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**SUBSTITUTE HOUSE BILL 2333**

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**State of Washington**

**63rd Legislature**

**2014 Regular Session**

**By** House Labor & Workforce Development (originally sponsored by Representatives Ryu, Sells, Moscoso, Seaquist, S. Hunt, Green, Stanford, Appleton, Reykdal, Fitzgibbon, Habib, Bergquist, Goodman, Farrell, Ormsby, Pollet, and Walkinshaw)

READ FIRST TIME 01/29/14.

1 AN ACT Relating to the employment antiretaliation act; amending RCW  
2 49.46.010, 49.46.100, and 39.12.010; reenacting and amending RCW  
3 49.48.082; adding new sections to chapter 49.46 RCW; adding a new  
4 section to chapter 49.12 RCW; adding new sections to chapter 49.48 RCW;  
5 adding new sections to chapter 39.12 RCW; adding new sections to  
6 chapter 49.52 RCW; creating a new section; and prescribing penalties.

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

8 NEW SECTION. **Sec. 1.** The legislature finds that many workers are  
9 unable to exercise their wage and hour rights because of fear of  
10 adverse action or actual adverse action by unscrupulous employers.  
11 Employers should not gain a competitive advantage against law abiding  
12 business by retaliating or discriminating against their employees. No  
13 employee should have to fear adverse action simply for engaging in  
14 rights the state of Washington has deemed so important that they are  
15 protected by law. It is in the public interest of the state of  
16 Washington that employees be able to report concerns to their employers  
17 without fear of retaliation or discrimination. The legislature finds  
18 that strong, clear, and effective protections for employees will help  
19 address the problems of employer retaliation.



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

6 (f) Any newspaper vendor, carrier, or delivery person selling or  
7 distributing newspapers on the street, to offices, to businesses, or  
8 from house to house and any freelance news correspondent or "stringer"  
9 who, using his or her own equipment, chooses to submit material for  
10 publication for free or a fee when such material is published;

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

13 (h) Any individual engaged in forest protection and fire prevention  
14 activities;

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

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

24 (k) Any resident, inmate, or patient of a state, county, or  
25 municipal correctional, detention, treatment or rehabilitative  
26 institution;

27 (l) Any individual who holds a public elective or appointive office  
28 of the state, any county, city, town, municipal corporation or quasi  
29 municipal corporation, political subdivision, or any instrumentality  
30 thereof, or any employee of the state legislature;

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

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

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

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

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

8 (7) "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 (8) "Adverse action" means discharging, denying a promotion,  
14 demoting, failing to rehire after a seasonal interruption of work,  
15 threatening, penalizing, retaliating, engaging in unfair immigration-  
16 related practices, filing a false report with a government agency,  
17 changing an employee's status to a nonemployee, or otherwise  
18 discriminating against an employee. "Adverse action" may involve any  
19 aspect of employment, including pay, work hours, responsibilities, or  
20 other material change in the terms and condition of employment;

21 (9) "Department" means the department of labor and industries;

22 (10) "Front pay" means the compensation the employee would earn if  
23 reinstated to his or her former position;

24 (11) "Interested party" includes: A contractor or subcontractor or  
25 an employee of a contractor or subcontractor; the director or the  
26 director's designee; an organization whose members' wages, benefits,  
27 and conditions of employment are affected by this chapter, including a  
28 labor union; or any other organization of workers that exists for the  
29 purpose, in whole or in part, of interacting with employers;

30 (12)(a) "Pattern or practice" means that, in addition to the  
31 current violation, within the previous ten years the employer was:

32 (i) Convicted of a criminal violation of a state or local law  
33 concerning retaliation;

34 (ii) Subject to a court order entering final judgment for a  
35 violation of section 3, 9, 14, or 19 of this act, and the judgment was  
36 not satisfied or current within thirty days of the later of:

37 (A) The expiration of the time for appealing the order; or

1 (B) If a timely appeal was made, the date of the final resolution  
2 of the appeal; or

3 (iii) Subject to a final and binding citation and notice of  
4 assessment from the department for a violation of section 3, 9, 14, or  
5 19 of this act, and the citation and penalty were not satisfied or  
6 current within thirty days of the date the citation became final and  
7 binding.

8 (b) For the purposes of this subsection (12), an employer includes  
9 a successor employer, as defined in RCW 49.48.082;

10 (13)(a) "Unfair immigration-related practice" includes any of the  
11 following practices:

12 (i) Requesting more or different documents than are required under  
13 8 U.S.C. Sec. 1324a(b), or a refusal to honor documents tendered  
14 pursuant to that section that on their face reasonably appear to be  
15 genuine;

16 (ii) Using the federal E-Verify system to check the employment  
17 authorization status of a person at a time or in a manner not required  
18 under 8 U.S.C. Sec. 1324a(b), or not authorized under any memorandum of  
19 understanding governing the use of the federal E-Verify system;

20 (iii) Threatening to file or the filing of a false police report;

21 (iv) Threatening to contact or contacting immigration authorities;

22 (v) Withholding or threatening to destroy documents related to a  
23 person's immigration status.

24 (b) "Unfair immigration-related practice" does not include conduct  
25 undertaken at the express and specific direction or request of the  
26 federal government.

27 NEW SECTION. Sec. 3. A new section is added to chapter 49.46 RCW  
28 to read as follows:

29 (1) An employer, any of its agents, or any person acting on behalf  
30 of the employer may not take adverse action against any individual or  
31 individuals because:

32 (a) An employee or former employee has informed any other person or  
33 made a complaint, or the employer believes an employee has informed any  
34 other person or made a complaint, including to the employer, the  
35 department, the attorney general, or any other person that the employer  
36 engaged in conduct that an employee reasonably believes violates this  
37 chapter;

1 (b) An employee or former employee demands from the employee's  
2 employer a lawful claim under this chapter;

3 (c) An employee or former employee has caused to be instituted, or  
4 is about to cause to be instituted, a proceeding under or related to  
5 this chapter;

6 (d) An employee or former employee has testified or is about to  
7 testify in a proceeding under or related to this chapter;

8 (e) An employee has refused to participate in an activity that  
9 would result in a violation of state or federal law;

10 (f) An employee or former employee has sought information about his  
11 or her rights under this chapter or informed others about their rights  
12 under this chapter;

13 (g) An employee or former employee has, or the employer believes an  
14 employee has, otherwise exercised rights protected by this chapter; or

15 (h) An employee or former employee filed a complaint with the  
16 department or brought suit in court where the employer was determined  
17 to have violated this chapter.

