including in circumstances where one entity controls, is controlled by, or is under common control with another employer, or where one entity exerts control over the operations of another employer.

(b) "Employer" does not include agencies, authorities, or instrumentalities of the United States, its possessions and territories, the commonwealth of Puerto Rico, or the District of Columbia.

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

(7) "Helper" means an individual engaged by an employee to perform work in the employer's usual course of business. The employer of the employee is the employer of the "helper."

(8)(a) "Independent contractor" means an individual who performs labor or services for a party when all of the following elements are established:

(i) The individual is and will continue to be free from control or direction over the performance of the labor or services by the party for whom the labor or services are performed, both under the contract of labor or service and in fact. Control or direction includes the right to control or direct as well as general control or direction over the individual's physical activities; and

(ii) The labor or service is outside the usual course of business for which the labor or service is performed; and

(iii) The individual is customarily engaged in an independently established trade, occupation, business, or profession of the same nature as that involved in the contract of labor or service, for which the individual independently establishes the price of the individual's labor or service; and

(iv) On the effective date of service, the individual is responsible for filing at the next applicable filing period, both under the contract of service and in fact, a schedule of expenses with the internal revenue service for the type of business the individual is conducting; and

(v) On the effective date of service, or within a reasonable period after the effective date of service, the individual has an active and valid account with the department of revenue and other state agencies as required by the particular case, for the business the individual is conducting, for the payment of all state taxes normally paid by employers and businesses and has registered for and received a unified business identifier number from the state of Washington; and

(vi) On the effective date of service, the individual is maintaining a separate set of books or records that reflect all items of income and expenses of the business that the individual is conducting; and

(vii) If the individual is performing services that require registration under chapter 18.27 RCW or licensing under chapter 19.28 RCW for remuneration under an independent contract, on the effective date of the contract for services the individual has a valid contractor registration under chapter 18.27 RCW or an electrical contractor license under chapter 19.28 RCW.

(b) In determining whether an individual is an independent contractor, acts taken by an employer to comply with local, state, or federal laws or regulations may not be considered as proof of independent contractor status.

(9) "Misclassification" means designating an employee as a nonemployee of the employer.

(10)(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 nonpayment of wages;

(ii) Subject to a court order entering final judgment for a violation of this chapter or chapter 39.12, 49.46, 49.48, or 49.52 RCW, 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) Due to a previous violation, subject to a final and binding citation and notice of assessment from the department for a violation of this chapter or chapter 39.12 or 49.48 RCW, or a final determination of violation of chapter 39.12 RCW, and the citation, determination, and penalty was not satisfied or current within thirty days of the date the citation or determination became final and binding.

(b) For purposes of this subsection (10), an employer includes a successor employer, as defined in RCW 49.48.082.

(11) "Person" means a natural person, firm, partnership, corporation, association, or organization.

(12) "Willful" means a knowing and intentional action that is neither accidental nor the result of a bona fide dispute.

NEW SECTION. **Sec.**  (1) An employer-employee relationship exists when an individual performs labor or services for another individual or entity. The party asserting that an individual is not an employee must establish by a preponderance of the evidence that the individual is an independent contractor or is otherwise not an employee under this chapter.

(2) A general contractor is not responsible for violations of an independent contractor or subcontractor under this chapter unless the general contractor exerts substantial control over the day-to-day work of the independent contractor or subcontractor. For purposes of this subsection:

(a) "General contractor" means the contractor required to be registered under chapter 18.27 RCW or licensed under chapter 19.28 RCW whose business operations for a project require the use of more than one building trade or craft upon a single job or project, under a single building permit, and who has responsibility to superintend the project as a whole.

(b) "Subcontractor" means a contractor who engages in a business that is required to be registered under chapter 18.27 RCW or licensed under chapter 19.28 RCW and who is not a general contractor.

NEW SECTION. **Sec.**  (1) An employer may not willfully misclassify an employee as an independent contractor.

(2) A person may not charge an employee who has been misclassified as an independent contractor a fee, or make any deductions from compensation for any purpose, including for goods, materials, space rental, services, government licenses, repair, equipment maintenance, or fines arising from the employment where any of the acts would have violated the law if the individual had not been misclassified.

(3) A person may not require or request an employee to enter into an agreement or sign a document that results in the misclassification of the employee as an independent contractor or otherwise does not accurately reflect the employee's relationship with the employer.

(4) A person may not perform the following acts for the purpose of facilitating or evading detection of a violation of this chapter:

(a) Form, assist in, or induce the formation of a corporation, partnership, limited liability company, or other business entity; or

(b) Pay or collect a fee for use of a foreign or domestic corporation, partnership, limited liability company, or other business entity.

(5) A person may not, for remuneration, conspire with, aid and abet, assist, or advise an employer with the intent of violating this chapter.

NEW SECTION. **Sec.**  (1) The department may conduct an investigation if it obtains information indicating a person may have violated this chapter, but the department may not investigate a violation of this chapter that occurred more than three years before the date of the violation. For the purposes of this section, a violation occurs from the initial date of misclassification and for as long as the employee continues to be misclassified. The three-year 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 under this section.

(2) If the department determines that a person violated this chapter, it may:

(a) For a violation of section 10 of this act, order the employer to pay a civil penalty of not less than one thousand dollars and not more than ten thousand dollars;

(b) For a violation of section 6 of this act, order the person to pay a civil penalty of: (i) Not less than one thousand dollars and not more than ten thousand dollars per employee; or (ii) if the person has engaged in a pattern or practice of violations, not less than ten thousand dollars and not more than twenty-five thousand dollars per employee;

(c) For a violation of section 6 of this act, order persons, including employers, to jointly and severally pay the following: (i) Three times the amount of wages, salary, and employment benefits denied or withheld, except benefits under Title 50 or 51 RCW; and (ii) reimbursement for payroll taxes under Title 50 or 51 RCW and the value of any other state payroll taxes paid or state benefits lost by the employee;

(d) In addition, for a violation of section 6 of this act, order the employer to reinstate and properly classify the employee. The director may award front pay in lieu of reinstatement; and

(e) Determine whether to initiate collection procedures pursuant to RCW 51.16.150 through 51.16.190 to enforce its orders under (c) and (d) of this subsection, and send a copy of its determination, including any supporting documentation, to the employment security department.

(3) The department must consider referrals based on a court finding of a violation of section 6 of this act to determine whether to initiate collection procedures.

(4)(a) The department must adjust the penalty amounts in subsection (2) of this section beginning January 1, 2021, and on each January 1st thereafter, to reflect the percentage change in the consumer price index, calculated as follows: The index for the calendar year preceding the year in which the January 1st calculation is made, to be known as "calendar year A," is divided by the index for the calendar year preceding calendar year A, and the resulting ratio is multiplied by the penalty amount in effect on December 31st immediately preceding the January 1st on which the respective calculation is made.

