
HOUSE BILL 1440

State of Washington

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2013 Regular Session

By Representatives McCoy, Sullivan, Ryu, Sells, Green, Cody, Moscoso, Goodman, Bergquist, Riccelli, Hunt, Fitzgibbon, Pollet, Seaquist, Roberts, Ormsby, Stonier, Pettigrew, Van De Wege, Hudgins, Reykdal, Blake, Freeman, Moeller, Jinkins, Appleton, and Kagi

Read first time 01/28/13. Referred to Committee on Labor & Workforce Development.

1 AN ACT Relating to ensuring fairness to employers by protecting
2 employees; amending RCW 39.12.010, 39.12.050, 49.52.070, 49.48.084,
3 50.12.070, 50.12.072, 50.24.070, 50.04.100, 50.04.298, 51.08.070, and
4 51.08.180; reenacting and amending RCW 49.48.082, 49.48.060, and
5 49.46.010; adding new sections to chapter 39.12 RCW; adding new
6 sections to chapter 49.52 RCW; adding new sections to chapter 49.48
7 RCW; adding new sections to chapter 49.46 RCW; adding a new section to
8 chapter 50.04 RCW; adding a new chapter to Title 49 RCW; adding a new
9 chapter to Title 60 RCW; creating new sections; repealing RCW
10 39.12.100, 49.46.100, 50.04.140, 50.04.145, 51.08.181, and 51.08.195;
11 and prescribing penalties.

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

13 NEW SECTION. **Sec. 1.** The legislature finds that underground
14 economy activity in this state results in millions of dollars of lost
15 revenue to the state and is unfair to workers and law abiding
16 businesses. Theft of wages by employers, whether through
17 misclassification, illegal deductions, or failure to pay wages owed, is
18 a significant problem, particularly in low-wage industries. The

1 legislature finds that improving compliance with wage-related laws will
2 help address the problems of the underground economy, level the playing
3 field for honest employers and contractors, and protect workers.

4 **Employee Fair Classification Act**

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

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

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

10 (2) "Director" means the director of the department of labor and
11 industries.

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

13 (4) "Employee" means a person or entity that an employer hires or
14 employs for remuneration, but does not include a bona fide independent
15 contractor. A person or entity may be an employee of two or more
16 employers at the same time.

17 (5) "Employer" means any of the following that employ a person:

18 (a) An individual; (b) any form of business entity, or the receiver,
19 trustee, or successor of a business entity; (c) an administrator or
20 executor of an estate; and (d) the state or any agency,
21 instrumentality, or political subdivision of the state. "Employer"
22 includes an individual or entity that acts directly or indirectly in
23 the interest of an employer in relation to employing a person.
24 "Employer" does not include agencies, authorities, or instrumentalities
25 of the United States, its possessions and territories, the commonwealth
26 of Puerto Rico, or the District of Columbia.

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

29 (7) "Interested party" means: A contractor or subcontractor or an
30 employee of a contractor or subcontractor; the director or the
31 director's designee; an organization whose members' wages, benefits,
32 and conditions of employment are affected by this chapter, including a
33 labor union; or any other organization of workers that exists for the
34 purpose, in whole or in part, of interacting with employers.

1 (8) "Misclassification" means willfully designating an employee as
2 not an employee of the employer.

3 (9)(a) "Pattern or practice" means that, in addition to the current
4 violation, within the previous ten years the employer was:

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

7 (ii) Subject to a court order entering final judgment for a
8 violation of this chapter or chapter 49.46, 49.48, 49.52, or 39.12 RCW,
9 and the judgment was not satisfied or current within thirty days of the
10 later of: (A) The expiration of the time for appealing the order; or
11 (B) if a timely appeal was made, the date of the final resolution of
12 the appeal; or

13 (iii) Subject to a final and binding citation and notice of
14 assessment from the department for a violation of this chapter or
15 chapter 49.46, 49.48, 49.52, or 39.12 RCW, and the citation and penalty
16 were not satisfied or current within thirty days of the date the
17 citation became final and binding.

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

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

22 NEW SECTION. **Sec. 4.** (1) An employer-employee relationship is
23 presumed to exist when an individual performs services for
24 remuneration. The party asserting that an individual is not an
25 employee must establish by a preponderance of the evidence that the
26 individual is an independent contractor.

27 (2) An individual is an independent contractor if he or she
28 performs services for remuneration and:

29 (a) The individual is and will continue to be free from control or
30 direction over the performance of the services by the party for whom
31 the services are performed, both under the contract of service and in
32 fact. An individual is an employee if the party for whom the services
33 are performed exercises or has the right to exercise general control,
34 directly or indirectly, over the individual's physical activities. The
35 amount of control need not extend to all the details of the physical
36 performance of the services for the individual to be an employee;

1 (b) The service is either outside the usual course of business for
2 which the service is performed, or the service is performed outside of
3 all the places of business of the enterprise for which the service is
4 performed;

5 (c) The individual is customarily engaged in an independently
6 established trade, occupation, business, or profession of the same
7 nature as that involved in the contract of service.

8 (3) The withholding of federal income taxes with respect to the
9 individual may not be considered in determining whether an individual
10 is an independent contractor within the meaning of this section.

11 NEW SECTION. **Sec. 5.** (1) An employer shall not misclassify an
12 employee as an independent contractor.

13 (2) An employer shall not charge an employee who has been
14 misclassified as an independent contractor a fee, or make any
15 deductions from compensation for any purpose, including for goods,
16 materials, space rental, services, government licenses, repairs,
17 equipment maintenance, or fines arising from the employment where any
18 of the acts described in this subsection (2) would have violated the
19 law if the individual had not been misclassified.

20 (3) No person may require or request an employee to enter into an
21 agreement or sign a document that results in the misclassification of
22 the employee as an independent contractor or otherwise does not
23 accurately reflect the employee's relationship with the employer.

24 (4) No person may perform the following acts for the purpose of
25 facilitating or evading detection of a violation of this section:

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

28 (b) Pay or collect a fee for use of a foreign or domestic
29 corporation, partnership, limited liability company, or other business
30 entity.

31 (5) A person may not conspire with, aid and abet, assist, or advise
32 an employer with the intent of violating this chapter.

33 NEW SECTION. **Sec. 6.** (1) An employer may not discharge, threaten,
34 penalize, or otherwise discriminate or retaliate against an employee
35 because:

1 (a) The employee made a complaint, or the employer believes the
2 employee made a complaint, to the employer, the department, the
3 attorney general, or any other person that the employer engaged in
4 conduct that the employee reasonably believes violates this chapter;

5 (b) The employee has caused to be instituted, or is about to cause
6 to be instituted, a proceeding under or related to this chapter;

7 (c) The employee has testified or is about to testify in a
8 proceeding under or related to this chapter;

9 (d) The employee has, or the employer believes the employee has,
10 otherwise exercised rights protected by this chapter; or

11 (e) The department has determined that the employer violated this
12 chapter.

13 (2) If an employer takes adverse action against an employee within
14 ninety days of the employee having engaged in an activity described in
15 subsection (1) of this section, the employer is presumed to have acted
16 in retaliation. The employer may rebut this presumption with clear and
17 convincing evidence that the adverse action was taken for a permissible
18 purpose. For purposes of this subsection, "adverse action" includes
19 discharging, threatening, penalizing, or otherwise discriminating
20 against an employee.

21 (3) A complaint or other communication by an employee triggers the
22 protections of this section regardless of whether the complaint or
23 communication is in writing or makes explicit reference to this
24 chapter.

25 (4) A violation of this section is a gross misdemeanor.

26 NEW SECTION. **Sec. 7.** (1) The department may conduct an
27 investigation if it obtains information indicating an employer may have
28 violated this chapter, but the department may not investigate a
29 violation of this chapter that occurred more than three years before
30 the date the department obtained the information.