18 (2) If an employer takes adverse action against an employee or  
19 former employee within ninety days of an activity described in  
20 subsection (1) of this section, the employer is presumed to have acted  
21 in retaliation in violation of subsection (1) of this section.  
22 However, in the case of seasonal work that ended before the close of  
23 the ninety day period, the presumption also applies if the employer  
24 fails to rehire a former employee at the next opportunity for work in  
25 the same position. The employer may rebut the presumption with clear  
26 and convincing evidence that the adverse action was taken for a  
27 permissible purpose.

28 (3) A complaint or other communication by an employee triggers the  
29 protections of this section regardless of whether the complaint or  
30 communication is in writing or makes explicit reference to this  
31 chapter.

32 (4) A violation of this section is a gross misdemeanor.

33 NEW SECTION. **Sec. 4.** A new section is added to chapter 49.46 RCW  
34 to read as follows:

35 (1) An individual aggrieved or an interested party filing on behalf  
36 of an individual aggrieved by section 3 of this act may file a  
37 complaint with the director.

1 (2) If an individual aggrieved or an interested party filing on  
2 behalf of an individual aggrieved files a complaint with the  
3 department, the director may investigate the complaint. If, following  
4 an investigation, the director determines that an employer violated  
5 section 3 of this act, the director may order the employer to comply  
6 with any one or more of the following:

7 (a) Pay a civil penalty of not less than one thousand dollars and  
8 not more than ten thousand dollars per individual aggrieved.

9 (b)(i) Subject to (b)(ii) of this subsection, pay any aggrieved  
10 individual not less than one thousand dollars and not more than ten  
11 thousand dollars.

12 (ii) If an employee or former employee is the aggrieved individual,  
13 pay the individual the greater of:

14 (A) The amount of any civil penalty imposed under (a) of this  
15 subsection; or

16 (B) Three times the amount of any wages, salary, and employment  
17 benefits unlawfully denied or withheld, except benefits under Title 50  
18 or 51 RCW.

19 (c) If the aggrieved individual is a former employee of the  
20 violating employer, reinstate the aggrieved individual as an employee  
21 at not less than the most recent rate of pay received by the employee.  
22 The director may award front pay in lieu of reinstatement.

23 (3) An appeal from the director's determination may be taken in  
24 accordance with chapter 34.05 RCW, with the prevailing party entitled  
25 to recover reasonable costs and attorneys' fees.

26 (4) The director may not investigate any alleged violation under  
27 this section that occurred more than three years before the date that  
28 the employee filed the complaint. This period is tolled during any  
29 period of time that an employer, any of its agents, or any person  
30 acting on behalf of the employer deters an individual from filing a  
31 complaint.

32 NEW SECTION. **Sec. 5.** A new section is added to chapter 49.46 RCW  
33 to read as follows:

34 (1) An individual aggrieved by a violation of section 3 of this act  
35 may bring suit on behalf of himself or herself or on behalf of any  
36 other individuals similarly situated.

1 (2) If a court determines that an employer violated section 3 of  
2 this act, the court, unless prohibited by federal law:

3 (a)(i) Shall award statutory damages for each individual aggrieved  
4 by the violation. Subject to (a)(ii) of this subsection, statutory  
5 damages must not be less than one thousand dollars and not more ten  
6 thousand dollars per individual, unless the employer engaged in a  
7 pattern or practice of violations, in which case the statutory damages  
8 must be not less than ten thousand dollars and not more than twenty-  
9 five thousand dollars per individual;

10 (ii) If an employee or former employee is the individual subject to  
11 adverse action, the court shall award the greater of:

12 (A) The amounts specified in (a)(i) of this subsection; or

13 (B) Three times the amount of any wages, salary, and employment  
14 benefits unlawfully denied or withheld, except benefits under Title 50  
15 or 51 RCW;

16 (b) May award actual damages sustained by the individual;

17 (c) May order injunctive or other equitable relief if the aggrieved  
18 individual is an employee or former employee of the violating employer.  
19 The relief may include:

20 (i) Reinstatement of the former employee as an employee to his or  
21 her former position at not less than the most recent rate of  
22 compensation received by the employee, including the value of any  
23 benefits; or

24 (ii) Front pay in lieu of reinstatement;

25 (d)(i) For a first violation, may order the appropriate government  
26 agencies to suspend all licenses that are held by the violating party  
27 for a period of up to fourteen days. The licenses that are subject to  
28 suspension are all licenses, certifications, or registrations held by  
29 the violating party specific to the business location or locations  
30 where the adverse action occurred;

31 (ii) For a second violation, the court may order the appropriate  
32 government agencies to suspend all licenses that are held by the  
33 violating party for a period of up to thirty days. The licenses that  
34 are subject to suspension are all licenses held by the violating party  
35 specific to the business location or locations where the adverse action  
36 occurred;

37 (iii) For a third violation, the court may order the appropriate  
38 government agencies to suspend all licenses that are held by the



1 violating party for a period of up to ninety days. The licenses that  
2 are subject to suspension are all licenses held by the violating party  
3 specific to the business location or locations where the adverse action  
4 occurred.

5 (e) Shall award attorneys' fees and costs.

6 (3) A civil action under this section must be brought no later than  
7 three years after the violation occurred. This period is tolled during  
8 any period of time that an employer, any of its agents, or any person  
9 acting on behalf of the employer deters an individual from bringing an  
10 action under this section.

