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**SENATE BILL 5513**

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**State of Washington**

**66th Legislature**

**2019 Regular Session**

**By** Senators Keiser, Conway, Wellman, Frockt, and Saldaña

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

1 AN ACT Relating to simplifying, clarifying, and making consistent  
2 employee status under industrial insurance laws, prevailing wage  
3 laws, wage deduction laws, wage payment laws, minimum wage laws, and  
4 unemployment compensation laws, and creating the employee fair  
5 classification act; amending RCW 39.12.010, 49.46.010, 49.46.010,  
6 50.04.100, 50.04.298, 50.12.070, 51.08.070, 51.08.180, and 51.12.020;  
7 reenacting and amending RCW 49.48.082; adding a new section to  
8 chapter 39.12 RCW; adding new sections to chapter 49.52 RCW; adding a  
9 new section to chapter 49.48 RCW; adding a new section to chapter  
10 49.46 RCW; adding a new section to chapter 50.04 RCW; adding a new  
11 section to chapter 51.12 RCW; adding a new chapter to Title 49 RCW;  
12 creating new sections; repealing RCW 39.12.100, 50.04.140, 50.04.145,  
13 51.08.181, and 51.08.195; prescribing penalties; providing effective  
14 dates; and providing expiration dates.

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

16 NEW SECTION. **Sec. 1.** The legislature finds that the current  
17 employee tests determining which workers can access wage standards  
18 and important elements of the public safety net can be confusing for  
19 both workers and employers. By establishing a definition of  
20 "independent contractor" and applying it consistently for various  
21 wage, benefit, and social insurance programs, the legislature will

1 clarify for employers what elements of a working relationship  
2 constitute an "employee" and ensure that those working as independent  
3 contractors are doing so in a truly independent manner. Further, this  
4 clarity will help level the playing field for employers who pay for  
5 workers' living wages and benefits, and ensure that more workers have  
6 access to the wage and social insurance protections that have  
7 underpinned the middle class for decades. The legislature intends to  
8 promote consistency and clarity with respect to independent  
9 contractor definitions, and to provide a fair and accessible process  
10 for workers and for the state to enforce these standards.

11 NEW SECTION. **Sec. 2.** This chapter may be known and cited as the  
12 employee fair classification act.

13 NEW SECTION. **Sec. 3.** The definitions in this section apply  
14 throughout this chapter unless the context clearly requires  
15 otherwise.

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

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

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

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

24 (b) "Employee" does not include an independent contractor as  
25 defined by subsection (8) of this section.

26 (c) "Employee" also does not include, for purposes of sections 5,  
27 6, 7, and 8 of this act only:

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

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

34 (iii) Any individual engaged in the activities of an educational,  
35 charitable, religious, state or local governmental body or agency, or  
36 nonprofit organization where the employer-employee relationship does  
37 not in fact exist or where the services are rendered to such  
38 organizations gratuitously. If the individual receives reimbursement

1 in lieu of compensation for normally incurred out-of-pocket expenses  
2 or receives a nominal amount of compensation per unit of voluntary  
3 service rendered, an employer-employee relationship is deemed not to  
4 exist for the purpose of this section or for purposes of membership  
5 or qualification in any state, local government, or publicly  
6 supported retirement system other than that provided under chapter  
7 41.24 RCW;

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

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

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

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

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

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

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

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

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

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

5 (5) (a) "Employer" means any of the following that employ a  
6 person: (i) An individual; (ii) any form of business entity, or the  
7 receiver, trustee, or successor of a business entity; (iii) an  
8 administrator or executor of an estate; or (iv) the state or any  
9 agency, instrumentality, or political subdivision of the state.

10 "Employer" includes an individual or entity that acts directly or  
11 indirectly in the interest of an employer in relation to employing a  
12 person. More than one entity may be the "employer," including in  
13 circumstances where one entity controls, is controlled by, or is  
14 under common control with another employer, or where one entity  
15 exerts control over the operations of another employer.