31 (2) If the department determines that an employer violated this
32 chapter, it may:

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

36 (b) For a violation of section 5 or 6 of this act, order the
37 employer to pay a civil penalty of: (i) Not less than one thousand

1 dollars and not more than ten thousand dollars per employee; or (ii) if
2 the employer has engaged in a pattern or practice of violations, not
3 less than ten thousand dollars and not more than twenty-five thousand
4 dollars per employee;

5 (c) Order the employer to pay any employee aggrieved by a violation
6 of section 5 or 6 of this act the greater of: (i) Ten thousand
7 dollars; or (ii) three times the amount of any wages, salary,
8 employment benefits, or other compensation unlawfully denied or
9 withheld;

10 (d) Order the employer to reinstate the employee to his or her
11 former position at not less than the most recent rate of compensation
12 received by the employee, including the value of any benefits; and

13 (e) Determine whether to initiate collection procedures pursuant to
14 RCW 51.16.150 through 51.16.190, and send a copy of its determination,
15 including any supporting documentation, to the employment security
16 department.

17 (3) An employer may appeal the department's determination pursuant
18 to RCW 49.48.084.

19 (4) The department shall deposit civil penalties paid under this
20 chapter into the employee fair classification act account created in
21 section 10 of this act.

22 (5) The director shall accept referrals based on a court finding of
23 a violation of section 5 of this act and may initiate proceedings as
24 provided in this section.

25 NEW SECTION. **Sec. 8.** (1) An interested party or an individual
26 aggrieved by a violation of section 5 or 6 of this act may bring suit
27 on behalf of himself or herself or on behalf of any other individual
28 who is similarly situated.

29 (2) If a court determines that an employer violated section 5 or 6
30 of this act, it:

31 (a) Shall award the greater of:

32 (i) Three times the amount of any wages, salary, employment
33 benefits, or other compensation unlawfully denied or withheld; or

34 (ii) Statutory damages for each employee aggrieved by the
35 violation. Statutory damages may not exceed ten thousand dollars per
36 employee, unless the employer engaged in a pattern or practice of

1 violations, in which case the statutory damages must be not less than
2 ten thousand dollars and not more than twenty-five thousand dollars per
3 employee;

4 (b) May award injunctive or other equitable relief, including
5 reinstatement of the employee to his or her former position at not less
6 than the most recent rate of compensation received by the employee,
7 including the value of any benefits, or front pay in lieu of
8 reinstatement; and

9 (c) Shall award attorneys' fees and costs.

10 (3) A civil action under this section must be brought no later than
11 three years after the violation occurred. This period is tolled during
12 any period of time that the employer deters an individual from bringing
13 an action under this section.

14 NEW SECTION. **Sec. 9.** (1) If an employer engages an individual to
15 perform services and does not consider the individual to be an
16 employee, the employer shall post and keep posted the following notice:

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

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

26 (2) The notice required by this section must be in English and
27 Spanish and must be posted in a conspicuous place in each of the
28 employer's offices in the state and at each job site where a worker
29 classified as an individual contractor performs services.

30 NEW SECTION. **Sec. 10.** The employee fair classification act
31 account is created in the state treasury. All receipts from civil
32 penalties issued under section 7 of this act must be deposited in the
33 account. Moneys in the account may be spent only after appropriation.
34 Expenditures from the account may be used for enforcement of this
35 chapter.

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

5 (4) (~~An "interested party" for the purposes of this chapter shall~~
6 ~~include a contractor, subcontractor, an employee of a contractor or~~
7 ~~subcontractor, an organization whose members' wages, benefits, and~~
8 ~~conditions of employment are affected by this chapter, and the director~~
9 ~~of labor and industries or the director's designee.)) "Department,"
10 "employ," "employee," "employer," "front pay," "interested party," and
11 "pattern or practice" mean the same as defined in section 3 of this
12 act.~~

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

15 Section 4 of this act governs the determination of independent
16 contractor status for purposes of this chapter.

17 **Sec. 14.** RCW 39.12.050 and 2009 c 219 s 3 are each amended to read
18 as follows:

19 (1) Any contractor or subcontractor who files a false statement or
20 fails to file any statement or record required to be filed under this
21 chapter and the rules adopted under this chapter, shall, after a
22 determination to that effect has been issued by the director after
23 hearing under chapter 34.05 RCW, forfeit as a civil penalty the sum of
24 five hundred dollars for each false filing or failure to file, and
25 shall not be permitted to bid, or have a bid considered, on any public
26 works contract until the penalty has been paid in full to the director.
27 The civil penalty under this subsection shall not apply to a violation
28 determined by the director to be an inadvertent filing or reporting
29 error. Civil penalties shall be deposited in the public works
30 administration account.

31 To the extent that a contractor or subcontractor has not paid wages
32 at the rate due pursuant to RCW 39.12.020, and a finding to that effect
33 has been made as provided by this subsection, such unpaid wages shall
34 constitute a lien against the bonds and retainage as provided in RCW
35 18.27.040, 19.28.041, 39.08.010, and 60.28.011.

1 (2) If a contractor or subcontractor is found to have violated the
2 provisions of subsection (1) of this section, or of chapter 49.-- RCW
3 (the new chapter created in section 61 of this act), or both, for a
4 second time within a five year period, the contractor or subcontractor
5 shall be subject to the sanctions prescribed in subsection (1) of this
6 section and shall not be allowed to bid on any public works contract
7 for one year. The one year period shall run from the date of notice by
8 the director of the determination of noncompliance. When an appeal is
9 taken from the director's determination, the one year period shall
10 commence from the date of the final determination of the appeal.

11 The director shall issue his or her findings that a contractor or
12 subcontractor has violated the provisions of this subsection after a
13 hearing held subject to the provisions of chapter 34.05 RCW.

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

16 (1) An employer may not discharge, threaten, penalize, or otherwise
17 discriminate or retaliate against an employee because:

18 (a) The employee made a complaint, or the employer believes the
19 employee made a complaint, to the employer, the department, the
20 attorney general, or any other person that the employer engaged in
21 conduct that the employee reasonably believes violates this chapter;

22 (b) The employee has caused to be instituted, or is about to cause
23 to be instituted, a proceeding under or related to this chapter;

24 (c) The employee has testified or is about to testify in a
25 proceeding under or related to this chapter;

26 (d) The employee has, or the employer believes the employee has,
27 otherwise exercised rights protected by this chapter; or

28 (e) The department has determined that the employer violated this
29 chapter.

30 (2) If an employer takes adverse action against an employee within
31 ninety days of the employee having engaged in an activity described in
32 subsection (1) of this section, the employer is presumed to have acted
33 in retaliation. The employer may rebut this presumption with clear and
34 convincing evidence that the adverse action was taken for a permissible
35 purpose. For purposes of this subsection, "adverse action" includes
36 discharging, threatening, penalizing, or otherwise discriminating
37 against an employee.

1 (3) A complaint or other communication by an employee triggers the
2 protections of this section regardless of whether the complaint or
3 communication is in writing or makes explicit reference to this
4 chapter.

5 (4) A violation of this section is a gross misdemeanor.

6 NEW SECTION. **Sec. 16.** A new section is added to chapter 39.12 RCW
7 to read as follows:

8 (1) If, following an investigation, the department determines that
9 an employer violated section 15 of this act, it may order the employer
10 to:

11 (a) Pay a civil penalty of not less than one thousand dollars and
12 not more than ten thousand dollars per employee;

13 (b) Pay any aggrieved employee the greater of: (i) Ten thousand
14 dollars; or (ii) three times the amount of any wages, salary,
15 employment benefits, or other compensation unlawfully denied or
16 withheld; or

17 (c) Reinstate the employee to his or her former position at not
18 less than the most recent rate of compensation received by the
19 employee, including the value of any benefits.

20 (2) A judicial appeal from the department's determination may be
21 taken in accordance with chapter 34.05 RCW, with the prevailing party
22 entitled to recover reasonable costs and attorneys' fees.

23 NEW SECTION. **Sec. 17.** A new section is added to chapter 39.12 RCW
24 to read as follows:

25 (1) An interested party or an individual aggrieved by a violation
26 of section 15 of this act may bring suit on behalf of himself or
27 herself or on behalf of any other individual who is similarly situated.