11 **Sec. 6.** RCW 49.46.100 and 2010 c 8 s 12044 are each amended to  
12 read as follows:

13 ~~((1))~~ Any employer who hinders or delays the director or his or  
14 her authorized representatives in the performance of his or her duties  
15 in the enforcement of this chapter, or refuses to admit the director or  
16 his or her authorized representatives to any place of employment, or  
17 fails to make, keep, and preserve any records as required under the  
18 provisions of this chapter, or falsifies any such record, or refuses to  
19 make any record accessible to the director or his or her authorized  
20 representatives upon demand, or refuses to furnish a sworn statement of  
21 such record or any other information required for the proper  
22 enforcement of this chapter to the director or his or her authorized  
23 representatives upon demand, or pays or agrees to pay wages at a rate  
24 less than the rate applicable under this chapter, or otherwise violates  
25 any provision of this chapter or of any regulation issued under this  
26 chapter shall be deemed in violation of this chapter and shall, upon  
27 conviction therefor, be guilty of a gross misdemeanor.

28 ~~((2) Any employer who discharges or in any other manner  
29 discriminates against any employee because such employee has made any  
30 complaint to his or her employer, to the director, or his or her  
31 authorized representatives that he or she has not been paid wages in  
32 accordance with the provisions of this chapter, or that the employer  
33 has violated any provision of this chapter, or because such employee  
34 has caused to be instituted or is about to cause to be instituted any  
35 proceeding under or related to this chapter, or because such employee  
36 has testified or is about to testify in any such proceeding shall be~~

1 ~~deemed in violation of this chapter and shall, upon conviction~~  
2 ~~therefor, be guilty of a gross misdemeanor.))~~

3 **INDUSTRIAL WELFARE ACT**

4 NEW SECTION. **Sec. 7.** A new section is added to chapter 49.12 RCW  
5 to read as follows:

6 (1) An employer, any of its agents, or any person acting on behalf  
7 of the employer may not take adverse action against any individual or  
8 individuals because an employee has updated or attempted to update his  
9 or her personal information, unless the change is directly related to  
10 the skill set or knowledge required for the job.

11 (2) If an employer takes adverse action against an employee or  
12 former employee within ninety days of an activity described in  
13 subsection (1) of this section, the employer is presumed to have acted  
14 in retaliation in violation of subsection (1) of this section.  
15 However, in the case of seasonal work that ended before the close of  
16 the ninety day period, the presumption also applies if the employer  
17 fails to rehire a former employee at the next opportunity for work in  
18 the same position. The employer may rebut the presumption with clear  
19 and convincing evidence that the adverse action was taken for a  
20 permissible purpose.

21 (3) For the purposes of this section, "adverse action" has the same  
22 meaning as in RCW 49.46.010.

23 (4) An interested party or individual aggrieved by this section may  
24 file a complaint under section 4 of this act.

25 (5) An individual aggrieved by a violation of this section may also  
26 bring suit on behalf of himself or herself or on behalf of any other  
27 individuals similarly situated under section 5 of this act.

28 (6) A violation of this section is a gross misdemeanor.

29 **WAGE PAYMENT ACT**

30 **Sec. 8.** RCW 49.48.082 and 2010 c 42 s 1 are each reenacted and  
31 amended to read as follows:

32 The definitions in this section apply throughout this section and  
33 RCW 49.48.083 through 49.48.086:

- 1 (1) "Citation" means a written determination by the department that  
2 a wage payment requirement has been violated.
- 3 (2) "Department" means the department of labor and industries.
- 4 (3) "Determination of compliance" means a written determination by  
5 the department that wage payment requirements have not been violated.
- 6 (4) "Director" means the director of the department of labor and  
7 industries, or the director's authorized representative.
- 8 (5) "Employee" has the meaning provided in: (a) RCW 49.46.010 for  
9 purposes of a wage payment requirement set forth in RCW 49.46.020 or  
10 49.46.130; and (b) RCW 49.12.005 for purposes of a wage payment  
11 requirement set forth in RCW 49.48.010, 49.52.050, or 49.52.060.
- 12 (6) "Employer" has the meaning provided in RCW 49.46.010 for  
13 purposes of a wage payment requirement set forth in RCW 49.46.020,  
14 49.46.130, 49.48.010, 49.52.050, or 49.52.060.
- 15 (7) "Notice of assessment" means a written notice by the department  
16 that, based on a citation, the employer shall pay the amounts assessed  
17 under RCW 49.48.083.
- 18 (8) "Repeat willful violator" means any employer that has been the  
19 subject of a final and binding citation and notice of assessment for a  
20 willful violation of a wage payment requirement within three years of  
21 the date of issue of the most recent citation and notice of assessment  
22 for a willful violation of a wage payment requirement.
- 23 (9) "Successor" means any person to whom an employer quitting,  
24 selling out, exchanging, or disposing of a business sells or otherwise  
25 conveys in bulk and not in the ordinary course of the employer's  
26 business, more than fifty percent of the property, whether real or  
27 personal, tangible or intangible, of the employer's business.
- 28 (10) "Wage" has the meaning provided in RCW 49.46.010.
- 29 (11) "Wage complaint" means a complaint from an employee to the  
30 department that asserts that an employer has violated one or more wage  
31 payment requirements and that is reduced to writing.
- 32 (12) "Wage payment requirement" means a wage payment requirement  
33 set forth in RCW 49.46.020, 49.46.130, 49.48.010, 49.52.050, or  
34 49.52.060, and any related rules adopted by the department.
- 35 (13) "Willful" means a knowing and intentional action that is  
36 neither accidental nor the result of a bona fide dispute, as evaluated  
37 under the standards applicable to wage payment violations under RCW  
38 49.52.050(2).

1       (14) "Adverse action" means discharging, denying a promotion,  
2 demoting, failing to rehire after a seasonal interruption of work,  
3 threatening, penalizing, retaliating, engaging in unfair immigration-  
4 related practices, filing a false report with a government agency,  
5 changing an employee's status to a nonemployee, or otherwise  
6 discriminating against an employee. "Adverse action" may involve any  
7 aspect of employment, including pay, work hours, responsibilities, or  
8 other material change in the terms and condition of employment.

9       (15) "Front pay" means the compensation the employee would earn if  
10 reinstated to his or her former position.

