
HOUSE BILL 2190

State of Washington 55th Legislature 1997 Regular Session

By Representatives McMorris and Clements

Read first time 02/25/97. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to the application of the state wage and hour laws
2 without altering the minimum wage; amending RCW 49.46.005, 49.12.041,
3 49.46.010, 49.46.040, 49.46.090, 49.46.100, 49.46.130, 49.48.030,
4 49.48.040, 49.52.050, 49.52.070, and 49.52.080; adding new sections to
5 chapter 49.12 RCW; adding a new section to chapter 49.46 RCW; repealing
6 RCW 49.12.050, 49.12.150, 49.30.020, and 49.46.070; prescribing
7 penalties; and declaring an emergency.

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

9 **Sec. 1.** RCW 49.46.005 and 1961 ex.s. c 18 s 1 are each amended to
10 read as follows:

11 Whereas the establishment of a minimum wage for employees is a
12 subject of vital and imminent concern to the people of this state and
13 requires appropriate action by the legislature to establish minimum
14 standards of employment within the state of Washington, therefore the
15 legislature declares that in its considered judgment the health, safety
16 and the general welfare of the citizens of this state require the
17 enactment of this measure, and exercising its police power, the
18 legislature endeavors by this chapter to establish a minimum wage for

1 employees of this state to encourage employment opportunities within
2 the state.

3 The legislature further finds and declares that it is in the
4 interest of the health, safety, and the general welfare of the citizens
5 of this state and necessary to aid and foster interstate and intrastate
6 commerce, that the Washington minimum wage act parallel the federal
7 fair labor standards act in the absence of express language to the
8 contrary. Under this objective, the legislature finds that section 3,
9 chapter 289, Laws of 1975 1st ex. sess. was adopted for the purpose of
10 creating conformity between state overtime pay standards and the
11 federal fair labor standards act. RCW 49.46.130(2)(h), was intended to
12 incorporate alternative federal premium guarantee standards, whether
13 based on a different minimum workweek, premium guarantee formula, or
14 some combination thereof, into state wage and labor law. The
15 department of labor and industries has narrowed the scope of state-
16 recognized federal alternative formulas to exclude formulas which were
17 intended by the legislature for incorporation into Washington law.

18 The provisions of this chapter are enacted: (1) In the exercise of
19 the police power of the state for the purpose of protecting the
20 immediate and future health, safety and welfare of the people of this
21 state; (2) to protect intrastate commerce from practices that burden
22 and obstruct it; (3) to protect the right of collective bargaining; and
23 (4) to define and limit the jurisdiction of the courts.

24 **Sec. 2.** RCW 49.12.041 and 1994 c 164 s 14 are each amended to read
25 as follows:

26 It shall be the responsibility of the director to investigate the
27 wages, hours and conditions of employment of all employees, including
28 minors, except as may otherwise be provided in chapter 16, Laws of 1973
29 2nd ex. sess. The director, or the director's authorized
30 representative, shall have full authority to require statements from
31 all employers, relative to wages, hours and working conditions and to
32 inspect the ~~((books, records and))~~ physical facilities of all employers
33 subject to chapter 16, Laws of 1973 2nd ex. sess. Such examinations
34 shall take place within normal working hours, within reasonable limits
35 and in a reasonable manner.

1 NEW SECTION. **Sec. 3.** (1) A workday is a fixed and regularly
2 recurring period of twenty-four hours. It may begin at any hour of a
3 calendar day and must begin at the same time each calendar day.

4 (2) A workweek is a fixed and regularly recurring period of one
5 hundred sixty-eight hours or seven consecutive twenty-four hour
6 periods. It may begin on any day of the week and any hour of the day,
7 and need not coincide with a calendar week.

8 NEW SECTION. **Sec. 4.** (1) Every employer shall keep a record
9 containing the following information with respect to each and every
10 person employed, whether or not classified as an employee under RCW
11 49.46.010: Name; identifying symbol or number if it is used in place
12 of name on any records; home address; occupation; and dates of
13 employment.

14 (2) Every employer shall furnish to each employee at the time of
15 payment of wages an itemized statement showing the pay basis, that is
16 to say salaried or hourly, the rate or rates of pay, gross wages, and
17 all deductions therefrom for that pay period.