28 (2) If a court determines that an employer violated section 15 of
29 this act, it:

30 (a) Shall award the greater of:

31 (i) Three times the amount of any wages, salary, employment
32 benefits, or other compensation unlawfully denied or withheld; or

33 (ii) Statutory damages for each employee aggrieved by the
34 violation. Statutory damages may not exceed ten thousand dollars per
35 employee, unless the employer engaged in a pattern or practice of

1 violations, in which case the statutory damages must be not less than
2 ten thousand dollars and not more than twenty-five thousand dollars per
3 employee;

4 (b) May award injunctive or other equitable relief, including
5 reinstatement of the employee to his or her former position at not less
6 than the most recent rate of compensation received by the employee,
7 including the value of any benefits, or front pay in lieu of
8 reinstatement; and

9 (c) Shall award attorneys' fees and costs.

10 (3) A civil action under this section must be brought no later than
11 three years after the violation occurred. This period is tolled during
12 any period of time that the employer deters an individual from bringing
13 an action under this section.

14 NEW SECTION. **Sec. 18.** RCW 39.12.100 (Independent contractors--
15 Criteria) and 2009 c 63 s 1 are each repealed.

16 **Wage Deductions**

17 NEW SECTION. **Sec. 19.** A new section is added to chapter 49.52 RCW
18 to read as follows:

19 "Department," "employ," "employee," "employer," "front pay,"
20 "interested party," and "pattern or practice" means the same as defined
21 in section 3 of this act.

22 NEW SECTION. **Sec. 20.** A new section is added to chapter 49.52 RCW
23 to read as follows:

24 Section 4 of this act governs the determination of independent
25 contractor status for purposes of this chapter.

26 **Sec. 21.** RCW 49.52.070 and 2010 c 8 s 12056 are each amended to
27 read as follows:

28 Any employer and any officer, vice principal or agent of any
29 employer who shall violate any of the provisions of RCW 49.52.050 (1)
30 and (2) shall be liable in a civil action by the aggrieved employee or
31 his or her assignee to judgment for (~~twice~~) the amount of the wages
32 unlawfully rebated or withheld plus twice that amount by way of
33 exemplary damages, together with costs of suit and a reasonable sum for

1 attorney's fees(~~(: PROVIDED, HOWEVER, That the benefits of this~~
2 ~~section shall not be available to any employee who has knowingly~~
3 ~~submitted to such violations))).~~

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

6 (1) An employer may not discharge, threaten, penalize, or otherwise
7 discriminate or retaliate against an employee because:

8 (a) The employee made a complaint, or the employer believes the
9 employee made a complaint, to the employer, the department, the
10 attorney general, or any other person that the employer engaged in
11 conduct that the employee reasonably believes violates this chapter;

12 (b) The employee has caused to be instituted, or is about to cause
13 to be instituted, a proceeding under or related to this chapter;

14 (c) The employee has testified or is about to testify in a
15 proceeding under or related to this chapter;

16 (d) The employee has, or the employer believes the employee has,
17 otherwise exercised rights protected by this chapter; or

18 (e) The department has determined that the employer violated this
19 chapter.

20 (2) If an employer takes adverse action against an employee within
21 ninety days of the employee having engaged in an activity described in
22 subsection (1) of this section, the employer is presumed to have acted
23 in retaliation. The employer may rebut this presumption with clear and
24 convincing evidence that the adverse action was taken for a permissible
25 purpose. For purposes of this subsection, "adverse action" includes
26 discharging, threatening, penalizing, or otherwise discriminating
27 against an employee.

28 (3) A complaint or other communication by an employee triggers the
29 protections of this section regardless of whether the complaint or
30 communication is in writing or makes explicit reference to this
31 chapter.

32 (4) A violation of this section is a gross misdemeanor.

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

35 (1) If, following an investigation, the department determines that

1 an employer violated section 22 of this act, it may order the employer
2 to:

3 (a) Pay a civil penalty of not less than one thousand dollars and
4 not more than ten thousand dollars per employee;

5 (b) Pay any aggrieved employee the greater of: (i) Ten thousand
6 dollars; or (ii) three times the amount of any wages, salary,
7 employment benefits, or other compensation unlawfully denied or
8 withheld; or

9 (c) Reinstate the employee to his or her former position at not
10 less than the most recent rate of compensation received by the
11 employee, including the value of any benefits.

12 (2) An employer may appeal an order issued under this section
13 pursuant to RCW 49.48.084.

14 NEW SECTION. **Sec. 24.** A new section is added to chapter 49.52 RCW
15 to read as follows:

16 (1) An interested party or an individual aggrieved by a violation
17 of section 22 of this act may bring suit on behalf of himself or
18 herself or on behalf of any other individual who is similarly situated.

19 (2) If a court determines that an employer violated section 22 of
20 this act, it:

21 (a) Shall award the greater of:

22 (i) Three times the amount of any wages, salary, employment
23 benefits, or other compensation unlawfully denied or withheld; or

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

30 (b) May award injunctive or other equitable relief, including
31 reinstatement of the employee to his or her former position at not less
32 than the most recent rate of compensation received by the employee,
33 including the value of any benefits, or front pay in lieu of
34 reinstatement; and

35 (c) Shall award attorneys' fees and costs.

36 (3) A civil action under this section must be brought no later than

1 three years after the violation occurred. This period is tolled during
2 any period of time that the employer deters an individual from bringing
3 an action under this section.

4 **Wage Payment Act**

5 **Sec. 25.** RCW 49.48.082 and 2010 c 42 s 1 are each reenacted and
6 amended to read as follows:

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

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

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

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

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

16 (5) (~~"Employee" has the meaning provided in: (a) RCW 49.46.010~~
17 ~~for purposes of a wage payment requirement set forth in RCW 49.46.020~~
18 ~~or 49.46.130; and (b) RCW 49.12.005 for purposes of a wage payment~~
19 ~~requirement set forth in RCW 49.48.010, 49.52.050, or 49.52.060.~~

20 ~~(6) "Employer" has the meaning provided in RCW 49.46.010 for~~
21 ~~purposes of a wage payment requirement set forth in RCW 49.46.020,~~
22 ~~49.46.130, 49.48.010, 49.52.050, or 49.52.060)) "Employ," "employee,"
23 "employer," "front pay," "interested party," and "pattern or practice"
24 means the same as defined in section 3 of this act.~~

25 ((+7)) (6) "Notice of assessment" means a written notice by the
26 department that, based on a citation, the employer shall pay the
27 amounts assessed under RCW 49.48.083.

28 ((+8)) (7) "Repeat willful violator" means any employer that has
29 been the subject of a final and binding citation and notice of
30 assessment for a willful violation of a wage payment requirement within
31 three years of the date of issue of the most recent citation and notice
32 of assessment for a willful violation of a wage payment requirement.

33 ((+9)) (8) "Successor" means any person to whom an employer
34 quitting, selling out, exchanging, or disposing of a business sells or
35 otherwise conveys in bulk and not in the ordinary course of the

1 employer's business, more than fifty percent of the property, whether
2 real or personal, tangible or intangible, of the employer's business.

3 ~~((+10))~~ (9) "Wage" has the meaning provided in RCW 49.46.010.

4 ~~((+11))~~ (10) "Wage complaint" means a complaint from an employee
5 to the department that asserts that an employer has violated one or
6 more wage payment requirements and that is reduced to writing.

7 ~~((+12))~~ (11) "Wage payment requirement" means a wage payment
8 requirement set forth in RCW 49.46.020, 49.46.130, 49.48.010,
9 49.52.050, or 49.52.060, and any related rules adopted by the
10 department.

11 ~~((+13))~~ (12) "Willful" means a knowing and intentional action that
12 is neither accidental nor the result of a bona fide dispute, as
13 evaluated under the standards applicable to wage payment violations
14 under RCW 49.52.050(2).