11       (16) "Interested party" includes: A contractor or subcontractor or  
12 an employee of a contractor or subcontractor; the director or the  
13 director's designee; an organization whose members' wages, benefits,  
14 and conditions of employment are affected by this chapter, including a  
15 labor union; or any other organization of workers that exists for the  
16 purpose, in whole or in part, of interacting with employers.

17       (17)(a) "Pattern or practice" means that, in addition to the  
18 current violation, within the previous ten years the employer was:

19       (i) Convicted of a criminal violation of a state or local law  
20 concerning retaliation;

21       (ii) Subject to a court order entering final judgment for a  
22 violation of section 3, 9, 14, or 19 of this act, and the judgment was  
23 not satisfied or current within thirty days of the later of:

24       (A) The expiration of the time for appealing the order; or

25       (B) If a timely appeal was made, the date of the final resolution  
26 of the appeal; or

27       (iii) Subject to a final and binding citation and notice of  
28 assessment from the department for a violation of section 3, 14, or 19  
29 of this act, and the citation and penalty were not satisfied or current  
30 within thirty days of the date the citation became final and binding.

31       (b) For the purposes of this subsection (17), an employer includes  
32 a successor employer, as defined in RCW 49.48.082.

33       (18)(a) "Unfair immigration-related practice" includes any of the  
34 following practices:

35       (i) Requesting more or different documents than are required under  
36 8 U.S.C. Sec. 1324a(b), or a refusal to honor documents tendered  
37 pursuant to that section that on their face reasonably appear to be  
38 genuine;

1        (ii) Using the federal E-Verify system to check the employment  
2 authorization status of a person at a time or in a manner not required  
3 under 8 U.S.C. Sec. 1324a(b), or not authorized under any memorandum of  
4 understanding governing the use of the federal E-Verify system;

5        (iii) Threatening to file or the filing of a false police report;

6        (iv) Threatening to contact or contacting immigration authorities;

7        (v) Withholding or threatening to destroy documents related to a  
8 person's immigration status.

9        (b) "Unfair immigration-related practice" does not include conduct  
10 undertaken at the express and specific direction or request of the  
11 federal government.

12        NEW SECTION. Sec. 9. (1) An employer, any of its agents, or any  
13 person acting on behalf of the employer may not take adverse action  
14 against any individual or individuals because:

15        (a) An employee or former employee has informed any other person or  
16 made a complaint, or the employer believes an employee has informed any  
17 other person or made a complaint, including to the employer, the  
18 department, the attorney general, or any other person that the employer  
19 engaged in conduct that an employee reasonably believes violates this  
20 chapter;

21        (b) An employee or former employee demands from the employee's  
22 employer a lawful claim under this chapter;

23        (c) An employee or former employee has caused to be instituted, or  
24 is about to cause to be instituted, a proceeding under or related to  
25 this chapter;

26        (d) An employee or former employee has testified or is about to  
27 testify in a proceeding under or related to this chapter;

28        (e) An employee has refused to participate in an activity that  
29 would result in a violation of state or federal law;

30        (f) An employee or former employee has sought information about his  
31 or her rights under this chapter or informed others about their rights  
32 under this chapter;

33        (g) An employee or former employee has, or the employer believes an  
34 employee has, otherwise exercised rights protected by this chapter; or

35        (h) An employee or former employee filed a complaint with the  
36 department or brought suit in court where the employer was determined  
37 to have violated this chapter.

1 (2) If an employer takes adverse action against an employee or  
2 former employee within ninety days of an activity described in  
3 subsection (1) of this section, the employer is presumed to have acted  
4 in retaliation in violation of subsection (1) of this section.  
5 However, in the case of seasonal work that ended before the close of  
6 the ninety day period, the presumption also applies if the employer  
7 fails to rehire a former employee at the next opportunity for work in  
8 the same position. The employer may rebut the presumption with clear  
9 and convincing evidence that the adverse action was taken for a  
10 permissible purpose.

11 (3) A complaint or other communication by an employee triggers the  
12 protections of this section regardless of whether the complaint or  
13 communication is in writing or makes explicit reference to this  
14 chapter.

15 (4) A violation of this section is a gross misdemeanor.

16 NEW SECTION. **Sec. 10.** (1) An individual aggrieved or an  
17 interested party filing on behalf of an individual aggrieved by section  
18 9 of this act may file a complaint with the director on behalf of  
19 himself or herself. If an individual aggrieved or an interested party  
20 filing on behalf of an individual aggrieved files a complaint with the  
21 department, the director may investigate the complaint.

22 (2) If, following an investigation, the director determines that an  
23 employer violated section 9 of this act, it may order the employer to  
24 comply with any one or more of the following:

25 (a) Pay a civil penalty of not less than one thousand dollars and  
26 not more than ten thousand dollars per individual aggrieved.

27 (b)(i) Subject to (b)(ii) of this subsection, pay any aggrieved  
28 individual not less than one thousand dollars and not more than ten  
29 thousand dollars.

30 (ii) If an employee or former employee is the aggrieved individual,  
31 pay the individual the greater of:

32 (A) The amount of any civil penalty imposed under (a) of this  
33 subsection; or

34 (B) Three times the amount of any wages, salary, and employment  
35 benefits unlawfully denied or withheld, except benefits under Title 50  
36 or 51 RCW.

1 (c) If the aggrieved individual is a former employee of the  
2 violating employer, reinstate the aggrieved individual as an employee  
3 at not less than the most recent rate of pay received by the employee.  
4 The director may award front pay in lieu of reinstatement.

5 (3) An appeal from the director's determination may be taken in  
6 accordance with chapter 34.05 RCW, with the prevailing party entitled  
7 to recover reasonable costs and attorneys' fees.

8 (4) The director may not investigate any alleged violation under  
9 this section that occurred more than three years before the date that  
10 the employee filed the complaint. This period is tolled during any  
11 period of time that an employer, any of its agents, or any person  
12 acting on behalf of the employer deters an individual from filing a  
13 complaint.

14 NEW SECTION. **Sec. 11.** (1) An individual aggrieved by a violation  
15 of section 9 of this act may bring suit on behalf of himself or herself  
16 or on behalf of any other individuals similarly situated.

