

# HOUSE BILL ANALYSIS

## HB 3114

**Brief Description:** Providing for health care coverage for tipped employees.

---

**Sponsors:** Representatives McMorris, Kessler, Wolfe, Lantz, Quall, Anderson, Dyer, Buck, O'Brien, Morris, Clements, Lisk, Gombosky, Linville, Boldt, Honeyford and Doumit.

Hearing: February 5, 1998

### **BACKGROUND:**

Federal and state laws establish a minimum wage affecting full-time and part-time workers in the private and public sectors. In Washington, the minimum wage law is administered by the Department of Labor and Industries.

#### **Federal law**

---

The federal minimum wage is \$5.15 per hour. Federal law allows an employee's tips to be counted as wages in meeting an employer's minimum wage obligation. Employers of tipped employees— must pay at least \$2.13 per hour if they claim a tip credit against their minimum wage obligation. If an employee's tips combined with the employer's cash wage of at least \$2.13 per hour do not equal the minimum hourly wage, the employer must make up the difference. Certain other conditions must also be met.

The federal Employment Retirement Insurance Security Act (ERISA) regulates employee pension plans and welfare benefit plans. State laws that relate to— ERISA employee benefit plans are superseded by ERISA's preemption provision.

#### **State law**

---

The state minimum wage is \$4.90 per hour. The department has administratively determined that the Minimum Wage Act prohibits tip credit. Therefore, an employer must pay tipped employees— a cash wage of \$4.90 per hour. Washington courts have held that all tips given to an employee are the property of the employee.

The minimum wage provision that is more beneficial to employees, whether federal or state, will govern.

---

## **SUMMARY OF BILL:**

An employer may count tips as wages in meeting any state minimum wage rate above \$5.15 per hour, if the employer offers health insurance coverage to the employer's full time and qualified part time employees.

### **Full time tipped employee coverage**

---

From January 1, 1999 through December 31, 1999 an employer must offer coverage to full time employees, and pay a minimum of 80 percent of the total cost of the premium:

- ~ within six months from the date of the employees' hire, or
- ~ from the date coverage is first offered to existing employees, or
- ~ from the date the state minimum wage exceeds \$5.15.

From January 1, 2000 through December 31, 2000, or one year from the date the state minimum wage rate exceeds \$5.15 per hour and thereafter, an employer must offer coverage to full time employees, and pay a minimum of 50 percent of the total cost of the premium:

- ~ within three months from the date of the employees' hire, or
- ~ from the date coverage is first offered to existing employees.

The employer must pay 80 percent of the total cost of the premium.

- ~ Within six months from the date of hire, or
- ~ from the date coverage is first offered to existing employees.

A full time tipped employee means a tipped employee who regularly works eighteen hours or more per week.

### **Part time employee coverage**

---

An employer must offer part time tipped employees the same coverage the employer offers full time tipped employees if eligibility requirements in the employer's health care insurance plan covers employees who work less than eighteen hours per week.

An employer must offer to pay part time tipped employees one-half of the total premium for the unsubsidized Basic Health Plan coverage if the employer's health care insurance plan does not cover employees who work less than eighteen hours per week.

A part time tipped employee means a tipped employee who regularly works less than eighteen

hours per week.

## **Notice**

---

An employer must provide employees with thirty days notice of the applicable minimum wage, the employer's intent to offer health insurance coverage, and the open enrollment period.

An employer must provide employees a minimum of thirty days' written notice of the employer's intention to terminate a plan. The notice is subject to the requirements under federal law for continuation of coverage.

## **The minimum wage**

---

An employer is required to pay fifty percent of the minimum wage, but not less than \$5.15 per hour to all tipped employees. An employer is required to pay the minimum wage if the employer does not provide health care to employees.

The state's insurance statute apply to employee health insurance plans. The Department of Labor and Industries is authorized to adopt rules for the health care insurance plan program for tipped employees. The legislature must review the employee health insurance plan program in 2004.

**RULES AUTHORITY:** The bill does contain provisions addressing the rule making powers of an agency.

**FISCAL NOTE:** Requested February 5, 1998.

**EFFECTIVE DATE:** Ninety days after adjournment of session in which bill is passed.