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (10)(a) "Pattern or practice" means that, in addition to the  
31 current violation, within the previous ten years the employer was:

32 (i) Convicted of a criminal violation of a state or local law  
33 concerning nonpayment of wages;

34 (ii) Subject to a court order entering final judgment for a  
35 violation of this chapter or chapter 39.12, 49.46, 49.48, or 49.52  
36 RCW, and the judgment was not satisfied or current within thirty days  
37 of the later of: (A) The expiration of the time for appealing the  
38 order; or (B) if a timely appeal was made, the date of the final  
39 resolution of the appeal; or

1 (iii) Due to a previous violation, subject to a final and binding  
2 citation and notice of assessment from the department for a violation  
3 of this chapter or chapter 39.12 or 49.48 RCW, or a final  
4 determination of violation of chapter 39.12 RCW, and the citation,  
5 determination, and penalty was not satisfied or current within thirty  
6 days of the date the citation or determination became final and  
7 binding.

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

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

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

14 NEW SECTION. **Sec. 4.** (1) An employer-employee relationship  
15 exists when an individual performs labor or services for another  
16 individual or entity. The party asserting that an individual is not  
17 an employee must establish by a preponderance of the evidence that  
18 the individual is an independent contractor or is otherwise not an  
19 employee under this chapter.

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

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

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

34 NEW SECTION. **Sec. 5.** (1) An employer may not willfully  
35 misclassify an employee as an independent contractor.

36 (2) A person may not charge an employee who has been  
37 misclassified as an independent contractor a fee, or make any  
38 deductions from compensation for any purpose, including for goods,

1 materials, space rental, services, government licenses, repair,  
2 equipment maintenance, or fines arising from the employment where any  
3 of the acts would have violated the law if the individual had not  
4 been misclassified.

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

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

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

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

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

19 NEW SECTION. **Sec. 6.** (1) The department may conduct an  
20 investigation if it obtains information indicating a person may have  
21 violated this chapter, but the department may not investigate a  
22 violation of this chapter that occurred more than three years before  
23 the date of the violation. For the purposes of this section, a  
24 violation occurs from the initial date of misclassification and for  
25 as long as the employee continues to be misclassified. The three-year  
26 period is tolled during any period of time that an employer, any of  
27 its agents, or any person acting on behalf of the employer, deters an  
28 individual from filing a complaint under this section.

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

31 (a) For a violation of section 9 of this act, order the employer  
32 to pay a civil penalty of not less than one thousand dollars and not  
33 more than ten thousand dollars;

34 (b) For a violation of section 5 of this act, order the person to  
35 pay a civil penalty of: (i) Not less than one thousand dollars and  
36 not more than ten thousand dollars per employee; or (ii) if the  
37 person has engaged in a pattern or practice of violations, not less  
38 than ten thousand dollars and not more than twenty-five thousand  
39 dollars per employee;

1 (c) For a violation of section 5 of this act, order persons,  
2 including employers, to jointly and severally pay the following: (i)  
3 Three times the amount of wages, salary, and employment benefits  
4 denied or withheld, except benefits under Title 50 or 51 RCW; and  
5 (ii) reimbursement for payroll taxes under Title 50 or 51 RCW and the  
6 value of any other state payroll taxes paid or state benefits lost by  
7 the employee;

8 (d) In addition, for a violation of section 5 of this act, order  
9 the employer to reinstate and properly classify the employee. The  
10 director may award front pay in lieu of reinstatement; and

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

16 (3) The department must consider referrals based on a court  
17 finding of a violation of section 5 of this act to determine whether  
18 to initiate collection procedures.

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

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

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

33 (6) The department must deposit civil penalties collected under  
34 this chapter into the employee fair classification act account  
35 created in section 10 of this act.

36 (7) This section expires January 2, 2021.

