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**SENATE BILL 6261**

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**State of Washington 66th Legislature 2020 Regular Session**

**By** Senators McCoy, Saldaña, Conway, Kuderer, Hasegawa, Wilson, C., Das, Nguyen, and Keiser

AN ACT Relating to strengthening the farm labor contractor system by removing an exemption for nonprofits, prohibiting retaliation and the use of farm labor contractors in certain circumstances, and establishing liability for related violations; amending RCW 19.30.190 and 19.30.200; and reenacting and amending RCW 19.30.010.

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

**Sec.**  RCW 19.30.010 and 2017 c 253 s 1 are each reenacted and amended to read as follows:

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

(1) "Agricultural employee" means any person who renders, or has rendered, personal services to, or under the direction of, an agricultural employer in connection with the employer's agricultural activity.

(2) "Agricultural employer" means any person engaged in agricultural activity, including the growing, producing, or harvesting of farm or nursery products, or engaged in the forestation or reforestation of lands, which includes but is not limited to the planting, transplanting, tubing, precommercial thinning, and thinning of trees and seedlings, the clearing, piling, and disposal of brush and slash, the harvest of Christmas trees, and other related activities.

(3) "Director" as used in this chapter means the director of the department of labor and industries of the state of Washington.

(4) "Farm labor contracting activity" means recruiting, soliciting, employing, supplying, transporting, or hiring agricultural employees.

(5) "Farm labor contractor" means any person, or his or her agent or subcontractor, who, for a fee, performs any farm labor contracting activity. "Farm labor contractor" does not include a person performing farm labor contracting activity solely for a small forestland owner as defined in RCW 76.09.450 who receives services of no more than two agricultural employees at any given time.

(6) "Fee" means:

(a) Any money or other valuable consideration paid or promised to be paid for services rendered or to be rendered by a farm labor contractor.

(b) Any valuable consideration received or to be received by a farm labor contractor for or in connection with any of the services described in subsection (4) of this section, and shall include the difference between any amount received or to be received by him, and the amount paid out by him for or in connection with the rendering of such services.

(7) "Person" includes any individual, firm, partnership, association, corporation, or unit or agency of state or local government.

(8) This chapter shall not apply to employees of the employment security department acting in their official capacity or their agents, nor to any common carrier or full time regular employees thereof while transporting agricultural employees, nor to any person who performs any of the services enumerated in subsection (4) of this section only within the scope of his or her regular employment for one agricultural employer on whose behalf he or she is so acting, unless he or she is receiving a commission or fee, which commission or fee is determined by the number of workers recruited((~~, or to a nonprofit corporation or organization which performs the same functions for its members. Such nonprofit corporation or organization shall be one in which:~~

~~(a) None of its directors, officers, or employees are deriving any profit beyond a reasonable salary for services performed in its behalf.~~

~~(b) Membership dues and fees are used solely for the maintenance of the association or corporation~~)).

**Sec.**  RCW 19.30.190 and 1985 c 280 s 13 are each amended to read as follows:

(1) No farm labor contractor ((~~or~~)), agricultural employer, or any person acting on behalf of a farm labor contractor or agricultural employer, may ((~~discharge or in any other manner discriminate~~)) take adverse action against any employee ((~~because~~)) or former employee who:

((~~(1) The employee~~)) (a) Has made a claim against the farm labor contractor or agricultural employer ((~~for compensation for the employee's personal services.~~)) related in any way to the employee or former employee's employment;

((~~(2) The employee~~)) (b) Has caused to be instituted, or is about to cause to be instituted, any proceedings under or related to ((~~RCW 19.30.180.~~)) this chapter;

((~~(3) The employee~~)) (c) Has testified or is about to testify in any such proceedings((~~.~~));

((~~(4) The employee~~)) (d) Has discussed or consulted with anyone concerning the employee((~~'s~~)) or another person's employment rights ((~~under this chapter.~~)) or safety and health laws or regulations;

(e) Has informed any other person or made a complaint, or the employer believes the employee or former employee has informed any other person or made a complaint, including to the employer, the director, the attorney general, or any other person, that the employer engaged in conduct that the employee or former employee reasonably believes violates this chapter or any employment or safety and health laws or regulations;

(f) Has refused to participate in an activity that would result in a violation of any state or federal employment or safety and health laws or regulations;

(g) Has sought information about the employee or former employee's rights under any employment or safety and health laws or regulations, or informed others about their rights;

(h) Has, or the employer believes the employee or former employee has, otherwise exercised rights under any employment or safety and health laws or regulations; or

(i) Engaged in, or benefited from, any concerted activity to improve working conditions as protected by RCW 49.32.020.

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

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

(4) For purposes of this section:

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

(b)(i) "Unfair immigration-related practice" includes any of the following:

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

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

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

(D) Threatening to contact or contacting immigration authorities; or

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

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

**Sec.**  RCW 19.30.200 and 2000 c 171 s 48 are each amended to read as follows:

No person may utilize the services of any farm labor contractor to supply any agricultural worker unless the person first takes reasonable steps to determine that the farm labor contractor possesses a valid license required by this chapter. Any person who ((~~knowingly uses the services of an unlicensed farm labor contractor~~)) violates this section shall be personally, jointly, and severally liable with the person acting as a farm labor contractor to the same extent and in the same manner as provided in this chapter. ((~~In making determinations under this section, any user may rely~~)) The only defense that may be asserted to avoid liability under this section is that the person relied upon either the license issued by the director to the farm labor contractor under RCW 19.30.030 or the director's representation that such contractor is licensed as required by this chapter.

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