

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 6054

58th Legislature
2003 Regular Session

Passed by the Senate April 25, 2003
YEAS 48 NAYS 0

President of the Senate

Passed by the House April 24, 2003
YEAS 96 NAYS 0

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Milton H. Doumit, Jr.,
Secretary of the Senate of the
State of Washington, do hereby
certify that the attached is
SUBSTITUTE SENATE BILL 6054 as
passed by the Senate and the House
of Representatives on the dates
hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 6054

AS AMENDED BY THE HOUSE

Passed Legislature - 2003 Regular Session

State of Washington 58th Legislature 2003 Regular Session

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

READ FIRST TIME 04/02/03.

1 AN ACT Relating to clarifying the application of the industrial
2 welfare act to public employers; amending RCW 49.12.005, 49.12.187,
3 49.12.360, and 49.12.460; creating a new section; and declaring an
4 emergency.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that the enactment of
7 chapter 236, Laws of 1988 amended the definition of employer under the
8 industrial welfare act, chapter 49.12 RCW, to ensure that the family
9 care provisions of that act applied to the state and political
10 subdivisions. The legislature further finds that this amendment of the
11 definition of employer may be interpreted as creating an ambiguity as
12 to whether the other provisions of chapter 49.12 RCW have applied to
13 the state and its political subdivisions. The purpose of this act is
14 to make retroactive, remedial, curative, and technical amendments to
15 clarify the intent of chapter 49.12 RCW and chapter 236, Laws of 1988
16 and resolve any ambiguity. It is the intent of the legislature to
17 establish that, prior to the effective date of this act, chapter 49.12
18 RCW and the rules adopted thereunder did not apply to the state or its

1 agencies and political subdivisions except as expressly provided for in
2 RCW 49.12.265 through 49.12.295, 49.12.350 through 49.12.370,
3 49.12.450, and 49.12.460.

4 **Sec. 2.** RCW 49.12.005 and 1998 c 334 s 1 are each amended to read
5 as follows:

6 For the purposes of this chapter:

7 (1) (~~The term~~) "Department" means the department of labor and
8 industries.

9 (2) (~~The term~~) "Director" means the director of the department of
10 labor and industries, or the director's designated representative.

11 (3) (~~The term~~) (a) Before the effective date of this act,
12 "employer" means any person, firm, corporation, partnership, business
13 trust, legal representative, or other business entity which engages in
14 any business, industry, profession, or activity in this state and
15 employs one or more employees (~~and~~) but does not include the state,
16 any state institution, any state agency, political subdivision of the
17 state, or any municipal corporation or quasi-municipal corporation.
18 However, for the purposes of RCW (~~49.12.270~~) 49.12.265 through
19 49.12.295 (~~and~~), 49.12.350 through 49.12.370, 49.12.450, and
20 49.12.460 only, "employer" also includes the state, any state
21 institution, any state agency, political subdivisions of the state, and
22 any municipal corporation or quasi-municipal corporation.

23 (b) On and after the effective date of this act, "employer" means
24 any person, firm, corporation, partnership, business trust, legal
25 representative, or other business entity which engages in any business,
26 industry, profession, or activity in this state and employs one or more
27 employees, and includes the state, any state institution, state agency,
28 political subdivisions of the state, and any municipal corporation or
29 quasi-municipal corporation. However, this chapter and the rules
30 adopted thereunder apply to these public employers only to the extent
31 that this chapter and the rules adopted thereunder do not conflict
32 with: (i) Any state statute or rule; and (ii) respect to political
33 subdivisions of the state and any municipal or quasi-municipal
34 corporation, any local resolution, ordinance, or rule adopted under the
35 authority of the local legislative authority before April 1, 2003.

36 (4) (~~The term~~) "Employee" means an employee who is employed in

1 the business of the employee's employer whether by way of manual labor
2 or otherwise.

3 (5) (~~The term~~) "Conditions of labor" (~~shall~~) means and includes
4 the conditions of rest and meal periods for employees including
5 provisions for personal privacy, practices, methods and means by or
6 through which labor or services are performed by employees and includes
7 bona fide physical qualifications in employment, but shall not include
8 conditions of labor otherwise governed by statutes and rules and
9 regulations relating to industrial safety and health administered by
10 the department.

11 (6) For the purpose of chapter 16, Laws of 1973 2nd ex. sess. a
12 minor is defined to be a person of either sex under the age of eighteen
13 years.

14 **Sec. 3.** RCW 49.12.187 and 1973 2nd ex.s. c 16 s 18 are each
15 amended to read as follows:

16 This chapter shall not be construed to interfere with, impede, or
17 in any way diminish the right of employees to bargain collectively with
18 their employers through representatives of their own choosing
19 concerning wages or standards or conditions of employment.