15 **Sec. 26.** RCW 49.48.084 and 2010 c 42 s 3 are each amended to read
16 as follows:

17 (1) A person, firm, or corporation aggrieved by a citation and
18 notice of assessment or a determination of compliance issued by the
19 department under RCW 49.48.083 or sections 7, 16, 23, 30, or 36 of this
20 act, or the assessment of civil penalty due to a determination of
21 status as a repeat willful violator may appeal the citation and notice
22 of assessment, the determination of compliance, or the assessment of
23 civil penalty to the director by filing a notice of appeal with the
24 director within thirty days of the department's issuance of the
25 citation and notice of assessment, the determination of compliance, or
26 the assessment of civil penalty. A citation and notice of assessment,
27 a determination of compliance, or an assessment of a civil penalty not
28 appealed within thirty days is final and binding, and not subject to
29 further appeal.

30 (2) A notice of appeal filed with the director under this section
31 shall stay the effectiveness of the citation and notice of assessment,
32 the determination of compliance, or the assessment of civil penalty
33 pending final review of the appeal by the director as provided for in
34 chapter 34.05 RCW.

35 (3) Upon receipt of a notice of appeal, the director shall assign
36 the hearing to an administrative law judge of the office of
37 administrative hearings to conduct the hearing and issue an initial

1 order. The hearing and review procedures shall be conducted in
2 accordance with chapter 34.05 RCW, and the standard of review by the
3 administrative law judge of an appealed citation and notice of
4 assessment, an appealed determination of compliance, or an appealed
5 assessment of civil penalty shall be de novo. Any party who seeks to
6 challenge an initial order shall file a petition for administrative
7 review with the director within thirty days after service of the
8 initial order. The director shall conduct administrative review in
9 accordance with chapter 34.05 RCW.

10 (4) The director shall issue all final orders after appeal of the
11 initial order. The final order of the director is subject to judicial
12 review in accordance with chapter 34.05 RCW.

13 (5) Orders that are not appealed within the time period specified
14 in this section and chapter 34.05 RCW are final and binding, and not
15 subject to further appeal.

16 (6) An employer who fails to allow adequate inspection of records
17 in an investigation by the department under this chapter within a
18 reasonable time period may not use such records in any appeal under
19 this section to challenge the correctness of any determination by the
20 department of wages owed or penalty assessed.

21 NEW SECTION. **Sec. 27.** A new section is added to chapter 49.48 RCW
22 to read as follows:

23 Section 4 of this act governs the determination of independent
24 contractor status for purposes of this chapter.

25 **Sec. 28.** RCW 49.48.060 and 2010 c 42 s 5 and 2010 c 8 s 12050 are
26 each reenacted and amended to read as follows:

27 (1) If upon investigation by the director(~~(, after taking~~
28 ~~assignments of any wage claim under RCW 49.48.040 or after receiving a~~
29 ~~wage complaint as defined in RCW 49.48.082 from an employee)), it~~
30 appears to the director that (~~(the employer is representing to his or~~
31 ~~her employees that he or she is able to pay wages for their services~~
32 ~~and that the employees are not being paid for their services)) one or~~
33 ~~more employees was not paid for his or her services and that the~~
34 employer continues to employ one or more employees, the director may
35 require the employer to give a bond in such sum as the director deems
36 reasonable and adequate in the circumstances, with sufficient surety,

1 conditioned that the employer will for a definite future period not
2 exceeding (~~six months~~) one year conduct his or her business and pay
3 his or her employees in accordance with the laws of the state of
4 Washington.

5 (2) If within ten days after demand for such bond the employer
6 fails to provide the same, the director (~~may commence a suit against~~
7 ~~the employer in the superior court of appropriate jurisdiction to~~
8 ~~compel him or her to furnish such bond or cease doing business until he~~
9 ~~or she has done so. The employer shall have the burden of proving the~~
10 ~~amount thereof to be excessive.~~

11 (3) ~~If the court finds that there is just cause for requiring such~~
12 ~~bond and that the same is reasonable, necessary, or appropriate to~~
13 ~~secure the prompt payment of the wages of the employees of such~~
14 ~~employer and his or her compliance with one or more wage payment~~
15 ~~requirements as defined in RCW 49.48.082, the court shall enjoin such~~
16 ~~employer from doing business in this state until the requirement is~~
17 ~~met, or shall make other, and may make further, orders appropriate to~~
18 ~~compel compliance with the requirement.~~

19 (4) ~~Upon being informed of a wage claim against an employer or~~
20 ~~former employer, the director shall, if such claim appears to be just,~~
21 ~~immediately notify the employer or former employer, of such claim by~~
22 ~~mail. If the employer or former employer fails to pay the claim or~~
23 ~~make satisfactory explanation to the director of his or her failure to~~
24 ~~do so, within thirty days thereafter, the employer or former employer~~
25 ~~shall be liable to a penalty of ten percent of that portion of the~~
26 ~~claim found to be justly due. The director shall have a cause of~~
27 ~~action against the employer or former employer for the recovery of such~~
28 ~~penalty, and the same may be included in any subsequent action by the~~
29 ~~director on said wage claim, or may be exercised separately after~~
30 ~~adjustment of such wage claim without court action. This subsection~~
31 ~~does not apply to wage complaints made under RCW 49.48.083.)) shall, by~~
32 ~~order issued under official seal, revoke the industrial insurance~~
33 ~~certificate of coverage of the employer from whom the bond was~~
34 ~~required. The employer shall post a copy of the order revoking its~~
35 ~~industrial insurance certificate of coverage in a conspicuous place at~~
36 ~~the main entrance to the employer's place of business. A copy of the~~
37 ~~order must remain posted until the bond has been paid. A certificate~~

1 of coverage revoked under this section may not be reinstated and a new
2 certificate of coverage may not be issued to the employer until the
3 bond has been posted.

4 (3) An employer may appeal an order issued under this section
5 pursuant to RCW 49.48.084.

6 NEW SECTION. Sec. 29. A new section is added to chapter 49.48 RCW
7 to read as follows:

8 (1) An employer may not discharge, threaten, penalize, or otherwise
9 discriminate or retaliate against an employee because:

10 (a) The employee made a complaint, or the employer believes the
11 employee made a complaint, to the employer, the department, the
12 attorney general, or any other person that the employer engaged in
13 conduct that the employee reasonably believes violates this chapter;

14 (b) The employee has caused to be instituted, or is about to cause
15 to be instituted, a proceeding under or related to this chapter;

16 (c) The employee has testified or is about to testify in a
17 proceeding under or related to this chapter;

18 (d) The employee has, or the employer believes the employee has,
19 otherwise exercised rights protected by this chapter; or

20 (e) The department has determined that the employer violated this
21 chapter.

22 (2) If an employer takes adverse action against an employee within
23 ninety days of the employee having engaged in an activity described in
24 subsection (1) of this section, the employer is presumed to have acted
25 in retaliation. The employer may rebut this presumption with clear and
26 convincing evidence that the adverse action was taken for a permissible
27 purpose. For purposes of this subsection, "adverse action" includes
28 discharging, threatening, penalizing, or otherwise discriminating
29 against an employee.

30 (3) A complaint or other communication by an employee triggers the
31 protections of this section regardless of whether the complaint or
32 communication is in writing or makes explicit reference to this
33 chapter.

34 (4) A violation of this section is a gross misdemeanor.

35 NEW SECTION. Sec. 30. A new section is added to chapter 49.48 RCW
36 to read as follows:

1 (1) If, following an investigation, the department determines that
2 an employer violated section 29 of this act, it may order the employer
3 to:

4 (a) Pay a civil penalty of not less than one thousand dollars and
5 not more than ten thousand dollars per employee; or

6 (b) Pay any aggrieved employee the greater of:

7 (i) Ten thousand dollars; or (ii) three times the amount of any
8 wages, salary, employment benefits, or other compensation unlawfully
9 denied or withheld; or

10 (c) Reinstate the employee to his or her former position at not
11 less than the most recent rate of compensation received by the
12 employee, including the value of any benefits.

13 (2) An employer may appeal an order issued under this section
14 pursuant to RCW 49.48.084.

15 NEW SECTION. **Sec. 31.** A new section is added to chapter 49.48 RCW
16 to read as follows:

17 (1) An interested party or an individual aggrieved by a violation
18 of section 29 of this act may bring suit on behalf of himself or
19 herself or on behalf of any other individual who is similarly situated.