(b) For the purposes of this subsection, "index" means the same as the definition in RCW 2.12.037(1).

(5) An employer may appeal the department's determination pursuant to RCW 49.48.084.

(6) The department must deposit civil penalties collected under this chapter into the employee fair classification act account created in section 11 of this act.

(7) This section expires January 2, 2021.

NEW SECTION. **Sec.**  (1) The department may conduct an investigation if it obtains information indicating a person may have violated this chapter, but the department may not investigate a violation of this chapter that occurred more than three years before the date of the violation. For the purposes of this section, a violation occurs from the initial date of misclassification and for as long as the employee continues to be misclassified. The three-year 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 under this section.

(2) If the department determines that a person violated this chapter, it must:

(a) For a violation of section 10 of this act, order the employer to pay a civil penalty of not less than one thousand dollars and not more than ten thousand dollars;

(b) For a violation of section 6 of this act, order the person to pay a civil penalty of: (i) Not less than one thousand dollars and not more than ten thousand dollars per employee; or (ii) if the person has engaged in a pattern or practice of violations, not less than ten thousand dollars and not more than twenty-five thousand dollars per employee;

(c) For a violation of section 6 of this act, order persons, including employers, to jointly and severally pay the following: (i) Three times the amount of wages, salary, and employment benefits denied or withheld, except benefits under Title 50 or 51 RCW; and (ii) reimbursement for payroll taxes under Title 50 or 51 RCW and the value of any payroll taxes paid or benefits lost by the employee;

(d) In addition, for a violation of section 6 of this act, order the employer to reinstate and properly classify the employee. The director may award front pay in lieu of reinstatement;

(e) Determine whether to initiate collection procedures pursuant to RCW 51.16.150 through 51.16.190 to enforce its orders under (c) and (d) of this subsection, and send a copy of its determination, including any supporting documentation, to the employment security department; and

(f) Consider referrals based on a court finding of a violation of section 6 of this act to determine whether to initiate collection procedures.

(3)(a) The department must adjust the penalty amounts in subsection (2) of this section beginning January 1, 2021, and on each January 1st thereafter, to reflect the percentage change in the consumer price index, calculated as follows: The index for the calendar year preceding the year in which the January 1st calculation is made, to be known as "calendar year A," is divided by the index for the calendar year preceding calendar year A, and the resulting ratio is multiplied by the penalty amount in effect on December 31st immediately preceding the January 1st on which the respective calculation is made.

(b) For the purposes of this subsection, "index" means the same as the definition in RCW 2.12.037(1).

(4) An employer may appeal the department's determination pursuant to RCW 49.48.084.

(5) The department must deposit civil penalties collected under this chapter into the employee fair classification act account created in section 11 of this act.

NEW SECTION. **Sec.**  (1) An individual aggrieved by a violation of section 6 of this act may bring suit on behalf of himself or herself or on behalf of any other individual who is similarly situated.

(2) If a court determines that a person or persons, including employers, violated section 6 of this act, it:

(a) Shall order persons, including employers, to jointly and severally pay the greater of:

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

(ii) Statutory damages for each employee aggrieved by the violation. Statutory damages must not be less than one thousand dollars and not more than ten thousand dollars per employee, unless the person 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 employee;

(b) May order persons, including employers, to jointly and severally pay the employee reimbursement for any taxes and the value of any benefits paid by the employee; and

(c) Shall order persons, including employers, to jointly and severally pay attorneys' fees and costs.

(3) If a court determines that an employer violated section 6 of this act, it may order the employer to pay any taxes owed and award injunctive or other equitable relief, including reinstatement and reclassification of the employee with terms and conditions at least as favorable as those that applied when the employee was misclassified, including rate of compensation, value of any benefits, and hours of work. The court may award front pay in lieu of reinstatement.

(4) A civil action under this section must be brought no later than three years after the violation occurred. For the purposes of this section, a violation occurs from the initial date of misclassification and for as long as the employee continues to be misclassified. The three-year 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.**  (1) If an employer engages an individual to perform labor or services for remuneration and considers the individual to be an independent contractor, the employer shall provide that individual with the following notice:

"Every worker has the right to be properly classified as an employee rather than an independent contractor if the individual does not meet the requirements of an independent contractor under the law known as the employee fair classification act.

If you believe you or someone else has been improperly classified as an independent contractor under the employee fair classification act, you have the right to challenge this classification by filing a complaint with the department of labor and industries or by bringing an action in state court."

(2) The notice required by this section must be in English, Spanish, and any other language or languages primarily spoken by the majority of the workforce. The notice must also be posted in a conspicuous place in each of the employer's offices in the state and at each job site where a worker classified as an independent contractor performs labor or services.

NEW SECTION. **Sec.**  The employee fair classification act account is created in the state treasury. All receipts from civil penalties issued under section 7 of this act must be deposited in the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for enforcement of this chapter.

NEW SECTION. **Sec.**  The department may adopt rules to implement this chapter. In addition, the department shall develop a plan for strategic enforcement of this chapter, prioritizing industries and workplaces with a high concentration of violations.

**PREVAILING WAGE**

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

(1) The "prevailing rate of wage," for the intents and purposes of this chapter, shall be the rate of hourly wage, usual benefits, and overtime paid in the locality, as hereinafter defined, 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 the largest city in the county wherein the physical work is being performed.

(3) The "usual benefits" for the purposes of this chapter shall include 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) "Employee" has the same meaning as "laborers, workers, and mechanics."

(5) "Independent contractor" has the meaning provided in section 4 of this act.

(6) 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.

NEW SECTION. **Sec.**  A new section is added to chapter 39.12 RCW to read as follows:

An employer-employee relationship exists when a laborer, worker, or mechanic performs labor for another individual or entity. The party asserting that an individual is not an employee must establish by a preponderance of the evidence that the individual is an independent contractor.

**WAGE DEDUCTIONS**

NEW SECTION. **Sec.**  A new section is added to chapter 49.52 RCW to read as follows:

"Employ," "employee," "employer," and "independent contractor" have the meanings provided in section 4 of this act.

NEW SECTION. **Sec.**  A new section is added to chapter 49.52 RCW to read as follows:

(1) An employer-employee relationship exists when an individual performs labor or services for another individual or entity. The party asserting that an individual is not an employee must establish by a preponderance of the evidence that the individual is an independent contractor.

(2) A general contractor is not responsible for violations of an independent contractor or subcontractor under this chapter unless the general contractor exerts substantial control over the day-to-day work of the independent contractor or subcontractor. For purposes of this section, "general contractor" and "subcontractor" have the meanings provided in section 5 of this act.

