
HOUSE BILL 1795

State of Washington 59th Legislature 2005 Regular Session

By Representatives B. Sullivan, Condotta, Talcott, Shabro, Haler, Dunn, Nixon, Holmquist, Walsh, Bailey, Kristiansen, Kretz and Linville

Read first time 02/07/2005. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to employee wages and benefits; amending RCW
2 49.46.010 and 49.46.020; adding a new section to chapter 49.46 RCW;
3 providing an expiration date; and declaring an emergency.

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

5 **Sec. 1.** RCW 49.46.010 and 2002 c 354 s 231 are each amended to
6 read as follows:

7 As used in this chapter:

8 (1) "Average tipped wage rate" means the total amount received by
9 a tipped employee in tips for a calendar month divided by the total
10 number of hours worked in that month by the tipped employee.

11 (2) "Director" means the director of labor and industries;

12 ~~((+2))~~ (3) "Wage" means compensation due to an employee by reason
13 of employment, payable in legal tender of the United States or checks
14 on banks convertible into cash on demand at full face value, subject to
15 such deductions, charges, or allowances as may be permitted by rules of
16 the director;

17 ~~((+3))~~ (4) "Employ" includes to permit to work;

18 ~~((+4))~~ (5) "Employer" includes any individual, partnership,

1 association, corporation, business trust, or any person or group of
2 persons acting directly or indirectly in the interest of an employer in
3 relation to an employee;

4 ~~((+5))~~ (6) "Employee" includes any individual employed by an
5 employer but shall not include:

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

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

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

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

33 (e) Any individual employed full time by any state or local
34 governmental body or agency who provides voluntary services but only
35 with regard to the provision of the voluntary services. The voluntary
36 services and any compensation therefor shall not affect or add to
37 qualification, entitlement or benefit rights under any state, local

1 government, or publicly supported retirement system other than that
2 provided under chapter 41.24 RCW;

3 (f) Any newspaper vendor or carrier;

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

6 (h) Any individual engaged in forest protection and fire prevention
7 activities;

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

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

17 (k) Any resident, inmate, or patient of a state, county, or
18 municipal correctional, detention, treatment or rehabilitative
19 institution;

20 (l) Any individual who holds a public elective or appointive office
21 of the state, any county, city, town, municipal corporation or quasi
22 municipal corporation, political subdivision, or any instrumentality
23 thereof, or any employee of the state legislature;

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

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

28 (~~(6)~~) (7) "Occupation" means any occupation, service, trade,
29 business, industry, or branch or group of industries or employment or
30 class of employment in which employees are gainfully employed;

31 (~~(7)~~) (8) "Retail or service establishment" means an
32 establishment seventy-five percent of whose annual dollar volume of
33 sales of goods or services, or both, is not for resale and is
34 recognized as retail sales or services in the particular industry;

35 (9) "Tipped employee" means an employee who regularly and
36 customarily receives gratuities directly from the customer in
37 recognition of the service performed and who is employed by an employer

1 with a standard industry code of 58, 70, or 79, or a North American
2 industry code of 713, 721, or 722.

3 **Sec. 2.** RCW 49.46.020 and 1999 c 1 s 1 are each amended to read as
4 follows:

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

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

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

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

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

31 (c)(i) On September 30, 2005, and on each following September 30th,
32 the department of labor and industries shall establish an adjusted
33 minimum tipped wage rate for tipped employees that is equal to fifty
34 percent of the adjusted minimum wage rate calculated under (b) of this
35 subsection. Each adjusted minimum tipped wage rate established under
36 this subsection (4)(c)(i) takes effect on the following January 1st.

1 (ii) On June 1, 2005, the department of labor and industries shall
2 establish an adjusted minimum tipped wage rate for tipped employees
3 that is equal to fifty percent of the adjusted minimum wage rate
4 calculated under (b) of this subsection. The adjusted minimum tipped
5 wage rate calculated under this subsection (4)(c)(ii) takes effect July
6 1, 2005. This subsection (4)(c)(ii) expires January 1, 2006.

7 (iii) Employers that employ tipped employees may elect to pay the
8 adjusted minimum tipped wage rate for tipped employees under this
9 subsection (4)(c) instead of the adjusted minimum wage rate under (b)
10 of this subsection. If an employer elects to use the adjusted minimum
11 tipped wage rate under this subsection (4)(c), the provisions of
12 section 3 of this act apply.

13 (5) The director shall by (~~regulation~~) rule establish the minimum
14 wage for employees under the age of eighteen years.

15 NEW SECTION. Sec. 3. A new section is added to chapter 49.46 RCW
16 to read as follows:

17 (1) Employers shall determine the average tipped wage rate for each
18 tipped employee for the previous calendar month. If the average tipped
19 wage rate does not equal or exceed the adjusted minimum wage rate under
20 RCW 49.46.020(4)(b) for any tipped employee, the employer shall pay the
21 tipped employee an amount equal to the number of hours worked for the
22 previous calendar month multiplied by the adjusted minimum wage rate
23 under RCW 49.46.020(4)(b) less the average tipped wage rate for the
24 tipped employee for the previous calendar month. Employers shall pay
25 the tipped employee this amount at any time during the month subsequent
26 to the month used for the calculation under this subsection.

27 (2) Employers shall contribute monthly, an amount equal to fifty
28 percent of the adjusted minimum tipped wage rate under RCW
29 49.46.020(4)(c) multiplied by the total number of hours worked during
30 the previous calendar month by all tipped employees, for the provision
31 of one or more of the following employee benefits:

32 (a) Health care benefits for all employees;

33 (b) Wages in excess of the adjusted minimum wage rate for nontipped
34 employees; or

35 (c) Employee meals, paid vacation leave, paid sick leave, and any
36 other nonwage benefits deemed appropriate as provided in rule by the
37 director.

1 (3) Annually, any employer subject to this section shall submit
2 with the department of labor and industries: (a) A report certifying
3 that the employer has complied with the requirements of this section;
4 and (b) a twenty-five dollar fee. The report shall include information
5 that allows the department to verify compliance with this section. The
6 report shall be developed by the department in conjunction with
7 employers subject to this section. The director shall establish by
8 rule any other requirements necessary for the proper administration of
9 this section.

10 (4) This section only applies to employers paying tipped employees
11 the wage rate established in RCW 49.46.020(4)(c).

12 NEW SECTION. **Sec. 4.** This act is necessary for the immediate
13 preservation of the public peace, health, or safety, or support of the
14 state government and its existing public institutions, and takes effect
15 immediately.

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