37 NEW SECTION. **Sec. 7.** (1) The department may conduct an  
38 investigation if it obtains information indicating a person may have  
39 violated this chapter, but the department may not investigate a

1 violation of this chapter that occurred more than three years before  
2 the date of the violation. For the purposes of this section, a  
3 violation occurs from the initial date of misclassification and for  
4 as long as the employee continues to be misclassified. The three-year  
5 period is tolled during any period of time that an employer, any of  
6 its agents, or any person acting on behalf of the employer, deters an  
7 individual from filing a complaint under this section.

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

10 (a) For a violation of section 9 of this act, order the employer  
11 to pay a civil penalty of not less than one thousand dollars and not  
12 more than ten thousand dollars;

13 (b) For a violation of section 5 of this act, order the person to  
14 pay a civil penalty of: (i) Not less than one thousand dollars and  
15 not more than ten thousand dollars per employee; or (ii) if the  
16 person has engaged in a pattern or practice of violations, not less  
17 than ten thousand dollars and not more than twenty-five thousand  
18 dollars per employee;

19 (c) For a violation of section 5 of this act, order persons,  
20 including employers, to jointly and severally pay the following: (i)  
21 Three times the amount of wages, salary, and employment benefits  
22 denied or withheld, except benefits under Title 50 or 51 RCW; and  
23 (ii) reimbursement for payroll taxes under Title 50 or 51 RCW and the  
24 value of any payroll taxes paid or benefits lost by the employee;

25 (d) In addition, for a violation of section 5 of this act, order  
26 the employer to reinstate and properly classify the employee. The  
27 director may award front pay in lieu of reinstatement;

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

33 (f) Consider referrals based on a court finding of a violation of  
34 section 5 of this act to determine whether to initiate collection  
35 procedures.

36 (3) (a) The department must adjust the penalty amounts in  
37 subsection (2) of this section beginning January 1, 2021, and on each  
38 January 1st thereafter, to reflect the percentage change in the  
39 consumer price index, calculated as follows: The index for the  
40 calendar year preceding the year in which the January 1st calculation

1 is made, to be known as "calendar year A," is divided by the index  
2 for the calendar year preceding calendar year A, and the resulting  
3 ratio is multiplied by the penalty amount in effect on December 31st  
4 immediately preceding the January 1st on which the respective  
5 calculation is made.

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

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

10 (5) The department must deposit civil penalties collected under  
11 this chapter into the employee fair classification act account  
12 created in section 10 of this act.

13 NEW SECTION. **Sec. 8.** (1) An individual aggrieved by a violation  
14 of section 5 of this act may bring suit on behalf of himself or  
15 herself or on behalf of any other individual who is similarly  
16 situated.

17 (2) If a court determines that a person or persons, including  
18 employers, violated section 5 of this act, it:

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

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

24 (ii) Statutory damages for each employee aggrieved by the  
25 violation. Statutory damages must not be less than one thousand  
26 dollars and not more than ten thousand dollars per employee, unless  
27 the person engaged in a pattern or practice of violations, in which  
28 case the statutory damages must be not less than ten thousand dollars  
29 and not more than twenty-five thousand dollars per employee;

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

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

35 (3) If a court determines that an employer violated section 5 of  
36 this act, it may order the employer to pay any taxes owed and award  
37 injunctive or other equitable relief, including reinstatement and  
38 reclassification of the employee with terms and conditions at least  
39 as favorable as those that applied when the employee was

1 misclassified, including rate of compensation, value of any benefits,  
2 and hours of work. The court may award front pay in lieu of  
3 reinstatement.

4 (4) A civil action under this section must be brought no later  
5 than three years after the violation occurred. For the purposes of  
6 this section, a violation occurs from the initial date of  
7 misclassification and for as long as the employee continues to be  
8 misclassified. The three-year period is tolled during any period of  
9 time that an employer, any of its agents, or any person acting on  
10 behalf of the employer deters an individual from bringing an action  
11 under this section.