**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~~)) section 4 of this act for purposes of a wage payment requirement set forth in RCW 49.48.010, 49.52.050, or 49.52.060.

(6) "Employ" has the meaning provided in section 4 of this act.

(7) "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~~)) section 4 of this act.

((~~(7)~~)) (8) "Independent contractor" has the meaning provided in section 4 of this act.

(9) "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)~~)) (10) "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)~~)) (11) "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)~~)) (12) "Wage" has the meaning provided in RCW 49.46.010.

((~~(11)~~)) (13) "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)~~)) (14) "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)~~)) (15) "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).

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

(1) An employer-employee relationship exists when an individual performs labor or services for another individual or entity. The party asserting that an individual is not an employee must establish by a preponderance of the evidence that the individual is an independent contractor or is otherwise not an employee under this chapter.

(2) A general contractor is not responsible for violations of a bona fide independent contractor or subcontractor under this chapter unless the general contractor exerts substantial control over the day-to-day work of the independent contractor or subcontractor. For purposes of this section, "general contractor" and "subcontractor" have the meanings provided in section 5 of this act.

**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) "Department" means the department of labor and industries;

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

((~~(2)~~)) (3) "Employ" ((~~includes to permit to work~~)) has the meaning provided in section 4 of this act;

((~~(3)~~)) (4) "Employee" ((~~includes any individual employed by an employer but~~)) has the meaning provided in section 4 of this act and 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)~~)) (5) "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~~)) has the meaning provided in section 4 of this act;

((~~(5)~~)) (6) "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)~~)) (7) "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)~~)) (8) "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.

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

As used in this chapter:

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

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

((~~(2)~~)) (3) "Employ" ((~~includes to permit to work~~)) has the meaning provided in section 4 of this act;

((~~(3)~~)) (4) "Employee" ((~~includes any individual employed by an employer but~~)) has the meaning provided in section 4 of this act and shall not include:

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

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

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

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

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

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

(g) Any carrier subject to regulation by part 1 of the interstate commerce act;

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

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

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

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

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

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

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

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

((~~(4)~~)) (5) "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~~)) has the meaning provided in section 4 of this act;

((~~(5)~~)) (6) "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)~~)) (7) "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)~~)) (8) "Wage" means compensation due to an employee by reason of employment, payable in legal tender of the United States or checks on banks convertible into cash on demand at full face value, subject to such deductions, charges, or allowances as may be permitted by rules of the director.

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

(1) An employer-employee relationship exists when an individual performs labor or services for another individual or entity. The party asserting that an individual is not an employee must establish by a preponderance of the evidence that the individual is an independent contractor or is otherwise not an employee under this chapter.

(2) A general contractor is not responsible for violations of an independent contractor or subcontractor under this chapter unless the general contractor exerts substantial control over the day-to-day work of the independent contractor or subcontractor. For purposes of this section, "general contractor" and "subcontractor" have the same meanings provided in section 5 of this act.

**UNEMPLOYMENT INSURANCE**

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

The services of an independent contractor, as defined in section 4 of this act, are not services in employment under this title.

**Sec.**  RCW 50.04.100 and 1982 1st ex.s. c 18 s 14 are each amended to read as follows:

"Employment," subject only to the other provisions of this title, means personal service, of whatever nature, unlimited by the relationship of master and servant as known to the common law or any other legal relationship, including service in interstate commerce, performed for wages or under any contract calling for the performance of personal services, written or oral, express or implied. The party asserting that services performed are not services in employment must establish by a preponderance of the evidence that an individual is an independent contractor or that the services are otherwise not in employment under this title.

((~~Except as provided by RCW 50.04.145,~~)) Personal services performed for an employing unit by one or more contractors or subcontractors acting individually or as a partnership, which do not meet the provisions of ((~~RCW 50.04.140~~)) section 22 of this act, shall be considered employment of the employing unit: PROVIDED, HOWEVER, That such contractor or subcontractor shall be an employer under the provisions of this title in respect to personal services performed by individuals for such contractor or subcontractor.

**Sec.**  RCW 50.04.298 and 2007 c 146 s 8 are each amended to read as follows:

For the purposes of this title:

(1) "Professional employer organization" means a person or entity that enters into an agreement with one or more client employers to provide professional employer services. "Professional employer organization" includes entities that use the term "staff leasing company," "permanent leasing company," "registered staff leasing company," "employee leasing company," "administrative employer," or any other name, when they provide professional employer services to client employers. The following are not classified as professional employer organizations: Independent contractors in ((~~RCW 50.04.140~~)) section 22 of this act; temporary staffing services companies and services referral agencies as defined in RCW 50.04.245; third-party payers as defined in RCW 50.04.248; or labor organizations.

(2) "Client employer" means any employer who enters into a professional employer agreement with a professional employer organization.

(3) "Coemployer" means either a professional employer organization or a client employer that has entered into a professional employer agreement.

(4) "Covered employee" means an individual performing services for a client employer that constitutes employment under this title.

(5) "Professional employer services" means services provided by the professional employer organization to the client employer, which include, but are not limited to, human resource functions, risk management, or payroll administration services, in a coemployment relationship.

(6) "Coemployment relationship" means a relationship that is intended to be ongoing rather than temporary or project-specific, where the rights, duties, and obligations of an employer in an employment relationship are allocated between coemployers pursuant to a professional employer agreement and state law. A coemployment relationship exists only if a majority of the employees performing services to a client employer, or to a division or work unit of a client employer, are covered employees. In determining the allocation of rights and obligations in a coemployment relationship:

(a) The professional employer organization has only those employer rights and is subject only to those obligations specifically allocated to it by the professional employer agreement or state law;

(b) The client employer has those rights and obligations allocated to it by the professional employer agreement or state law, as well as any other right or obligation of an employer that is not specifically allocated by the professional employer agreement or state law.

(7) "Professional employer agreement" means a written contract between a client employer and a professional employer organization that provides for: (a) The coemployment of covered employees; and (b) the allocation of employer rights and obligations between the client and the professional employer organization with respect to the covered employees.

**Sec.**  RCW 50.12.070 and 2013 c 250 s 1 are each amended to read as follows:

(1)(a) Each employing unit shall keep true and accurate work records, containing such information as the commissioner may prescribe. Such records shall be open to inspection and be subject to being copied by the commissioner or his or her authorized representatives at any reasonable time and as often as may be necessary. The commissioner may require from any employing unit any sworn or unsworn reports with respect to persons employed by it, which he or she deems necessary for the effective administration of this title.

