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## Commerce & Labor Committee

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# Proposed Striking Amendment to ESSB 5264

**Brief Description:** Prohibiting public employers from misclassifying employees to avoid providing benefits.

**Sponsors:** Senate Committee on Ways & Means (originally sponsored by Senators Prentice, Fraser, Patterson, Costa, Shin, Kline, Kohl-Welles, Constantine, Jacobsen, Winsley and Gardner).

### Brief Summary of Proposed Striking Amendment

- Makes it an unfair practice for a public employer to misclassify an employee to avoid providing employment-based benefits

**Hearing Date:** 3/27/01; 2/20/02

**Staff:** Jill Reinmuth (786-7134).

### Background:

Eligibility for employment-based benefits is generally based on: (1) the existence of an employment relationship between a person and a public entity; and (2) the nature of that relationship. In general, if an employment relationship does not exist, the person is not eligible for employment-based benefits. If the employment relationship is part-time or temporary, the person also may not be eligible for benefits.

Various legal tests have been developed to determine whether or not an employment relationship exists. For example, the federal Internal Revenue Service uses a 20-part test to determine whether a person is an employee or an independent contractor. State agencies such as the Department of Retirement Systems, the Health Care Authority, the Employment Security Department, and the Department of Labor and Industries also use multi-factor tests to determine whether an employment relationship exists.

In the past decade, some public entities have been sued by persons alleging that the public entities misclassified their employment relationships, and thus, did not give them employment-based benefits to which they were entitled. Cases involving King County, the

City of Bellevue, and the City of Seattle have been settled. These public entities have agreed to pay the plaintiffs past compensation and future benefits totaling more than \$60 million. A case involving the State Board for Community and Technical Colleges and the Health Care Authority is still pending.

**Summary of Proposed Striking Amendment:**

It is an unfair practice for a public employer to:

- misclassify an employee to avoid providing or continuing to provide employment-based benefits; or
- include language in a contract with an employee that requires the employee to forego employment-based benefits.

If an employee believes he or she has been harmed by such an unfair practice, the employee may bring a civil action in a court of competent jurisdiction.

A "public employer" is a state or local government employer.

An "employee" is a person who provides services for compensation to an employer, but not an independent contractor.

"Employment-based benefits" mean benefits to which an employee may become or is entitled under state law or public employer written policy.

"Misclassify" means to classify incorrectly a long-term public employee as temporary, leased, contract, seasonal, intermittent, or part-time.

**Rules Authority:** The bill does not contain provisions addressing the rule-making powers of an agency.

**Appropriation:** None.

**Fiscal Note:** Available for ESSB 5264, but not for proposed striking amendment.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.