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SENATE BILL 5466

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State of Washington

61st Legislature

2009 Regular Session

By Senators Holmquist, Hewitt, Schoesler, King, Pflug, Carrell, Swecker, and Honeyford

Read first time 01/22/09. Referred to Committee on Labor, Commerce & Consumer Protection.

1 AN ACT Relating to defining the term employ for minimum wage  
2 purposes; amending RCW 49.46.010; and creating a new section.

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

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

6 As used in this chapter:

7 (1) "Director" means the director of labor and industries;

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

13 (3) "Employ" includes to permit to work. However, "employ" and  
14 "work" do not mean or include the use of an employer's vehicle for  
15 travel by an employee and activities performed by an employee that are  
16 incidental to the use of such a vehicle for commuting, when the use of  
17 that vehicle for travel is within the normal commuting area for the  
18 employer's business or establishment and the use of the employer's

1 vehicle is subject to an agreement on the part of the employer and the  
2 employee or representative of the employee;

3 (4) "Employer" includes any individual, partnership, association,  
4 corporation, business trust, or any person or group of persons acting  
5 directly or indirectly in the interest of an employer in relation to an  
6 employee;

7 (5) "Employee" includes any individual employed by an employer but  
8 shall not include:

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

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

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

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

36 (e) Any individual employed full time by any state or local  
37 governmental body or agency who provides voluntary services but only  
38 with regard to the provision of the voluntary services. The voluntary

1 services and any compensation therefor shall not affect or add to  
2 qualification, entitlement or benefit rights under any state, local  
3 government, or publicly supported retirement system other than that  
4 provided under chapter 41.24 RCW;

5 (f) Any newspaper vendor or carrier;

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

8 (h) Any individual engaged in forest protection and fire prevention  
9 activities;

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

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

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

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

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

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

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

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

1        NEW SECTION.    **Sec. 2.**    This act does not alter the terms,  
2 conditions, or practices contained in any collective bargaining  
3 agreement.

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