
HOUSE BILL 2333

State of Washington

63rd Legislature

2014 Regular Session

By Representatives Ryu, Sells, Moscoso, Seaquist, Hunt, Green, Stanford, Appleton, Reykdal, Fitzgibbon, Habib, Bergquist, Goodman, Farrell, Ormsby, Pollet, and Walkinshaw

Read first time 01/15/14. Referred to Committee on Labor & Workforce Development.

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, or 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, or 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, or 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, or 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, or 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, or 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, or 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, or 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 ---