

SENATE BILL REPORT

SB 6434

As Reported By Senate Committee On:
Labor, Commerce, Research & Development, January 26, 2006

Title: An act relating to compensating on-call workers for active duty hours under the state minimum wage act.

Brief Description: Compensating on-call workers for active duty hours under the state minimum wage act.

Sponsors: Senators Keiser, Kohl-Welles, Franklin and Kline.

Brief History:

Committee Activity: Labor, Commerce, Research & Development: 1/23/06, 1/26/06 [DP, DNP].

SENATE COMMITTEE ON LABOR, COMMERCE, RESEARCH & DEVELOPMENT

Majority Report: Do pass.

Signed by Senators Kohl-Welles, Chair; Franklin, Vice Chair; Brown, Keiser and Prentice.

Minority Report: Do not pass.

Signed by Senators Parlette, Ranking Minority Member; Hewitt and Honeyford.

Staff: Alison Mendiola (786-7483)

Background: Under the Washington Minimum Wage Act (MWA), a minimum hourly wage rate must be paid to employees in this state. The current minimum wage is \$7.63 per hour. The MWA excludes from the definition of "employee", and, therefore, excludes from the minimum wage requirements, any individual whose duties require that he or she reside or sleep at the place of employment or who otherwise spends a substantial portion of his or her work time subject to call, and not engaged in the performance of active duties.

This particular exemption from the definition of employee has the been the subject of recent litigation. In *Berrocal v. Fernandez*, two shepherders were required to live on-site and be subject to call twenty-four hours a day, seven days per week [155 Wn.2d 585 (2005)]. They were paid a flat rate of \$650 per month, regardless of the hours worked, in addition to being provided with room, board, health insurance, and two weeks' paid vacation per year, but they were not entitled to any regularly scheduled days off.

The shepherders believed they were not properly compensated for all their hours of employment and filed a suit against their employer for lost wages under the MWA.

The State Supreme Court reviewed this specific exemption of "employee" in great detail. Prior to the *Berrocal* decision, the exemption had been interpreted that a worker is exempt from the MWA if the worker: (1) resides or sleeps at the place of his or her employment and

is not engaged in active duties or (2) otherwise spends a substantial portion of his or her work time subject to call and is not engaged in active duties.

However, in *Berrocal*, the Court determined that the phrase "not engaged in active duties" only applied to the "subject to call" portion of the statutory exemption; therefore, if the worker is required to live on-site, the worker is exempt from the MWA. The sheepherders who lived on-site met this exemption and are not subject to the MWA.

Summary of Bill: The exemption of residential and on-call employees from the MWA is struck and the definition of "employ" is amended as follows: to engage, suffer, or permit to work. However, for any individual whose duties require that he or she spend a substantial portion of work time subject to call, including those who reside or sleep at the place of employment, "employ" refers only to time spent in the performance of active duties.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: Under the State Supreme Court *Berrocal* decision, both residential and on-call workers are exempt from minimum wages laws. This hurts more than just sheepherders, it can impact emergency workers, nurses, and many others whose work requires them to be on-call. This bill clarifies the Court's misinterpretation of the exemption and is consistent with federal law and prior State Supreme Court holdings.

Testimony Against: Having to pay workers who live on-site minimum wage on top of the housing and any other benefits that are provided to them is unreasonable and may put many farms out of business. For many types of agricultural work it is necessary for people to live on-site and be subject to-call. To subject these workers to minimum wage, it would be hard to determine exactly what counts as work and how many hours are worked.

Who Testified: PRO: Lori Isley, Columbia Legal Services; Erik Nicholson, United Farm Workers; Candace Inagi, SEIU Local 775; and Jeff Johnson, Washington State Labor Council, AFL-CIO.

CON: Jack Field, Washington Cattlemen Association; Carol Martinez, S. Martinez Livestock; and Nick Martinez, S. Martinez Livestock.