(b) An employer who contracts with another person or entity for work subject to chapter 18.27 or 19.28 RCW shall obtain and preserve a record of the unified business identifier account number for and compensation paid to the person or entity performing the work. In addition to the penalty in subsection (3) of this section, failure to obtain or maintain the record is subject to RCW 39.06.010.

(2)(a) Each employer shall register with the department and obtain an employment security account number. Each employer shall make periodic reports at such intervals as the commissioner may by regulation prescribe, setting forth the remuneration paid for employment to workers in its employ, the full names and social security numbers of all such workers, and the total hours worked by each worker and such other information as the commissioner may by regulation prescribe.

(b) If the employing unit fails or has failed to report the number of hours in a reporting period for which a worker worked, such number will be computed by the commissioner and given the same force and effect as if it had been reported by the employing unit. In computing the number of such hours worked, the total wages for the reporting period, as reported by the employing unit, shall be divided by the dollar amount of the state's minimum wage in effect for such reporting period and the quotient, disregarding any remainder, shall be credited to the worker: PROVIDED, That although the computation so made will not be subject to appeal by the employing unit, monetary entitlement may be redetermined upon request if the department is provided with credible evidence of the actual hours worked. Benefits paid using computed hours are not considered an overpayment and are not subject to collections when the correction of computed hours results in an invalid or reduced claim; however:

(i) A contribution paying employer who fails to report the number of hours worked will have its experience rating account charged for all benefits paid that are based on hours computed under this subsection; and

(ii) An employer who reimburses the trust fund for benefits paid to workers and fails to report the number of hours worked shall reimburse the trust fund for all benefits paid that are based on hours computed under this subsection.

(3) Any employer who fails to keep and preserve records required by this section shall be subject to a penalty determined by the commissioner but not to exceed two hundred fifty dollars or two hundred percent of the quarterly tax for each offense, whichever is greater.

(4) Upon referral from the department of labor and industries pursuant to section 7 of this act, the employment security department may initiate procedures for improper recordkeeping and the recovery of contributions, interest, and penalties.

(5) The commissioner must consider referrals based on a court finding of a violation of section 6 of this act and may initiate procedures for improper recordkeeping and the recovery of contributions, interest, and penalties.

**INDUSTRIAL INSURANCE**

**Sec.**  RCW 51.08.070 and 2008 c 102 s 2 are each amended to read as follows:

"Employer" means any person, body of persons, corporate or otherwise, and the legal representatives of a deceased employer, all while engaged in this state in any work covered by the provisions of this title, by way of trade or business, or who contracts with one or more workers((~~, the essence of which is the personal labor of such worker or workers~~)). Or as an exception to the definition of employer, persons or entities are not employers when they contract or agree to remunerate the services performed by an ((~~individual who meets the tests set forth in subsections (1) through (6) of RCW 51.08.195 or the separate tests set forth in RCW 51.08.181 for work performed that requires registration under chapter 18.27 RCW or licensing under chapter 19.28 RCW~~)) independent contractor as defined in section 4 of this act.

**Sec.**  RCW 51.08.180 and 2008 c 102 s 3 are each amended to read as follows:

"Worker" means every person in this state who is engaged in the employment of an employer under this title, whether by way of manual labor or otherwise in the course of his or her employment; also every person in this state who is engaged in the employment of or who is working under an independent contract, ((~~the essence of which is his or her personal labor for an employer under this title,~~)) whether by way of manual labor or otherwise, in the course of his or her employment, ((~~or as an exception to the definition of worker, a person is not a worker if~~)) unless he or she ((~~meets the tests set forth in subsections (1) through (6) of RCW 51.08.195 or the separate tests set forth in RCW 51.08.181 for work performed that requires registration under chapter 18.27 RCW or licensing under chapter 19.28 RCW~~)) meets the definition of independent contractor as defined in section 4 of this act: PROVIDED, That a person is not a worker for the purpose of this title, with respect to his or her activities attendant to operating a truck which he or she owns, and which is leased to a common or contract carrier.

NEW SECTION. **Sec.**  A new section is added to chapter 51.12 RCW to read as follows:

An employer-employee relationship exists when an individual performs labor or services for another individual or entity. The party asserting that an individual is not an employee must establish by a preponderance of the evidence that the individual is an independent contractor, or otherwise not an employee or worker under this chapter. This presumption also applies at the board of industrial insurance appeals and may be rebutted by a preponderance of the evidence.

**Sec.**  RCW 51.12.020 and 2015 c 236 s 4 are each amended to read as follows:

The following are the only employments which shall not be included within the mandatory coverage of this title:

(1) Any person employed as a domestic ((~~servant~~)) worker in a private home by an employer who has less than two employees regularly employed forty or more hours a week in such employment.

(2) Any person employed to do gardening, maintenance, or repair, in or about the private home of the employer. For the purposes of this subsection, "maintenance" means the work of keeping in proper condition, "repair" means to restore to sound condition after damage, and "private home" means a person's place of residence.

(3) A person whose employment is not in the course of the trade, business, or profession of his or her employer and is not in or about the private home of the employer.

(4) Any person performing services in return for aid or sustenance only, received from any religious or charitable organization.

(5) Sole proprietors or partners.

(6) Any child under eighteen years of age employed by his or her parent or parents in agricultural activities on the family farm.

(7) Jockeys while participating in or preparing horses for race meets licensed by the Washington horse racing commission pursuant to chapter 67.16 RCW.

(8)(a) Except as otherwise provided in (b) of this subsection, any bona fide officer of a corporation voluntarily elected or voluntarily appointed in accordance with the articles of incorporation or bylaws of the corporation, who at all times during the period involved is also a bona fide director, and who is also a shareholder of the corporation. Only such officers who exercise substantial control in the daily management of the corporation and whose primary responsibilities do not include the performance of manual labor are included within this subsection.

(b) Alternatively, a corporation that is not a "public company" as defined in RCW 23B.01.400 may exempt eight or fewer bona fide officers, who are voluntarily elected or voluntarily appointed in accordance with the articles of incorporation or bylaws of the corporation and who exercise substantial control in the daily management of the corporation, from coverage under this title without regard to the officers' performance of manual labor if the exempted officer is a shareholder of the corporation, or may exempt any number of officers if all the exempted officers are related by blood within the third degree or marriage. If a corporation that is not a "public company" elects to be covered under subsection (8)(a) of this section, the corporation's election must be made on a form prescribed by the department and under such reasonable rules as the department may adopt.

(c) Determinations respecting the status of persons performing services for a corporation shall be made, in part, by reference to Title 23B RCW and to compliance by the corporation with its own articles of incorporation and bylaws. For the purpose of determining coverage under this title, substance shall control over form, and mandatory coverage under this title shall extend to all workers of this state, regardless of honorary titles conferred upon those actually serving as workers.