18 (3) Every employer shall keep and preserve payroll or other records
19 containing the following information and data with respect to each
20 employee to whom RCW 49.46.020 applies: Time and day of week on which
21 an individual employee's or an entire work force's workweek begins;
22 hours worked each workday; total hours worked each workweek; total
23 weekly straight-time earnings or wages; total overtime compensation, in
24 excess of straight-time amounts, for the workweek; total additions to
25 or deductions from wages paid each pay period; and date of payment and
26 the pay period covered by the payment. To the extent that an employee
27 self-reports this information, the employee is estopped from contesting
28 the reported information unless the employee can establish by clear and
29 convincing evidence that the employee's employer directed or required
30 the employee to report false information.

31 (4) The department has exclusive authority to establish additional
32 recordkeeping requirements by rule as required by special
33 circumstances. The department shall catalog every recordkeeping rule
34 within a single rule.

35 (5) The department may consider and grant employer requests for
36 waiver or modification of the recordkeeping requirements prescribed in
37 subsections (3) and (4) of this section.

1 NEW SECTION. **Sec. 5.** An employer shall maintain the records
2 required by this chapter for a period of three years. Employers shall
3 keep the records safe and accessible at the place or places of
4 employment or at one or more established central recordkeeping offices
5 where the records are customarily maintained.

6 NEW SECTION. **Sec. 6.** (1) An employer shall, within ten days of a
7 request from the department, make all records required by this chapter
8 available for inspection, transcription, or copying.

9 (2) An employer shall, within ten days of a request from an
10 employee, make records relating to that employee and required under
11 section 4 (1) and (2) of this act available for inspection or copying.
12 An employee shall bear the reasonable cost of any copies of the
13 records.

14 NEW SECTION. **Sec. 7.** (1) The department shall investigate
15 violations of and has the sole authority to enforce the recordkeeping
16 provisions in this chapter.

17 (2) Every employer shall furnish to the department on demand a
18 sworn statement of the required records and information upon forms
19 prescribed or approved by the department.

20 (3) Any employer who refuses to admit the department to any place
21 of employment, fails to make, keep, and preserve any records as
22 required by this chapter, falsifies any records, refuses to make any
23 record inaccessible to the department, or refuses to furnish a sworn
24 statement of the records to the department is, upon conviction, guilty
25 of a gross misdemeanor.

26 NEW SECTION. **Sec. 8.** (1) Notwithstanding the provisions of
27 chapter 49.46 RCW or other provisions of this chapter, the obligation
28 of an employer to furnish or compensate an employee for apparel
29 required during work hours shall be determined only under this section.

30 (2) Employers are not required to furnish or compensate employees
31 for apparel that an employer requires an employee to wear during
32 working hours unless the required apparel is a uniform.

33 (3)(a) As used in this section, a uniform is:

34 (i) Apparel of a distinctive style and quality that, when worn
35 outside of the workplace, clearly identifies the person as an employee
36 of a specific employer;

- 1 (ii) Apparel that is specially marked with an employer's logo;
- 2 (iii) Unique apparel representing an historical time period or an
- 3 ethnic tradition; or
- 4 (iv) Formal apparel.

5 (b) Notwithstanding subsection (4) of this section, if an employer
6 changes the color or colors of apparel required to be worn by all
7 employees, more than once in a calendar year, the apparel is defined as
8 a uniform and the employer shall furnish or compensate an employee for
9 the apparel.

10 (4) Except as provided in subsection (3)(b) of this section, if an
11 employer requires an employee to wear apparel of a common color that
12 conforms to a general dress code or style, the employer is not required
13 to furnish or compensate an employee for that apparel. For the
14 purposes of this subsection, "common color" includes but is not limited
15 to colors such as black, white, gray, tan, khaki, brown, blue, green,
16 yellow, and red and any shade of those colors commonly worn in public
17 such as dark blue, light gray, or dark brown.

18 (5) An employer is not required to furnish or compensate employees
19 for apparel that is required by the employer to be worn as a reasonable
20 means of enhancing workplace safety unless the employer is required to
21 furnish or compensate employees for such apparel under chapter 49.17
22 RCW.

