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**HOUSE BILL 1491**

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**State of Washington**

**66th Legislature**

**2019 Regular Session**

**By** Representatives Macri, Lekanoff, Frame, Davis, Fitzgibbon, and Cody

Read first time 01/23/19. Referred to Committee on Labor & Workplace Standards.

1 AN ACT Relating to secure scheduling; reenacting and amending RCW  
2 50.20.050; adding a new chapter to Title 49 RCW; and prescribing  
3 penalties.

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

5 NEW SECTION. **Sec. 1.** DEFINITIONS. The definitions in this  
6 section apply throughout this chapter unless the context clearly  
7 requires otherwise.

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

11 (2) "Bona fide business reason" means:

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

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

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

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

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

1 (ii) A significant detrimental effect on business performance;  
2 (iii) A significant inability to meet customer needs or demands;  
3 or  
4 (iv) A significant insufficiency of work during the periods the  
5 employee proposes to work.

6 (3) "Career-related educational or training program" means:  
7 (a) An educational or training program;  
8 (b) A preapprenticeship or apprenticeship program; or  
9 (c) A program of study offered by a public, private, or nonprofit  
10 career and technical education school, institution of higher  
11 education, or other entity that provides academic, education, career  
12 and technical education, or training including, but not limited to,  
13 remedial education or English as a second language, as appropriate.

14 (4) "Caregiver" means an employee who has the responsibility of  
15 providing:  
16 (a) Ongoing care or education, including responsibility for  
17 securing the ongoing care or education, of a child;  
18 (b) Ongoing care, including the responsibility for securing  
19 ongoing care, of:  
20 (i) An individual with a serious health condition who is in a  
21 family relationship with the employee; or  
22 (ii) A parent of the individual.

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

27 (6) "Department" means the department of labor and industries.  
28 (7) "Director" means the director of the department.  
29 (8) "Employ" means to suffer or permit to work.  
30 (9) "Employee" means any individual employed by an employer. A  
31 "covered employee" is an employee as limited by RCW 49.46.010 who  
32 works at a fixed point-of-sale location of an employer.

33 (10)(a) "Employer" means any employer as defined in RCW  
34 49.46.010. A "covered employer" is a food services, hospitality, or  
35 retail establishment that employs one hundred or more employees  
36 worldwide, except that a full service restaurant must also have forty  
37 or more full service restaurant locations worldwide. Establishments  
38 include chains, integrated enterprises, or franchises associated with  
39 a franchisor or network of franchises that employ more than one  
40 hundred employees in the aggregate.

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

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

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

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

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

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

18 (iii) Centralized control of labor relations; and

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

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

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

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

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

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

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

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

39 (16) "Hospitality establishment" means a business that provides  
40 lodging on a short-term basis, including hotels, motels, and casino

1 hotels including, but not limited to, those businesses described  
2 under the 2017 North American classification system codes 721110 and  
3 721120.

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

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

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

23 (20) "Parent" means a biological or adoptive parent, a  
24 stepparent, or a person who stood in loco parentis to the employee  
25 when the employee was a child.

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

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

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

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

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

5 (b) Continuing treatment by a health care provider.

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

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

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

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

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

22 (30) "Work shift" means the specific and consecutive hours the  
23 employer requires the employee to work or to be on call to work, but  
24 in no instance shall a work shift be fewer than six consecutive  
25 hours.

26 (31) "Workweek" means a fixed and regularly occurring period of  
27 one hundred sixty-eight hours of seven consecutive twenty-four hour  
28 periods. It may begin on any day of the week and any hour of the day,  
29 and need not coincide with a calendar week.

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

34 NEW SECTION. **Sec. 2.** GOOD FAITH ESTIMATE OF WORK SCHEDULE. (1)

35 At the time of hire, a covered employer must provide a new covered  
36 employee a written good faith estimate of the employee's work  
37 schedule, in English and the employee's primary language. The  
38 estimate must include the median number of hours the employee is  
39 expected to work each workweek, whether the employee is expected to

1 work on-call shifts, and a subset of days and a subset of times or  
2 work shifts that the employee may expect to work, or days of the week  
3 and times or work shifts on which the employee will not be scheduled  
4 to work.

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

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

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

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

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

18 NEW SECTION. **Sec. 3.** WORK SCHEDULE INPUT. (1) At the time of  
19 hire and during employment, a covered employee may identify any  
20 limitations or changes in work schedule availability. An employee has  
21 the right to request not to be scheduled for work shifts during  
22 certain times or at certain locations and the right to identify  
23 preferences for the hours or locations of work.

