
SENATE BILL 5394

State of Washington

58th Legislature

2003 Regular Session

By Senators Stevens, Benton, Johnson, Deccio, Rossi, Sheahan, Schmidt and Esser

Read first time 01/23/2003. Referred to Committee on Commerce & Trade.

1 AN ACT Relating to tipped employees; amending RCW 49.46.010,
2 49.46.010, and 49.46.020; providing an effective date; and providing an
3 expiration date.

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

5 **Sec. 1.** RCW 49.46.010 and 1997 c 203 s 3 are each amended to read
6 as follows:

7 As used in this chapter:

8 (1) "Director" means the director of labor and industries;

9 (2) "Wage" means compensation due to an employee by reason of
10 employment, payable in legal tender of the United States or checks on
11 banks convertible into cash on demand at full face value, subject to
12 such deductions, charges, or allowances as may be permitted by rules of
13 the director;

14 (3) "Employ" includes to permit to work;

15 (4) "Employer" includes any individual, partnership, association,
16 corporation, business trust, or any person or group of persons acting
17 directly or indirectly in the interest of an employer in relation to an
18 employee;

1 (5) "Employee" includes any individual employed by an employer but
2 shall not include:

3 (a) Any individual (i) employed as a hand harvest laborer and paid
4 on a piece rate basis in an operation which has been, and is generally
5 and customarily recognized as having been, paid on a piece rate basis
6 in the region of employment; (ii) who commutes daily from his or her
7 permanent residence to the farm on which he or she is employed; and
8 (iii) who has been employed in agriculture less than thirteen weeks
9 during the preceding calendar year;

10 (b) Any individual employed in casual labor in or about a private
11 home, unless performed in the course of the employer's trade, business,
12 or profession;

13 (c) Any individual employed in a bona fide executive,
14 administrative, or professional capacity or in the capacity of outside
15 salesman as those terms are defined and delimited by rules of the
16 director. However, those terms shall be defined and delimited by the
17 Washington personnel resources board pursuant to chapter 41.06 RCW;

18 (d) Any individual engaged in the activities of an educational,
19 charitable, religious, state or local governmental body or agency, or
20 nonprofit organization where the employer-employee relationship does
21 not in fact exist or where the services are rendered to such
22 organizations gratuitously. If the individual receives reimbursement
23 in lieu of compensation for normally incurred out-of-pocket expenses or
24 receives a nominal amount of compensation per unit of voluntary service
25 rendered, an employer-employee relationship is deemed not to exist for
26 the purpose of this section or for purposes of membership or
27 qualification in any state, local government or publicly supported
28 retirement system other than that provided under chapter 41.24 RCW;

29 (e) Any individual employed full time by any state or local
30 governmental body or agency who provides voluntary services but only
31 with regard to the provision of the voluntary services. The voluntary
32 services and any compensation therefor shall not affect or add to
33 qualification, entitlement or benefit rights under any state, local
34 government, or publicly supported retirement system other than that
35 provided under chapter 41.24 RCW;

36 (f) Any newspaper vendor or carrier;

37 (g) Any carrier subject to regulation by Part 1 of the Interstate
38 Commerce Act;

1 (h) Any individual engaged in forest protection and fire prevention
2 activities;

3 (i) Any individual employed by any charitable institution charged
4 with child care responsibilities engaged primarily in the development
5 of character or citizenship or promoting health or physical fitness or
6 providing or sponsoring recreational opportunities or facilities for
7 young people or members of the armed forces of the United States;

8 (j) Any individual whose duties require that he or she reside or
9 sleep at the place of his or her employment or who otherwise spends a
10 substantial portion of his or her work time subject to call, and not
11 engaged in the performance of active duties;

12 (k) Any resident, inmate, or patient of a state, county, or
13 municipal correctional, detention, treatment or rehabilitative
14 institution;

15 (l) Any individual who holds a public elective or appointive office
16 of the state, any county, city, town, municipal corporation or quasi
17 municipal corporation, political subdivision, or any instrumentality
18 thereof, or any employee of the state legislature;

19 (m) All vessel operating crews of the Washington state ferries
20 operated by the department of transportation;

21 (n) Any individual employed as a seaman on a vessel other than an
22 American vessel;

23 (6) "Occupation" means any occupation, service, trade, business,
24 industry, or branch or group of industries or employment or class of
25 employment in which employees are gainfully employed;

26 (7) "Retail or service establishment" means an establishment
27 seventy-five percent of whose annual dollar volume of sales of goods or
28 services, or both, is not for resale and is recognized as retail sales
29 or services in the particular industry;

30 (8) "Tipped employee" means an employee who customarily and
31 regularly receives more than fifty dollars per month in tips.

32 **Sec. 2.** RCW 49.46.010 and 2002 c 354 s 231 are each amended to
33 read as follows:

34 As used in this chapter:

35 (1) "Director" means the director of labor and industries;

36 (2) "Wage" means compensation due to an employee by reason of
37 employment, payable in legal tender of the United States or checks on

1 banks convertible into cash on demand at full face value, subject to
2 such deductions, charges, or allowances as may be permitted by rules of
3 the director;

4 (3) "Employ" includes to permit to work;

5 (4) "Employer" includes any individual, partnership, association,
6 corporation, business trust, or any person or group of persons acting
7 directly or indirectly in the interest of an employer in relation to an
8 employee;

9 (5) "Employee" includes any individual employed by an employer but
10 shall not include:

11 (a) Any individual (i) employed as a hand harvest laborer and paid
12 on a piece rate basis in an operation which has been, and is generally
13 and customarily recognized as having been, paid on a piece rate basis
14 in the region of employment; (ii) who commutes daily from his or her
15 permanent residence to the farm on which he or she is employed; and
16 (iii) who has been employed in agriculture less than thirteen weeks
17 during the preceding calendar year;