20 (2) If a court determines that an employer violated section 29 of
21 this act, it:

22 (a) Shall award the greater of:

23 (i) Three times the amount of any wages, salary, employment
24 benefits, or other compensation unlawfully denied or withheld; or

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

31 (b) May award injunctive or other equitable relief, including
32 reinstatement of the employee to his or her former position at not less
33 than the most recent rate of compensation received by the employee,
34 including the value of any benefits, or front pay in lieu of
35 reinstatement; and

36 (c) Shall award attorneys' fees and costs.

1 (3) A civil action under this section must be brought no later than
2 three years after the violation occurred. This period is tolled during
3 any period of time that the employer deters an individual from bringing
4 an action under this section.

5 NEW SECTION. **Sec. 32.** A new section is added to chapter 49.48 RCW
6 to read as follows:

7 An interested party may bring complaints under this chapter.

8 **Minimum Wage Act**

9 **Sec. 33.** RCW 49.46.010 and 2011 1st sp.s. c 43 s 462 are each
10 reenacted and amended to read as follows:

11 As used in this chapter:

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

13 (2) (~~("Employ" includes to permit to work)~~) "Department," "employ,"
14 "employer," "front pay," "interested party," and "pattern or practice"
15 means the same as defined in section 3 of this act;

16 (3) "Employee" (~~((includes any individual employed by an employer~~
17 ~~but shall not include))~~) means any person or entity that an employer
18 hires or suffers or permits to work for remuneration. A person or
19 entity may be an employee of two or more employers at the same time.
20 "Employee" does not include a bona fide independent contractor or:

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

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

31 (c) Any individual employed in a bona fide executive,
32 administrative, or professional capacity or in the capacity of outside
33 salesperson as those terms are defined and delimited by rules of the
34 director. However, those terms shall be defined and delimited by the

1 human resources director pursuant to chapter 41.06 RCW for employees
2 employed under the director of personnel's jurisdiction;

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

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

21 (f) Any newspaper vendor or carrier;

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

24 (h) Any individual engaged in forest protection and fire prevention
25 activities;

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

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

35 (k) Any resident, inmate, or patient of a state, county, or
36 municipal correctional, detention, treatment or rehabilitative
37 institution;

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

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

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

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

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

16 ~~((6))~~ (5) "Retail or service establishment" means an
17 establishment seventy-five percent of whose annual dollar volume of
18 sales of goods or services, or both, is not for resale and is
19 recognized as retail sales or services in the particular industry;

20 ~~((7))~~ (6) "Wage" means compensation due to an employee by reason
21 of employment, payable in legal tender of the United States or checks
22 on banks convertible into cash on demand at full face value, subject to
23 such deductions, charges, or allowances as may be permitted by rules of
24 the director.

25 NEW SECTION. Sec. 34. A new section is added to chapter 49.46 RCW
26 to read as follows:

27 Section 4 of this act governs the determination of independent
28 contractor status for purposes of this chapter.

29 NEW SECTION. Sec. 35. A new section is added to chapter 49.46 RCW
30 to read as follows:

31 (1) An employer may not discharge, threaten, penalize, or otherwise
32 discriminate or retaliate against an employee because:

33 (a) The employee made a complaint, or the employer believes the
34 employee made a complaint, to the employer, the department, the
35 attorney general, or any other person that the employer engaged in
36 conduct that the employee reasonably believes violates this chapter;

1 (b) The employee has caused to be instituted, or is about to cause
2 to be instituted, a proceeding under or related to this chapter;

3 (c) The employee has testified or is about to testify in a
4 proceeding under or related to this chapter;

5 (d) The employee has, or the employer believes the employee has,
6 otherwise exercised rights protected by this chapter; or

7 (e) The department has determined that the employer violated this
8 chapter.

9 (2) If an employer takes adverse action against an employee within
10 ninety days of the employee having engaged in an activity described in
11 subsection (1) of this section, the employer is presumed to have acted
12 in retaliation. The employer may rebut this presumption with clear and
13 convincing evidence that the adverse action was taken for a permissible
14 purpose. For purposes of this subsection, "adverse action" includes
15 discharging, threatening, penalizing, or otherwise discriminating
16 against an employee.

17 (3) A complaint or other communication by an employee triggers the
18 protections of this section regardless of whether the complaint or
19 communication is in writing or makes explicit reference to this
20 chapter.

21 (4) A violation of this section is a gross misdemeanor.

22 NEW SECTION. **Sec. 36.** A new section is added to chapter 49.46 RCW
23 to read as follows:

24 (1) If, following an investigation, the department determines that
25 an employer violated section 35 of this act, it may order the employer
26 to:

27 (a) Pay a civil penalty of not less than one thousand dollars and
28 not more than ten thousand dollars per employee;

29 (b) Pay any aggrieved employee the greater of: (i) Ten thousand
30 dollars; or (ii) three times the amount of any wages, salary,
31 employment benefits, or other compensation unlawfully denied or
32 withheld; or

33 (c) Reinstate the employee to his or her former position at not
34 less than the most recent rate of compensation received by the
35 employee, including the value of any benefits.

36 (2) An employer may appeal an order issued under this section
37 pursuant to RCW 49.48.084.

1 independent contractor are not services in employment subject to this
2 title.

3 **Sec. 40.** RCW 50.12.070 and 2009 c 432 s 11 are each amended to
4 read as follows:

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

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

19 (2)(a) Each employer shall register with the department and obtain
20 an employment security account number. Registration must include the
21 names and social security numbers of the owners, partners, members, or
22 corporate officers of the business, as well as their mailing addresses
23 and telephone numbers and other information the commissioner may by
24 rule prescribe. Registration of corporations must also include the
25 percentage of stock ownership for each corporate officer, delineated by
26 zero percent, less than ten percent, or ten percent or more. Any
27 changes in the owners, partners, members, or corporate officers of the
28 business, and changes in percentage of ownership of the outstanding
29 shares of stock of the corporation, must be reported to the department
30 at intervals prescribed by the commissioner under (b) of this
31 subsection.

32 (b) Each employer shall make periodic reports at such intervals as
33 the commissioner may by regulation prescribe, setting forth the
34 remuneration paid for employment to workers in its employ, the full
35 names and social security numbers of all such workers, and the total
36 hours worked by each worker and such other information as the
37 commissioner may by regulation prescribe.

1 (c) If the employing unit fails or has failed to report the number
2 of hours in a reporting period for which a worker worked, such number
3 will be computed by the commissioner and given the same force and
4 effect as if it had been reported by the employing unit. In computing
5 the number of such hours worked, the total wages for the reporting
6 period, as reported by the employing unit, shall be divided by the
7 dollar amount of the state's minimum wage in effect for such reporting
8 period and the quotient, disregarding any remainder, shall be credited
9 to the worker: PROVIDED, That although the computation so made will
10 not be subject to appeal by the employing unit, monetary entitlement
11 may be redetermined upon request if the department is provided with
12 credible evidence of the actual hours worked. Benefits paid using
13 computed hours are not considered an overpayment and are not subject to
14 collections when the correction of computed hours results in an invalid
15 or reduced claim; however:

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

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

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

28 (4) Upon referral from the department of labor and industries
29 pursuant to section 7 of this act, the employment security department
30 may initiate procedures for improper recordkeeping and the recovery of
31 contributions, interest, and penalties.

32 **Sec. 41.** RCW 50.12.072 and 2010 c 72 s 2 are each amended to read
33 as follows:

34 (1) An employer that knowingly fails to register with the
35 department and obtain an employment security account number, as
36 required under RCW 50.12.070(2), is subject to a penalty not to exceed
37 one thousand dollars per quarter or two times the taxes due per

1 quarter, whichever is greater. This penalty is in addition to all
2 other penalties and is in addition to higher rates for employers that
3 do not meet the definition of "qualified employer" under RCW 50.29.010.
4 This penalty does not apply if the employer can prove that it had good
5 cause to believe that it was not required to register with the
6 department.