12 NEW SECTION. **Sec. 9.** (1) If an employer engages an individual  
13 to perform labor or services for remuneration and considers the  
14 individual to be an independent contractor, the employer shall  
15 provide that individual with the following notice:

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

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

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

33 NEW SECTION. **Sec. 10.** The employee fair classification act  
34 account is created in the state treasury. All receipts from civil  
35 penalties issued under section 6 of this act must be deposited in the  
36 account. Moneys in the account may be spent only after appropriation.  
37 Expenditures from the account may be used only for enforcement of  
38 this chapter.



1 defraying costs of apprenticeship or other similar programs, or for  
2 other bona fide fringe benefits, but only where the contractor or  
3 subcontractor is not required by other federal, state, or local law  
4 to provide any of such benefits.

5 (4) "Employee" has the same meaning as "laborers, workers, and  
6 mechanics."

7 (5) "Independent contractor" has the same meaning as in section 3  
8 of this act.

9 (6) An "interested party" for the purposes of this chapter shall  
10 include a contractor, subcontractor, an employee of a contractor or  
11 subcontractor, an organization whose members' wages, benefits, and  
12 conditions of employment are affected by this chapter, and the  
13 director of labor and industries or the director's designee.

14 NEW SECTION. Sec. 13. A new section is added to chapter 39.12  
15 RCW to read as follows:

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

#### 21 **WAGE DEDUCTIONS**

22 NEW SECTION. Sec. 14. A new section is added to chapter 49.52  
23 RCW to read as follows:

24 (1) "Employ," "employer," and "independent contractor" have the  
25 same meanings as in section 3 of this act.

26 (2) "Employee" has the same meaning as in section 3(4) (a) and  
27 (b) of this act.

28 NEW SECTION. Sec. 15. A new section is added to chapter 49.52  
29 RCW to read as follows:

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

35 (2) A general contractor is not responsible for violations of an  
36 independent contractor or subcontractor under this chapter unless the

1 general contractor exerts substantial control over the day-to-day  
2 work of the independent contractor or subcontractor. For purposes of  
3 this section, "general contractor" and "subcontractor" have the same  
4 meanings as in section 4(2) (a) and (b) of this act.

5 **WAGE PAYMENT ACT**

6 **Sec. 16.** RCW 49.48.082 and 2010 c 42 s 1 are each reenacted and  
7 amended to read as follows:

8 The definitions in this section apply throughout this section and  
9 RCW 49.48.083 through 49.48.086:

10 (1) "Citation" means a written determination by the department  
11 that a wage payment requirement has been violated.

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

13 (3) "Determination of compliance" means a written determination  
14 by the department that wage payment requirements have not been  
15 violated.

16 (4) "Director" means the director of the department of labor and  
17 industries, or the director's authorized representative.

18 (5) "Employee" has the meaning provided in: (a) RCW 49.46.010 for  
19 purposes of a wage payment requirement set forth in RCW 49.46.020 or  
20 49.46.130; and (b) (~~RCW 49.12.005~~) section 3(4) (a) and (b) of this  
21 act for purposes of a wage payment requirement set forth in RCW  
22 49.48.010, 49.52.050, or 49.52.060.

23 (6) "Employ" has the same meaning as in section 3 of this act.

24 (7) "Employer" ((has the meaning provided in RCW 49.46.010 for  
25 purposes of a wage payment requirement set forth in RCW 49.46.020,  
26 49.46.130, 49.48.010, 49.52.050, or 49.52.060)) and "independent  
27 contractor" have the same meanings as in section 3 of this act.

28 ~~((7))~~ (8) "Notice of assessment" means a written notice by the  
29 department that, based on a citation, the employer shall pay the  
30 amounts assessed under RCW 49.48.083.

