

# HOUSE BILL REPORT

## HB 1515

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### As Reported by House Committee On: Labor & Workplace Standards

**Title:** An act relating to simplifying, clarifying, and making consistent employee status under industrial insurance laws, prevailing wage laws, wage deduction laws, wage payment laws, minimum wage laws, and unemployment compensation laws, and creating the employee fair classification act.

**Brief Description:** Concerning the employer-employee relationship.

**Sponsors:** Representatives Riccelli, Doglio, Frame, Ormsby, Valdez, Stonier, Robinson, Cody, Pellicciotti, Peterson, Tharinger, Fitzgibbon, Sells, Reeves, Pollet and Macri.

#### **Brief History:**

##### **Committee Activity:**

Labor & Workplace Standards: 1/28/19, 2/21/19 [DPS].

#### **Brief Summary of Substitute Bill**

- Creates a work group on employee classification to examine questions regarding worker classifications as employees, independent contractors, or exempt from coverage under various laws.

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### HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Sells, Chair; Chapman, Vice Chair; Mosbrucker, Ranking Minority Member; Chandler, Assistant Ranking Minority Member; Gregerson, Hoff and Ormsby.

**Staff:** Joan Elgee (786-7106).

#### **Background:**

##### Independent Contractor Tests.

Employment standards and benefits generally apply only if an employer-employee relationship exists rather than an independent contractor relationship. Various multipart tests

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are used to determine whether an individual is an independent contractor. If an employer treats a worker as an independent contractor rather than as an employee, the employer may be liable under the various employment laws.

*Prevailing Wage, Industrial Insurance, and Unemployment Insurance.* For purposes of prevailing wage, industrial insurance, and unemployment insurance, a six-part statutory independent contractor test is applied. This test requires that:

- the individual has been and will be free from direction and control, both under the contract and in fact;
- the individual's services are outside the usual course of business for which the service is performed, or outside all the places of business, or the individual must pay the costs of the principal place of business where the services are performed;
- the individual has an independently established business, or a principal place of business that qualifies for an Internal Revenue Service (IRS) deduction;
- the individual is responsible for filing a schedule of expenses with the IRS;
- the individual has a separate set of books and records that reflect all items of income and expenses; and
- the individual has an active and valid registration with the Department of Revenue, has a Unified Business Identifier number, and has any other required state accounts for the payment of taxes.

In the construction industry, a seventh required element is that the individual be registered as a contractor or licensed as an electrical contractor. For industrial insurance, a threshold question is whether a person under contract brings more than their personal labor to the job. For unemployment insurance, persons outside construction may also be independent contractors under an alternative three-part test.

*Minimum Wage and Other Wage Laws.* For purposes of the Minimum Wage Act, which also addresses overtime, a common law economic dependence test applies. The inquiry under this test is whether the worker is economically dependent on the alleged employer or is instead in business for himself or herself. Other wage laws also do not have statutory tests.

#### Exemptions from Employment Laws.

The Minimum Wage Act, the industrial insurance laws, and the unemployment insurance laws each have various exemptions. For example, persons doing casual labor in a home are exempt from the Minimum Wage Act, as are commissioned outside sales people. Under industrial insurance, statutory exemptions include taxi drivers and drivers providing commercial transportation services.

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#### **Summary of Substitute Bill:**

A work group on employee classification is created to examine questions regarding worker classifications as employees, independent contractors, or exempt from coverage under various laws.

The work group is composed of four legislators, one from each major caucus of the House of Representatives and the Senate, and five members each appointed by each of the Association of Washington Business and the Washington Labor Council. The Department of Labor and Industries (L&I) and the Employment Security Department each have one nonvoting member. The members select co-chairs from among the work group membership. The L&I provides staff support to the work group.

The work group must review the elements of classification by:

- examining ways to adopt unified employee and independent contractor definitions, which must assure no general loss of worker rights, protections, and social insurance;
- considering the classification of specific industries as exempt under specified laws; and
- examining any need for changes to agency practices to ensure classifications are enforced.

By November 15, 2019, the work group must report its findings and any recommendations to the appropriate committees of the Legislature. The findings must include problem statements submitted by members, options for unified definitions and exemptions, an analysis of the impact of proposals on affected industries and workers, and the impact of broad inclusions or exclusions on workers. A majority of the work group may agree to continue to work until December 25, 2020.

#### **Substitute Bill Compared to Original Bill:**

The substitute bill strikes the underlying bill and creates the work group.

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**Appropriation:** None.

**Fiscal Note:** Requested on February 25, 2019.

**Effective Date of Substitute Bill:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

#### **Staff Summary of Public Testimony:**

(In support) Workers are being denied pay and benefits, which hurts families and also costs the state lost revenue, as companies may misclassify workers to avoid taxes. Misclassified workers have no true freedom but also do not receive rights such as a remedy for sexual harassment. A United States Department of Labor study found that 30 percent of workers are misclassified. Misclassification puts law-abiding businesses at a disadvantage. Workers are taken advantage of and not allowed independence, such as getting penalized for refusing too many jobs. The Department of Commerce study will not deal with the worker status questions.

The bill establishes a common sense test of who is an independent contractor which will improve understanding. The workers' compensation test is applied to other state agencies

and the litigated "essence of the contract" language is removed. Four states use this test, known as the "ABC test." Current exemptions are not changed and true independent contractors such as direct salespeople are protected. Booth renters are not impacted.

(Opposed) The bill is premature because the Department of Commerce study is not due until June. Effectively, independent contractors are eliminated. Section 3(8)(a) is a big problem. Cosmetologists are affected because they are not "outside the usual course of business" and salon owner operators will lose their livelihood because they cannot both work and rent space. The bill will harm families. The industry will return to employee salons. At some level a person engaging a worker will have "physical control," which makes the person an employee.

Businesses will be forced to treat workers who do app-based work as employees, which is not feasible. The bill will destroy the app-based driving industry. The bill undermines the flexibility that drivers want. Taxi drivers have always been sole proprietors and support the exemption from workers' compensation. Independent contractors may purchase workers' compensation if they want it. The bill presumes people choose an independent contractor model for nefarious reasons. The bill will drive more into the underground economy. Trucking is regulated by federal law and being an owner-operator is the American dream, which the bill will eliminate.

The impacts on health care are significant. Physicians don't want to be employees because they could not work for others. Many provisions are alarming; a hospital may be liable for misclassification by a vendor. A person could be subject to five times the damages if the person misclassifies.

**Persons Testifying:** (In support) Representative Riccelli, prime sponsor; Joe Kendo, Washington State Labor Council and American Federation of Labor-Congress of Industrial Organizations; Brian Wright, Washington State Association for Justice; Rebecca Smith, National Employment Law Project; Mia Kelly, Working Washington; and Phil Lindquist, International Union of Painters and Allied Trades.

(Opposed) Bob Battles, Association of Washington Business; Heather Kerekfty, Salon Envy; Jenni Treutle, Studio 4; Kay Neth, Rover.com; Megan White; Debbie Whitt; Matthew Wald, Lynn Reed, and James Lockhart, Drive Forward; Gary Wray, Wray Brothers, LLC; Tom Kwieciak, Association of Washington Business; Sheri Call, Washington Trucking Associations; Lisa Thatcher, Washington Hospital Association; Nicole Stansberry; Rose Feliciano, Internet Association; Jennifer Corbin, Ericksen Avenue Salon; Thien Son, Kaylin Nicole Salon; Mollie Sparks, Mollie Michelle Salon; Chris Van Dyk, Eastside For Hire, Incorporated; and Breanne Guyett-Kadrmars.

**Persons Signed In To Testify But Not Testifying:** None.