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**SUBSTITUTE SENATE BILL 5717**

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**State of Washington**

**66th Legislature**

**2019 Regular Session**

**By** Senate Labor & Commerce (originally sponsored by Senators Saldaña, Das, Hasegawa, Nguyen, Keiser, Llias, Conway, Hunt, Randall, and Wilson, C.)

READ FIRST TIME 02/22/19.

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

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

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

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

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

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

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

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

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

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

21 (ii) A significant detrimental effect on business performance;

1 (iii) A significant inability to meet customer needs or demands;  
2 or  
3 (iv) A significant insufficiency of work during the periods the  
4 employee proposes to work.

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

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

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

26 (6) "Department" means the department of labor and industries.  
27 (7) "Director" means the director of the department.  
28 (8) "Employ" includes to permit to work.  
29 (9) "Employee" means any individual employed by an employer, as  
30 defined in subsection (10) of this section, and as limited by RCW  
31 49.46.010 who works at a fixed point-of-sale location of an employer.  
32 "Employee" does not mean employees providing roadside assistance  
33 services, defined as off-site repair assistance rendered to a  
34 motorist with a disabled vehicle.

35 (10)(a) "Employer" means any employer as defined in RCW 49.46.010  
36 that is a food service, hospitality, or retail establishment that  
37 employs two hundred fifty or more employees worldwide, including  
38 chains, integrated enterprises, or franchises associated with a  
39 franchisor or network of franchises that employ more than two hundred  
40 fifty employees in the aggregate, except that:

1 (i) A full service restaurant must also have forty or more full  
2 service restaurant locations worldwide;

3 (ii) A franchisee employing fewer than twenty-five employees  
4 aggregated across all locations operated by that franchisee is not an  
5 employer; and

6 (iii) "Employer" does not include a nonprofit service  
7 organization or temporary service contractor as defined in RCW  
8 19.31.020(12).

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

11 (i) The average number per calendar week of employees who worked  
12 for compensation during the preceding calendar year for any and all  
13 weeks during which at least one employee worked for compensation. For  
14 employers that did not have any employees during the previous  
15 calendar year, the number of employees shall be calculated based upon  
16 the average number per calendar week of employees who worked for  
17 compensation during the first ninety calendar days of the current  
18 year in which the employer engaged in business; and

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

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

23 (i) Degree of interrelation between the operations of multiple  
24 entities;

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

26 (iii) Centralized control of labor relations; and

27 (iv) Degree of common ownership or financial control over the  
28 entities.

29 (d) For purposes of this subsection (10) only, "employee" means  
30 any individual employed by an employer.

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

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

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

37 (12) "Food services establishment" means a business that sells  
38 prepared foods or beverages, including: Food services contractors;  
39 caterers and mobile food services; drinking places that serve  
40 alcoholic beverages; full service restaurants; limited service

1 restaurants, cafeterias, grill buffets, and buffets; and snack and  
2 nonalcoholic beverage bars. These businesses include, but are not  
3 limited to, those described in the 2017 North American classification  
4 system code 722.

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

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

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

9 (16) "Hospitality establishment" means a business that provides  
10 lodging on a short-term basis, including hotels, motels, and casino  
11 hotels including, but not limited to, those businesses described  
12 under the 2017 North American classification system codes 721110 and  
13 721120.

14 (17) "Interactive process" means a timely, good faith process  
15 that includes a discussion between the employer and the employee for  
16 the purpose of arriving at a mutually beneficial arrangement of a  
17 work schedule that meets the needs of the employee and the employer.  
18 The discussion may include the proposal of alternatives by the  
19 employer and the employee.

20 (18) "Major life event" means a major event related to the  
21 employee's access to the workplace due to: Changes in the employee's  
22 transportation or housing; the employee's own serious health  
23 condition; the employee's responsibilities as a caregiver; the  
24 employee's enrollment in a career-related educational or training  
25 program; or the employee's other job or jobs.

26 (19) "On-call shift" means any time that the employer requires  
27 the employee to be available to work, contact the employer or the  
28 employer's designee, or wait to be contacted by the employer or the  
29 employer's designee, for the purpose of determining whether the  
30 employee must report to work. During such time, on-call status  
31 applies regardless of whether the employee is located on or off the  
32 employer's premises.

33 (20) "Parent" means a biological, adoptive, de facto, or foster  
34 parent, stepparent, or legal guardian of an employee or the  
35 employee's spouse or a person who stood in loco parentis to the  
36 employee when the employee was a child.

