FINAL BILL REPORT
ESSB 5264

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Synopsis as Enacted

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).

Senate Committee on Labor, Commerce & Financial Institutions
Senate Committee on Ways & Means
House Committee on Commerce & Labor
House Committee on Appropriations

Background: Public employers sometimes provide a lower level of health insurance coverage, retirement plan coverage, sick or annual leave, or other employment-based benefits to persons who are employed on a part-time, temporary, leased, contract, or other contingent basis. The practice of providing less generous compensation to some contingent workers is sometimes justified on the basis that the employer should provide more generous compensation to persons who perform full-time services, or have performed services for a longer period of time. In some cases, however, public employers use labels to justify providing different levels of benefits to employees who have rendered identical levels of service, for identical periods of time, for the employer. In these cases, the employer may misclassify an employee as "temporary" or "leased" or "seasonal," when in fact the employee renders exactly the same services, for the same period of time as another employee who is labeled "permanent" or "full-time," and hence qualifies for better benefits.

The federal Internal Revenue Service has developed a 20 part test to determine whether a person is an employee or an independent contractor. Similar multi-factor tests are used by state agencies such as the Department of Retirement Systems, the Health Care Authority, the Employment Security Department, and the Department of Labor and Industries to determine whether an employee-employer relationship exists.

In recent years some public employers, such as Metro-King County, and the State Board for Community Colleges, have been taken to court by employees who claimed that they had been misclassified in some manner. The law in this field has developed through judicial application and there is little statutory warning to public employers of the consequences they may face. Over the last decade, public entities in Washington have paid out over $60 million in misclassification cases. A large case involving part-time community college faculty eligibility for retirement and health benefits is still pending.

Summary: It is an unfair practice for a public employer to misclassify an employee to avoid providing employment-based benefits, or to include language in an employment contract requiring an employee to forego employment-based benefits. "Employment-based benefits"

mean any benefits to which an employee is entitled under any state law, employer written policies, or collective bargaining agreements. "Misclassify" means to incorrectly label a long-term public employee in a manner that does not objectively describe the employee's actual work circumstances.

Any person who believes he or she has been harmed by being misclassified may bring a civil action.

Votes on Final Passage:

Senate	30	18	
House	96	0	(House amended)
House	95	0	(House reconsidered)
Senate	45	0	(Senate concurred)

Effective: June 13, 2002