
HOUSE BILL 1351

State of Washington 61st Legislature 2009 Regular Session

By Representatives Wallace, Moeller, Wood, Ormsby, and Kenney

Read first time 01/19/09. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to industrial insurance coverage for the owners of
2 drywall installation or finishing businesses; amending RCW 51.12.020
3 and 51.08.070; adding a new section to chapter 51.12 RCW; adding a new
4 section to chapter 51.04 RCW; and creating a new section.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that there is
7 continued evidence of underreporting and nonpayment of workers'
8 compensation premiums by employers in the drywall installation and
9 finishing industry. This abuse is created when employers improperly
10 claim owner exemptions for individuals who are really workers and who
11 later claim and receive benefits provided for in Title 51 RCW.
12 Untangling this web of deceit is complicated and costly to the system
13 and often only comes to light when a claim for benefits is made. To
14 end this cycle of abuse the legislature therefore declares that all
15 owners of drywall installation and finishing businesses are subject to
16 mandatory coverage under Title 51 RCW.

17 NEW SECTION. **Sec. 2.** A new section is added to chapter 51.12 RCW
18 to read as follows:

1 (1) All owners of businesses engaged in the installation or
2 finishing of drywall are within the mandatory coverage of this title.

3 (2) In consultation with the advisory committee created under
4 section 5 of this act, the department shall adopt rules to implement
5 this section. Rules shall be designed to be the least burdensome to
6 employers and to encourage voluntary compliance.

7 **Sec. 3.** RCW 51.12.020 and 2008 c 217 s 98 are each amended to read
8 as follows:

9 The following are the only employments which shall not be included
10 within the mandatory coverage of this title:

11 (1) Any person employed as a domestic servant in a private home by
12 an employer who has less than two employees regularly employed forty or
13 more hours a week in such employment.

14 (2) Any person employed to do gardening, maintenance, or repair, in
15 or about the private home of the employer. For the purposes of this
16 subsection, "maintenance" means the work of keeping in proper
17 condition, "repair" means to restore to sound condition after damage,
18 and "private home" means a person's place of residence.

19 (3) A person whose employment is not in the course of the trade,
20 business, or profession of his or her employer and is not in or about
21 the private home of the employer.

22 (4) Any person performing services in return for aid or sustenance
23 only, received from any religious or charitable organization.

24 (5) Sole proprietors or partners, except as provided in section 2
25 of this act.

26 (6) Any child under eighteen years of age employed by his or her
27 parent or parents in agricultural activities on the family farm.

28 (7) Jockeys while participating in or preparing horses for race
29 meets licensed by the Washington horse racing commission pursuant to
30 chapter 67.16 RCW.

31 (8)(a) Except as otherwise provided in (b) of this subsection and
32 section 2 of this act, any bona fide officer of a corporation
33 voluntarily elected or voluntarily appointed in accordance with the
34 articles of incorporation or bylaws of the corporation, who at all
35 times during the period involved is also a bona fide director, and who
36 is also a shareholder of the corporation. Only such officers who

1 exercise substantial control in the daily management of the corporation
2 and whose primary responsibilities do not include the performance of
3 manual labor are included within this subsection.

4 (b) Alternatively and except as provided in section 2 of this act,
5 a corporation that is not a "public company" as defined in RCW
6 23B.01.400(24) may exempt eight or fewer bona fide officers, who are
7 voluntarily elected or voluntarily appointed in accordance with the
8 articles of incorporation or bylaws of the corporation and who exercise
9 substantial control in the daily management of the corporation, from
10 coverage under this title without regard to the officers' performance
11 of manual labor if the exempted officer is a shareholder of the
12 corporation, or may exempt any number of officers if all the exempted
13 officers are related by blood within the third degree or marriage. If
14 a corporation that is not a "public company" elects to be covered under
15 subsection (8)(a) of this section, the corporation's election must be
16 made on a form prescribed by the department and under such reasonable
17 rules as the department may adopt.

18 (c) Determinations respecting the status of persons performing
19 services for a corporation shall be made, in part, by reference to
20 Title 23B RCW and to compliance by the corporation with its own
21 articles of incorporation and bylaws. For the purpose of determining
22 coverage under this title, substance shall control over form, and
23 mandatory coverage under this title shall extend to all workers of this
24 state, regardless of honorary titles conferred upon those actually
25 serving as workers.

26 (d) A corporation may elect to cover officers who are exempted by
27 this subsection in the manner provided by RCW 51.12.110.

28 (9) Services rendered by a musician or entertainer under a contract
29 with a purchaser of the services, for a specific engagement or
30 engagements when such musician or entertainer performs no other duties
31 for the purchaser and is not regularly and continuously employed by the
32 purchaser. A purchaser does not include the leader of a group or
33 recognized entity who employs other than on a casual basis musicians or
34 entertainers.

35 (10) Services performed by a newspaper carrier selling or
36 distributing newspapers on the street or from house to house.

37 (11) Services performed by an insurance producer, as defined in RCW
38 48.17.010(5).

1 (12) Services performed by a booth renter. However, a person
2 exempted under this subsection may elect coverage under RCW 51.32.030.

3 (13) Except as provided in section 2 of this act, members of a
4 limited liability company, if either:

5 (a) Management of the company is vested in its members, and the
6 members for whom exemption is sought would qualify for exemption under
7 subsection (5) of this section were the company a sole proprietorship
8 or partnership; or

9 (b) Management of the company is vested in one or more managers,
10 and the members for whom the exemption is sought are managers who would
11 qualify for exemption under subsection (8) of this section were the
12 company a corporation.

13 **Sec. 4.** RCW 51.08.070 and 2008 c 102 s 2 are each amended to read
14 as follows:

15 (1) "Employer" means any person, body of persons, corporate or
16 otherwise, and the legal representatives of a deceased employer, all
17 while engaged in this state in any work covered by the provisions of
18 this title, by way of trade or business, or who contracts with one or
19 more workers, the essence of which is the personal labor of such worker
20 or workers. Or as an exception to the definition of employer, persons
21 or entities are not employers when they contract or agree to remunerate
22 the services performed by an individual who meets the tests set forth
23 in subsections (1) through (6) of RCW 51.08.195 or the separate tests
24 set forth in RCW 51.08.181 for work performed that requires
25 registration under chapter 18.27 RCW or licensing under chapter 19.28
26 RCW.

27 (2) For purposes of chapter 51.44 RCW, "employer" also includes:
28 (a) Any person or body of persons, corporate or otherwise, who is
29 within the mandatory coverage of this title under section 2 of this
30 act; and (b) the legal representatives of a deceased person who is
31 within the mandatory coverage of this title under section 2 of this
32 act.

33 NEW SECTION. **Sec. 5.** A new section is added to chapter 51.04 RCW
34 to read as follows:

35 (1) The drywall oversight committee is created to advise the

1 department on the development of rules to implement section 2 of this
2 act and to otherwise advise the department on issues affecting the
3 drywall industry.

4 (2) The committee shall be composed of the following eight members
5 to be appointed by the director: Four drywall contractors, two
6 construction related trade association representatives, and two labor
7 representatives.

8 (3) Members of the committee shall serve without compensation, but
9 shall be reimbursed for travel expenses as provided in RCW 43.03.050
10 and 43.03.060.

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