(d) A corporation may elect to cover officers who are exempted by this subsection in the manner provided by RCW 51.12.110.

(9) Services rendered by a musician or entertainer under a contract with a purchaser of the services, for a specific engagement or engagements when such musician or entertainer performs no other duties for the purchaser and is not regularly and continuously employed by the purchaser. A purchaser does not include the leader of a group or recognized entity who employs other than on a casual basis musicians or entertainers.

(10) Services performed by a 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.

(11) Services performed by an insurance producer, as defined in RCW 48.17.010, or a surplus line broker licensed under chapter 48.15 RCW.

(12) Services performed by a booth renter. However, a person exempted under this subsection may elect coverage under RCW 51.32.030.

(13) Members of a limited liability company, if either:

(a) Management of the company is vested in its members, and the members for whom exemption is sought would qualify for exemption under subsection (5) of this section were the company a sole proprietorship or partnership; or

(b) Management of the company is vested in one or more managers, and the members for whom the exemption is sought are managers who would qualify for exemption under subsection (8) of this section were the company a corporation.

((~~(14) A driver providing commercial transportation services as defined in RCW 48.177.005. The driver may elect coverage in the manner provided by RCW 51.32.030.~~

~~(15) For hire vehicle operators under chapter 46.72 RCW who own or lease the for hire vehicle, chauffeurs under chapter 46.72A RCW who own or lease the limousine, and operators of taxicabs under chapter 81.72 RCW who own or lease the taxicab. An owner or lessee may elect coverage in the manner provided by RCW 51.32.030.~~))

**WORKERS' BOARDS AND PORTABLE BENEFITS FOR WORKERS**

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

(1) "Benefit provider" means a nonprofit entity that is eligible to provide benefits to eligible beneficiaries under section 42 of this act.

(2) "Contributing agent" means a business, organization, corporation, limited liability company, partnership, or any other entity that facilitates the provision of services by intermediary employees to consumers.

(3) "Covered contributing agent" means any contributing agent determined by the department to be subject to the determinations of a workers' board.

(4) "Covered intermediary employee" means any intermediary employee eligible for representation by a workers' board. Covered intermediary employees must have worked at least thirty cumulative hours, or the lesser of either thirty tasks, trips, or shifts in the industry to qualify for representation in a calendar year.

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

(6) "Eligible beneficiary" means any intermediary employee who meets the minimum thresholds under this chapter to receive contributions from a contributing agent under sections 40 and 41 of this act.

(7) "Eligible contributing agent representative" means an organization or association eligible to represent contributing agents in a given industry through a workers' board. Organizations are eligible if they:

(a) Pay workers in the industry for labor or services for which no W-2 tax document is filed; and

(b) Represent at least ten distinct contributing agents in the industry.

(8) "Eligible worker representative" means an organization or association eligible to represent covered intermediary employees in a given industry through a workers' board. Organizations are eligible if they:

(a) Are not an employer, employment agency, referral agency, or contributing agent;

(b) Have a conflict of interest policy prohibiting the participation of any individual in a decision-making role, if the individual pays covered intermediary employees to complete services in the industry for which the organization is seeking representation rights;

(c) Meet the requirements of 26 U.S.C. Sec. 501(c)(3), (4), (5), or (6) of the federal internal revenue code and is an organization that exists for the betterment of workers, including covered intermediary employees in the workforce for which the organization is seeking representation rights;

(d) Engage in public advocacy to promote the health and well-being of workers;

(e) Have a governing structure that promotes workers' decision-making power; and

(f) Represent at least one hundred covered intermediary employees in the industry.

(9) "Intermediary employee" means any worker, regardless of corporate status, who is not an employee under this chapter and who provides services for financial compensation through a contributing agent.

(10) "Represented intermediary employee" means any intermediary employee who has agreed to have a worker organization represent the employee on a workers' board and pays that organization a fee to do so.

(11) "Validated contributing agent representative" means an eligible contributing agent representative that:

(a) Pays intermediary employees for labor or services;

(b) Represents at least ten distinct contributing agents in the industry; and

(c) Has been approved by the department to represent contributing agents on the workers' board.

(12) "Validated worker representative" means an eligible worker representative that has been approved by the department to represent workers on the workers' board.

(13) "Workers' board" means a board of industry, worker, and department representatives required to set wages, rates, and working standards for specific industries under section 34 of this act.

NEW SECTION. **Sec.**  (1) Subject to sections 37 and 39 of this act, the department must establish a minimum base rate for all intermediary employees of contributing agents. Payments to such workers may not be less than equivalent to the state minimum wage. Any and all tips or gratuity must be in addition to the base rate and may not be included in the calculation of state minimum wage equivalency. The determination must:

(a) Be based on both time spent performing services in accordance with the scope of work and address any time spent on call or waiting for a job where the worker is unable to do other work; and

(b) Address all types of payment for services including, but not limited to, hourly, piecemeal, or transaction-based payments.

(2)(a) Intermediary employees may not be paid less than the rate established under this section.

(b) Covered intermediary employees may not be paid less than the rate determined by the workers' board for the specific industry in which the covered intermediary employee works.

NEW SECTION. **Sec.**  (1) Contributing agents with fewer than five intermediary employees must submit annual reports to the department disclosing the following information:

(a) Aggregated data about intermediary employees, including:

(i) The total number of intermediary employees who have completed more than thirty hours, tasks, trips, or shifts with the contributing agent during the calendar year;

(ii) Data about contributions to portable benefit accounts, including the average amount contributed to each intermediary employee portable benefit account: Per hour, task, trip, or shift worked; and per year;

(b) Data about wage theft and abuse, including:

(i) The number of intermediary employees who completed hours, tasks, trips, or shifts, but were not compensated for their labor; and

(ii) All reports from intermediary employees of sexual harassment or other forms of abuse experienced during the course of performing hours, tasks, trips, or shifts, and the contributing agent's response to the reports.

