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HOUSE BILL 2497

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State of Washington

62nd Legislature

2012 Regular Session

By Representatives Condotta, Warnick, Shea, Taylor, Fagan, Ross, and Alexander

Read first time 01/16/12. Referred to Committee on Labor & Workforce Development.

1 AN ACT Relating to the minimum hourly wage of tipped employees;  
2 amending RCW 49.46.020; and reenacting and amending RCW 49.46.010.

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

4 **Sec. 1.** RCW 49.46.020 and 1999 c 1 s 1 are each amended to read as  
5 follows:

6 ~~(1) ((Until January 1, 1999, every employer shall pay to each of~~  
7 ~~his or her employees who has reached the age of eighteen years wages at~~  
8 ~~a rate of not less than four dollars and ninety cents per hour.~~

9 ~~(2) Beginning January 1, 1999, and until January 1, 2000, every~~  
10 ~~employer shall pay to each of his or her employees who has reached the~~  
11 ~~age of eighteen years wages at a rate of not less than five dollars and~~  
12 ~~seventy cents per hour.~~

13 ~~(3))~~ Beginning January 1, 2000, and until January 1, 2001, every  
14 employer shall pay to each of his or her employees who has reached the  
15 age of eighteen years wages at a rate of not less than six dollars and  
16 fifty cents per hour.

17 ~~((4))~~ (2)(a) Except as provided in (c) of this subsection,  
18 beginning on January 1, 2001, and each following January 1st as set  
19 forth under (b) of this subsection, every employer shall pay to each of

1 his or her employees who has reached the age of eighteen years wages at  
2 a rate of not less than the amount established under (b) of this  
3 subsection.

4 (b) On September 30, 2000, and on each following September 30th,  
5 the department of labor and industries shall calculate an adjusted  
6 minimum wage rate to maintain employee purchasing power by increasing  
7 the current year's minimum wage rate by the rate of inflation. The  
8 adjusted minimum wage rate shall be calculated to the nearest cent  
9 using the consumer price index for urban wage earners and clerical  
10 workers, CPI-W, or a successor index, for the twelve months prior to  
11 each September 1st as calculated by the United States department of  
12 labor. Each adjusted minimum wage rate calculated under this  
13 subsection ~~((+4))~~ (2)(b) takes effect on the following January 1st.

14 ~~((+5))~~ (c) Every employer shall pay to each of his or her tipped  
15 employees who has reached the age of eighteen years wages at a rate of  
16 not less than:

- 17 (i) The rate established under (b) of this subsection; or  
18 (ii) Seven dollars and twenty-five cents per hour so long as the  
19 employee receives an additional amount due to tips. The additional  
20 amount received due to tips must be at least equal to the difference  
21 between the wage established under (b) of this subsection and seven  
22 dollars and twenty-five cents per hour.

23 (3) The director shall by ~~((regulation))~~ rule establish the minimum  
24 wage for employees under the age of eighteen years.

25 **Sec. 2.** RCW 49.46.010 and 2011 1st sp.s. c 43 s 462 are each  
26 reenacted and amended to read as follows:

27 As used in this chapter:

- 28 (1) "Director" means the director of labor and industries;  
29 (2) "Employ" includes to permit to work;  
30 (3) "Employee" includes any individual employed by an employer but  
31 shall not include:

32 (a) Any individual (i) employed as a hand harvest laborer and paid  
33 on a piece rate basis in an operation which has been, and is generally  
34 and customarily recognized as having been, paid on a piece rate basis  
35 in the region of employment; (ii) who commutes daily from his or her  
36 permanent residence to the farm on which he or she is employed; and

1 (iii) who has been employed in agriculture less than thirteen weeks  
2 during the preceding calendar year;

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

6 (c) Any individual employed in a bona fide executive,  
7 administrative, or professional capacity or in the capacity of outside  
8 salesperson as those terms are defined and delimited by rules of the  
9 director. However, those terms shall be defined and delimited by the  
10 human resources director pursuant to chapter 41.06 RCW for employees  
11 employed under the director of personnel's jurisdiction;

12 (d) Any individual engaged in the activities of an educational,  
13 charitable, religious, state or local governmental body or agency, or  
14 nonprofit organization where the employer-employee relationship does  
15 not in fact exist or where the services are rendered to such  
16 organizations gratuitously. If the individual receives reimbursement  
17 in lieu of compensation for normally incurred out-of-pocket expenses or  
18 receives a nominal amount of compensation per unit of voluntary service  
19 rendered, an employer-employee relationship is deemed not to exist for  
20 the purpose of this section or for purposes of membership or  
21 qualification in any state, local government, or publicly supported  
22 retirement system other than that provided under chapter 41.24 RCW;

23 (e) Any individual employed full time by any state or local  
24 governmental body or agency who provides voluntary services but only  
25 with regard to the provision of the voluntary services. The voluntary  
26 services and any compensation therefor shall not affect or add to  
27 qualification, entitlement, or benefit rights under any state, local  
28 government, or publicly supported retirement system other than that  
29 provided under chapter 41.24 RCW;

30 (f) Any newspaper vendor or carrier;

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

33 (h) Any individual engaged in forest protection and fire prevention  
34 activities;

35 (i) Any individual employed by any charitable institution charged  
36 with child care responsibilities engaged primarily in the development  
37 of character or citizenship or promoting health or physical fitness or

1 providing or sponsoring recreational opportunities or facilities for  
2 young people or members of the armed forces of the United States;

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

7 (k) Any resident, inmate, or patient of a state, county, or  
8 municipal correctional, detention, treatment or rehabilitative  
9 institution;

10 (l) Any individual who holds a public elective or appointive office  
11 of the state, any county, city, town, municipal corporation or quasi  
12 municipal corporation, political subdivision, or any instrumentality  
13 thereof, or any employee of the state legislature;

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

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

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

22 (5) "Occupation" means any occupation, service, trade, business,  
23 industry, or branch or group of industries or employment or class of  
24 employment in which employees are gainfully employed;

25 (6) "Retail or service establishment" means an establishment  
26 seventy-five percent of whose annual dollar volume of sales of goods or  
27 services, or both, is not for resale and is recognized as retail sales  
28 or services in the particular industry;

29 (7) "Tipped employee" means an employee who regularly and  
30 customarily receives tips.

31 (8) "Wage" means compensation due to an employee by reason of  
32 employment, payable in legal tender of the United States or checks on  
33 banks convertible into cash on demand at full face value, subject to  
34 such deductions, charges, or allowances as may be permitted by rules of  
35 the director.

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