

SENATE BILL REPORT

ESB 6421

As Passed Senate, February 13, 2020

Title: An act relating to extending the farm internship program.

Brief Description: Extending the farm internship program.

Sponsors: Senators Muzzall, Hunt, Warnick, Takko, Schoesler, Wagoner, Padden, Hasegawa and Saldaña.

Brief History:

Committee Activity: Labor & Commerce: 1/21/20, 2/03/20 [DP].

Floor Activity:

Passed Senate: 2/13/20, 47-0.

Brief Summary of Engrossed Bill

- Reestablishes the farm internship pilot project, which expires on December 31, 2025.

SENATE COMMITTEE ON LABOR & COMMERCE

Majority Report: Do pass.

Signed by Senators Keiser, Chair; Conway, Vice Chair; King, Ranking Member; Braun, Saldaña, Schoesler, Stanford, Walsh and Wellman.

Staff: Susan Jones (786-7404)

Background: Employment Laws. A number of laws provide employment protections to workers. These include the Minimum Wage Act (MWA), the Industrial Insurance Act, and the Employment Security Act. While these acts define who is covered in different ways, generally a person who provides services to a for-profit business is covered by the acts. Exemptions apply to each act. Referring to an individual as an intern or volunteer does not exempt the employer or the worker from the respective acts.

Minimum Wage Act. The MWA establishes a minimum wage which must be paid to all employees, unless they are exempt. Exempt employees include certain agricultural employees and volunteers for nonprofit organizations. The director of the Department of

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Labor and Industries (L&I) may, to prevent curtailment of opportunities for employment, issue special certificates to employers allowing them to pay wages lower than the minimum wage to learners.

Industrial Insurance. Industrial insurance provides medical and time loss benefits to workers injured in the course of their employment. Employers insure through the State Fund administered by L&I or, if qualified, may self-insure. State Fund premiums are calculated based on the industry risk classification and the employer's experience rating.

Unemployment Insurance. Under the Employment Security Act, qualified individuals who have lost their jobs through no fault of their own, or who quit for good cause, are entitled to unemployment insurance benefits. Exemptions include certain agricultural labor performed by students.

Farm Internship Pilot Project. In 2010, the Legislature directed L&I to establish a farm internship pilot project. The program has expired and been extended or reestablished. The pilot project, which originally began with a few counties, consisted of the following counties in 2019: San Juan, Skagit, King, Whatcom, Kitsap, Pierce, Jefferson, Spokane, Yakima, Chelan, Grant, Island, Snohomish, Kittitas, Lincoln, Thurston, Walla Walla, Clark, Cowlitz, and Lewis.

Under the project, qualified small farms were allowed to employ up to three farm interns at any time, working under special certificates issued by L&I. Farms seeking to employ interns submitted an application to L&I and were required to execute an agreement with the intern that sets forth specified information.

Under the pilot, farm interns were not considered employees under the MWA. Similarly, agricultural labor provided by a farm intern was not employment for purposes of unemployment insurance. L&I provided a special industrial insurance risk class for farm interns.

Upon receipt of an application, L&I had to review the application and issue a certificate within 15 days if L&I found the following:

- The farm qualifies as a small farm.
- There have been no serious violations of the minimum wage or workers' compensation laws that provide reasonable grounds to believe the terms of an internship agreement may not be complied with.
- Issuing a certificate will not create unfair competitive labor cost advantages nor have the effect of impairing or depressing wage or working standards established for experienced workers for work of a like or comparable character in the industry or occupation at which the intern is to be employed.
- A farm intern will not displace an experienced worker.
- The farm demonstrates that the interns will perform work for the farm under an internship program that (1) provides a curriculum of learning modules and supervised participation in farm work activities designed to teach farm interns about farming practices and farm enterprises; (2) is based on the bona fide curriculum of an educational or vocational institution; and (3) is reasonably designed to provide the intern with vocational knowledge and skills about farming practices and enterprises.

In assessing an internship program, L&I may consult with relevant college and university departments and extension programs and state and local government agencies involved in the regulation or development of agriculture.

Before employing an intern, a farm had to submit a statement confirming its understanding and intent to comply with certain labor laws and pay required workers' compensation premiums. L&I could revoke a certificate for a farm's failure to pay the premiums for interns or non-interns, and for other reasons.

A small farm was defined as a farm:

- organized as a sole proprietorship, partnership, or corporation;
- that reports on the IRS Form 1040 Schedule F annual sales less than \$250,000; and
- where all the owners or partners of the farm provide regular labor to and participate in the management of the farm, and own or lease the productive assets of the farm.

L&I was required to monitor and evaluate the farm internships and report to the appropriate committees of the Legislature. The 2019 L&I report stated that from July 1, 2018 to June 30, 2019, 23 farms applied for, and received, special certificates for the project, and 29 interns were trained.

The farm internship pilot project and related provisions expired on December 31, 2019.

Summary of Engrossed Bill: The director of L&I must reestablish the farm internship pilot project. The project and related labor laws expire on December 31, 2025.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony: PRO: This is a re-implementation of the program, which has had a positive impact for smaller operations. They are typically CSI, truck operations. Many of the owners and interns were millennials. It is a learning experience for those starting farms and to train those wishing to start farms. They must offer training. It gives them the opportunity to experience what they might not otherwise. The interns get a stipend and other benefits, such as housing and food.

It is helpful that the program allows workers' compensation for participants. As L&I reported in 2019, there has been one workers' compensation claim and no days lost. Most of these farms are not running big machinery.

You may want to consider extending the program statewide to include more people.

Persons Testifying: PRO: Senator Ron Muzzall, Prime Sponsor; Scott Dille, Washington State Dairy Federation.

Persons Signed In To Testify But Not Testifying: No one.