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

39 (22) "Retail establishment" means an entity that is engaged  
40 primarily in the sale of consumer goods at one or more stores within

1 the state. For the purposes of this subsection, "consumer goods"  
2 means products that are primarily for personal, household, or family  
3 purposes, including but not limited to appliances, clothing,  
4 electronics, groceries, and household items. These entities include,  
5 but are not limited to, those described in the 2017 North American  
6 classification system codes 44110 through 453998.

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

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

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

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

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

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

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

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

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

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

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

37 At the time of hire, an employer must provide a new employee a  
38 written good faith estimate of the employee's work schedule, in  
39 English and the employee's primary language. The estimate must

1 include the median number of hours the employee is expected to work  
2 each workweek, whether the employee is expected to work on-call  
3 shifts, and a subset of days and a subset of times or work shifts  
4 that the employee may expect to work, or days of the week and times  
5 or work shifts on which the employee will not be scheduled to work.

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

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

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

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

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

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

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

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

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

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

4 (c) The requirement for an employee to provide verifying  
5 information may not exceed privacy or verification requirements  
6 otherwise established by law.

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

10 (a) Sooner than ten hours after the end of the previous calendar  
11 day's work shift; or

12 (b) Sooner than ten hours following the end of a work shift that  
13 spanned two calendar days.

14 (2) An employer must compensate an employee who works the hours  
15 described in subsection (1) of this section at one and one-half times  
16 the employee's regular rate of pay for the hours worked that are  
17 fewer than ten hours apart.

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

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

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

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

33 (4) An employer shall post the written work schedule in a  
34 conspicuous and accessible location, in English and in the primary  
35 languages of all of the employees at the particular workplace. An  
36 employer shall transmit the written work schedule to each employee.  
37 The employer may transmit the written work schedule electronically if  
38 electronic means are regularly used to communicate scheduling

1 information to employees. The written work schedule shall include the  
2 shifts of all current employees at that worksite, whether or not they  
3 are scheduled to work or be on call that week.

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

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

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

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

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

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

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

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

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

37 (b) An employer may ask but may not require an employee to find  
38 replacement coverage if the reason is an emergency or major life  
39 event that prevents the employee from working the scheduled hours,



1 unless the major life event is covered by another law under (a) of  
2 this subsection. An employer may require a written statement from the  
3 employee verifying that the employee is unable to work the scheduled  
4 hours due to an emergency or major life event. The employee shall not  
5 have to explain the nature of the emergency or major life event.

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

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

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

15 (a) At least one hour of pay at the employee's regular rate of  
16 pay, in addition to wages earned, for adding hours of work or  
17 changing the date, start time, or end time of a work shift with no  
18 loss of hours, or changing the physical address of a work shift. This  
19 provision does not require the payment of any overtime pay that would  
20 not ordinarily be paid to the employee.

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

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

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

37 (b) Additional hours that the employee volunteers to work in  
38 response to a mass communication, in writing from the employer, about

1 the availability of additional hours, provided that the mass  
2 communication is:

3 (i) Only used for additional hours that are the result of another  
4 employee being unable to work scheduled hours; and

5 (ii) Is clear that accepting such hours is voluntary and the  
6 employee has the right to decline such hours;

7 (c) Additional hours that an employer requests employees who are  
8 currently working, through an in-person group communication, to work  
9 in order to address present and unanticipated customer needs, so long  
10 as the hours are consecutive to the hours the employee is currently  
11 working and the employee consents to take the hours;

12 (d) Employee-requested changes including additional or subtracted  
13 hours that the employee voluntarily makes to the employee's work  
14 schedule and documents in writing; or

15 (e) Operations cannot begin or continue due to:

16 (i) Threats to employees or property, or due to the  
17 recommendation of a public official that work may not begin or  
18 continue;

19 (ii) Failure of public utilities to supply electricity, water, or  
20 gas, or failure in the public utilities or sewer system; or

21 (iii) A state of emergency declared by the president of the  
22 United States, governor of Washington, or mayor of a city.

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

30 NEW SECTION. **Sec. 9.** ACCESS TO HOURS FOR EXISTING EMPLOYEES.

31 (1) Subject to subsections (5) and (7) of this section, when  
32 additional hours of work become available, an employer must offer the  
33 additional hours to existing employees before hiring new employees  
34 from an external applicant pool or subcontractors, including hiring  
35 through the use of temporary services or staffing agencies, as  
36 provided in this section.