23 **Sec. 9.** RCW 49.46.010 and 1993 c 281 s 56 are each amended to read
24 as follows:

25 As used in this chapter:

- 26 (1) "Director" means the director of labor and industries;
- 27 (2) "Wage" means compensation due to an employee by reason of
- 28 employment, payable in legal tender of the United States or checks on
- 29 banks convertible into cash on demand at full face value, subject to
- 30 such deductions, charges, or allowances as may be permitted by rules of
- 31 the director;
- 32 (3) "Employ" includes to permit to work;
- 33 (4) "Employer" includes any individual, partnership, association,
- 34 corporation, business trust, or any person or group of persons acting
- 35 directly or indirectly in the interest of an employer in relation to an
- 36 employee;
- 37 (5) "Employee" includes any individual employed by an employer but
- 38 shall not include:

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

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

11 (c) Any individual employed in a bona fide executive,
12 administrative, or professional capacity or in the capacity of outside
13 salesman as those terms are defined and delimited by rules of the
14 director. However, those terms shall be defined and delimited by the
15 Washington personnel resources board pursuant to chapter 41.06 RCW;

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

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

34 (f) Any newspaper vendor or carrier;

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

37 (h) Any individual engaged in forest protection and fire prevention
38 activities;

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

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

10 (k) Any resident, inmate, or patient of a state, county, or
11 municipal correctional, detention, treatment or rehabilitative
12 institution;

13 (l) Any individual who holds a public elective or appointive office
14 of the state, any county, city, town, municipal corporation or quasi
15 municipal corporation, political subdivision, or any instrumentality
16 thereof, or any employee of the state legislature;

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

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

21 (o) Any employee who is a computer systems analyst, computer
22 programmer, software engineer, or other similarly skilled worker, whose
23 primary duty is:

24 (i) The application of systems analysis techniques and procedures,
25 including consulting with users, to determine hardware, software, or
26 system functional specifications;

27 (ii) The design, development, documentation, analysis, creation,
28 testing, or modification of computer systems or programs, including
29 prototypes, based on and related to user or system design
30 specifications;

31 (iii) The design, documentation, testing, creation, or modification
32 of computer programs related to machine operating systems; or

33 (iv) A combination of duties described in (i), (ii), and (iii) of
34 this subsection (5)(o), the performance of which requires the same
35 level of skills; and

36 who, for an employee who is compensated on an hourly basis, is
37 compensated at a rate of not less than twenty-three dollars and sixty-
38 three cents an hour.

1 (6) "Occupation" means any occupation, service, trade, business,
2 industry, or branch or group of industries or employment or class of
3 employment in which employees are gainfully employed.

4 **Sec. 10.** RCW 49.46.040 and 1959 c 294 s 4 are each amended to read
5 as follows:

6 (1) The director or ((his)) the director's designated
7 representatives may investigate and gather data regarding the wages,
8 hours, and other conditions and practices of employment in any industry
9 subject to this chapter, and may enter and inspect such places and such
10 records (and make such transcriptions thereof), question such
11 employees, and investigate such facts, conditions, practices, or
12 matters as ((he)) the director may deem necessary or appropriate to
13 determine whether any person has violated any provision of this
14 chapter, or which may aid in the enforcement of the provisions of this
15 chapter.

16 (2) With the consent and cooperation of federal agencies charged
17 with the administration of federal labor laws, the director may, for
18 the purpose of carrying out ((his)) the director's functions and duties
19 under this chapter, utilize the services of federal agencies and their
20 employees and, notwithstanding any other provision of law, may
21 reimburse such federal agencies and their employees for services
22 rendered for such purposes.

23 ~~(3) ((Every employer subject to any provision of this chapter or of~~
24 ~~any order issued under this chapter shall make, keep, and preserve such~~
25 ~~records of the persons employed by him and of the wages, hours, and~~
26 ~~other conditions and practices of employment maintained by him, and~~
27 ~~shall preserve such records for such periods of time, and shall make~~
28 ~~reports therefrom to the director as he shall prescribe by regulation~~
29 ~~as necessary or appropriate for the enforcement of the provisions of~~
30 ~~this chapter or the regulations thereunder.~~

31 ((4)) The director is authorized to make such regulations
32 regulating, restricting, or prohibiting industrial homework as are
33 necessary or appropriate to prevent the circumvention or evasion of and
34 to safeguard the minimum wage rate prescribed in this chapter, and all
35 existing regulations of the director relating to industrial homework
36 are hereby continued in full force and effect.

