
HOUSE BILL 2104

State of Washington

56th Legislature

1999 Regular Session

By Representatives Wolfe, Schoesler, Kessler, O'Brien, Lantz, McMorris, Quall, Morris, Radcliff, Linville, Van Luven, Dunn, D. Schmidt, Cairnes, Carrell, Delvin, Parlette, Lambert, Bush, Lisk, Buck, B. Chandler, G. Chandler, Barlean, Ericksen, Ballard, McDonald, Huff, D. Sommers, Koster, Mastin, Fortunato, Mitchell, Pennington, Wensman, Schindler, Carlson, Pflug, Cox, Esser, Hankins and Skinner

Read first time 02/15/1999. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to the characterization of income and providing
2 retail or service establishment wage guarantees; amending RCW
3 49.46.010; and adding a new section to chapter 49.46 RCW.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 49.46 RCW
6 to read as follows:

7 (1) Retail or service employers shall pay:

8 (a) One hundred percent of the wage required by RCW 49.46.020 as
9 cash wages; or

10 (b) Elect to pay tipped employees no less than eighty-five percent
11 of the wage required by RCW 49.46.020 as cash wages if each employee at
12 a retail or service establishment receives wages equal to one hundred
13 twenty percent of the wage required by RCW 49.46.020. Under no
14 circumstances may an employer pay an employee a cash wage of less than
15 six dollars per hour.

16 (2) Any retail or service employer electing to pay an employee
17 under subsection (1)(b) of this section shall pay the tax in chapter
18 82.04 RCW at the retail rate.

1 **Sec. 2.** RCW 49.46.010 and 1997 c 203 s 3 are each amended to read
2 as follows:

3 As used in this chapter:

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

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

11 (3) "Employ" includes to permit to work;

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

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

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

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

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

33 (d) Any individual engaged in the activities of an educational,
34 charitable, religious, state or local governmental body or agency, or
35 nonprofit organization where the employer-employee relationship does
36 not in fact exist or where the services are rendered to such
37 organizations gratuitously. If the individual receives reimbursement
38 in lieu of compensation for normally incurred out-of-pocket expenses or
39 receives a nominal amount of compensation per unit of voluntary service

1 rendered, an employer-employee relationship is deemed not to exist for
2 the purpose of this section or for purposes of membership or
3 qualification in any state, local government or publicly supported
4 retirement system other than that provided under chapter 41.24 RCW;

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

12 (f) Any newspaper vendor or carrier;

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

15 (h) Any individual engaged in forest protection and fire prevention
16 activities;

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

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

26 (k) Any resident, inmate, or patient of a state, county, or
27 municipal correctional, detention, treatment or rehabilitative
28 institution;

29 (l) Any individual who holds a public elective or appointive office
30 of the state, any county, city, town, municipal corporation or quasi
31 municipal corporation, political subdivision, or any instrumentality
32 thereof, or any employee of the state legislature;

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

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

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

1 (7) "Tipped employee" means any employee engaged in an occupation
2 in which she or he customarily and regularly reports more than three
3 dollars per hour in tips;

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

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