

2 **ESSB 5264** - H COMM AMD **Adopted 3-8-02**
3 By Committee on Commerce & Labor

4

5 Strike everything after the enacting clause and insert the
6 following:

7 "NEW SECTION. **Sec. 1.** A new section is added to chapter 49.44 RCW
8 to read as follows:

9 The legislature intends that public employers be prohibited from
10 misclassifying employees, or taking other action to avoid providing or
11 continuing to provide employment-based benefits to which employees are
12 entitled under state law or employer policies or collective bargaining
13 agreements applicable to the employee's correct classification.

14 This act does not mandate that any public employer provide benefits
15 to actual temporary, seasonal, or part-time employees beyond the
16 benefits to which they are entitled under state law or employer
17 policies or collective bargaining agreements applicable to the
18 employee's correct classification. Public employers may determine
19 eligibility rules for their own benefit plans and may exclude
20 categories of workers such as "temporary" or "seasonal," so long as the
21 definitions and eligibility rules are objective and applied on a
22 consistent basis. Objective standards, such as control over the work
23 and the length of the employment relationship, should determine whether
24 a person is an employee who is entitled to employee benefits, rather
25 than the arbitrary application of labels, such as "temporary" or
26 "contractor." Common law standards should be used to determine whether
27 a person is performing services as an employee, as a contractor, or as
28 part of an agency relationship.

29 This act does not modify any statute or policy regarding the
30 employment of: Public employee retirees who are hired for
31 postretirement employment as provided for in chapter 41.26, 41.32,
32 41.35, or 41.40 RCW or who work as contractors; or enrolled students
33 who receive employment as student employees or as part of their
34 education or financial aid.

1 NEW SECTION. **Sec. 2.** A new section is added to chapter 49.44 RCW
2 to read as follows:

3 (1) It is an unfair practice for any public employer to:

4 (a) Misclassify any employee to avoid providing or continuing to
5 provide employment-based benefits; or

6 (b) Include any other language in a contract with an employee that
7 requires the employee to forgo employment-based benefits.

8 (2) The definitions in this subsection apply throughout this act
9 unless the context clearly requires otherwise.

10 (a) "Employee" means a person who is providing services for
11 compensation to an employer, unless the person is free from the
12 employer's direction and control over the performance of work. This
13 definition shall be interpreted consistent with common law.

14 (b) "Employment-based benefits" means any benefits to which
15 employees are entitled under state law or employer policies or
16 collective bargaining agreements applicable to the employee's correct
17 classification.

18 (c) "Public employer" means: (i) Any unit of local government
19 including, but not limited to, a county, city, town, municipal
20 corporation, quasi-municipal corporation, or political subdivision; and
21 (ii) the state, state institutions, and state agencies. This
22 definition shall be interpreted consistent with common law.

23 (d) "Misclassify" and "misclassification" means to incorrectly
24 classify or label a long-term public employee as "temporary," "leased,"
25 "contract," "seasonal," "intermittent," or "part-time," or to use a
26 similar label that does not objectively describe the employee's actual
27 work circumstances.

28 (3) An employee deeming himself or herself harmed in violation of
29 subsection (1) of this section may bring a civil action in a court of
30 competent jurisdiction.

31 NEW SECTION. **Sec. 3.** This act shall be construed liberally for
32 the accomplishment of its purposes.

33 NEW SECTION. **Sec. 4.** If any provision of this act or its
34 application to any person or circumstance is held invalid, the
35 remainder of the act or the application of the provision to other
36 persons or circumstances is not affected."

1 Correct the title.

EFFECT: (1) Strikes provisions authorizing administrative review by the Department of Retirement Systems.

(2) Adds references to collective bargaining agreements under which employees may be entitled to employment-based benefits.

(3) Provides that this act does not modify statutes or policies regarding public employee retirees who are hired for postretirement employment.

(4) Clarifies that:

(a) The act does not mandate a public employer to provide benefits to actual temporary, seasonal, or part-time employees beyond the benefits they receive under state law, employer policy, or a collective bargaining agreement;

(b) Public employers may determine eligibility rules for their own benefit plans; and

(c) Public employers may exclude categories of workers such as "temporary" or "seasonal," so long as definitions and eligibility rules are objective and applied on a consistent basis.

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