1 **Sec. 11.** RCW 49.46.090 and 1959 c 294 s 9 are each amended to read
2 as follows:

3 (1) ~~((Any employer who pays any employee less than wages to which
4 such employee is entitled under or by virtue of this chapter, shall be
5 liable to such employee affected for the full amount of such wage rate,
6 less any amount actually paid to such employee by the employer, and for
7 costs and such reasonable attorney's fees as may be allowed by the
8 court. Any agreement between such employee and the employer to work
9 for less than such wage rate shall be no defense to such action.))~~ No
10 employer shall be subject to any liability or punishment under this
11 title on account of the failure of the employer to pay an employee
12 minimum wages, or to pay an employee overtime compensation, for or on
13 account of any of the following activities of the employee:

14 (a) Walking, riding, or traveling to and from the actual place of
15 performance of the principal activity or activities that the employee
16 is employed to perform; and

17 (b) Activities that are preliminary to or subsequent to the
18 principal activity or activities;
19 that occur either before the time on any particular workday at which
20 the employee commences, or after the time on any particular workday at
21 which the employee ceases, the principal activity or activities.

22 For purposes of this subsection, the use of an employer's vehicle
23 for travel by an employee and activities performed by an employee that
24 are incidental to the use of the vehicle for commuting shall not be
25 considered part of the employee's principal activities if the use of
26 the vehicle for travel is within the normal commuting area for the
27 employer's business or establishment and the use of the employer's
28 vehicle is subject to an agreement on the part of the employer and the
29 employee or representative of the employee.

30 (2) ~~At the written request of any employee paid less than the wages
31 to which he or she is entitled under or by virtue of this chapter or
32 chapter 49.12 or 49.48 RCW, the director may take an assignment ((under
33 this chapter or as provided in RCW 49.48.040 of such wage claim in
34 trust for the assigning employee and may bring any legal action
35 necessary to collect such claim, and the employer shall be required to
36 pay the costs and such reasonable attorney's fees as may be allowed by
37 the court))~~ of the wage claim in trust for the assigning employee, and
38 may, as assignee for the employee, bring an action for unpaid wages

1 under RCW 49.48.030 or an action for exemplary damages as provided
2 under RCW 49.52.070.

3 **Sec. 12.** RCW 49.46.100 and 1959 c 294 s 10 are each amended to
4 read as follows:

5 (1) Any employer who hinders or delays the director or ((his)) the
6 director's authorized representatives in the performance of ((his)) the
7 director or representative's duties in the enforcement of this chapter,
8 or ((refuses to admit the director or his authorized representatives to
9 any place of employment, or fails to make, keep, and preserve any
10 records as required under the provisions of this chapter, or falsifies
11 any such record, or refuses to make any record accessible to the
12 director or his authorized representatives upon demand, or refuses to
13 furnish a sworn statement of such record or any other information
14 required for the proper enforcement of this chapter to the director or
15 his authorized representatives upon demand, or)) pays or agrees to pay
16 wages at a rate less than the rate applicable under this chapter, or
17 otherwise violates any provision of this chapter or of any regulation
18 issued under this chapter shall be deemed in violation of this chapter
19 and shall, upon conviction therefor, be guilty of a gross misdemeanor.

20 (2) Any employer who discharges or in any other manner
21 discriminates against any employee because such employee has made any
22 complaint to his or her employer, to the director, or his or her
23 authorized representatives that he or she has not been paid wages in
24 accordance with the provisions of this chapter, or that the employer
25 has violated any provision of this chapter, or because such employee
26 has caused to be instituted or is about to cause to be instituted any
27 proceeding under or related to this chapter, or because such employee
28 has testified or is about to testify in any such proceeding shall be
29 deemed in violation of this chapter and shall, upon conviction
30 therefor, be guilty of a gross misdemeanor.

31 **Sec. 13.** RCW 49.46.130 and 1995 c 5 s 1 are each amended to read
32 as follows:

33 (1) Except as otherwise provided in this section, no employer shall
34 employ any of his or her employees for a work week longer than forty
35 hours unless such employee receives compensation for his or her
36 employment in excess of the hours above specified at a rate not less

1 than one and one-half times the regular rate at which he or she is
2 employed.

