
SENATE BILL 5265

State of Washington

57th Legislature

2001 Regular Session

By Senators Prentice, Costa, Kline, Patterson, Constantine, Kohl-Welles and Gardner

Read first time 01/17/2001. Referred to Committee on Labor, Commerce & Financial Institutions.

1 AN ACT Relating to unfair practices by private 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.** LEGISLATIVE FINDINGS. The legislature finds
6 that part-time, temporary, leased, and other contingent workers are
7 increasing in numbers. Under state laws and employer policies, these
8 contingent workers are less likely than other workers to receive
9 employment-based benefits. Consequently, employers may terminate
10 employees, misclassify employees, limit contract terms, or take other
11 action to avoid providing or continuing to provide employment-based
12 benefits.

13 NEW SECTION. **Sec. 2.** LEGISLATIVE INTENT. The legislature intends
14 that the purpose of this act is to prohibit employers from terminating
15 employees, misclassifying employees, limiting their contracts, or
16 taking other action to avoid providing or continuing to provide
17 employment-based benefits to which employees are entitled under state
18 law or employer policies. It is not the intent of the legislature that

1 this act relate to or affect employment-based benefits subject to the
2 federal employee retirement income security act.

3 NEW SECTION. **Sec. 3.** A new section is added to chapter 49.44 RCW
4 to read as follows:

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

6 (a) Terminate any employee to avoid providing or continuing to
7 provide employment-based benefits to which the employee would become or
8 is entitled under any state law or any employer policy;

9 (b) Misclassify any employee to avoid providing or continuing to
10 provide employment-based benefits to which the employee would become or
11 is entitled under any state law or any employer policy;

12 (c) Limit the term of a contract with an employee to avoid
13 providing employment-based benefits to which the employee would become
14 entitled under any state law or any employer policy;

15 (d) Include any other language in a contract with an employee that
16 requires the employee to forego employment-based benefits to which the
17 employee would become or is entitled under any state law or any
18 employer policy; or

19 (e) Terminate or in any manner discriminate against an employee
20 because the employee has filed or communicated to the employer an
21 intent to file an action alleging a violation of this subsection.

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

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

28 (b) "Employer" means any person, firm, corporation, partnership,
29 business trust, legal representative, or other business entity which
30 engages in any business, industry, profession, or activity.

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

34 (3) Any employee deeming himself or herself terminated or otherwise
35 harmed in violation of subsection (1) of this section may bring a civil
36 action in a court of competent jurisdiction. If the employee prevails,
37 he or she shall be awarded:

1 (a) Either six months' wages or treble the actual damages sustained
2 by the employee as a result of being terminated or otherwise harmed in
3 violation of subsection (1) of this section, whichever is greater;
4 (b) Costs of suit or arbitration; and
5 (c) Reasonable attorneys' fees.

6 NEW SECTION. **Sec. 4.** This act shall be construed liberally for
7 the accomplishment of the purposes thereof.

8 NEW SECTION. **Sec. 5.** This act may be known and cited as the
9 employee benefits fairness act of 2001.

10 NEW SECTION. **Sec. 6.** If any provision of this act or its
11 application to any person or circumstance is held invalid, the
12 remainder of the act or the application of the provision to other
13 persons or circumstances is not affected.

14 NEW SECTION. **Sec. 7.** Captions used in this act are not any part
15 of the law.

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