7 (2) Upon referral from the department of labor and industries
8 pursuant to section 7 of this act, the employment security department
9 may initiate procedures for improper recordkeeping and the recovery of
10 contributions, interest, and penalties.

11 **Sec. 42.** RCW 50.24.070 and 2011 c 301 s 18 are each amended to
12 read as follows:

13 (1) At any time after the commissioner shall find that any
14 contributions, interest, or penalties have become delinquent, the
15 commissioner may issue an order and notice of assessment specifying the
16 amount due, which order and notice of assessment shall be served upon
17 the delinquent employer in the manner prescribed for the service of a
18 summons in a civil action, or using a method by which the mailing can
19 be tracked or the delivery can be confirmed. Failure of the employer
20 to receive such notice or order whether served or mailed shall not
21 release the employer from any tax, or any interest or penalties
22 thereon.

23 (2) The commissioner shall accept referrals based on a court
24 finding of a violation of section 5 of this act and may pursue a claim
25 for contributions.

26 **Sec. 43.** RCW 50.04.100 and 1982 1st ex.s. c 18 s 14 are each
27 amended to read as follows:

28 "Employment", subject only to the other provisions of this title,
29 means personal service, of whatever nature, unlimited by the
30 relationship of master and servant as known to the common law or any
31 other legal relationship, including service in interstate commerce,
32 performed for wages or under any contract calling for the performance
33 of personal services, written or oral, express or implied.

34 ~~((Except as provided by RCW 50.04.145,))~~ Personal services
35 performed for an employing unit by one or more contractors or
36 subcontractors acting individually or as a partnership, which do not

1 meet the provisions of ((RCW 50.04.140)) section 39 of this act, shall
2 be considered employment of the employing unit: PROVIDED, HOWEVER,
3 That such contractor or subcontractor shall be an employer under the
4 provisions of this title in respect to personal services performed by
5 individuals for such contractor or subcontractor.

6 **Sec. 44.** RCW 50.04.298 and 2007 c 146 s 8 are each amended to read
7 as follows:

8 For the purposes of this title:

9 (1) "Professional employer organization" means a person or entity
10 that enters into an agreement with one or more client employers to
11 provide professional employer services. "Professional employer
12 organization" includes entities that use the term "staff leasing
13 company," "permanent leasing company," "registered staff leasing
14 company," "employee leasing company," "administrative employer," or any
15 other name, when they provide professional employer services to client
16 employers. The following are not classified as professional employer
17 organizations: Independent contractors in ((RCW 50.04.140)) section 39
18 of this act; temporary staffing services companies and services
19 referral agencies as defined in RCW 50.04.245; third-party payers as
20 defined in RCW 50.04.248; or labor organizations.

21 (2) "Client employer" means any employer who enters into a
22 professional employer agreement with a professional employer
23 organization.

24 (3) "Coemployer" means either a professional employer organization
25 or a client employer that has entered into a professional employer
26 agreement.

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

29 (5) "Professional employer services" means services provided by the
30 professional employer organization to the client employer, which
31 include, but are not limited to, human resource functions, risk
32 management, or payroll administration services, in a coemployment
33 relationship.

34 (6) "Coemployment relationship" means a relationship that is
35 intended to be ongoing rather than temporary or project-specific, where
36 the rights, duties, and obligations of an employer in an employment
37 relationship are allocated between coemployers pursuant to a

1 professional employer agreement and state law. A coemployment
2 relationship exists only if a majority of the employees performing
3 services to a client employer, or to a division or work unit of a
4 client employer, are covered employees. In determining the allocation
5 of rights and obligations in a coemployment relationship:

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

9 (b) The client employer has those rights and obligations allocated
10 to it by the professional employer agreement or state law, as well as
11 any other right or obligation of an employer that is not specifically
12 allocated by the professional employer agreement or state law.

13 (7) "Professional employer agreement" means a written contract
14 between a client employer and a professional employer organization that
15 provides for: (a) The coemployment of covered employees; and (b) the
16 allocation of employer rights and obligations between the client and
17 the professional employer organization with respect to the covered
18 employees.

19 NEW SECTION. **Sec. 45.** The following acts or parts of acts are
20 each repealed:

21 (1) RCW 50.04.140 (Employment--Exception tests) and 1991 c 246 s 6
22 & 1945 c 35 s 15; and

23 (2) RCW 50.04.145 (Employment--Exclusions) and 2008 c 102 s 1, 1983
24 1st ex.s. c 23 s 25, & 1982 1st ex.s. c 18 s 13.

25 **Sec. 46.** RCW 51.08.070 and 2008 c 102 s 2 are each amended to read
26 as follows:

27 "Employer" means any person, body of persons, corporate or
28 otherwise, and the legal representatives of a deceased employer, all
29 while engaged in this state in any work covered by the provisions of
30 this title, by way of trade or business, or who contracts with one or
31 more workers, the essence of which is the personal labor of such worker
32 or workers. Or as an exception to the definition of employer, persons
33 or entities are not employers when they contract or agree to remunerate
34 the services performed by an (~~individual who meets the tests set forth~~
35 ~~in subsections (1) through (6) of RCW 51.08.195 or the separate tests~~

1 ~~set forth in RCW 51.08.181 for work performed that requires~~
2 ~~registration under chapter 18.27 RCW or licensing under chapter 19.28~~
3 ~~RCW)) independent contractor, as defined in section 4 of this act.~~

4 **Sec. 47.** RCW 51.08.180 and 2008 c 102 s 3 are each amended to read
5 as follows:

6 "Worker" means every person in this state who is engaged in the
7 employment of an employer under this title, whether by way of manual
8 labor or otherwise in the course of his or her employment; also every
9 person in this state who is engaged in the employment of or who is
10 working under an independent contract, the essence of which is his or
11 her personal labor for an employer under this title, whether by way of
12 manual labor or otherwise, in the course of his or her employment, or
13 as an exception to the definition of worker, a person is not a worker
14 if he or she meets the ~~((tests))~~ test set forth in ~~((subsections (1)~~
15 ~~through (6) of RCW 51.08.195 or the separate tests set forth in RCW~~
16 ~~51.08.181 for work performed that requires registration under chapter~~
17 ~~18.27 RCW or licensing under chapter 19.28 RCW)) section 4 of this act:~~
18 PROVIDED, That a person is not a worker for the purpose of this title,
19 with respect to his or her activities attendant to operating a truck
20 which he or she owns, and which is leased to a common or contract
21 carrier.

22 NEW SECTION. **Sec. 48.** The following acts or parts of acts are
23 each repealed:

24 (1) RCW 51.08.181 ("Worker"--Registered contractor and electrician
25 exclusions) and 2008 c 102 s 5; and

26 (2) RCW 51.08.195 ("Employer" and "worker"--Additional exception)
27 and 2008 c 102 s 4 & 1991 c 246 s 1.

28 **Liens for Wage Claims**

29 NEW SECTION. **Sec. 49.** The definitions in this section apply
30 throughout this chapter unless the context clearly requires otherwise.

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

32 (2) "Employ," "employee," and "employer" means the same as defined
33 in section 3 of this act.

1 (3) "Improvement" means all property upon which the employee has
2 performed work or furnished materials at the instance of the owner or
3 of any person acting by the owner's authority or under the owner as a
4 contractor or otherwise. "Improvement" does not include an improvement
5 that is subject to a lien under chapter 60.04 RCW or would be subject
6 to a lien under chapter 60.04 RCW if filed during the period of
7 limitation established by RCW 60.04.141.

8 (4) "Party in interest" means a person who stands to gain or lose
9 by the operation of the lien. "Party in interest" includes but is not
10 limited to a purchaser of the property and a financial institution with
11 a security interest in the property.

12 (5) "Wage claim" means the amount of wages owed to an employee, as
13 well as any statutory penalties that may be owed for violation of a
14 state or federal wage law, including but not limited to chapters 39.12,
15 49.12, 49.46, 49.48, 49.52, and 49.-- RCW (the new chapter created in
16 section 61 of this act), and the fair labor standards act, 29 U.S.C.
17 Sec. 201 et seq.

18 NEW SECTION. **Sec. 50.** Section 4 of this act governs the
19 determination of independent contractor status for purposes of this
20 chapter.

