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**Commerce & Labor Committee**

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**SSB 6054**

**Brief Description:** Clarifying the application of the industrial welfare act to public employers.

**Sponsors:** Senate Committee on Ways & Means (originally sponsored by Senators Rossi and Fairley; by request of Office of Financial Management).

**Brief Summary of Substitute Bill**

- Provides that, prior to the bill's effective date, the Industrial Welfare Act (IWA) does not apply to the public sector except as expressly provided, and that, after the bill's effective date, the IWA applies to the public sector under specified conditions.

**Hearing Date:**

**Staff:** Chris Cordes (786-7103).

**Background:**

Under the Washington Industrial Welfare Act (IWA), it is unlawful for an employer to employ workers under conditions of labor that are detrimental to their health. The Department of Labor and Industries (Department) is authorized to conduct investigations into wages, hours, and conditions of employment and to adopt rules establishing employment standards. Employers may apply for a variance from these rules for good cause.

The Department has adopted various employment standards, including rules dealing with the employment of minors, payment of wages, employment records, and rest and meal periods. The rules governing rest and meal periods require a paid rest period of at least 10 minutes for each four hours of working time. The rules also specify that an employee may not be required to work more than three hours without a rest period. Scheduled rest periods are not required, however, if the nature of the work allows employees to take intermittent rest periods equivalent to the rules' requirements. Employees must be allowed a meal period of at least 30 minutes.

Another provision of the IWA states that the law does not interfere with or diminish the right of employees to bargain collectively with their employers concerning wages or conditions of employment. This provision was at issue in a 2002 case brought by employees covered by a

collective bargaining agreement that contained provisions inconsistent with the Department's rule. The Washington Supreme Court concluded that the IWA did not allow a collective bargaining agreement to decrease the frequency of workers' rest periods, especially without compliance with the statutory process for seeking a variance.

The IWA applies generally to "employers" who are persons, firms, corporations, partnerships, business trusts, legal representatives, or other business entities that engage in any business, industry, profession, or activity in Washington. For the purposes of provisions addressing family care and the use of sick leave, required wearing apparel, and parental leave, the IWA expressly states that it applies to the state and political subdivisions of the state. Provisions prohibiting employment discrimination against volunteer fire fighters apply to any person who employs 20 or more full-time employees.

These coverage provisions are at issue in a case for which an appeal to the Washington Court of Appeals has been requested. In this case, state employees worked "straight eight" work shifts. The employees allege that under this shift they work through rest and meal periods without additional compensation, in violation of rules adopted under the IWA. The state argues that the rest and meal period rules under the IWA do not apply to the public sector. The superior court agreed that the IWA applies to the state and review of this question is pending before the appellate court.

#### **Summary of Bill:**

Legislative findings are made that the 1988 amendment of IWA's definition of employer was to ensure that the family care provisions applied to the public sector and that this amendment may be interpreted as creating an ambiguity about the application of other provisions of the IWA to the public sector. The bill's declared purpose is to make retroactive and curative amendments to clarify the intent and resolve any ambiguity.

Prior to the bill's effective date, the definition of "employer" under the IWA does not include the public sector, except as expressly provided with respect to provisions addressing family care/sick leave and wearing apparel.

After the bill's effective date, the definition of "employer" includes the public sector as follows:

- The IWA applies to public employers only to the extent that the IWA and rules adopted under the IWA do not conflict with a statute, ordinance, or rule adopted under the authority of the appropriate legislative body.
- Public employees may enter into collective bargaining contracts or other employment agreements that specify wages, hours, and working conditions that vary from or supercede the standards of the IWA and rules adopted under the IWA.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** The bill contains an emergency clause and takes effect immediately.