24 (2) A covered employer must consider and respond to requests  
25 under subsection (1) of this section as follows:

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

36 (b) If the employee's request is not due to a major life event,  
37 the employer must engage in an interactive process with the employee  
38 to discuss the request, and may require verifying information from  
39 the employee if the employer provides the employee with adequate

1 notice and a reasonable time to respond. The employer may grant or  
2 deny the request for any reason that is not unlawful.

3 NEW SECTION. **Sec. 4.** REST BETWEEN WORK SHIFTS. (1) Unless the  
4 employee requests or consents to work such hours, an employer may not  
5 schedule or require an employee to work:

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

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

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

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

18 NEW SECTION. **Sec. 5.** ADVANCE NOTICE OF WORK SCHEDULE. (1)  
19 Subject to subsection (2) of this section, an employer shall provide  
20 employees with a written work schedule at least fourteen calendar  
21 days before the first day of the work schedule.

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

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

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

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

5 NEW SECTION. **Sec. 6.** NOTICE OF WORK SCHEDULE CHANGES. (1) For  
6 an employer-requested change to the written work schedule that occurs  
7 after the advance notice required in section 5 of this act:

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

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

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

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

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

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

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

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



1 hours due to an emergency or major life event. The employee shall not  
2 have to explain the nature of the emergency or major life event.

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

7 NEW SECTION. **Sec. 7.** COMPENSATION FOR WORK SCHEDULE CHANGES.

8 (1) Subject to subsection (2) of this section, an employer must  
9 compensate an employee for each employer-requested change to the  
10 employee's written work schedule that occurs after the advance notice  
11 required by section 5 of this act as follows:

12 (a) At least one hour of pay at the employee's regular rate of  
13 pay, in addition to wages earned, for adding hours of work or  
14 changing the date, start time, or end time of a work shift with no  
15 loss of hours, or changing the physical address of a work shift.

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

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

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

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

35 (c) Operations cannot begin or continue due to:

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

- 1 (ii) Failure of public utilities to supply electricity, water, or  
2 gas, or failure in the public utilities or sewer system; or  
3 (iii) A state of emergency declared by the president of the  
4 United States, governor of Washington, or mayor of a city.

5 NEW SECTION. **Sec. 8.** UNDERSCHEDULING. An employer may not  
6 engage in a pattern or practice of systemic underscheduling in which  
7 the total hours actually worked are significantly greater than the  
8 hours in the written work schedule required by section 5 of this act.  
9 Pursuant to rules adopted by the department, an employer shall  
10 periodically provide the department with aggregate data on  
11 discrepancies between scheduled work hours and hours actually worked.

12 NEW SECTION. **Sec. 9.** ACCESS TO HOURS FOR EXISTING EMPLOYEES.  
13 (1) Subject to subsections (5) and (7) of this section, when  
14 additional hours of work become available, an employer must offer the  
15 additional hours to existing employees before hiring new employees  
16 from an external applicant pool or subcontractors, including hiring  
17 through the use of temporary services or staffing agencies, as  
18 provided in this section.

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

- 27 (i) Description and title of the position;  
28 (ii) Required qualifications for the position;  
29 (iii) Total hours of work being offered;  
30 (iv) Schedule of available work shifts;  
31 (v) Whether the available work shifts will occur at the same time  
32 each week;  
33 (vi) Length of time the employer anticipates requiring coverage  
34 of the additional hours; and  
35 (vii) An advisement that an employee may accept a subset of the  
36 hours offered.

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (a) Where employees may access written notices;

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

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

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

1        NEW SECTION.        **Sec. 10.**        RECORDKEEPING. (1) An employer must  
2 retain records for a period of three years that document compliance  
3 with this chapter, including:

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

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

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

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

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

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

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

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

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

30       NEW SECTION.        **Sec. 11.**        RETALIATION. (1) An employer may not  
31 discharge or otherwise discriminate against an employee because the  
32 employee has filed a complaint, or instituted or caused to be  
33 instituted any proceeding under this chapter, or testified or is  
34 about to testify in any such proceeding, or because the employee  
35 exercised a right afforded by this chapter on behalf of himself or  
36 herself or others.