31 ~~((8))~~ (9) "Repeat willful violator" means any employer that has  
32 been the subject of a final and binding citation and notice of  
33 assessment for a willful violation of a wage payment requirement  
34 within three years of the date of issue of the most recent citation  
35 and notice of assessment for a willful violation of a wage payment  
36 requirement.

37 ~~((9))~~ (10) "Successor" means any person to whom an employer  
38 quitting, selling out, exchanging, or disposing of a business sells

1 or otherwise conveys in bulk and not in the ordinary course of the  
2 employer's business, more than fifty percent of the property, whether  
3 real or personal, tangible or intangible, of the employer's business.

4 ~~((10))~~ (11) "Wage" has the meaning provided in RCW 49.46.010.

5 ~~((11))~~ (12) "Wage complaint" means a complaint from an employee  
6 to the department that asserts that an employer has violated one or  
7 more wage payment requirements and that is reduced to writing.

8 ~~((12))~~ (13) "Wage payment requirement" means a wage payment  
9 requirement set forth in RCW 49.46.020, 49.46.130, 49.48.010,  
10 49.52.050, or 49.52.060, and any related rules adopted by the  
11 department.

12 ~~((13))~~ (14) "Willful" means a knowing and intentional action  
13 that is neither accidental nor the result of a bona fide dispute, as  
14 evaluated under the standards applicable to wage payment violations  
15 under RCW 49.52.050(2).

16 NEW SECTION. **Sec. 17.** A new section is added to chapter 49.48  
17 RCW to read as follows:

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

24 (2) A general contractor is not responsible for violations of a  
25 bona fide independent contractor or subcontractor under this chapter  
26 unless the general contractor exerts substantial control over the  
27 day-to-day work of the independent contractor or subcontractor. For  
28 purposes of this section, "general contractor" and "subcontractor"  
29 have the same meaning as in section 4(2) (a) and (b) of this act.

### 30 **MINIMUM WAGE ACT**

31 **Sec. 18.** RCW 49.46.010 and 2015 c 299 s 3 are each amended to  
32 read as follows:

33 As used in this chapter:

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

35 (2) ~~(("Employ" includes to permit to work))~~ "Department,"  
36 "employ," and "employer" have the same meanings as in section 3 of  
37 this act;

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

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

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

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

20 (d) Any individual engaged in the activities of an educational,  
21 charitable, religious, state or local governmental body or agency, or  
22 nonprofit organization where the employer-employee relationship does  
23 not in fact exist or where the services are rendered to such  
24 organizations gratuitously. If the individual receives reimbursement  
25 in lieu of compensation for normally incurred out-of-pocket expenses  
26 or receives a nominal amount of compensation per unit of voluntary  
27 service rendered, an employer-employee relationship is deemed not to  
28 exist for the purpose of this section or for purposes of membership  
29 or qualification in any state, local government, or publicly  
30 supported retirement system other than that provided under chapter  
31 41.24 RCW;

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

39 (f) Any newspaper vendor, carrier, or delivery person selling or  
40 distributing newspapers on the street, to offices, to businesses, or

1 from house to house and any freelance news correspondent or  
2 "stringer" who, using his or her own equipment, chooses to submit  
3 material for publication for free or a fee when such material is  
4 published;

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

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

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

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

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

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

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

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

29 (o) Any farm intern providing his or her services to a small farm  
30 which has a special certificate issued under RCW 49.12.470;

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

37 (4) (~~"Employer" includes any individual, partnership,~~  
38 ~~association, corporation, business trust, or any person or group of~~  
39 ~~persons acting directly or indirectly in the interest of an employer~~  
40 ~~in relation to an employee;~~

1       ~~(5))~~) "Occupation" means any occupation, service, trade,  
2 business, industry, or branch or group of industries or employment or  
3 class of employment in which employees are gainfully employed;

4       ~~((6))~~) (5) "Retail or service establishment" means an  
5 establishment seventy-five percent of whose annual dollar volume of  
6 sales of goods or services, or both, is not for resale and is  
7 recognized as retail sales or services in the particular industry;