17 (2) If a court determines that an employer violated section 9 of  
18 this act, the court, unless prohibited by federal law:

19 (a)(i) Shall award statutory damages for each individual aggrieved  
20 by the violation. Subject to (a)(ii) of this subsection, statutory  
21 damages must not be less than one thousand dollars and not more ten  
22 thousand dollars per individual, unless the employer engaged in a  
23 pattern or practice of violations, in which case the statutory damages  
24 must be not less than ten thousand dollars and not more than twenty-  
25 five thousand dollars per individual;

26 (ii) If an employee or former employee is the individual subject to  
27 adverse action, the court shall award the greater of:

28 (A) The amounts specified in (a)(i) of this subsection; or

29 (B) Three times the amount of any wages, salary, and employment  
30 benefits unlawfully denied or withheld, except benefits under Title 50  
31 or 51 RCW;

32 (b) May award actual damages sustained by the individual;

33 (c) May order injunctive or other equitable relief if the aggrieved  
34 individual is an employee or former employee of the violating employer.  
35 The relief may include:

36 (i) Reinstatement of the former employee as an employee to his or

1 her former position at not less than the most recent rate of  
2 compensation received by the employee, including the value of any  
3 benefits; or

4 (ii) Front pay in lieu of reinstatement;

5 (d)(i) For a first violation, may order the appropriate government  
6 agencies to suspend all licenses that are held by the violating party  
7 for a period of up to fourteen days. The licenses that are subject to  
8 suspension are all licenses, certifications, or registrations held by  
9 the violating party specific to the business location or locations  
10 where the adverse action occurred;

11 (ii) For a second violation, the court may order the appropriate  
12 government agencies to suspend all licenses that are held by the  
13 violating party for a period of up to thirty days. The licenses that  
14 are subject to suspension are all licenses held by the violating party  
15 specific to the business location or locations where the adverse action  
16 occurred;

17 (iii) For a third violation, the court may order the appropriate  
18 government agencies to suspend all licenses that are held by the  
19 violating party for a period of up to ninety days. The licenses that  
20 are subject to suspension are all licenses held by the violating party  
21 specific to the business location or locations where the adverse action  
22 occurred.

23 (e) Shall award attorneys' fees and costs.

24 (3) A civil action under this section must be brought no later than  
25 three years after the violation occurred. This period is tolled during  
26 any period of time that an employer, any of its agents, or any person  
27 acting on behalf of the employer deters an individual from bringing an  
28 action under this section.

29 NEW SECTION. **Sec. 12.** Sections 9 through 11 of this act are each  
30 added to chapter 49.48 RCW.

31 **PREVAILING WAGE**

32 **Sec. 13.** RCW 39.12.010 and 1989 c 12 s 6 are each amended to read  
33 as follows:

34 The definitions in this section apply throughout this chapter  
35 unless the context clearly requires otherwise.



1           (1) The "prevailing rate of wage," (~~for the intents and purposes~~  
2 ~~of this chapter, shall be~~) means the rate of hourly wage, usual  
3 benefits, and overtime paid in the locality, as (~~hereinafter~~) defined  
4 in this section, to the majority of workers, laborers, or mechanics, in  
5 the same trade or occupation. In the event that there is not a  
6 majority in the same trade or occupation paid at the same rate, then  
7 the average rate of hourly wage and overtime paid to such laborers,  
8 workers, or mechanics in the same trade or occupation shall be the  
9 prevailing rate. If the wage paid by any contractor or subcontractor  
10 to laborers, workers, or mechanics on any public work is based on some  
11 period of time other than an hour, the hourly wage for the purposes of  
12 this chapter shall be mathematically determined by the number of hours  
13 worked in such period of time.

14           (2) The "locality" (~~for the purposes of this chapter shall be~~)  
15 means the largest city in the county wherein the physical work is being  
16 performed.

17           (3) The "usual benefits" (~~for the purposes of this chapter shall~~)  
18 includes the amount of:

19           (a) The rate of contribution irrevocably made by a contractor or  
20 subcontractor to a trustee or to a third person pursuant to a fund,  
21 plan, or program; and

22           (b) The rate of costs to the contractor or subcontractor which may  
23 be reasonably anticipated in providing benefits to workers, laborers,  
24 and mechanics pursuant to an enforceable commitment to carry out a  
25 financially responsible plan or program which was communicated in  
26 writing to the workers, laborers, and mechanics affected, for medical  
27 or hospital care, pensions on retirement or death, compensation for  
28 injuries or illness resulting from occupational activity, or insurance  
29 to provide any of the foregoing, for unemployment benefits, life  
30 insurance, disability and sickness insurance, or accident insurance,  
31 for vacation and holiday pay, for defraying costs of apprenticeship or  
32 other similar programs, or for other bona fide fringe benefits, but  
33 only where the contractor or subcontractor is not required by other  
34 federal, state, or local law to provide any of such benefits.

35           (4) An "interested party" (~~for the purposes of this chapter~~  
36 ~~shall~~) includes a contractor, subcontractor, an employee of a  
37 contractor or subcontractor, an organization whose members' wages,

1 benefits, and conditions of employment are affected by this chapter,  
2 and the director of labor and industries or the director's designee.

3 (5) "Adverse action" means discharging, denying a promotion,  
4 demoting, failing to rehire after a seasonal interruption of work,  
5 threatening, penalizing, retaliating, engaging in unfair immigration-  
6 related practices, filing a false report with a government agency,  
7 changing an employee's status to a nonemployee, or otherwise  
8 discriminating against an employee. "Adverse action" may involve any  
9 aspect of employment, including pay, work hours, responsibilities, or  
10 other material change in the terms and condition of employment.

11 (6) "Department" means the department of labor and industries.

12 (7) "Front pay" means the compensation the employee would earn if  
13 reinstated to his or her former position.

14 (8) "Interested party" includes: A contractor or subcontractor or  
15 an employee of a contractor or subcontractor; the director or the  
16 director's designee; an organization whose members' wages, benefits,  
17 and conditions of employment are affected by this chapter, including a  
18 labor union; or any other organization of workers that exists for the  
19 purpose, in whole or in part, of interacting with employers.