18 (b) Any individual employed in casual labor in or about a private
19 home, unless performed in the course of the employer's trade, business,
20 or profession;

21 (c) Any individual employed in a bona fide executive,
22 administrative, or professional capacity or in the capacity of outside
23 salesman as those terms are defined and delimited by rules of the
24 director. However, those terms shall be defined and delimited by the
25 director of personnel pursuant to chapter 41.06 RCW for employees
26 employed under the director of personnel's jurisdiction;

27 (d) Any individual engaged in the activities of an educational,
28 charitable, religious, state or local governmental body or agency, or
29 nonprofit organization where the employer-employee relationship does
30 not in fact exist or where the services are rendered to such
31 organizations gratuitously. If the individual receives reimbursement
32 in lieu of compensation for normally incurred out-of-pocket expenses or
33 receives a nominal amount of compensation per unit of voluntary service
34 rendered, an employer-employee relationship is deemed not to exist for
35 the purpose of this section or for purposes of membership or
36 qualification in any state, local government or publicly supported
37 retirement system other than that provided under chapter 41.24 RCW;

1 (e) Any individual employed full time by any state or local
2 governmental body or agency who provides voluntary services but only
3 with regard to the provision of the voluntary services. The voluntary
4 services and any compensation therefor shall not affect or add to
5 qualification, entitlement or benefit rights under any state, local
6 government, or publicly supported retirement system other than that
7 provided under chapter 41.24 RCW;

8 (f) Any newspaper vendor or carrier;

9 (g) Any carrier subject to regulation by Part 1 of the Interstate
10 Commerce Act;

11 (h) Any individual engaged in forest protection and fire prevention
12 activities;

13 (i) Any individual employed by any charitable institution charged
14 with child care responsibilities engaged primarily in the development
15 of character or citizenship or promoting health or physical fitness or
16 providing or sponsoring recreational opportunities or facilities for
17 young people or members of the armed forces of the United States;

18 (j) Any individual whose duties require that he or she reside or
19 sleep at the place of his or her employment or who otherwise spends a
20 substantial portion of his or her work time subject to call, and not
21 engaged in the performance of active duties;

22 (k) Any resident, inmate, or patient of a state, county, or
23 municipal correctional, detention, treatment or rehabilitative
24 institution;

25 (l) Any individual who holds a public elective or appointive office
26 of the state, any county, city, town, municipal corporation or quasi
27 municipal corporation, political subdivision, or any instrumentality
28 thereof, or any employee of the state legislature;

29 (m) All vessel operating crews of the Washington state ferries
30 operated by the department of transportation;

31 (n) Any individual employed as a seaman on a vessel other than an
32 American vessel;

33 (6) "Occupation" means any occupation, service, trade, business,
34 industry, or branch or group of industries or employment or class of
35 employment in which employees are gainfully employed;

36 (7) "Retail or service establishment" means an establishment
37 seventy-five percent of whose annual dollar volume of sales of goods or

1 services, or both, is not for resale and is recognized as retail sales
2 or services in the particular industry;

3 (8) "Tipped employee" means an employee who customarily and
4 regularly receives more than fifty dollars per month in tips.

5 **Sec. 3.** RCW 49.46.020 and 1999 c 1 s 1 are each amended to read as
6 follows:

7 (1) Until January 1, 1999, every employer shall pay to each of his
8 or her employees who has reached the age of eighteen years wages at a
9 rate of not less than four dollars and ninety cents per hour.

10 (2) Beginning January 1, 1999, and until January 1, 2000, every
11 employer shall pay to each of his or her employees who has reached the
12 age of eighteen years wages at a rate of not less than five dollars and
13 seventy cents per hour.

14 (3) Beginning January 1, 2000, and until January 1, 2001, every
15 employer shall pay to each of his or her employees who has reached the
16 age of eighteen years wages at a rate of not less than six dollars and
17 fifty cents per hour.

18 (4)(a) Beginning on January 1, 2001, and each following January 1st
19 as set forth under (b) of this subsection, every employer shall pay to
20 each of his or her employees who has reached the age of eighteen years
21 wages at a rate of not less than the amount established under (b) of
22 this subsection.

23 (b) On September 30, 2000, and on each following September 30th,
24 the department of labor and industries shall calculate an adjusted
25 minimum wage rate to maintain employee purchasing power by increasing
26 the current year's minimum wage rate by the rate of inflation. The
27 adjusted minimum wage rate shall be calculated to the nearest cent
28 using the consumer price index for urban wage earners and clerical
29 workers, CPI-W, or a successor index, for the twelve months prior to
30 each September 1st as calculated by the United States department of
31 labor. Each adjusted minimum wage rate calculated under this
32 subsection (4)(b) takes effect on the following January 1st.

33 (c) Every employer shall pay to each of his or her tipped employees
34 who has reached the age of eighteen years wages at a rate of not less
35 than:

36 (i) The rate established under (b) of this subsection; or

1 (ii) Six dollars and ninety cents per hour so long as the employee
2 receives an additional amount due to tips. The additional amount
3 received due to tips must be at least equal to the difference between
4 the wage established under (b) of this subsection and six dollars and
5 ninety cents per hour.

6 (5) The director shall by regulation establish the minimum wage for
7 employees under the age of eighteen years.

8 NEW SECTION. Sec. 4. Section 1 of this act expires July 1, 2004.

9 NEW SECTION. Sec. 5. Section 2 of this act takes effect July 1,
10 2004.

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