
SENATE BILL 5624

State of Washington

62nd Legislature

2011 Regular Session

By Senators Holmquist Newbry, Kastama, King, and Shin

Read first time 02/01/11. Referred to Committee on Labor, Commerce & Consumer Protection.

1 AN ACT Relating to defining the term employ for minimum wage
2 purposes; amending RCW 49.46.010; reenacting and amending RCW
3 49.46.010; creating a new section; providing an effective date; and
4 providing an expiration date.

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

6 **Sec. 1.** RCW 49.46.010 and 2010 c 160 s 2 and 2010 c 8 s 12040 are
7 each reenacted and amended to read as follows:

8 As used in this chapter:

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

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

15 (3) "Employ" includes to permit to work. However, "employ" and
16 "work" do not mean or include the use of an employer's vehicle for
17 travel by an employee and activities performed by an employee that are
18 incidental to the use of such a vehicle for commuting, when the use of
19 that vehicle for travel is within the normal commuting area for the

1 employer's business or establishment and the use of the employer's
2 vehicle is subject to an agreement on the part of the employer and the
3 employee or representative of the employee;

4 (4) "Employer" includes any individual, partnership, association,
5 corporation, business trust, or any person or group of persons acting
6 directly or indirectly in the interest of an employer in relation to an
7 employee;

8 (5) "Employee" includes any individual employed by an employer but
9 shall not include:

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

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

20 (c) Any individual employed in a bona fide executive,
21 administrative, or professional capacity or in the capacity of outside
22 salesperson as those terms are defined and delimited by rules of the
23 director. However, those terms shall be defined and delimited by the
24 director of personnel pursuant to chapter 41.06 RCW for employees
25 employed under the director of personnel's jurisdiction;

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

37 (e) Any individual employed full time by any state or local
38 governmental body or agency who provides voluntary services but only

1 with regard to the provision of the voluntary services. The voluntary
2 services and any compensation therefor shall not affect or add to
3 qualification, entitlement, or benefit rights under any state, local
4 government, or publicly supported retirement system other than that
5 provided under chapter 41.24 RCW;

6 (f) Any newspaper vendor or carrier;

7 (g) Any carrier subject to regulation by Part 1 of the Interstate
8 Commerce Act;

9 (h) Any individual engaged in forest protection and fire prevention
10 activities;

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

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

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

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

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

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

31 (o) Any farm intern providing his or her services to a small farm
32 which has a special certificate issued under RCW 49.12.465;

33 (6) "Occupation" means any occupation, service, trade, business,
34 industry, or branch or group of industries or employment or class of
35 employment in which employees are gainfully employed;

36 (7) "Retail or service establishment" means an establishment
37 seventy-five percent of whose annual dollar volume of sales of goods or

1 services, or both, is not for resale and is recognized as retail sales
2 or services in the particular industry.

3 **Sec. 2.** RCW 49.46.010 and 2010 c 8 s 12040 are each amended to
4 read as follows:

5 As used in this chapter:

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

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

12 (3) "Employ" includes to permit to work. However, "employ" and
13 "work" do not mean or include the use of an employer's vehicle for
14 travel by an employee and activities performed by an employee that are
15 incidental to the use of such a vehicle for commuting, when the use of
16 that vehicle for travel is within the normal commuting area for the
17 employer's business or establishment and the use of the employer's
18 vehicle is subject to an agreement on the part of the employer and the
19 employee or representative of the employee;

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

24 (5) "Employee" includes any individual employed by an employer but
25 shall not include:

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

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

36 (c) Any individual employed in a bona fide executive,
37 administrative, or professional capacity or in the capacity of outside

1 salesperson as those terms are defined and delimited by rules of the
2 director. However, those terms shall be defined and delimited by the
3 director of personnel pursuant to chapter 41.06 RCW for employees
4 employed under the director of personnel's jurisdiction;

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

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

23 (f) Any newspaper vendor or carrier;

24 (g) Any carrier subject to regulation by Part 1 of the Interstate
25 Commerce Act;

26 (h) Any individual engaged in forest protection and fire prevention
27 activities;

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

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

37 (k) Any resident, inmate, or patient of a state, county, or

1 municipal correctional, detention, treatment or rehabilitative
2 institution;

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

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

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

11 (6) "Occupation" means any occupation, service, trade, business,
12 industry, or branch or group of industries or employment or class of
13 employment in which employees are gainfully employed;

14 (7) "Retail or service establishment" means an establishment
15 seventy-five percent of whose annual dollar volume of sales of goods or
16 services, or both, is not for resale and is recognized as retail sales
17 or services in the particular industry.

18 NEW SECTION. **Sec. 3.** This act does not alter the terms,
19 conditions, or practices contained in any collective bargaining
20 agreement.

21 NEW SECTION. **Sec. 4.** Section 1 of this act expires December 31,
22 2011.

23 NEW SECTION. **Sec. 5.** Section 2 of this act takes effect December
24 31, 2011.

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