20 (9)(a) "Pattern or practice" means that, in addition to the current  
21 violation, within the previous ten years the employer was:

22 (i) Convicted of a criminal violation of a state or local law  
23 concerning retaliation;

24 (ii) Subject to a court order entering final judgment for a  
25 violation of section 3, 9, 14, or 19 of this act, and the judgment was  
26 not satisfied or current within thirty days of the later of:

27 (A) The expiration of the time for appealing the order; or

28 (B) If a timely appeal was made, the date of the final resolution  
29 of the appeal; or

30 (iii) Subject to a final and binding citation and notice of  
31 assessment from the department for a violation of section 3, 9, or 19  
32 of this act, and the citation and penalty were not satisfied or current  
33 within thirty days of the date the citation became final and binding.

34 (b) For the purposes of this subsection (9), an employer includes  
35 a successor employer, as defined in RCW 49.48.082.

36 (10)(a) "Unfair immigration-related practice" includes any of the  
37 following practices:

1       (i) Requesting more or different documents than are required under  
2 8 U.S.C. Sec. 1324a(b), or a refusal to honor documents tendered  
3 pursuant to that section that on their face reasonably appear to be  
4 genuine;

5       (ii) Using the federal E-Verify system to check the employment  
6 authorization status of a person at a time or in a manner not required  
7 under 8 U.S.C. Sec. 1324a(b), or not authorized under any memorandum of  
8 understanding governing the use of the federal E-Verify system;

9       (iii) Threatening to file or the filing of a false police report;

10       (iv) Threatening to contact or contacting immigration authorities;

11       (v) Withholding or threatening to destroy documents related to a  
12 person's immigration status.

13       (b) "Unfair immigration-related practice" does not include conduct  
14 undertaken at the express and specific direction or request of the  
15 federal government.

16       NEW SECTION. Sec. 14. (1) An employer, any of its agents, or any  
17 person acting on behalf of the employer may not take adverse action  
18 against any individual or individuals because:

19       (a) An employee or former employee has informed any other person or  
20 made a complaint, or the employer believes an employee has informed any  
21 other person or made a complaint, including to the employer, the  
22 department, the attorney general, or any other person that the employer  
23 engaged in conduct that an employee reasonably believes violates this  
24 chapter;

25       (b) An employee or former employee demands from the employee's  
26 employer a lawful claim under this chapter;

27       (c) An employee or former employee has caused to be instituted, or  
28 is about to cause to be instituted, a proceeding under or related to  
29 this chapter;

30       (d) An employee or former employee has testified or is about to  
31 testify in a proceeding under or related to this chapter;

32       (e) An employee has refused to participate in an activity that  
33 would result in a violation of state or federal law;

34       (f) An employee or former employee has sought information about his  
35 or her rights under this chapter or informed others about their rights  
36 under this chapter;

1 (g) An employee or former employee has, or the employer believes an  
2 employee has, otherwise exercised rights protected by this chapter; or

3 (h) An employee or former employee filed a complaint with the  
4 department or brought suit in court where the employer was determined  
5 to have violated this chapter.

6 (2) If an employer takes adverse action against an employee or  
7 former employee within ninety days of an activity described in  
8 subsection (1) of this section, the employer is presumed to have acted  
9 in retaliation in violation of subsection (1) of this section.  
10 However, in the case of seasonal work that ended before the close of  
11 the ninety day period, the presumption also applies if the employer  
12 fails to rehire a former employee at the next opportunity for work in  
13 the same position. The employer may rebut the presumption with clear  
14 and convincing evidence that the adverse action was taken for a  
15 permissible purpose.

16 (3) A complaint or other communication by an employee triggers the  
17 protections of this section regardless of whether the complaint or  
18 communication is in writing or makes explicit reference to this  
19 chapter.

20 (4) A violation of this section is a gross misdemeanor.

21 NEW SECTION. **Sec. 15.** (1) An individual aggrieved or an  
22 interested party filing on behalf of an individual aggrieved by section  
23 14 of this act may file a complaint with the director on behalf of  
24 himself or herself. If an individual aggrieved or an interested party  
25 filing on behalf of an individual aggrieved files a complaint with the  
26 department, the director may investigate the complaint.

27 (2) If, following an investigation, the director determines that an  
28 employer violated section 14 of this act, the director may order the  
29 employer to comply with any one or more of the following:

30 (a) Pay a civil penalty of not less than one thousand dollars and  
31 not more than ten thousand dollars per individual aggrieved.

32 (b)(i) Subject to (b)(ii) of this subsection, pay any aggrieved  
33 individual not less than one thousand dollars and not more than ten  
34 thousand dollars.

35 (ii) If an employee or former employee is the aggrieved individual,  
36 pay the individual the greater of:

1 (A) The amount of any civil penalty imposed under (a) of this  
2 subsection; or

3 (B) Three times the amount of any wages, salary, and employment  
4 benefits unlawfully denied or withheld, except benefits under Title 50  
5 or 51 RCW.

6 (c) If the aggrieved individual is a former employee of the  
7 violating employer, reinstate the aggrieved individual as an employee  
8 at not less than the most recent rate of pay received by the employee.  
9 The director may award front pay in lieu of reinstatement.

10 (3) An appeal from the director's determination may be taken in  
11 accordance with chapter 34.05 RCW, with the prevailing party entitled  
12 to recover reasonable costs and attorneys' fees.

13 (4) The director may not investigate any alleged violation under  
14 this section that occurred more than three years before the date that  
15 the employee filed the complaint. This period is tolled during any  
16 period of time that an employer, any of its agents, or any person  
17 acting on behalf of the employer deters an individual from filing a  
18 complaint.

19 NEW SECTION. **Sec. 16.** (1) An individual aggrieved by a violation  
20 of section 14 of this act may bring suit on behalf of himself or  
21 herself or on behalf of any other individuals similarly situated.

