
HOUSE BILL 1636

State of Washington

62nd Legislature

2011 Regular Session

By Representatives Upthegrove, Nealey, Ormsby, Green, Fitzgibbon, Llias, Orcutt, Maxwell, Sullivan, Pedersen, Anderson, Van De Wege, McCune, Orwall, Ross, Goodman, Sells, Bailey, Stanford, Pearson, Roberts, Kristiansen, Warnick, Cody, Moscoso, and Billig

Read first time 01/27/11. Referred to Committee on Labor & Workforce Development.

1 AN ACT Relating to amateur sports officials; and amending RCW
2 50.04.245 and 51.12.020.

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

4 **Sec. 1.** RCW 50.04.245 and 2007 c 146 s 14 are each amended to read
5 as follows:

6 (1) Subject to the other provisions of this title, personal
7 services performed for, or for the benefit of, a third party pursuant
8 to a contract with a temporary staffing services company or services
9 referral agency constitutes employment for the temporary staffing
10 services company or services referral agency when the agency is
11 responsible, under contract or in fact, for the payment of wages in
12 remuneration for the services performed.

13 (2) The temporary staffing services company or services referral
14 agency is considered the employer as defined in RCW 50.04.080.

15 (3) Services performed by amateur sports officials, on a contest-
16 by-contest basis, for interscholastic and youth or adult recreational
17 sports contests are not considered employment for a services referral
18 agency if the agency is not responsible for payment to the amateur

1 sports officials unless and until the agency is paid or reimbursed by
2 a third party.

3 (4) For the purposes of this section:

4 (a) "Temporary staffing services company" means an individual or
5 entity that engages in: Recruiting and hiring its own employees;
6 finding other organizations that need the services of those employees;
7 and assigning those employees on a temporary basis to perform work at
8 or services for a client to support or supplement the client's
9 workforces, or to provide assistance in special work situations, such
10 as employee absences, skill shortages, and seasonal workloads, or to
11 perform special assignments or projects, all under the direction and
12 supervision of the client. "Temporary staffing services company" does
13 not include professional employer organizations as defined in RCW
14 50.04.298, permanent employee leasing, or permanent employee placement
15 services.

16 (b) "Services referral agency" means an individual or entity other
17 than a professional employer organization as defined in RCW 50.04.298
18 that is engaged in the business of offering the services of one or more
19 individuals to perform specific tasks for a third party.

20 (c) "Amateur sports official" means any person who serves as a
21 neutral participant in any sports contest where the players are not
22 compensated including, but not limited to, an umpire, referee, judge,
23 linesperson, scorekeeper, timekeeper, or organizer.

24 **Sec. 2.** RCW 51.12.020 and 2009 c 162 s 33 are each amended to read
25 as follows:

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

28 (1) Any person employed as a domestic servant in a private home by
29 an employer who has less than two employees regularly employed forty or
30 more hours a week in such employment.

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

36 (3) A person whose employment is not in the course of the trade,

1 business, or profession of his or her employer and is not in or about
2 the private home of the employer.

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

5 (5) Sole proprietors or partners.

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

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

11 (8)(a) Except as otherwise provided in (b) of this subsection, any
12 bona fide officer of a corporation voluntarily elected or voluntarily
13 appointed in accordance with the articles of incorporation or bylaws of
14 the corporation, who at all times during the period involved is also a
15 bona fide director, and who is also a shareholder of the corporation.
16 Only such officers who exercise substantial control in the daily
17 management of the corporation and whose primary responsibilities do not
18 include the performance of manual labor are included within this
19 subsection.

20 (b) Alternatively, a corporation that is not a "public company" as
21 defined in RCW 23B.01.400(~~(+24)~~) may exempt eight or fewer bona fide
22 officers, who are voluntarily elected or voluntarily appointed in
23 accordance with the articles of incorporation or bylaws of the
24 corporation and who exercise substantial control in the daily
25 management of the corporation, from coverage under this title without
26 regard to the officers' performance of manual labor if the exempted
27 officer is a shareholder of the corporation, or may exempt any number
28 of officers if all the exempted officers are related by blood within
29 the third degree or marriage. If a corporation that is not a "public
30 company" elects to be covered under (~~subsection (8)~~)(a) of this
31 subsection, the corporation's election must be made on a form
32 prescribed by the department and under such reasonable rules as the
33 department may adopt.

34 (c) Determinations respecting the status of persons performing
35 services for a corporation shall be made, in part, by reference to
36 Title 23B RCW and to compliance by the corporation with its own
37 articles of incorporation and bylaws. For the purpose of determining
38 coverage under this title, substance shall control over form, and

1 mandatory coverage under this title shall extend to all workers of this
2 state, regardless of honorary titles conferred upon those actually
3 serving as workers.

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

6 (9) Services rendered by a musician or entertainer under a contract
7 with a purchaser of the services, for a specific engagement or
8 engagements when such musician or entertainer performs no other duties
9 for the purchaser and is not regularly and continuously employed by the
10 purchaser. A purchaser does not include the leader of a group or
11 recognized entity who employs other than on a casual basis musicians or
12 entertainers.

13 (10) Services performed by a newspaper carrier selling or
14 distributing newspapers on the street or from house to house.

15 (11) Services performed by an insurance producer, as defined in RCW
16 48.17.010(~~(+5)~~), or a surplus line broker licensed under chapter 48.15
17 RCW.

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

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

21 (a) Management of the company is vested in its members, and the
22 members for whom exemption is sought would qualify for exemption under
23 subsection (5) of this section were the company a sole proprietorship
24 or partnership; or

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

29 (14) Services performed by amateur sports officials, on a contest-
30 by-contest basis, for interscholastic and youth or adult recreational
31 sports contests. For purposes of this subsection, "amateur sports
32 official" means any person who serves as a neutral participant in any
33 sports contest where the players are not compensated including, but not
34 limited to, an umpire, referee, judge, linesperson, scorekeeper,
35 timekeeper, or organizer, and who is not otherwise employed by the
36 sponsor of the sports contest.

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