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

13       **Sec. 19.** RCW 49.46.010 and 2015 c 299 s 3 are each amended to  
14 read as follows:

15       As used in this chapter:

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

17       (2) ~~(("Employ" includes to permit to work))~~) "Department,"  
18 "employ," and "employer" have the same meanings as in section 3 of  
19 this act;

20       (3) "Employee" ~~((includes any individual employed by an employer~~  
21 ~~but))~~ has the same meaning as in section 3(4) (a) and (b) of this act  
22 and shall not include:

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

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

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

1 (d) Any individual engaged in the activities of an educational,  
2 charitable, religious, state or local governmental body or agency, or  
3 nonprofit organization where the employer-employee relationship does  
4 not in fact exist or where the services are rendered to such  
5 organizations gratuitously. If the individual receives reimbursement  
6 in lieu of compensation for normally incurred out-of-pocket expenses  
7 or receives a nominal amount of compensation per unit of voluntary  
8 service rendered, an employer-employee relationship is deemed not to  
9 exist for the purpose of this section or for purposes of membership  
10 or qualification in any state, local government, or publicly  
11 supported retirement system other than that provided under chapter  
12 41.24 RCW;

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

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

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

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

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

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

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

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

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

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

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

18 (~~4~~) (~~"Employer" includes any individual, partnership,~~  
19 ~~association, corporation, business trust, or any person or group of~~  
20 ~~persons acting directly or indirectly in the interest of an employer~~  
21 ~~in relation to an employee;~~

22 (~~5~~)) "Occupation" means any occupation, service, trade,  
23 business, industry, or branch or group of industries or employment or  
24 class of employment in which employees are gainfully employed;

25 (~~(6)~~) (5) "Retail or service establishment" means an  
26 establishment seventy-five percent of whose annual dollar volume of  
27 sales of goods or services, or both, is not for resale and is  
28 recognized as retail sales or services in the particular industry;

29 (~~(7)~~) (6) "Wage" means compensation due to an employee by  
30 reason of employment, payable in legal tender of the United States or  
31 checks on banks convertible into cash on demand at full face value,  
32 subject to such deductions, charges, or allowances as may be  
33 permitted by rules of the director.

34 NEW SECTION. **Sec. 20.** A new section is added to chapter 49.46  
35 RCW to read as follows:

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

1 independent contractor or is otherwise not an employee under this  
2 chapter.

3 (2) A general contractor is not responsible for violations of an  
4 independent contractor or subcontractor under this chapter unless the  
5 general contractor exerts substantial control over the day-to-day  
6 work of the independent contractor or subcontractor. For purposes of  
7 this section, "general contractor" and "subcontractor" have the same  
8 meaning as in section 4(2) (a) and (b) of this act.

9 **UNEMPLOYMENT INSURANCE**

10 NEW SECTION. **Sec. 21.** A new section is added to chapter 50.04  
11 RCW to read as follows:

12 The services of an independent contractor, as defined in section  
13 3 of this act, are not services in employment under this title.

14 **Sec. 22.** RCW 50.04.100 and 1982 1st ex.s. c 18 s 14 are each  
15 amended to read as follows:

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

26 (~~Except as provided by RCW 50.04.145,~~) Personal services  
27 performed for an employing unit by one or more contractors or  
28 subcontractors acting individually or as a partnership, which do not  
29 meet the provisions of ((RCW 50.04.140)) section 21 of this act,  
30 shall be considered employment of the employing unit: PROVIDED,  
31 HOWEVER, That such contractor or subcontractor shall be an employer  
32 under the provisions of this title in respect to personal services  
33 performed by individuals for such contractor or subcontractor.