(2) Contributing agents with five or more intermediary employees must submit an annual report to the department including the information required in subsection (1) of this section, and the following information, as applicable:

(a) Disaggregated data about intermediary employees, including:

(i) All known demographics of intermediary employees, including gender, race, age, and primary language spoken at home;

(ii) Average hours per week performed by each intermediary employee;

(iii) Average annual number of hours, tasks, trips, or shifts offered to each intermediary employee;

(iv) Average annual number of hours, tasks, trips, or shifts performed by each intermediary employee;

(v) Average number of months since each intermediary employee completed at least five hours, tasks, trips, or shifts;

(vi) Average pay rates per hours, tasks, trips, or shifts collected by each intermediary employee;

(vii) The zip codes in which each intermediary employee primarily completes hours, tasks, trips, or shifts;

(viii) The tenth, twenty-fifth, fiftieth, seventy-fifth, and ninetieth percentile of payouts to intermediary employees per job, per week, and per year;

(ix) The number of intermediary employees providing services each calendar month and over the course of the calendar year; and

(x) The median time or miles an intermediary employee is active on the contributing agent's app, when applicable, and the time or miles the intermediary employee is paid while on the app;

(b) Data about worker turnover and retention, including:

(i) The number of intermediary employees terminated each quarter within the last year;

(ii) The number of intermediary employees with zero payments each quarter;

(iii) The proportion of intermediary employees terminated by the contributing agent, out of all intermediary employees whose relationship with the contributing agent ended or where there has been zero payments in the last two quarters; and

(iv) The grounds or justifications for terminations within the last year;

(c) Data about payment rates, including:

(i) Average and median rate per hour, task, trip, or shift, disaggregated by zip code;

(ii) Average and equivalent hourly wage;

(iii) Whether the rates are set by the contributing agent or the intermediary employee;

(iv) If variable or surge pricing is used, the hourly rate per task, trip, or shift for the highest ten percent of rates; and

(v) If bonus or promotional payments are used, the policies for the offering of bonuses or promotional pricing;

(d) Data about benefits and benefit contributions, including:

(i) Any benefits or protections, including industrial insurance, auto insurance, or expense reimbursement, provided directly by the contributing agent to the intermediary employee and the terms for provision of such benefits or protections; and

(ii) The twenty-fifth, fiftieth, and seventy-fifth percentile of portable benefit contributions to eligible beneficiaries' portable benefit accounts over the year;

(e) Policies, practices, and algorithms of the contributing agent, including:

(i) Any written agreement signed between the contributing agent and the intermediary employee at the beginning of the contracting relationship or the terms most recently accepted by the intermediary employee;

(ii) Policies outlining the ability of an intermediary employee to decline or alter the task, trip, or shift offered; and

(iii) The algorithm used to offer intermediary employees tasks, trips, or shifts;

(f) Conflict of interest disclosures, including a disclosure of any third-party recipients of individualized or aggregate worker data; and

(g) Data reported to the department shall not include the name, contact information, or other identifying information of individual intermediary employees.

(3) The department must adopt rules establishing financial penalties for failure to comply with this section.

NEW SECTION. **Sec.**  (1) Every three years, the department must contract with two third-party entities to complete studies of eligible beneficiaries and covered intermediary employees. Surveys must address factors such as:

(a) The total number of intermediary employees, eligible beneficiaries, and covered intermediary employees in the state;

(b) The demographic characteristics of eligible beneficiaries and covered intermediary employees;

(c) The satisfaction by eligible beneficiaries and covered intermediary employees in work outside of traditional W-2 employment;

(d) The total household income and benefits available to eligible beneficiaries and covered intermediary employees;

(e) The benefits that eligible beneficiaries receive from their portable benefit accounts; and

(f) Unmet needs experienced by eligible beneficiaries and covered intermediary employees.

(2) One contract must be issued to a worker organization that:

(a) Is not an employer, employment agency, referral agency, or contributing agent;

(b) Has proven relationships with eligible beneficiaries or covered intermediary employees;

(c) Has proven experience organizing hard-to-reach populations;

(d) Represents workers who are demographically diverse;

(e) Has the capacity amongst its staff to conduct research in at least three languages; and

(f) Has successfully conducted research with workers in the past.

(3) The second contract must be issued to a university research department or similar nonpartisan entity that:

(a) Has expertise in survey research with hard-to-reach populations; and

(b) Has a record of published research with academic rigor.

(4) Each contractor must submit a report summarizing the survey to the appropriate committee of the legislature by December 15th of the year in which the survey was conducted.

NEW SECTION. **Sec.**  (1) The department must, subject to the requirements set forth in this section, convene workers' boards for nonemployee workers in Washington state.

(a) The department must create five discrete nonemployee industry categories for the purposes of convening and implementing workers' boards: Caregiving and domestic services or other services performed in and about the home, passenger transport, product movement, sales, and certificated professional services.

(b) Every three years, the department must evaluate and redefine industry categories, based on data reported by contributing agents and information gathered from surveys of eligible beneficiaries and covered intermediary employees.

(2) Once any eligible worker representative provides a showing of interest by presenting evidence that they represent the lesser of two hundred fifty covered intermediary employees or one-half percent of the industry, the department must indicate that the organization is validated, and a workers' board must be established in the industry. After the department indicates that one eligible worker representative is validated:

(a) Additional eligible worker representatives may present evidence that they represent at least one hundred covered intermediary employees to gain representation rights on the workers' board; and

(b) Eligible contributing agent representatives may present evidence that they represent at least five distinct contributing agents to gain representation rights on the workers' board.

NEW SECTION. **Sec.**  (1) Within ninety days of the department validating an eligible worker representative, all contributing agents in the industry in which a workers' board has been established must provide the validated worker representatives physical access to the intermediary employees, and submit a list of intermediary employees' names and contact information to validated worker representatives, including the intermediary employees':

(a) Full names;

(b) All known phone numbers, including cellular phones and landline or fixed-line phones;

(c) Email addresses; and

(d) Physical addresses.

(2) The department may determine whether an intermediary employee is a covered intermediary employee in one of two ways:

(a) For positions, job titles, classifications, or tasks that require certification or licensure, the department must determine which positions, job titles, classifications, or tasks fall within the workers' board's scope; and

(b) For all other positions, job titles, classifications, or tasks, the validated worker representative must provide the department with the list of contributing agents that fall within the workers' board's scope.

(3) A named contributing agent has one month from provision of the contributing agent list to the department to appeal the inclusion of their intermediary employees in the workers' board's scope.

(4) Within ninety days of the department validating an eligible worker representative, all contributing agents must notify all of its covered intermediary employees of the workers' board and their right to choose a representative.

(5) Inclusion within the scope of the workers' board must be based on community of interest factors including, but not limited to, duties, skills, working conditions, and other job-related issues.

(6) Data required in subsection (1) of this section may not be reported to the department and must be reported directly to validated worker representatives. A third party may be used to transfer this data if appropriate to ensure adequate protection of the data.

NEW SECTION. **Sec.**  (1) The workers' board shall be composed of three validated worker representatives, three validated contributing agent representatives, and four representatives of the department.

(2)(a) Worker positions must be distributed among validated worker representatives in accordance with the number of workers the organization represents. Validated worker representatives must appoint individuals for each of the seats they are allotted.

