

SENATE BILL REPORT

SB 5463

As of February 20, 2009

Title: An act relating to minimum wage and overtime compensation complaints.

Brief Description: Creating a good faith defense for certain minimum wage and overtime compensation complaints.

Sponsors: Senators Holmquist, Hewitt, King, Honeyford, Pflug, Roach, Delvin, Stevens, Schoesler and Swecker.

Brief History:

Committee Activity: Labor, Commerce & Consumer Protection: 2/19/09.

SENATE COMMITTEE ON LABOR, COMMERCE & CONSUMER PROTECTION

Staff: Kathleen Buchli (786-7488)

Background: Washington law establishes a state minimum wage, overtime compensation, and various other minimum wage standards. These requirements are enforced by the Department of Labor and Industries (Department).

Summary of Bill: An employer is not subject to liability or penalty for failing to pay minimum wages or overtime compensation if the employer establishes that he or she acted in good faith and conformity with and reliance on a rule related to any wage payment requirement; a written order, ruling, approval, opinion, advice, determination, or interpretation of the Director of the Department; or an interpretive or administrative policy issued by the Department.

This defense, if established, bars an action or proceeding even if after the complained of act or omission, the order, ruling, approval, opinion, advice, determination, or interpretation, or interpretive or administrative policy of the Department that the employer relied upon, is modified or rescinded or is determined by a judicial authority to be invalid.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

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

Staff Summary of Public Testimony: PRO: This is a step in the right direction. It is common sense that an employer will not be penalized for following the directives of the state. This is brought forward from the Brinks situation that was discussed last year. This is a modest proposition that if the Department puts forth a policy explaining the gaps between federal and state law, employers should be able to rely on it in court. This is borrowed almost exactly from existing law dealing with the Wage Payment Act. We would like to be able to rely on the rules of the Department.

CON: Allowing employers to avoid paying wages that are owed undermines the purpose of the Minimum Wage Act. This is broader than the Brinks bill and allows them an out anytime they rely on a rule. We are not talking about penalties or damages, we are talking about wages. This shifts the costs of Department errors to the workers. We urge you to uphold the standards of the Minimum Wage Act by rejecting this bill. It would deny workers minimum wage and overtime pay for work they have performed. Employers are already protected when they rely on a rule; good faith reliance on advice will get you out of a penalty right now.

Persons Testifying: PRO: Senator Holmquist, prime sponsor; Kris Tefft, Association of Washington Business; Larry Stevens, Mechanical Contractors Association, National Electrical Contractors Association.

CON: Rebecca Johnson, Washington State Labor Council; David Mark, citizen.