37 (2) (a) An employer must post written notice of available hours of  
38 work for at least five consecutive calendar days. The employer must

1 post the notice in a conspicuous and accessible location where  
2 employee notices are customarily posted. If the employer posts the  
3 notice in electronic format, all employees in the workplace must have  
4 access to the notice on-site. The notice must be in English and the  
5 primary languages of all of the employees at the particular  
6 workplace. The notice must contain the following information:

7 (i) Description and title of the position;

8 (ii) Required qualifications for the position;

9 (iii) Total hours of work being offered;

10 (iv) Schedule of available work shifts;

11 (v) Whether the available work shifts will occur at the same time  
12 each week;

13 (vi) Length of time the employer anticipates requiring coverage  
14 of the additional hours; and

15 (vii) An advisement that an employee may accept a subset of the  
16 hours offered.

17 (b) An employer may post the notice concurrently to external  
18 candidates.

19 (3) (a) An employer must offer additional hours of work to an  
20 existing employee who responds to the offer of work and who, to a  
21 reasonable employer acting in good faith, is qualified with the  
22 skills and experience to perform the work. If more than one qualified  
23 employee responds to the offer, the employer may distribute the hours  
24 among interested employees or may offer all of the available hours to  
25 one qualified employee. The employer may choose among qualified  
26 internal candidates following the employer's usual and customary  
27 hiring procedures; however, the employer must first offer shifts to  
28 employees whose regular workplace is the location where the shifts  
29 described in the notice will be worked, and if no such employee  
30 accepts the shifts within the time defined in this section, to  
31 employees whose regular workplace is a location other than the  
32 location where such hours will be worked; or if no such employee  
33 accepts the hours described in the notice within the time defined in  
34 this section, to temporary or seasonal workers who have been  
35 continuously assigned for at least four weeks to the location where  
36 the shift described in the notice will be worked. An employee may  
37 accept an entire shift offered by an employer or any shift increment.  
38 An employer is not required to award an employee a shift increment  
39 when the remaining portion of the shift is three hours or less and  
40 was not accepted by another employee.

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

4 (c) If an employee accepts additional hours of work for seasonal  
5 employment, the employer may reasonably delay scheduling such hours  
6 and permit new employees to start working for training purposes, so  
7 long as the delay does not exceed two weeks, the employer follows the  
8 employer's usual and customary practices for training new employees,  
9 and the employer provides the existing employee with a prospective  
10 start date for the additional hours.

11 (4) If no employee responds to the written notice of additional  
12 hours of work following the five consecutive calendar day posting  
13 requirement or accepts an offer of additional hours during the five  
14 consecutive calendar day acceptance period, the employer may  
15 immediately proceed with hiring new employees from an external  
16 applicant pool or subcontractors to work the additional hours  
17 described in the notice posted pursuant to subsection (2)(a) of this  
18 section.

19 (5)(a) If an employer provides notice of additional hours of work  
20 to all employees and receives written confirmation from all such  
21 employees that they are not interested in accepting additional hours  
22 of work, the employer may immediately proceed with hiring new  
23 employees from an external applicant pool or subcontractors to work  
24 the additional hours.

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

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

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

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

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

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

38 (9) An employer must notify an employee in writing of the  
39 employer's policy for offering and distributing work shifts under  
40 this section, at the time of hire and within twenty-four hours of any

1 change, and must post the policy in an accessible location in the  
2 workplace. The policy shall be transmitted or made available  
3 electronically and shall communicate:

4 (a) Where employees may access written notices;

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

7 (c) How hours will be distributed among qualified and interested  
8 employees.

9 (10) An employer who fails to offer additional hours of work as  
10 required by this section must compensate each existing employee one  
11 hundred dollars for each such occurrence. An employer who fails to  
12 award hours to a qualified employee who is eligible to receive the  
13 hours under the policy provided pursuant to subsection (9) of this  
14 section must compensate the qualified employee in the amount of one  
15 thousand dollars.

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

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

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

25 (c) Work schedules, including work schedules provided under  
26 section 5 of this act and modifications to work schedules made under  
27 section 6 of this act;

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

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

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

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

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

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

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

14 (2) Prohibited discrimination may include: Demoting, suspending,  
15 or harassing an employee; assigning an employee to a lesser position  
16 in terms of job classification, job security, or other condition of  
17 employment; reducing the hours or pay of an employee or denying the  
18 employee additional hours; and actions or threats related to  
19 perceived immigration status or work authorization. An adverse action  
20 against an employee within ninety calendar days of the employee's  
21 exercise of rights protected in this chapter shall give rise to a  
22 rebuttable presumption of retaliation.