3 (2) This section does not apply to:

4 (a) Any person exempted pursuant to RCW 49.46.010(5). The fact
5 that an employee is subject to deductions from pay for voluntary or
6 involuntary absences of less than a full day or of less than a full
7 workweek shall not be a factor in determining whether that employee is
8 exempted under RCW 49.46.010(5)(c), except during workweeks in which
9 the employee incurs an actual reduction in pay. For purposes of this
10 subsection, the term "actual reduction in pay" does not include any
11 reduction in accrued paid leave or any other practice that does not
12 reduce the amount of the employee's pay for the workweek in question.
13 The payment of compensation or provision of compensatory time off in
14 addition to a salary shall not be a factor in determining whether a
15 person is exempted under RCW 49.46.010(5)(c);

16 (b) Employees who request compensating time off in lieu of overtime
17 pay;

18 (c) Any individual employed as a seaman whether or not the seaman
19 is employed on a vessel other than an American vessel;

20 (d) Seasonal employees who are employed at concessions and
21 recreational establishments at agricultural fairs, including those
22 seasonal employees employed by agricultural fairs, within the state
23 provided that the period of employment for any seasonal employee at any
24 or all agricultural fairs does not exceed fourteen working days a year;

25 (e) Any individual employed as a motion picture projectionist if
26 that employee is covered by a contract or collective bargaining
27 agreement which regulates hours of work and overtime pay;

28 (f) An individual employed as a truck or bus driver who is subject
29 to the provisions of the Federal Motor Carrier Act (49 U.S.C. Sec. 3101
30 et seq. and 49 U.S.C. Sec. 10101 et seq.) ~~((, if the compensation system~~
31 ~~under which the truck or bus driver is paid includes overtime pay,~~
32 ~~reasonably equivalent to that required by this subsection, for working~~
33 ~~longer than forty hours per week))~~;

34 (g) Any individual employed (i) on a farm, in the employ of any
35 person, in connection with the cultivation of the soil, or in
36 connection with raising or harvesting any agricultural or horticultural
37 commodity, including raising, shearing, feeding, caring for, training,
38 and management of livestock, bees, poultry, and furbearing animals and
39 wildlife, or in the employ of the owner or tenant or other operator of

1 a farm in connection with the operation, management, conservation,
2 improvement, or maintenance of such farm and its tools and equipment;
3 or (ii) in packing, packaging, grading, storing or delivering to
4 storage, or to market or to a carrier for transportation to market, any
5 agricultural or horticultural commodity; or (iii) commercial canning,
6 commercial freezing, or any other commercial processing, or with
7 respect to services performed in connection with the cultivation,
8 raising, harvesting, and processing of oysters or in connection with
9 any agricultural or horticultural commodity after its delivery to a
10 terminal market for distribution for consumption;

11 (h) Any industry in which federal law provides for an overtime
12 payment (~~((based on a work week other than forty hours))~~) method, such as
13 29 U.S.C. 207 (i) or (j). However, the provisions of the federal (~~(law~~
14 ~~regarding overtime payment based on a work week other than forty~~
15 ~~hours)) overtime payment method shall nevertheless apply to employees
16 covered by this section without regard to the existence of actual
17 federal jurisdiction over the industrial activity of the particular
18 employer within this state. For the purposes of this subsection,
19 "industry" means a trade, business, industry, or other activity, or
20 branch, or group thereof, in which individuals are gainfully employed
21 (section 3(h) of the Fair Labor Standards Act of 1938, as amended
22 (Public Law 93-259)).~~

23 (3) No employer of commissioned salespeople primarily engaged in
24 the business of selling automobiles, trucks, recreational vessels,
25 recreational vessel trailers, recreational vehicle trailers,
26 recreational campers, or manufactured housing to ultimate purchasers
27 shall violate subsection (1) of this section with respect to such
28 commissioned salespeople if the commissioned salespeople are paid the
29 greater of:

30 (a) Compensation at the hourly rate, which may not be less than the
31 rate required under RCW 49.46.020, for each hour worked up to forty
32 hours per week, and compensation of one and one-half times that hourly
33 rate for all hours worked over forty hours in one week; or

34 (b) A straight commission, a salary plus commission, or a salary
35 plus bonus applied to gross salary.

36 (4) No public agency shall be deemed to have violated subsection
37 (1) of this section with respect to the employment of any employee in
38 fire protection activities or any employee in law enforcement
39 activities (including security personnel in correctional institutions)

1 if: (a) In a work period of twenty-eight consecutive days the employee
2 receives for tours of duty which in the aggregate exceed two hundred
3 forty hours; or (b) in the case of such an employee to whom a work
4 period of at least seven but less than twenty-eight days applies, in
5 his or her work period the employee receives for tours of duty which in
6 the aggregate exceed a number of hours which bears the same ratio to
7 the number of consecutive days in his or her work period as two hundred
8 forty hours bears to twenty-eight days; compensation at a rate not less
9 than one and one-half times the regular rate at which he or she is
10 employed.