22 (2) If a court determines that an employer violated section 14 of  
23 this act, the court, unless prohibited by federal law:

24 (a)(i) Shall award statutory damages for each individual aggrieved  
25 by the violation. Subject to (a)(ii) of this subsection, statutory  
26 damages must not be less than one thousand dollars and not more ten  
27 thousand dollars per individual, unless the employer engaged in a  
28 pattern or practice of violations, in which case the statutory damages  
29 must be not less than ten thousand dollars and not more than twenty-  
30 five thousand dollars per individual;

31 (ii) If an employee or former employee is the individual subject to  
32 adverse action, the court shall award the greater of:

33 (A) The amounts specified in (a)(i) of this subsection; or

34 (B) Three times the amount of any wages, salary, and employment  
35 benefits unlawfully denied or withheld, except benefits under Title 50  
36 or 51 RCW;

37 (b) May award actual damages sustained by the individual;

1 (c) May order injunctive or other equitable relief if the aggrieved  
2 individual is an employee or former employee of the violating employer.  
3 The relief may include:

4 (i) Reinstatement of the former employee as an employee to his or  
5 her former position at not less than the most recent rate of  
6 compensation received by the employee, including the value of any  
7 benefits; or

8 (ii) Front pay in lieu of reinstatement;

9 (d)(i) For a first violation, may order the appropriate government  
10 agencies to suspend all licenses that are held by the violating party  
11 for a period of up to fourteen days. The licenses that are subject to  
12 suspension are all licenses, certifications, or registrations held by  
13 the violating party specific to the business location or locations  
14 where the adverse action occurred;

15 (ii) For a second violation, the court may order the appropriate  
16 government agencies to suspend all licenses that are held by the  
17 violating party for a period of up to thirty days. The licenses that  
18 are subject to suspension are all licenses held by the violating party  
19 specific to the business location or locations where the adverse action  
20 occurred;

21 (iii) For a third violation, the court may order the appropriate  
22 government agencies to suspend all licenses that are held by the  
23 violating party for a period of up to ninety days. The licenses that  
24 are subject to suspension are all licenses held by the violating party  
25 specific to the business location or locations where the adverse action  
26 occurred.

27 (e) Shall award attorneys' fees and costs.

28 (3) A civil action under this section must be brought no later than  
29 three years after the violation occurred. This period is tolled during  
30 any period of time that an employer, any of its agents, or any person  
31 acting on behalf of the employer deters an individual from bringing an  
32 action under this section.

33 NEW SECTION. **Sec. 17.** Sections 14 through 16 of this act are each  
34 added as new sections to chapter 39.12 RCW.

35 **WAGE DEDUCTIONS**

1           NEW SECTION.    **Sec. 18.**    The definitions in this section apply  
2 throughout this chapter unless the context clearly requires otherwise.

3           (1) "Adverse action" means discharging, denying a promotion,  
4 demoting, failing to rehire after a seasonal interruption of work,  
5 threatening, penalizing, retaliating, engaging in unfair immigration-  
6 related practices, filing a false report with a government agency,  
7 changing an employee's status to a nonemployee, or otherwise  
8 discriminating against an employee. "Adverse action" may involve any  
9 aspect of employment, including pay, work hours, responsibilities, or  
10 other material change in the terms and condition of employment.

11           (2) "Department" means the department of labor and industries.

12           (3) "Director" means the director of the department of labor and  
13 industries.

14           (4) "Front pay" means the compensation the employee would earn if  
15 reinstated to his or her former position.

16           (5) "Interested party" includes: A contractor or subcontractor or  
17 an employee of a contractor or subcontractor; the director or the  
18 director's designee; an organization whose members' wages, benefits,  
19 and conditions of employment are affected by this chapter, including a  
20 labor union; or any other organization of workers that exists for the  
21 purpose, in whole or in part, of interacting with employers.

22           (6)(a) "Pattern or practice" means that, in addition to the current  
23 violation, within the previous ten years the employer was:

24           (i) Convicted of a criminal violation of a state or local law  
25 concerning retaliation;

26           (ii) Subject to a court order entering final judgment for a  
27 violation of section 3, 9, 14, or 19 of this act, and the judgment was  
28 not satisfied or current within thirty days of the later of:

29           (A) The expiration of the time for appealing the order; or

30           (B) If a timely appeal was made, the date of the final resolution  
31 of the appeal; or

32           (iii) Subject to a final and binding citation and notice of  
33 assessment from the department for a violation of section 3, 9, or 15  
34 of this act, and the citation and penalty were not satisfied or current  
35 within thirty days of the date the citation became final and binding.

36           (b) For the purposes of this subsection (6), an employer includes  
37 a successor employer, as defined in RCW 49.48.082.

1 (7)(a) "Unfair immigration-related practice" means any of the  
2 following practices:

3 (i) Requesting more or different documents than are required under  
4 8 U.S.C. Sec. 1324a(b), or a refusal to honor documents tendered  
5 pursuant to that section that on their face reasonably appear to be  
6 genuine;

7 (ii) Using the federal E-Verify system to check the employment  
8 authorization status of a person at a time or in a manner not required  
9 under 8 U.S.C. Sec. 1324a(b), or not authorized under any memorandum of  
10 understanding governing the use of the federal E-Verify system;

11 (iii) Threatening to file or the filing of a false police report;

12 (iv) Threatening to contact or contacting immigration authorities;

13 (v) Withholding or threatening to destroy documents related to a  
14 person's immigration status.

15 (b) "Unfair immigration-related practice" does not include conduct  
16 undertaken at the express and specific direction or request of the  
17 federal government.

18 NEW SECTION. **Sec. 19.** (1) An employer, any of its agents, or any  
19 person acting on behalf of the employer may not take adverse action  
20 against any individual or individuals because:

21 (a) An employee or former employee has informed any other person or  
22 made a complaint, or the employer believes an employee has informed any  
23 other person or made a complaint, including to the employer, the  
24 department, the attorney general, or any other person that the employer  
25 engaged in conduct that an employee reasonably believes violates this  
26 chapter;

27 (b) An employee or former employee demands from the employee's  
28 employer a lawful claim under this chapter;

29 (c) An employee or former employee has caused to be instituted, or  
30 is about to cause to be instituted, a proceeding under or related to  
31 this chapter;

32 (d) An employee or former employee has testified or is about to  
33 testify in a proceeding under or related to this chapter;

34 (e) An employee has refused to participate in an activity that  
35 would result in a violation of state or federal law;

36 (f) An employee or former employee has sought information about his



1 or her rights under this chapter or informed others about their rights  
2 under this chapter;

3 (g) An employee or former employee has, or the employer believes an  
4 employee has, otherwise exercised rights protected by this chapter; or

5 (h) An employee or former employee filed a complaint with the  
6 department or brought suit in court where the employer was determined  
7 to have violated this chapter.