37       (2) Prohibited discrimination may include: Demoting, suspending,  
38 or harassing an employee; assigning an employee to a lesser position  
39 in terms of job classification, job security, or other condition of

1 employment; reducing the hours or pay of an employee or denying the  
2 employee additional hours; and actions or threats related to  
3 perceived immigration status or work authorization. An adverse action  
4 against an employee within ninety calendar days of the employee's  
5 exercise of rights protected in this chapter shall give rise to a  
6 rebuttable presumption of retaliation.

7 NEW SECTION. **Sec. 12.** NOTICE AND POSTING. The department shall  
8 include notice of the provisions of this chapter in the next  
9 reprinting of employment posters.

10 NEW SECTION. **Sec. 13.** RULES/TECHNICAL ASSISTANCE. (1) The  
11 department shall adopt rules to implement this chapter.

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

14 NEW SECTION. **Sec. 14.** ADMINISTRATIVE ENFORCEMENT. (1) Upon  
15 complaint by an employee, the director must investigate to determine  
16 if there has been compliance with this chapter and the rules adopted  
17 under this chapter. The director may require the testimony of  
18 witnesses and production of documents as part of an investigation.

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

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

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

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

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

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

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

7 (4) The department must deposit civil penalties paid under this  
8 section in the supplemental pension fund established under RCW  
9 51.44.033.

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

13 NEW SECTION. **Sec. 15.** PRIVATE CAUSE OF ACTION. (1) An employee  
14 or class of employees may bring a civil action against an employer  
15 for violation of this chapter for:

16 (a) Unpaid compensation;

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

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

19 and

20 (d) Costs and reasonable attorneys' fees.

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

25 NEW SECTION. **Sec. 16.** WHISTLEBLOWER ENFORCEMENT. (1) The civil  
26 penalties specified in section 14(2)(b) of this act may be recovered  
27 through a civil action brought by any employee allegedly harmed by a  
28 violation of this chapter, whether or not that person has received  
29 full or partial relief from the harm, on behalf of the director and  
30 other current and former employees, pursuant to the following  
31 procedures:

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

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

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

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

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

33 (4) Civil penalties recovered by aggrieved employees under this  
34 section shall be distributed as follows: Seventy percent to the  
35 director for enforcement of this chapter, and for education of  
36 employers and employees about their rights and responsibilities under  
37 this chapter, to be continuously appropriated to supplement and not  
38 supplant the funding to the director for those purposes; and thirty  
39 percent to the aggrieved employees. Twenty percent of the director's



1 share of penalties recovered under this section shall be allocated to  
2 community-based enforcement partnerships.

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

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

16 NEW SECTION. **Sec. 17.** ELIGIBILITY FOR UNEMPLOYMENT BENEFITS. An  
17 employee whose employer knowingly fails to comply with this chapter,  
18 or whose employer makes a significant change to the employee's work  
19 schedule due to changes in the employer's business needs, shall be  
20 considered to have good cause to leave work under RCW 50.20.050.

21 NEW SECTION. **Sec. 18.** MORE GENEROUS POLICIES. (1) Nothing in  
22 this chapter shall be construed to discourage or prohibit an employer  
23 from the adoption or retention of scheduling policies more generous  
24 than those required by this chapter.

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

29 NEW SECTION. **Sec. 19.** CONFLICT WITH FEDERAL REQUIREMENTS. If  
30 any part of this act is found to be in conflict with federal  
31 requirements that are a prescribed condition to the allocation of  
32 federal funds to the state or the eligibility of employers in this  
33 state for federal unemployment tax credits, the conflicting part of  
34 this act is inoperative solely to the extent of the conflict, and the  
35 finding or determination does not affect the operation of the  
36 remainder of this act. Rules adopted under this act must meet federal  
37 requirements that are a necessary condition to the receipt of federal

1 funds by the state or the granting of federal unemployment tax  
2 credits to employers in this state.

3 NEW SECTION. **Sec. 20.** SEVERABILITY. If any provision of this  
4 act or its application to any person or circumstance is held invalid,  
5 the remainder of the act or the application of the provision to other  
6 persons or circumstances is not affected.