11 NEW SECTION. **Sec. 14.** A new section is added to chapter 49.46 RCW
12 to read as follows:

13 In any action or proceeding based on any act or omission on or
14 after the effective date of this section, no employer shall be subject
15 to any liability or punishment for or on account of the failure of the
16 employer to pay minimum wages or overtime compensation under this title
17 if the employer pleads and proves that the act or omission complained
18 of was in good faith in conformity with and in reliance on any written
19 administrative regulation, order, ruling, approval, or interpretation
20 of the department, or any administrative practice or enforcement policy
21 of the department with respect to the class of employers to which the
22 employer belonged. Such a defense, if established, is a bar to the
23 action or proceeding, notwithstanding that after the act or omission,
24 the administrative regulation, order, ruling, approval, interpretation,
25 practice, or enforcement policy is modified or rescinded or is
26 determined by judicial authority to be invalid or of no legal effect.

27 **Sec. 15.** RCW 49.48.030 and 1971 ex.s. c 55 s 3 are each amended to
28 read as follows:

29 ~~((In any action in which any person is successful in recovering
30 judgment for wages or salary owed to him, reasonable attorney's fees,
31 in an amount to be determined by the court, shall be assessed against
32 said employer or former employer: PROVIDED, HOWEVER, That this section
33 shall not apply if the amount of recovery is less than or equal to the
34 amount admitted by the employer to be owing for said wages or salary.))~~

35 (1) Any employer who pays an employee less than the wages to which the
36 employee is entitled under or by virtue of this chapter or chapter
37 49.12 or 49.48 RCW, is liable in a civil action to the employee for the

1 full amount of the unpaid wages, notwithstanding any agreement to work
2 for a lower wage. In such an action, if the employee is successful in
3 recovering judgment for unpaid wages, reasonable attorneys' fees and
4 costs, in an amount to be determined by the court, shall be awarded to
5 the employee. However, the court shall not award attorneys' fees or
6 costs to the employee if the amount of the judgment for unpaid wages is
7 less than or equal to any amount previously offered or paid by the
8 employer to such employee in response to the employee's wage claim.

9 (2) Any civil action under this section to recover unpaid wages
10 must be commenced within two years of the date the claim for wages
11 accrued. Unless otherwise agreed by all parties to the action, an
12 employee is only entitled to bring the action on his or her own
13 individual behalf, except an employee may also bring such an action on
14 behalf of any other similarly situated employee who has given his or
15 her prior written consent to become a party to the action and has filed
16 the consent with the court in which the action is brought.

17 (3) For purposes of subsection (2) of this section, an action is
18 considered to be commenced on the date determined in accordance with
19 RCW 4.16.170, except that for a collective action, it is considered to
20 be commenced in the case of any individual claimant:

21 (a) On the date determined in accordance with RCW 4.16.170, if the
22 individual claimant is specifically named as a party plaintiff in the
23 complaint and written consent of the individual to become a party
24 plaintiff is filed on or before the date in the court in which the
25 action is brought; or

26 (b) If the written consent was not so filed or if the name of the
27 individual claimant did not so appear on the subsequent date on which
28 the written consent is filed in the court in which the action was
29 commenced.

30 **Sec. 16.** RCW 49.48.040 and 1987 c 172 s 1 are each amended to read
31 as follows:

32 (1) The department of labor and industries may:

33 (a) Upon obtaining information indicating an employer may be
34 committing a violation under chapters 39.12, 49.46, and 49.48 RCW,
35 conduct investigations to ensure compliance with chapters 39.12, 49.46,
36 and 49.48 RCW;

1 (b) (~~Order~~) Demand the payment of (~~all~~) any wages owed (~~the~~
2 ~~workers and institute actions necessary for the collection of the sums~~
3 ~~determined owed~~) to an employee; and

4 (c) Take assignments of wage claims (~~and prosecute actions for the~~
5 ~~collection of wages of persons who are financially unable to employ~~
6 ~~counsel when in the judgment of the director of the department the~~
7 ~~claims are valid and enforceable in the courts~~) from employees and
8 initiate civil actions to recover unpaid wages owed to the employees as
9 provided under RCW 49.46.090 and 49.48.030.

10 (2) The director of the department or any authorized representative
11 may, for the purpose of carrying out RCW 49.48.040 through 49.48.080:

12 (a) Issue subpoenas to compel the attendance of witnesses or parties
13 and the production of books, papers, or records; (b) administer oaths
14 and examine witnesses under oath; (c) take the verification of proof of
15 instruments of writing; and (d) take depositions and affidavits. If
16 assignments for wage claims are taken, court costs shall not be payable
17 by the department for prosecuting such suits.