8 (2) If an employer takes adverse action against an employee or  
9 former employee within ninety days of an activity described in  
10 subsection (1) of this section, the employer is presumed to have acted  
11 in retaliation in violation of subsection (1) of this section.  
12 However, in the case of seasonal work that ended before the close of  
13 the ninety day period, the presumption also applies if the employer  
14 fails to rehire a former employee at the next opportunity for work in  
15 the same position. The employer may rebut the presumption with clear  
16 and convincing evidence that the adverse action was taken for a  
17 permissible purpose.

18 (3) A complaint or other communication by an employee triggers the  
19 protections of this section regardless of whether the complaint or  
20 communication is in writing or makes explicit reference to this  
21 chapter.

22 (4) A violation of this section is a gross misdemeanor.

23 NEW SECTION. **Sec. 20.** (1) An individual aggrieved or an  
24 interested party filing on behalf of an individual aggrieved by section  
25 19 of this act may file a complaint with the director on behalf of  
26 himself or herself. If an individual aggrieved or an interested party  
27 filing on behalf of an individual aggrieved files a complaint with the  
28 department, the director may investigate the complaint.

29 (2) If, following an investigation, the director determines that an  
30 employer violated section 19 of this act, the director may order the  
31 employer to comply with any one or more of the following:

32 (a) Pay a civil penalty of not less than one thousand dollars and  
33 not more than ten thousand dollars per individual aggrieved.

34 (b)(i) Subject to (b)(ii) of this subsection, pay any aggrieved  
35 individual not less than one thousand dollars and not more than ten  
36 thousand dollars.

1 (ii) If an employee or former employee is the aggrieved individual,  
2 pay the individual the greater of:

3 (A) The amount of any civil penalty imposed under (a) of this  
4 subsection; or

5 (B) Three times the amount of any wages, salary, and employment  
6 benefits unlawfully denied or withheld, except benefits under Title 50  
7 or 51 RCW.

8 (c) If the aggrieved individual is a former employee of the  
9 violating employer, reinstate the aggrieved individual as an employee  
10 at not less than the most recent rate of pay received by the employee.  
11 The director may award front pay in lieu of reinstatement.

12 (3) An appeal from the director's determination may be taken in  
13 accordance with chapter 34.05 RCW, with the prevailing party entitled  
14 to recover reasonable costs and attorneys' fees.

15 (4) The director may not investigate any alleged violation under  
16 this section that occurred more than three years before the date that  
17 the employee filed the complaint. This period is tolled during any  
18 period of time that an employer, any of its agents, or any person  
19 acting on behalf of the employer deters an individual from filing a  
20 complaint.

21 NEW SECTION. **Sec. 21.** (1) An individual aggrieved by a violation  
22 of section 19 of this act may bring suit on behalf of himself or  
23 herself or on behalf of any other individuals similarly situated.

24 (2) If a court determines that an employer violated section 19 of  
25 this act, the court, unless prohibited by federal law:

26 (a)(i) Shall award statutory damages for each individual aggrieved  
27 by the violation. Subject to (a)(ii) of this subsection, statutory  
28 damages must not be less than one thousand dollars and not more ten  
29 thousand dollars per individual, unless the employer engaged in a  
30 pattern or practice of violations, in which case the statutory damages  
31 must be not less than ten thousand dollars and not more than twenty-  
32 five thousand dollars per individual;

33 (ii) If an employee or former employee is the individual subject to  
34 adverse action, the court shall award the greater of:

35 (A) The amounts specified in (a)(i) of this subsection; or

36 (B) Three times the amount of any wages, salary, and employment

1 benefits unlawfully denied or withheld, except benefits under Title 50  
2 or 51 RCW;

3 (b) May award actual damages sustained by the individual;

4 (c) May order injunctive or other equitable relief if the aggrieved  
5 individual is an employee or former employee of the violating employer.  
6 The relief may include:

7 (i) Reinstatement of the former employee as an employee to his or  
8 her former position at not less than the most recent rate of  
9 compensation received by the employee, including the value of any  
10 benefits; or

11 (ii) Front pay in lieu of reinstatement;

12 (d)(i) For a first violation, may order the appropriate government  
13 agencies to suspend all licenses that are held by the violating party  
14 for a period of up to fourteen days. The licenses that are subject to  
15 suspension are all licenses, certifications, or registrations held by  
16 the violating party specific to the business location or locations  
17 where the adverse action occurred;

18 (ii) For a second violation, the court may order the appropriate  
19 government agencies to suspend all licenses that are held by the  
20 violating party for a period of up to thirty days. The licenses that  
21 are subject to suspension are all licenses held by the violating party  
22 specific to the business location or locations where the adverse action  
23 occurred;

24 (iii) For a third violation, the court may order the appropriate  
25 government agencies to suspend all licenses that are held by the  
26 violating party for a period of up to ninety days. The licenses that  
27 are subject to suspension are all licenses held by the violating party  
28 specific to the business location or locations where the adverse action  
29 occurred.

30 (e) Shall award attorneys' fees and costs.

31 (3) A civil action under this section must be brought no later than  
32 three years after the violation occurred. This period is tolled during  
33 any period of time that an employer, any of its agents, or any person  
34 acting on behalf of the employer deters an individual from bringing an  
35 action under this section.

36 NEW SECTION. **Sec. 22.** Sections 18 through 21 of this act are each  
37 added as new sections to chapter 49.52 RCW.

1        NEW SECTION.    **Sec. 23.**    If any provision of this act or its  
2 application to any person or circumstance is held invalid, the  
3 remainder of the act or the application of the provision to other  
4 persons or circumstances is not affected.

--- END ---