7 **Sec. 21.** RCW 50.20.050 and 2009 c 493 s 3 and 2009 c 247 s 1 are  
8 each reenacted and amended to read as follows:

9 (1) ~~((With respect to claims that have an effective date on or  
10 after January 4, 2004, and for separations that occur before  
11 September 6, 2009:~~

12 ~~(a) An individual shall be disqualified from benefits beginning  
13 with the first day of the calendar week in which he or she has left  
14 work voluntarily without good cause and thereafter for seven calendar  
15 weeks and until he or she has obtained bona fide work in employment  
16 covered by this title and earned wages in that employment equal to  
17 seven times his or her weekly benefit amount.~~

18 ~~The disqualification shall continue if the work obtained is a  
19 mere sham to qualify for benefits and is not bona fide work. In  
20 determining whether work is of a bona fide nature, the commissioner  
21 shall consider factors including but not limited to the following:~~

22 ~~(i) The duration of the work;~~

23 ~~(ii) The extent of direction and control by the employer over the  
24 work; and~~

25 ~~(iii) The level of skill required for the work in light of the  
26 individual's training and experience.~~

27 ~~(b) An individual is not disqualified from benefits under (a) of  
28 this subsection when:~~

29 ~~(i) He or she has left work to accept a bona fide offer of bona  
30 fide work as described in (a) of this subsection;~~

31 ~~(ii) The separation was necessary because of the illness or  
32 disability of the claimant or the death, illness, or disability of a  
33 member of the claimant's immediate family if:~~

34 ~~(A) The claimant pursued all reasonable alternatives to preserve  
35 his or her employment status by requesting a leave of absence, by  
36 having promptly notified the employer of the reason for the absence,  
37 and by having promptly requested reemployment when again able to  
38 assume employment. These alternatives need not be pursued, however,~~

1 ~~when they would have been a futile act, including those instances~~  
2 ~~when the futility of the act was a result of a recognized labor/~~  
3 ~~management dispatch system; and~~

4 ~~(B) The claimant terminated his or her employment status, and is~~  
5 ~~not entitled to be reinstated to the same position or a comparable or~~  
6 ~~similar position;~~

7 ~~(iii) (A) With respect to claims that have an effective date~~  
8 ~~before July 2, 2006, he or she: (I) Left work to relocate for the~~  
9 ~~spouse's employment that, due to a mandatory military transfer: (1)~~  
10 ~~Is outside the existing labor market area; and (2) is in Washington~~  
11 ~~or another state that, pursuant to statute, does not consider such an~~  
12 ~~individual to have left work voluntarily without good cause; and (II)~~  
13 ~~remained employed as long as was reasonable prior to the move;~~

14 ~~(B) With respect to claims that have an effective date on or~~  
15 ~~after July 2, 2006, he or she: (I) Left work to relocate for the~~  
16 ~~spouse's employment that, due to a mandatory military transfer, is~~  
17 ~~outside the existing labor market area; and (II) remained employed as~~  
18 ~~long as was reasonable prior to the move;~~

19 ~~(iv) The separation was necessary to protect the claimant or the~~  
20 ~~claimant's immediate family members from domestic violence, as~~  
21 ~~defined in RCW 26.50.010, or stalking, as defined in RCW 9A.46.110;~~

22 ~~(v) The individual's usual compensation was reduced by twenty-~~  
23 ~~five percent or more;~~

24 ~~(vi) The individual's usual hours were reduced by twenty-five~~  
25 ~~percent or more;~~

26 ~~(vii) The individual's worksite changed, such change caused a~~  
27 ~~material increase in distance or difficulty of travel, and, after the~~  
28 ~~change, the commute was greater than is customary for workers in the~~  
29 ~~individual's job classification and labor market;~~

30 ~~(viii) The individual's worksite safety deteriorated, the~~  
31 ~~individual reported such safety deterioration to the employer, and~~  
32 ~~the employer failed to correct the hazards within a reasonable period~~  
33 ~~of time;~~

34 ~~(ix) The individual left work because of illegal activities in~~  
35 ~~the individual's worksite, the individual reported such activities to~~  
36 ~~the employer, and the employer failed to end such activities within a~~  
37 ~~reasonable period of time;~~

38 ~~(x) The individual's usual work was changed to work that violates~~  
39 ~~the individual's religious convictions or sincere moral beliefs; or~~

1 ~~(xi) The individual left work to enter an apprenticeship program~~  
2 ~~approved by the Washington state apprenticeship training council.~~  
3 ~~Benefits are payable beginning Sunday of the week prior to the week~~  
4 ~~in which the individual begins active participation in the~~  
5 ~~apprenticeship program.~~

6 ~~(2) With respect to separations that occur on or after September~~  
7 ~~6, 2009:))~~

8 (a) An individual shall be disqualified from benefits beginning  
9 with the first day of the calendar week in which ~~((he or she has))~~  
10 the individual left work voluntarily without good cause and  
11 thereafter for seven calendar weeks and until ~~((he or she has~~  
12 ~~obtained))~~ the individual obtains bona fide work in employment  
13 covered by this title and earned wages in that employment equal to  
14 seven times his or her weekly benefit amount. Good cause reasons to  
15 leave work are limited to reasons listed in (b) of this subsection.