18 (3) The director shall have a seal inscribed "Department of Labor
19 and Industries--State of Washington" and all courts shall take judicial
20 notice of such seal. Obedience to subpoenas issued by the director or
21 authorized representative shall be enforced by the courts in any
22 county.

23 (4) The director or authorized representative shall have free
24 access to all places and works of labor. Any employer or any agent or
25 employee of such employer who refuses the director or authorized
26 representative admission therein, or who, when requested by the
27 director or authorized representative, wilfully neglects or refuses to
28 furnish the director or authorized representative any statistics or
29 information pertaining to his or her lawful duties, which statistics or
30 information may be in his or her possession or under the control of the
31 employer or agent, shall be guilty of a misdemeanor.

32 **Sec. 17.** RCW 49.52.050 and 1941 c 72 s 1 are each amended to read
33 as follows:

34 Any employer or officer, vice principal or agent of any employer,
35 whether said employer be in private business or an elected public
36 official, who:

37 (1) Shall collect or receive from any employee a rebate of any part
38 of wages theretofore paid by such employer to such employee; (~~or~~)

1 (2) Willfully and with intent to deprive the employee of any part
2 of his or her wages, shall pay any employee a lower wage than the wage
3 such employer is obligated to pay such employee ~~((by any statute,~~
4 ~~ordinance, or contract; or))~~ under or by virtue of chapter 49.12,
5 49.46, or 49.48 RCW;

6 (3) ~~((Shall wilfully make or cause another to make any false entry~~
7 ~~in any employer's books or records purporting to show the payment of~~
8 ~~more wages to an employee than such employee received; or~~

9 (4)) Being an employer or a person charged with the duty of
10 keeping any employer's books or records shall willfully fail or cause
11 another to fail to show openly and clearly in due course in such
12 employer's books and records any rebate of or deduction from any
13 employee's wages; or

14 ((+5)) (4) Shall willfully receive or accept from any employee any
15 false receipt for wages;
16 shall be guilty of a misdemeanor.

17 **Sec. 18.** RCW 49.52.070 and 1939 c 195 s 3 are each amended to read
18 as follows:

19 Any employer and any officer, vice principal, or agent of any
20 employer who shall violate ~~((any of the provisions of subdivisions (1)~~
21 ~~and (2) of))~~ RCW 49.52.050 (1) and (2) shall be liable in a civil
22 action by the aggrieved employee ~~((or his assignee to))~~ under RCW
23 49.48.030 for judgment ((for)) up to a maximum of twice the amount of
24 ~~((the))~~ wages unlawfully rebated or withheld ~~((by way of exemplary~~
25 ~~damages, together with costs of suit and a reasonable sum for~~
26 ~~attorney's fees: PROVIDED, HOWEVER, That the benefits of this section~~
27 ~~shall not be available to any employee who has knowingly submitted to~~
28 ~~such violations)), which exemplary damages, if any, shall be awarded at~~
29 the discretion of the court. However, the exemplary damages are not
30 available to any employee who knowingly has submitted to the violation.

31 **Sec. 19.** RCW 49.52.080 and 1939 c 195 s 4 are each amended to read
32 as follows:

33 The violations by an employer or any officer, vice principal, or
34 agent of any employer of ~~((any of the provisions of subdivisions (3),~~
35 ~~(4), and (5) of))~~ RCW 49.52.050 (3) and (4) shall raise a presumption
36 that any deduction from or underpayment of any employee's wages
37 connected with such violation was willful.

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

3 (1) RCW 49.12.050 and 1994 c 164 s 15, 1973 2nd ex.s. c 16 s 14, &
4 1913 c 174 s 7;

5 (2) RCW 49.12.150 and 1913 c 174 s 18;

6 (3) RCW 49.30.020 and 1989 c 380 s 84; and

7 (4) RCW 49.46.070 and 1959 c 294 s 7.

8 NEW SECTION. **Sec. 21.** Sections 3 through 8 of this act are each
9 added to chapter 49.12 RCW.

10 NEW SECTION. **Sec. 22.** This act is necessary for the immediate
11 preservation of the public peace, health, or safety, or support of the
12 state government and its existing public institutions, and takes effect
13 immediately.

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