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**SUBSTITUTE SENATE BILL 5264**

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**State of Washington**

**57th Legislature**

**2001 Regular Session**

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

READ FIRST TIME 03/08/01.

1       AN ACT Relating to unfair practices by public employers with  
2 respect to eligibility for employment-based benefits; adding a new  
3 section to chapter 49.44 RCW; and creating new sections.

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

5       NEW SECTION.     **Sec. 1.**     The legislature intends that public  
6 employers be prohibited from misclassifying employees, or taking other  
7 action to avoid providing or continuing to provide employment-based  
8 benefits to which employees are entitled under state law or employer  
9 policies.

10       The legislature intends that public employers should provide all  
11 persons who provide services for the employer, and who are in an  
12 employer-employee relationship with the employer, with the benefits of  
13 the employer-employee relationship. Health insurance, retirement  
14 benefits, sick and annual leave, and other similar employee benefits  
15 should be provided on a consistent basis, as defined by state law or  
16 employer policies, to all persons who have an employee-employer  
17 relationship with a public employer. Objective standards, such as  
18 control over the work and the length of the employment relationship  
19 should determine whether a person is an employee who is entitled to

1 employee benefits, rather than the arbitrary application of labels,  
2 such as "temporary," or "contractor." Common law standards, applied in  
3 a manner consistent with internal revenue service and department of  
4 retirement system guidelines, should be used to determine whether a  
5 person is performing services as an employee, as a contractor, or as  
6 part of an agency relationship.

7 The legislature does not intend to modify or mandate in any way the  
8 provision of benefits by this act, but instead intends that public  
9 employers apply benefit eligibility rules on an objective basis. This  
10 act specifically is not intended to modify any statute or policy  
11 regarding the employment of public employee retirees who work as  
12 contractors.

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

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

16 (a) Misclassify any employee to avoid providing or continuing to  
17 provide employment-based benefits to which the employee would become or  
18 is entitled under any state law or any employer policy; or

19 (b) Include any other language in a contract with an employee that  
20 requires the employee to forego employment-based benefits to which the  
21 employee would become or is entitled under any state law or any  
22 employer policy.

23 (2) The definitions in this subsection apply throughout this  
24 section unless the context clearly requires otherwise.

25 (a) "Employee" means a person who is providing services for  
26 compensation to an employer, unless the person is free from the  
27 employer's direction and control over the performance of work. This  
28 definition shall be interpreted consistent with guidelines established  
29 by the federal internal revenue service, the department of retirement  
30 systems' definitions under RCW 41.40.010, and common law.

31 (b) "Employment-based benefits" means any benefits to which an  
32 employee may become or is entitled under any state law or any public  
33 employer written policy.

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

1 (d) "Misclassify" and "misclassification" mean to incorrectly  
2 classify or label a long-term public employee as "temporary," "leased,"  
3 "contract," "seasonal," "intermittent," or "part-time," or to use a  
4 similar label that does not objectively describe the employee's actual  
5 work circumstances.

6 (3) Any employee deeming himself or herself harmed in violation of  
7 subsection (1) of this section may either seek a review by the  
8 department of retirement systems to determine whether the employee has  
9 been misclassified, or may bring a civil action in a court of competent  
10 jurisdiction. If a person seeks a review by the department of  
11 retirement systems, it may investigate and render a decision regarding  
12 whether the person has been misclassified in a manner that has had a  
13 negative impact on the employee's right to retirement benefits provided  
14 by statute, ordinance, or employer policy. If the department  
15 determines that an employee has been misclassified, the public employer  
16 shall pay to the department of retirement systems an amount equal to  
17 the full cost of the investigation and review.

18 NEW SECTION. **Sec. 3.** This act shall be construed liberally for  
19 the accomplishment of the purposes thereof.

20 NEW SECTION. **Sec. 4.** If any provision of this act or its  
21 application to any person or circumstance is held invalid, the  
22 remainder of the act or the application of the provision to other  
23 persons or circumstances is not affected.

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