16 The disqualification shall continue if the work obtained is a  
17 mere sham to qualify for benefits and is not bona fide work. In  
18 determining whether work is of a bona fide nature, the commissioner  
19 shall consider factors including but not limited to the following:

20 (i) The duration of the work;

21 (ii) The extent of direction and control by the employer over the  
22 work; and

23 (iii) The level of skill required for the work in light of the  
24 individual's training and experience.

25 (b) An individual has good cause and is not disqualified from  
26 benefits under (a) of this subsection only under the following  
27 circumstances:

28 (i) ~~((He or she has))~~ The individual left work to accept a bona  
29 fide offer of bona fide work as described in (a) of this subsection;

30 (ii) The separation was necessary because of the illness or  
31 disability of the ~~((claimant))~~ individual or the death, illness, or  
32 disability of a member of the ~~((claimant's))~~ individual's immediate  
33 family if:

34 (A) The ~~((claimant))~~ individual pursued all reasonable  
35 alternatives to preserve his or her employment status by requesting a  
36 leave of absence, by having promptly notified the employer of the  
37 reason for the absence, and by having promptly requested reemployment  
38 when again able to assume employment. These alternatives need not be  
39 pursued, however, when they would have been a futile act, including

1 those instances when the futility of the act was a result of a  
2 recognized labor/management dispatch system; and

3 (B) The ~~((claimant))~~ individual terminated his or her employment  
4 status, and is not entitled to be reinstated to the same position or  
5 a comparable or similar position;

6 (iii) The ~~((claimant))~~ individual: (A) Left work to relocate for  
7 the employment of a spouse or domestic partner that is outside the  
8 existing labor market area; and (B) remained employed as long as was  
9 reasonable prior to the move;

10 (iv) The separation was necessary to protect the ~~((claimant))~~  
11 individual or the ~~((claimant's))~~ individual's immediate family  
12 members from domestic violence, as defined in RCW 26.50.010, or  
13 stalking, as defined in RCW 9A.46.110;

14 (v) The individual's usual compensation was reduced by twenty-  
15 five percent or more;

16 (vi) The individual's usual hours were reduced by twenty-five  
17 percent or more, if the requirements of section 17 of this act are  
18 met;

19 (vii) The individual's worksite changed, such change caused a  
20 material increase in distance or difficulty of travel, and, after the  
21 change, the commute was greater than is customary for workers in the  
22 individual's job classification and labor market;

23 (viii) The individual's worksite safety deteriorated, the  
24 individual reported such safety deterioration to the employer, and  
25 the employer failed to correct the hazards within a reasonable period  
26 of time;

27 (ix) The individual left work because of illegal activities in  
28 the individual's worksite, the individual reported such activities to  
29 the employer, and the employer failed to end such activities within a  
30 reasonable period of time;

31 (x) The individual's usual work was changed to work that violates  
32 the individual's religious convictions or sincere moral beliefs; or

33 (xi) The individual left work to enter an apprenticeship program  
34 approved by the Washington state apprenticeship training council.  
35 Benefits are payable beginning Sunday of the week prior to the week  
36 in which the individual begins active participation in the  
37 apprenticeship program.

38 ~~((3))~~ (2) Notwithstanding subsection ~~((2))~~ (1) of this  
39 section, ~~((for separations occurring on or after July 26, 2009, an~~  
40 ~~individual))~~ an individual who was simultaneously employed in full-

1 time employment and part-time employment and is otherwise eligible  
2 for benefits from the loss of the full-time employment shall not be  
3 disqualified from benefits because the individual:

4 (a) Voluntarily quit the part-time employment before the loss of  
5 the full-time employment; and

6 (b) Did not have prior knowledge that he or she would be  
7 separated from full-time employment.

8 NEW SECTION. **Sec. 22.** CODIFICATION. Sections 1 through 19 of  
9 this act constitute a new chapter in Title 49 RCW.

--- END ---