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

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

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

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

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

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

6 (i) The employer to pay: To the complainant, unpaid compensation;  
7 interest of one percent per month on all compensation owed; an  
8 additional amount of statutory damages equal to twice the unpaid  
9 compensation; and to the department, the costs of the investigation  
10 and enforcement; and

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

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

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

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

26 (4) The department must deposit civil penalties paid under this  
27 section in the supplemental pension fund established under RCW  
28 51.44.033.

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

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

35 (a) Unpaid compensation;

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

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

38 and

39 (d) Costs and reasonable attorneys' fees.

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

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

12 (a) The employee must give written notice to the director of the  
13 specific provisions of this chapter alleged to have been violated,  
14 including the facts and theories to support the alleged violation.  
15 The employee may also designate an organization, including a union or  
16 a nonprofit, to represent it in proceedings under this section,  
17 subject to rules adopted by the director.

18 (b) The director must notify the employee or representative  
19 organization that he or she does not intend to investigate the  
20 alleged violation within forty-five calendar days of the postmark  
21 date of the employee's notice. Upon receipt of the director's notice,  
22 or if no notice is provided within forty-five calendar days, of the  
23 postmark date of the notice, the aggrieved employee may commence a  
24 civil action under this subsection.

25 (c) If the director intends to investigate the alleged violation,  
26 he or she must notify the employee or representative of his or her  
27 decision within forty-five calendar days of the postmark date of the  
28 employee's notice. Within one hundred twenty calendar days of that  
29 decision, the director may investigate the alleged violation and  
30 issue any appropriate citation. If the director, during the course of  
31 the investigation, determines that additional time is necessary to  
32 complete the investigation, the director may extend the time by not  
33 more than sixty additional calendar days and must issue a notice of  
34 the extension. If the director determines that no citation will be  
35 issued, the director must notify the employee of that decision within  
36 five business days. Upon receipt of that notice or if no citation is  
37 issued by the director within the time limits prescribed by this  
38 subsection, or if the director fails to provide timely or any



1 notification, the employee may commence a civil action under this  
2 subsection.

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

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

12 (4) Civil penalties recovered by aggrieved employees under this  
13 section shall be distributed as follows: Seventy percent to the  
14 director for enforcement of this chapter, and for education of  
15 employers and employees about their rights and responsibilities under  
16 this chapter, to be continuously appropriated to supplement and not  
17 supplant the funding to the director for those purposes; and thirty  
18 percent to the aggrieved employees. Twenty percent of the director's  
19 share of penalties recovered under this section shall be allocated to  
20 community-based enforcement partnerships.

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

23 (6) No employer or his or her agent or any other person shall  
24 retaliate in any manner, or threaten to retaliate, against an  
25 employee because the employee has, or is believed to have,  
26 participated in or cooperated with an action under this section. Any  
27 person so retaliated against may bring an action for compensatory and  
28 punitive damages or equitable relief, including restraint of  
29 prohibited acts, restitution of wages or benefits, reinstatement,  
30 costs, reasonable attorneys' fees, and other appropriate relief.  
31 There shall be a rebuttable presumption that any adverse action taken  
32 against an employee within ninety days after the employee has filed  
33 an action under this chapter is retaliatory.

34 NEW SECTION. **Sec. 17.** MORE GENEROUS POLICIES. (1) Nothing in  
35 this chapter shall be construed to discourage or prohibit an employer  
36 from the adoption or retention of scheduling policies more generous  
37 than those required by this chapter.

38 (2) Nothing in this chapter shall be construed to diminish the  
39 obligation of an employer to comply with any contract, collective

1 bargaining agreement, employment benefit plan, or other agreement  
2 more generous than those required by this chapter.

3 NEW SECTION. **Sec. 18.** CONFLICT WITH FEDERAL REQUIREMENTS. If  
4 any part of this act is found to be in conflict with federal  
5 requirements that are a prescribed condition to the allocation of  
6 federal funds to the state or the eligibility of employers in this  
7 state for federal unemployment tax credits, the conflicting part of  
8 this act is inoperative solely to the extent of the conflict, and the  
9 finding or determination does not affect the operation of the  
10 remainder of this act. Rules adopted under this act must meet federal  
11 requirements that are a necessary condition to the receipt of federal  
12 funds by the state or the granting of federal unemployment tax  
13 credits to employers in this state.

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

18 NEW SECTION. **Sec. 20.** CODIFICATION. Sections 1 through 18 of  
19 this act constitute a new chapter in Title 49 RCW.

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