20 Employees of public employers may enter into collective bargaining
21 contracts, labor/management agreements, or other mutually agreed to
22 employment agreements that specifically vary from or supersede, in part
23 or in total, rules adopted under this chapter regarding appropriate
24 rest and meal periods.

25 **Sec. 4.** RCW 49.12.360 and 1989 1st ex.s. c 11 s 23 are each
26 amended to read as follows:

27 (1) An employer must grant an adoptive parent or a stepparent, at
28 the time of birth or initial placement for adoption of a child under
29 the age of six, the same leave under the same terms as the employer
30 grants to biological parents. As a term of leave, an employer may
31 restrict leave to those living with the child at the time of birth or
32 initial placement.

33 (2) An employer must grant the same leave upon the same terms for
34 men as it does for women.

35 (3) The department shall administer and investigate violations of

1 this section. Notices of infraction, penalties, and appeals shall be
2 administered in the same manner as violations under RCW 49.12.285.

3 ~~(4) ((For purposes of this section, "employer" includes all private
4 and public employers listed in RCW 49.12.005(3)).~~

5 ~~(5))~~ For purposes of this section, "leave" means any leave from
6 employment granted to care for a newborn or a newly adopted child at
7 the time of placement for adoption.

8 ~~((6))~~ (5) Nothing in this section requires an employer to:

9 (a) Grant leave equivalent to maternity disability leave; or

10 (b) Establish a leave policy to care for a newborn or newly placed
11 child if no such leave policy is in place for any of its employees.

12 **Sec. 5.** RCW 49.12.460 and 2001 c 173 s 1 are each amended to read
13 as follows:

14 (1) An employer may not discharge from employment or discipline a
15 volunteer fire fighter because of leave taken related to an alarm of
16 fire or an emergency call.

17 (2)(a) A volunteer fire fighter who believes he or she was
18 discharged or disciplined in violation of this section may file a
19 complaint alleging the violation with the director. The volunteer fire
20 fighter may allege a violation only by filing such a complaint within
21 ninety days of the alleged violation.

22 (b) Upon receipt of the complaint, the director must cause an
23 investigation to be made as the director deems appropriate and must
24 determine whether this section has been violated. Notice of the
25 director's determination must be sent to the complainant and the
26 employer within ninety days of receipt of the complaint.

27 (c) If the director determines that this section was violated and
28 the employer fails to reinstate the employee or withdraw the
29 disciplinary action taken against the employee, whichever is
30 applicable, within thirty days of receipt of notice of the director's
31 determination, the volunteer fire fighter may bring an action against
32 the employer alleging a violation of this section and seeking
33 reinstatement or withdrawal of the disciplinary action.

34 (d) In any action brought under this section, the superior court
35 shall have jurisdiction, for cause shown, to restrain violations under
36 this section and to order reinstatement of the employee or withdrawal
37 of the disciplinary action.

1 (3) For the purposes of this section:

2 (a) "Alarm of fire or emergency call" means responding to, working
3 at, or returning from a fire alarm or an emergency call, but not
4 participating in training or other nonemergency activities.

5 (b) "Employer" means (~~any person~~) an employer who had twenty or
6 more full-time equivalent employees in the previous year.

7 (c) "Reinstatement" means reinstatement with back pay, without loss
8 of seniority or benefits, and with removal of any related adverse
9 material from the employee's personnel file, if a file is maintained by
10 the employer.

11 (d) "Withdrawal of disciplinary action" means withdrawal of
12 disciplinary action with back pay, without loss of seniority or
13 benefits, and with removal of any related adverse material from the
14 employee's personnel file, if a file is maintained by the employer.

15 (e) "Volunteer fire fighter" means a fire fighter who:

16 (i) Is not paid;

17 (ii) Is not already at his or her place of employment when called
18 to serve as a volunteer, unless the employer agrees to provide such an
19 accommodation; and

20 (iii) Has been ordered to remain at his or her position by the
21 commanding authority at the scene of the fire.

22 (4) The legislature declares that the public policies articulated
23 in this section depend on the procedures established in this section
24 and no civil or criminal action may be maintained relying on the public
25 policies articulated in this section without complying with the
26 procedures set forth in this section, and to that end all civil actions
27 and civil causes of action for such injuries and all jurisdiction of
28 the courts of this state over such causes are hereby abolished, except
29 as provided in this section.

30 NEW SECTION. **Sec. 6.** This act is necessary for the immediate
31 preservation of the public peace, health, or safety, or support of the
32 state government and its existing public institutions, and takes effect
33 immediately.

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