(b) Contributing agent positions must be distributed among validated contributing agent representatives in accordance with the number of intermediary employees the organization represents. Validated contributing agent representatives must appoint individuals for each of the seats they are allotted.

(c) If there are more validated organizations than seats, only the most representative organizations are to be seated on the board.

(d) The director of the department must appoint the department representatives.

(3) Workers' board members serve four-year terms. Of the initial members: One worker, one contributing agent, and one department representative must be appointed for a two-year term; one worker, one contributing agent, and one department representative must be appointed to a three-year term; and the remaining representative must be appointed to a four-year term. Thereafter, members must be appointed for four-year terms.

(4) Members of the workers' board must be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060.

(5) The workers' board may adopt bylaws for its own procedures, including quorum requirements, frequency of meetings, and provision of translation and interpretation services.

NEW SECTION. **Sec.**  (1) The workers' board must:

(a) Ascertain the wages and benefits necessary to provide for the full participation in society of covered intermediary employees;

(b) Promote safe working conditions, training, and professional development for covered intermediary employees; and

(c) Promote effective enforcement of standards across the industry.

(2) Every three years, the workers' board must issue determinations on aspects of the industry that affect workers' well-being, including minimum standards for:

(a) Hourly wages, or the equivalent in task, shift, or trip rates, including the type and structure of payment;

(b) Rules about scheduling and the availability of tasks, shifts, or trips;

(c) Portable benefit contribution rates per hour, shift, or trip;

(d) The proportion of portable benefit contributions that can be used for administrative purposes;

(e) Leave policies;

(f) Certification standards and access to training;

(g) Any benefits, such as auto insurance and mileage reimbursement, provided directly by the contributing agent to the intermediary employee; and

(h) Other aspects of working conditions, as raised by validated worker representatives or validated contributing agent representatives on the workers' board.

(3) The standards established by the workers' board may meet or exceed, but may not fall below, standards established in statute, including minimum wages established in chapter 49.46 RCW, and established in this chapter, including minimum rates, benefit contributions, or the proportion of benefit contributions allowable for administrative purposes.

(4) If an established workers' board fails to make determinations under this section within any four-year period, the department must institute increases in the minimum rates and benefit contributions for the industry in accordance with inflation as determined by the department.

NEW SECTION. **Sec.**  (1) Each member of the workers' board has one vote.

(2) Representatives of the department must:

(a) Provide administrative and logistical assistance;

(b) Provide guidance about current law and the operations of the department;

(c) Convene and facilitate meetings; and

(d) Monitor the workers' board's compliance with federal and state law, and the mandate of the workers' board.

(3) Determinations by the workers' board must be set through majority vote. However, a majority of validated worker representatives, validated contributing agent representatives, and state representatives is required for determinations that decrease rates or worker protections.

(4) The workers' board must hold public hearings during each three-year determination cycle to gather information about the current living and working conditions of covered intermediary employees. These hearings must be held throughout the state, especially in geographies with a known concentration of covered intermediary employees.

(a) The hearings must be open to all individuals or organizations.

(b) Validated worker representatives and validated contributing agent representatives not represented on the workers' board have priority in hearings, with time allocated in accordance with the number of workers or agents represented.

NEW SECTION. **Sec.**  (1) When the workers' board reaches a determination, through consensus or majority vote, the workers' board's determination must be adopted as a policy by the department.

(2) If the workers' board fails to reach a determination within the required time period, the department's minimum rates under section 31 of this act take effect.

(3) The department may adopt rules implementing the policies provided by the workers' board under this section.

NEW SECTION. **Sec.**  (1) Contributing agents must contribute funds to benefit providers to provide benefits to eligible beneficiaries.

(a) The requirement to contribute funds under this chapter only applies when the eligible beneficiary for whom the contributing agent is making a contribution provides services in the state.

(b) The contribution amount must be five percent of the total charge collected from the consumer for each transaction of services provided or one dollar for every hour that the worker provided services to the consumer, whichever is less. If determined per hour, the determination must be prorated per minute.

(c) Contributions must be in addition to pay and may not be counted toward the minimum base rate.

(d) Contributions must be assessed for every hour, transaction, or production unit that the eligible beneficiary provided services through the contributing agent.

(e) Contributions must be made to the benefit provider on no less than a monthly basis and no later than fifteen days after the end of the month in which the eligible beneficiary services were provided.

(2) The contribution amounts earned by the eligible beneficiary under this section belong to the eligible beneficiary and the eligible beneficiary may accrue benefits based on contributions from more than one contributing agent.

(3) Contributions may exceed, but not go below, those established in sections 37 and 39 of this act as the result of a workers' board determination.

NEW SECTION. **Sec.**  (1) All eligible beneficiaries must receive industrial insurance under Title 51 RCW. Contributing agents must collect the portion of the contribution amount sufficient to provide industrial insurance under Title 51 RCW and remit those amounts to the department. The amounts necessary shall be determined by the department based on appropriate risk classifications.

(2) The contributing agents must remit the remainder of the contribution amount to the assigned benefit provider.

(3) Based on the contributions received, benefit providers must ensure that benefits are provided to eligible beneficiaries as set forth in this section.

(a) Benefit providers must solicit input from eligible beneficiaries regarding which benefits to provide.

(b) Benefit providers must provide some or all of the following benefits:

(i) Health insurance including, but not limited to, subsidies to purchase health insurance on the health benefit exchange;

(ii) Paid time off;

(iii) Retirement benefits; and

(iv) Other benefits determined by the benefit providers.

(c) Benefit providers may also offer other benefits or services to eligible beneficiaries to address the unique needs of a specific industry or eligible beneficiary groups including, but not limited to:

(i) Tax assistance;

(ii) Emergency loans; and

(iii) Other benefits.

(d) Benefit providers may provide benefits directly or through vendors approved by the benefit provider.

(e) Benefit providers may advocate on behalf of the eligible beneficiaries regarding benefits.

(f) Benefit providers may use up to ten percent of contribution funds received for administration of benefits and advocacy on behalf of eligible beneficiaries.

NEW SECTION. **Sec.**  (1) The department must adopt rules for organizations to become benefit providers.

(2) At a minimum, the rules on benefit providers must require:

(a) The benefit provider to be a nonprofit organization operating under 26 U.S.C. Sec. 501(c)(3) of the federal internal revenue code;

(b) At least one-half of the organization's board of directors to be comprised of eligible beneficiaries performing work for contributing agents or representatives of bona fide independent organizations of such workers;

(c) The organization to be independent from all business entities, organizations, corporations, or individuals that would pursue any financial interest in conflict with that of the eligible beneficiaries;

(d) All actions of the organization regarding providing benefits must be for the sole purpose of maximizing benefits to eligible beneficiaries;

(e) The board of directors of the organization to hold a fiduciary duty to the eligible beneficiaries with respect to the provision of benefits; and

(f) The organization to demonstrate adequate viability and financial sufficiency to successfully and sustainably deliver benefits, as determined by the department. At a minimum, the organization must have:

(i) Cash reserves in a sufficient amount, as determined by the department;

(ii) Liability coverage for an amount determined by the department;

(iii) Access to bonding; and

(iv) Other demonstrated competencies as determined by the department.

