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SENATE BILL 5774

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State of Washington

59th Legislature

2005 Regular Session

By Senators Poulsen and Parlette

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

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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