34 **Sec. 23.** RCW 50.04.298 and 2007 c 146 s 8 are each amended to  
35 read as follows:

36 For the purposes of this title:

1 (1) "Professional employer organization" means a person or entity  
2 that enters into an agreement with one or more client employers to  
3 provide professional employer services. "Professional employer  
4 organization" includes entities that use the term "staff leasing  
5 company," "permanent leasing company," "registered staff leasing  
6 company," "employee leasing company," "administrative employer," or  
7 any other name, when they provide professional employer services to  
8 client employers. The following are not classified as professional  
9 employer organizations: Independent contractors in (~~RCW 50.04.140~~)  
10 section 21 of this act; temporary staffing services companies and  
11 services referral agencies as defined in RCW 50.04.245; third-party  
12 payers as defined in RCW 50.04.248; or labor organizations.

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

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

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

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

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

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

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

1 specifically allocated by the professional employer agreement or  
2 state law.

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

9 **Sec. 24.** RCW 50.12.070 and 2013 c 250 s 1 are each amended to  
10 read as follows:

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

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

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

34 (b) If the employing unit fails or has failed to report the  
35 number of hours in a reporting period for which a worker worked, such  
36 number will be computed by the commissioner and given the same force  
37 and effect as if it had been reported by the employing unit. In  
38 computing the number of such hours worked, the total wages for the  
39 reporting period, as reported by the employing unit, shall be divided

1 by the dollar amount of the state's minimum wage in effect for such  
2 reporting period and the quotient, disregarding any remainder, shall  
3 be credited to the worker: PROVIDED, That although the computation so  
4 made will not be subject to appeal by the employing unit, monetary  
5 entitlement may be redetermined upon request if the department is  
6 provided with credible evidence of the actual hours worked. Benefits  
7 paid using computed hours are not considered an overpayment and are  
8 not subject to collections when the correction of computed hours  
9 results in an invalid or reduced claim; however:

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

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

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

23 (4) Upon referral from the department of labor and industries  
24 pursuant to section 6 of this act, the employment security department  
25 may initiate procedures for improper recordkeeping and the recovery  
26 of contributions, interest, and penalties.

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

## 31 INDUSTRIAL INSURANCE

32 **Sec. 25.** RCW 51.08.070 and 2008 c 102 s 2 are each amended to  
33 read as follows:

34 "Employer" means any person, body of persons, corporate or  
35 otherwise, and the legal representatives of a deceased employer, all  
36 while engaged in this state in any work covered by the provisions of  
37 this title, by way of trade or business, or who contracts with one or  
38 more workers (~~(, the essence of which is the personal labor of such~~

1 ~~worker or workers~~)). Or as an exception to the definition of  
2 employer, persons or entities are not employers when they contract or  
3 agree to remunerate the services performed by an (~~individual who~~  
4 ~~meets the tests set forth in subsections (1) through (6) of RCW~~  
5 ~~51.08.195 or the separate tests set forth in RCW 51.08.181 for work~~  
6 ~~performed that requires registration under chapter 18.27 RCW or~~  
7 ~~licensing under chapter 19.28 RCW~~) independent contractor as defined  
8 in section 3 of this act.

9 **Sec. 26.** RCW 51.08.180 and 2008 c 102 s 3 are each amended to  
10 read as follows:

11 "Worker" means every person in this state who is engaged in the  
12 employment of an employer under this title, whether by way of manual  
13 labor or otherwise in the course of his or her employment; also every  
14 person in this state who is engaged in the employment of or who is  
15 working under an independent contract, (~~the essence of which is his~~  
16 ~~or her personal labor for an employer under this title,~~) whether by  
17 way of manual labor or otherwise, in the course of his or her  
18 employment, (~~or as an exception to the definition of worker, a~~  
19 ~~person is not a worker if~~) unless he or she (~~meets the tests set~~  
20 ~~forth in subsections (1) through (6) of RCW 51.08.195 or the separate~~  
21 ~~tests set forth in RCW 51.08.181 for work performed that requires~~  
22 ~~registration under chapter 18.27 RCW or licensing under chapter 19.28~~  
23 ~~RCW~~) meets the definition of independent contractor as defined in  
24 section 3(8) of this act: PROVIDED, That a person is not a worker for  
25 the purpose of this title, with respect to his or her activities  
26 attendant to operating a truck which he or she owns, and which is  
27 leased to a common or contract carrier.

