
HOUSE BILL 2838

State of Washington 59th Legislature 2006 Regular Session

By Representatives B. Sullivan, Condotta, Ericksen, Talcott, Kristiansen, Holmquist, Ahern, Schindler, Alexander, Bailey and McCune

Read first time 01/13/2006. 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 creating a new section; 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) Beginning July 1, 2006, every employer shall pay to each of his
32 or her tipped employees who have reached the age of eighteen years,
33 wages at a rate of seven dollars and sixty-three cents per hour.

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

1 NEW SECTION. **Sec. 3.** A new section is added to chapter 49.46 RCW
2 to read as follows:

3 Employers shall determine the average tipped wage rate for each
4 tipped employee for the previous calendar month. If the average tipped
5 wage rate does not equal or exceed the minimum wage rate under RCW
6 49.46.020(4)(a) for any tipped employee, the employer shall pay the
7 tipped employee an amount equal to the number of hours worked for the
8 previous calendar month multiplied by the difference of the minimum
9 wage rate under RCW 49.46.020(4)(a) and the minimum wage rate under RCW
10 49.46.020(4)(c). Employers shall pay the tipped employee this amount
11 at any time during the month subsequent to the month used for the
12 calculation under this subsection.

13 NEW SECTION. **Sec. 4.** By July 1, 2016, the department of labor and
14 industries shall convene a study group to compile a report assessing
15 the effectiveness of this act in enabling restaurateurs to provide
16 adequate wages and benefits for all employees working in restaurants.
17 The study group shall consist of a member from each of the two largest
18 caucuses in both the house of representatives and senate, the director
19 of the department of labor and industries or the director's designee,
20 one representative of the restaurant industry appointed by the
21 governor, and one member of the labor industry appointed by the
22 governor. The department of labor and industries and senate and house
23 of representatives committee staff shall provide research and other
24 services necessary to prepare the report. The study group shall
25 present the report to the governor and the appropriate committees of
26 the legislature by December 1, 2016, and the report shall include
27 recommendations.

28 NEW SECTION. **Sec. 5.** This act is necessary for the immediate
29 preservation of the public peace, health, or safety, or support of the
30 state government and its existing public institutions, and takes effect
31 immediately.

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