21 NEW SECTION. **Sec. 51.** (1) An employee has a lien for wage claims
22 on: (a) Any real or personal property in this state that is owned by
23 the employee's employer; and (b) improvements in this state.

24 (2) Chapter 62A.9A RCW of the uniform commercial code does not
25 apply to a lien on the personal property of an employer under this
26 chapter.

27 NEW SECTION. **Sec. 52.** (1) To establish a lien on real property or
28 improvements, the lien claimant must:

29 (a) File for recording a notice of claim of lien in the county
30 where the property is located. The notice must:

31 (i) State the name, telephone number, and address of the lien
32 claimant, and if the lien has been assigned, the name of the assignee;

33 (ii) State the name of the employer;

34 (iii) State the street address, legal description, or other

1 description reasonably calculated to identify, for a person familiar
2 with the area, the location of the real property or the nature of the
3 improvements to be charged with the lien;

4 (iv) State the principal amount for which the lien is claimed;

5 (v) Be signed by the lien claimant or a person authorized to act on
6 his or her behalf;

7 (vi) Affirmatively state that the lien claimant or person
8 authorized to act on his or her behalf has read the notice of claim of
9 lien and believes it to be true and correct under penalty of perjury;
10 and

11 (vii) Be acknowledged and certified as set forth in subsection (3)
12 of this section;

13 (b) Pay a filing fee established by the county auditor; and

14 (c) Mail a copy of the notice filed under this subsection (1) to
15 the employer's registered agent, the employer's registered business
16 address, or the address where the employer resides, by certified mail
17 with return receipt requested.

18 (2) To establish a lien on personal property, the lien claimant
19 must:

20 (a) File for recording a notice of claim of lien with the
21 department of licensing. The notice must:

22 (i) State the name, phone number, and address of the lien claimant,
23 and if the lien has been assigned, the name of the assignee;

24 (ii) State the name of the employer;

25 (iii) Describe the personal property subject to the lien or
26 indicate that the lien covers all personal property;

27 (iv) State the principal amount for which the lien is claimed;

28 (v) Be signed by the lien claimant or a person authorized to act on
29 his or her behalf;

30 (vi) Affirmatively state that the lien claimant or person
31 authorized to act on his or her behalf has read the notice of claim of
32 lien and believes it to be true and correct under penalty of perjury;
33 and

34 (vii) Be acknowledged and certified as set forth in subsection (3)
35 of this section;

36 (b) Pay a filing fee established by the department of licensing;
37 and

1 (c) Mail a copy of the notice filed under this subsection (2) to
2 the employer's registered agent, the employer's registered business
3 address, or the address where the employer resides, by certified mail
4 with return receipt requested.

5 (3) Notwithstanding subsections (1) and (2) of this section, a
6 claim of lien, acknowledgment, and certificate substantially in the
7 following form shall be sufficient:

8 CLAIM OF LIEN

9, claimant, vs, name of person indebted
10 to claimant:

11 Notice is hereby given that the claimant named below asserts a
12 lien pursuant to chapter 60.-- RCW (the new chapter created in
13 section 62 of this act). In support of this lien the following
14 information is submitted:

15 1. NAME OF LIEN CLAIMANT:
16 TELEPHONE NUMBER:
17 ADDRESS:

18 2. NAME OF EMPLOYER:

19 3. DESCRIPTION OF THE REAL PROPERTY, PERSONAL PROPERTY,
20 OR IMPROVEMENTS AGAINST WHICH A LIEN IS CLAIMED (Street
21 address, legal description, or other information that will
22 reasonably describe the property, or statement that the lien
23 covers all personal property):
24
25
26

27 4. PRINCIPAL AMOUNT FOR WHICH THE LIEN IS CLAIMED IS:

28

29 5. IF THE CLAIMANT IS THE ASSIGNEE OF THIS CLAIM SO
30 STATE HERE:
31

32 6. IF THE PERSON SIGNING THIS CLAIM OF LIEN IS NOT THE
33 CLAIMANT, BUT IS AUTHORIZED TO ACT ON THE CLAIMANT'S BEHALF,
34 STATE THE PERSON'S NAME AND REPRESENTATIVE CAPACITY:

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NAME:
REPRESENTATIVE CAPACITY (e.g., officer or employee of claimant;
attorney or agent; representative of lien filing service;
administrator, representative, or agent of trustees of employee
benefit plan):

ACKNOWLEDGMENT

FOR AN ACKNOWLEDGMENT IN AN INDIVIDUAL CAPACITY:

STATE OF WASHINGTON, COUNTY OF
., ss.

., being sworn, says: I, ...(name of person)..., am the
claimant. I have read the foregoing claim of lien, believe the claim
of lien to be true and correct under penalty of perjury, and believe
the claim of lien is not frivolous, is made with reasonable cause, and
is not clearly excessive. The foregoing claim of lien is my free and
voluntary act for the uses and purposes stated therein.

.Dated:
.
.(Signature)

FOR AN ACKNOWLEDGMENT IN A REPRESENTATIVE CAPACITY:

STATE OF WASHINGTON, COUNTY OF
., ss.

., being sworn, says: I, ...(name of person)..., am
authorized to act on behalf of the claimant. I have read the foregoing
claim of lien, believe the claim of lien to be true and correct under
penalty of perjury, and believe the claim of lien is not frivolous, is
made with reasonable cause, and is not clearly excessive. The
foregoing claim of lien is the free and voluntary act of the claimant
for the uses and purposes stated therein.

.Dated:
.
.(Signature)

CERTIFICATE

FOR A CERTIFICATE OF ACKNOWLEDGMENT IN AN INDIVIDUAL CAPACITY:

1 I certify that I know or have satisfactory evidence
2 that . . . (name of person) . . . is the person who appeared before me,
3 and said person acknowledged that he/she signed this instrument and
4 acknowledged it to be his/her free and voluntary act for the uses and
5 purposes mentioned in the instrument.

6Dated:
7
8(Signature)
9 (Seal or stamp)

10 Title
11 My appointment
12 Expires

13 FOR A CERTIFICATE OF ACKNOWLEDGMENT IN A REPRESENTATIVE CAPACITY:

14 I certify that I know or have satisfactory evidence
15 that . . . (name of person) . . . is the person who appeared before me,
16 and said person acknowledged that he/she signed this instrument, on
17 oath stated that he/she was authorized to execute the instrument and
18 acknowledged it as the . . . (type of authority, e.g., officer or
19 employee, etc.) . . . of . . . (name of party on behalf of whom
20 instrument was executed) . . . to be the free and voluntary act of such
21 party for the uses and purposes mentioned in the instrument.

22Dated:
23
24(Signature)
25 (Seal or Stamp)

26 Title
27 My appointment
28 Expires

29 (4)(a) For a notice of claim of lien on real property or
30 improvements filed under subsection (1) of this section, the county
31 auditor shall record the notice in the same manner as deeds and other

1 instruments of title are recorded under chapter 65.08 RCW. Notices of
2 claim of lien for registered land need not be recorded in the Torrens
3 register.

4 (b) For a notice of claim of lien on personal property filed under
5 subsection (2) of this section, the department of licensing shall
6 record the notice in the same manner as filings accepted pursuant to
7 chapter 62A.9A RCW.

8 (5) The notice of claim of lien may be filed at any time prior to
9 the expiration of the statute of limitations for an action to recover
10 the wages that are the subject of the lien.

11 (6) Mistakes or errors in the claimed amount owed do not invalidate
12 the lien unless made with the intent to defraud.

13 (7) A lien under this chapter continues in all identifiable cash
14 proceeds of the property subject to the lien.

15 NEW SECTION. **Sec. 53.** Any lien or right of lien created by this
16 chapter and the right of action to recover the lien is assignable so as
17 to vest in the assignee all rights and remedies of the assignor,
18 subject to all defenses thereto that might be made.

19 NEW SECTION. **Sec. 54.** (1) An action to foreclose the lien must be
20 filed within one year of the date the lien was recorded.