28 NEW SECTION. **Sec. 27.** A new section is added to chapter 51.12  
29 RCW to read as follows:

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

1       **Sec. 28.** RCW 51.12.020 and 2015 c 236 s 4 are each amended to  
2 read as follows:

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

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

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

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

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

19       (5) Sole proprietors or partners.

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

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

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

34       (b) Alternatively, a corporation that is not a "public company"  
35 as defined in RCW 23B.01.400 may exempt eight or fewer bona fide  
36 officers, who are voluntarily elected or voluntarily appointed in  
37 accordance with the articles of incorporation or bylaws of the  
38 corporation and who exercise substantial control in the daily  
39 management of the corporation, from coverage under this title without  
40 regard to the officers' performance of manual labor if the exempted

1 officer is a shareholder of the corporation, or may exempt any number  
2 of officers if all the exempted officers are related by blood within  
3 the third degree or marriage. If a corporation that is not a "public  
4 company" elects to be covered under subsection (8)(a) of this  
5 section, the corporation's election must be made on a form prescribed  
6 by the department and under such reasonable rules as the department  
7 may adopt.

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

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

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

25 (10) Services performed by a newspaper vendor, carrier, or  
26 delivery person selling or distributing newspapers on the street, to  
27 offices, to businesses, or from house to house and any freelance news  
28 correspondent or "stringer" who, using his or her own equipment,  
29 chooses to submit material for publication for free or a fee when  
30 such material is published.

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

34 (12) Services performed by a booth renter. However, a person  
35 exempted under this subsection may elect coverage under RCW  
36 51.32.030.

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

38 (a) Management of the company is vested in its members, and the  
39 members for whom exemption is sought would qualify for exemption

1 under subsection (5) of this section were the company a sole  
2 proprietorship or partnership; or

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

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

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

15 NEW SECTION. **Sec. 29.** Sections 2 through 11 of this act  
16 constitute a new chapter in Title 49 RCW.

17 NEW SECTION. **Sec. 30.** If any provision of this act or its  
18 application to any person or circumstance is held invalid, the  
19 remainder of the act or the application of the provision to other  
20 persons or circumstances is not affected.

21 NEW SECTION. **Sec. 31.** If any part of this act is found to be in  
22 conflict with federal requirements that are a prescribed condition to  
23 the allocation of federal funds to the state or the eligibility of  
24 employers in this state for federal unemployment tax credits, the  
25 conflicting part of this act is inoperative solely to the extent of  
26 the conflict, and the finding or determination does not affect the  
27 operation of the remainder of this act. Rules adopted under this act  
28 must meet federal requirements that are a necessary condition to the  
29 receipt of federal funds by the state or the granting of federal  
30 unemployment tax credits to employers in this state.

31 NEW SECTION. **Sec. 32.** The following acts or parts of acts are  
32 each repealed:

33 (1) RCW 39.12.100 (Independent contractors—Criteria) and 2009 c  
34 63 s 1;

35 (2) RCW 50.04.140 (Employment—Exception tests) and 1991 c 246 s 6  
36 & 1945 c 35 s 15;

1 (3) RCW 50.04.145 (Employment—Exclusions) and 2008 c 102 s 1,  
2 1983 1st ex.s. c 23 s 25, & 1982 1st ex.s. c 18 s 13;

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

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

7 NEW SECTION. **Sec. 33.** Section 18 of this act expires December  
8 31, 2019.

9 NEW SECTION. **Sec. 34.** Section 19 of this act takes effect  
10 December 31, 2019.

11 NEW SECTION. **Sec. 35.** Section 7 of this act takes effect  
12 January 1, 2021.

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