(3) As administered by the department, an eligible beneficiary entitled to benefits under this chapter must select a benefit provider and be given the option to change the selected benefit provider once per year. Eligible beneficiaries must be provided information regarding available benefit providers and be able to easily select their chosen benefit provider.

NEW SECTION. **Sec.**  (1) Covered intermediary employees have the right to:

(a) Organize and communicate freely with other workers;

(b) Discuss terms and conditions of work with other workers and with contributing agents;

(c) Form, join, or assist worker organizations;

(d) Testify during board public hearings, without restraint on the content of their speech; and

(e) Take action with other workers to improve their working conditions or raise work-related complaints with the workers' board.

(2) No contributing agent may interfere with, restrain, or coerce intermediary employees from exercising rights under subsection (1) of this section. Validated worker representatives must operate free from influence by contributing agents. Contributing agents may not:

(a) Threaten workers with or impose adverse consequences for exercising their rights;

(b) Threaten workers with or impose adverse consequences related to a worker's immigration status for exercising their rights;

(c) Terminate a worker for exercising their rights;

(d) Reduce a worker's access to wages, tips, shifts, tasks, or trips for exercising their rights;

(e) Promise a worker benefits, rewards, or compensation if the worker rejects participation on the workers' board;

(f) Prohibit workers from talking about workers' board activities during work time;

(g) Perform surveillance of workers' organizing activities;

(h) Solicit individual workers to participate in campaign advertisements; and

(i) Adopt, maintain, or enforce work rules that reasonably tend to inhibit workers from exercising their rights.

(3) There shall be a rebuttable presumption of retaliation if a contributing agent takes an adverse action against a person within ninety calendar days of the person's exercise of rights. The standard of proof for retaliation is that the protected activity was a motivating factor in the adverse action. For the purposes of this subsection, "adverse action" means terminating, discharging, denying a promotion, demoting, failing to rehire after seasonal interruption of work, threatening, penalizing, retaliating, engaging in unfair immigration related practices, filing a false report with a government agency, changing an intermediary employee's status or pay rate or structure, eliminating eligibility for incentives or "bonuses," or otherwise discriminating against the person.

NEW SECTION. **Sec.**  (1) The department must adopt rules to implement and administer the delivery of benefits within this chapter and administer and enforce workers' boards, including rules for:

(a) Monitoring compliance of contributing agents;

(b) Establishing a fee on contributing agents to fund the department's compliance efforts;

(c) Monitoring compliance of benefit providers, including the ability to remove benefit providers that are out of compliance with the criteria established under this chapter;

(d) Providing procedures for eligible beneficiaries to select benefit providers, to change their selections annually, and to receive notices of the right to select different benefit providers;

(e) Providing procedures for community-based enforcement, including worker-led or worker organization-led complaints;

(f) Administering industrial insurance coverage for eligible beneficiaries under this chapter; and

(g) Establishing penalties on any contributing agents or eligible beneficiaries out of compliance. Such penalties may be used to fund the department's compliance efforts. If the penalty results directly from a complaint by a benefit provider or validated worker representative, the collected award must be split between the department and the complainant.

(2) The department must designate staff dedicated to the investigation and enforcement of laws concerning intermediary employees. Both contributing agents and qualified benefit providers may be subject to unannounced audits by the department.

(3) In addition to any remedies provided by the department to an eligible beneficiary for a contributing agent's noncompliance, an eligible beneficiary may bring a private cause of action against a contributing agent for the contributing agent's failure to comply with the contribution requirements under this chapter.

(4) The department must adopt rules to implement and administer performance of workers' boards within this chapter, including:

(a) Allowing represented workers to report violations of portable benefit contribution requirements or compliance with board determinations to the department. The department must investigate these complaints with the same diligence as any other employment or labor law violation;

(b) Providing validated worker representatives with standing to file complaints on the behalf of represented workers; and

(c) Establishing monetary penalties for a contributing agent found to be in violation of the standards established by the board. The department must set the amount of monetary penalties at no less than three times the amount owed in wages or benefit contributions. If the penalty results directly from a complaint by a benefit provider or validated worker representative, the collected award must be split between the department and the complainant.

NEW SECTION. **Sec.**  (1) The department must contract with eligible worker representatives to implement outreach and education to eligible beneficiaries and covered intermediary employees.

(2) Organizations conducting outreach and education must educate eligible beneficiaries and covered intermediary employees about their legal rights, and help eligible beneficiaries and intermediary employees file reports of violations of laws and standards, including portable benefit contribution requirements and standards established by the workers' board.

(3) Contributing agents must provide organizations conducting outreach and education access to workers through all reasonable means including, but not limited to, worksites, user data, and payment data.

NEW SECTION. **Sec.**  The requirements on contributing agents and the benefits provided to eligible beneficiaries under this chapter may not be considered in determinations of an eligible beneficiary's employment status or the contributing agent's employment relationship to the eligible beneficiary.

NEW SECTION. **Sec.**  (1) Sections 2 through 12 of this act constitute a new chapter in Title 49 RCW.

(2) Sections 30 through 46 of this act constitute a new chapter in Title 49 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.

NEW SECTION. **Sec.**  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.**  The following acts or parts of acts are each repealed:

(1) RCW 39.12.100 (Independent contractors—Criteria) and 2009 c 63 s 1;

(2) RCW 50.04.140 (Employment—Exception tests) and 1991 c 246 s 6 & 1945 c 35 s 15;

(3) RCW 50.04.145 (Employment—Exclusions) and 2008 c 102 s 1, 1983 1st ex.s. c 23 s 25, & 1982 1st ex.s. c 18 s 13;

(4) RCW 51.08.181 ("Worker"—Registered contractor and electrician exclusions) and 2008 c 102 s 5; and

(5) RCW 51.08.195 ("Employer" and "worker"—Additional exception) and 2008 c 102 s 4 & 1991 c 246 s 1.

NEW SECTION. **Sec.**  Section 19 of this act expires December 31, 2019.

NEW SECTION. **Sec.**  Section 20 of this act takes effect December 31, 2019.

NEW SECTION. **Sec.**  Section 8 of this act takes effect January 1, 2021.

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