21 (2)(a) A lien may be foreclosed by an action in: (i) The superior
22 court in the county in which the real property or improvements are
23 located; (ii) the district court in the county in which the personal
24 property is located if the value of the claim does not exceed the
25 jurisdictional limit of the court provided in RCW 3.66.020; or (iii)
26 the superior court in the county in which the personal property is
27 located if the value of the claim exceeds the jurisdictional limit of
28 the district court provided in RCW 3.66.020.

29 (b) If the lien claimant has instituted an action for the wage
30 claim that is the subject of the lien, that action must also be deemed
31 an action to foreclose on the lien.

32 (3) A foreclosure action or an action for a wage claim may be
33 brought by the employee individually, the department, the United States
34 department of labor, the office of the attorney general, or a
35 representative of the employee, including a collective bargaining

1 representative or class representative. Multiple wage claims against
2 the same employer may be joined in a single proceeding, but the court
3 may order separate trials or hearings.

4 (4) If the employee pursues the wage claim in an administrative
5 proceeding before the department, a final and binding citation issued
6 by the department establishes the amount of wages and penalties owed
7 for the purpose of foreclosure under this chapter.

8 (5) In the judgment resulting from such a foreclosure action, the
9 court may order the sale at sheriff's auction or the transfer to the
10 plaintiff of title or possession of any property subject to the lien.
11 Whether or not the court makes such an order as part of the judgment,
12 a writ of sale may be issued for any property subject to the lien for
13 ten years after a judgment for a wage claim is issued. A lien based on
14 an underlying judgment continues in force for an additional ten-year
15 period if the period of execution for the underlying judgment is
16 extended under RCW 6.17.020. A lien claimant who prevails in a
17 foreclosure action is entitled to costs and reasonable attorneys' fees.

18 NEW SECTION. **Sec. 55.** (1) A lien is extinguished:

19 (a) If an action for the underlying wage claim is not brought
20 within one year of the filing of the lien;

21 (b) If the action for the underlying wage claim is dismissed with
22 prejudice and no appeal is filed within the applicable appeals period.
23 If an appeal is filed, the lien continues in force until final judgment
24 is rendered; or

25 (c) Upon payment and acceptance of the amount due to the lien
26 claimant.

27 (2) If the lien is extinguished, upon demand and fifteen days'
28 written notice by the property owner, the lien claimant shall file a
29 release of lien at the place the lien was recorded and provide a copy
30 of the release of lien to the property owner. If the lien claimant
31 fails to release the lien as provided in this section, the property
32 owner has a private right of action against the lien claimant for
33 injunctive relief, costs, and reasonable attorneys' fees.

34 NEW SECTION. **Sec. 56.** (1) Except as provided in subsection (2) of
35 this section, a lien recorded under this chapter takes precedence over
36 all other debts, judgments, decrees, liens, security interests, or

1 mortgages against the employer, regardless as to whether these debts,
2 judgments, decrees, liens, security interests, or mortgages originated
3 before or after the wage lien, and regardless of whether these debts,
4 judgments, decrees, liens, or mortgages were perfected prior to the
5 wage lien. A wage lien is effective against the estate of the
6 employer. A wage lien is not effective against a subsequent bona fide
7 purchaser of the property subject to the lien.

8 (2) A statutory lien for wages owed, including but not limited to
9 liens under chapters 60.04, 60.11, 60.16, 60.24, 60.28, 60.34, and
10 60.76 RCW, ranks according to priority in time of filing.

11 NEW SECTION. **Sec. 57.** (1)(a) An employer subject to a lien under
12 this chapter or a party in interest may file a bond issued by a surety
13 company authorized to issue surety bonds in the state. Recording a
14 bond releases the real property, personal property, or improvements
15 described in the notice of claim of lien from the lien and any action
16 brought to recover the amount claimed.

17 (b) The bond must be recorded at the place the lien was recorded.
18 The bond must: (i) Contain a description of the claim of lien and real
19 property, personal property, or improvements involved; and (ii) be in
20 an amount no less than one thousand dollars or one and one-half times
21 the amount of the lien, whichever is greater.

22 (c) The condition of the bond must be to guarantee payment of any
23 judgment on the lien in favor of the lien claimant that is entered in
24 an action for a wage claim or a foreclosure action.

25 (d) If no action is commenced to recover on a lien within one year
26 of the filing of the lien, the surety is discharged from liability
27 under the bond. If an action is timely commenced, then on payment of
28 any judgment entered in the action or on payment of the full amount of
29 the bond to the holder of the judgment, whichever is less, the surety
30 is discharged from liability under the bond.

31 (2) In lieu of the surety bond provided for in subsection (1) of
32 this section, an employer subject to a lien under this chapter or a
33 party in interest may deposit with the treasurer of the county in which
34 the claim of lien is filed or with the department of licensing, as
35 applicable, an amount equal to the greater of one thousand dollars or
36 one and one-half times the amount claimed under the lien.

1 (3) A person entitled to post a bond under subsection (1) of this
2 section or to deposit an amount under subsection (2) of this section
3 may provide to the lien claimant a written notice of the filing of the
4 bond or deposit. The notice must include a demand that the lien be
5 released or foreclosed and state that if the lien is not released or
6 foreclosed, the person may recover the actual costs the person incurred
7 in complying with this section or five hundred dollars, whichever is
8 greater. The written notice and demand must be delivered to the lien
9 claimant by certified mail with return receipt requested.

10 (4)(a) A lien claimant who is served with a written notice and
11 demand in compliance with subsection (3) of this section is liable to
12 the person who filed the bond or made the deposit if the lien claimant
13 does not release or bring an action to foreclose the lien within
14 fifteen days after receiving the written notice and demand.

15 (b) The amount of the lien claimant's liability under this
16 subsection (4) is the amount of the costs the person who filed the bond
17 or made the deposit incurred in complying with this section, or five
18 hundred dollars, whichever is greater.

19 (5) If a lien claimant who is served with a written notice and
20 demand under subsection (3) of this section prevails in the action to
21 release or foreclose the lien, then in addition to other costs and
22 attorney fees to which the lien claimant is entitled, the court shall
23 award the lien claimant five hundred dollars or the lien claimant's
24 actual costs incurred in addressing the written notice and demand,
25 whichever is greater.

26 (6) If a lien claimant establishes the validity of the underlying
27 wage claim in an action to enforce the lien, the lien claimant is
28 entitled to judgment against the surety upon the bond or against the
29 money deposited.

30 NEW SECTION. **Sec. 58.** A contract between an employer and employee
31 may not waive or require an employee to waive the right to a lien under
32 this chapter. A provision of a contract made in violation of this
33 section is void as against the public policy of this state.

34 NEW SECTION. **Sec. 59.** The claim of lien, when filed as required
35 by this chapter, shall be notice to the spouse or the domestic partner

1 of the person who appears on record to be the owner of the property
2 sought to be charged with the lien, and shall subject all the community
3 interest of both spouses or both domestic partners to the lien.

4 NEW SECTION. **Sec. 60.** This chapter is to be liberally construed
5 to provide security for all parties intended to be protected by its
6 provisions.

7 NEW SECTION. **Sec. 61.** Sections 2 through 11 of this act
8 constitute a new chapter in Title 49 RCW.

9 NEW SECTION. **Sec. 62.** Sections 49 through 60 of this act
10 constitute a new chapter in Title 60 RCW.

11 NEW SECTION. **Sec. 63.** If any provision of this act or its
12 application to any person or circumstance is held invalid, the
13 remainder of the act or the application of the provision to other
14 persons or circumstances is not affected.

15 NEW SECTION. **Sec. 64.** If any part of this act is found to be in
16 conflict with federal requirements that are a prescribed condition to
17 the allocation of federal funds to the state or the eligibility of
18 employers in this state for federal unemployment tax credits, the
19 conflicting part of this act is inoperative solely to the extent of the
20 conflict, and the finding or determination does not affect the
21 operation of the remainder of this act. Rules adopted under this act
22 must meet federal requirements that are a necessary condition to the
23 receipt of federal funds by the state or the granting of federal
24 unemployment tax credits to employers in this state.

--- END ---