
HOUSE BILL 1881

State of Washington

65th Legislature

2017 Regular Session

By Representatives McCabe, Orwall, Johnson, Manweller, Vick, Griffey, Stambaugh, Dye, J. Walsh, Barkis, Springer, and Haler

Read first time 02/01/17. Referred to Committee on Labor & Workplace Standards.

1 AN ACT Relating to the employer status of franchisors; amending
2 RCW 49.12.005, 49.17.020, 49.46.010, 50.04.080, and 51.08.070;
3 reenacting and amending RCW 49.60.040; adding a new section to
4 chapter 49.52 RCW; and creating new sections.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that franchising is
7 an important business model which provides small business
8 opportunities, creates jobs, and benefits communities throughout this
9 state. Franchisees are able to own their own businesses but with
10 protections such as brand name recognition and proven methods. The
11 legislature further finds that under employment laws, persons who
12 work for a franchisee are the employees of only the franchisee.
13 Recent developments, however, have suggested that franchisors may be
14 found to be joint employers with franchisees. Joint employer status
15 of franchisors threatens the independence of franchisees and the
16 entire franchise model. Therefore, the legislature intends to clarify
17 that franchisors are not employers of franchisees or of the employees
18 of a franchisee.

19 **Sec. 2.** RCW 49.12.005 and 2015 c 299 s 2 are each amended to
20 read as follows:

1 For the purposes of this chapter:

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

3 (2) "Director" means the director of the department of labor and
4 industries, or the director's designated representative.

5 (3)(a) Before May 20, 2003, "employer" means any person, firm,
6 corporation, partnership, business trust, legal representative, or
7 other business entity which engages in any business, industry,
8 profession, or activity in this state and employs one or more
9 employees but does not include the state, any state institution, any
10 state agency, political subdivision of the state, or any municipal
11 corporation or quasi-municipal corporation. However, for the purposes
12 of RCW 49.12.265 through 49.12.295, 49.12.350 through 49.12.370,
13 49.12.450, and 49.12.460 only, "employer" also includes the state,
14 any state institution, any state agency, political subdivisions of
15 the state, and any municipal corporation or quasi-municipal
16 corporation.

17 (b) On and after May 20, 2003, "employer" means any person, firm,
18 corporation, partnership, business trust, legal representative, or
19 other business entity which engages in any business, industry,
20 profession, or activity in this state and employs one or more
21 employees, and includes the state, any state institution, state
22 agency, political subdivisions of the state, and any municipal
23 corporation or quasi-municipal corporation. However, this chapter and
24 the rules adopted thereunder apply to these public employers only to
25 the extent that this chapter and the rules adopted thereunder do not
26 conflict with: (i) Any state statute or rule; and (ii) respect to
27 political subdivisions of the state and any municipal or quasi-
28 municipal corporation, any local resolution, ordinance, or rule
29 adopted under the authority of the local legislative authority before
30 April 1, 2003. A franchisor, as defined in RCW 19.100.010, is not an
31 employer of a franchisee, as defined in RCW 19.100.010, or of an
32 employee of a franchisee.

33 (4) "Employee" means an employee who is employed in the business
34 of the employee's employer whether by way of manual labor or
35 otherwise. "Employee" does not include an individual who is at least
36 sixteen years old but under twenty-one years old, in his or her
37 capacity as a player for a junior ice hockey team that is a member of
38 a regional, national, or international league and that contracts with
39 an arena owned, operated, or managed by a public facilities district
40 created under chapter 36.100 RCW.

1 (5) "Conditions of labor" means and includes the conditions of
2 rest and meal periods for employees including provisions for personal
3 privacy, practices, methods and means by or through which labor or
4 services are performed by employees and includes bona fide physical
5 qualifications in employment, but shall not include conditions of
6 labor otherwise governed by statutes and rules and regulations
7 relating to industrial safety and health administered by the
8 department.

9 (6) For the purpose of chapter 16, Laws of 1973 2nd ex. sess. a
10 minor is defined to be a person of either sex under the age of
11 eighteen years.

12 **Sec. 3.** RCW 49.17.020 and 2010 c 8 s 12005 are each amended to
13 read as follows:

14 For the purposes of this chapter:

15 (1) The term "agriculture" means farming and includes, but is not
16 limited to:

17 (a) The cultivation and tillage of the soil;

18 (b) Dairying;

19 (c) The production, cultivation, growing, and harvesting of any
20 agricultural or horticultural commodity;

21 (d) The raising of livestock, bees, fur-bearing animals, or
22 poultry; and

23 (e) Any practices performed by a farmer or on a farm, incident to
24 or in connection with such farming operations, including but not
25 limited to preparation for market and delivery to:

26 (i) Storage;

27 (ii) Market; or

28 (iii) Carriers for transportation to market.

29 The term "agriculture" does not mean a farmer's processing for
30 sale or handling for sale a commodity or product grown or produced by
31 a person other than the farmer or the farmer's employees.

32 (2) The term "director" means the director of the department of
33 labor and industries, or his or her designated representative.

34 (3) The term "department" means the department of labor and
35 industries.

36 (4)(a) The term "employer" means any person, firm, corporation,
37 partnership, business trust, legal representative, or other business
38 entity which engages in any business, industry, profession, or
39 activity in this state and employs one or more employees or who

1 contracts with one or more persons, the essence of which is the
2 personal labor of such person or persons and includes the state,
3 counties, cities, and all municipal corporations, public
4 corporations, political subdivisions of the state, and charitable
5 organizations: PROVIDED, That any person, partnership, or business
6 entity not having employees, and who is covered by the industrial
7 insurance act shall be considered both an employer and an employee.

8 (b) A franchisor, as defined in RCW 19.100.010, is not an
9 employer of a franchisee, as defined in RCW 19.100.010, or of an
10 employee of a franchisee.

11 (5) The term "employee" means an employee of an employer who is
12 employed in the business of his or her employer whether by way of
13 manual labor or otherwise and every person in this state who is
14 engaged in the employment of or who is working under an independent
15 contract the essence of which is his or her personal labor for an
16 employer under this chapter whether by way of manual labor or
17 otherwise.

18 (6) The term "person" means one or more individuals,
19 partnerships, associations, corporations, business trusts, legal
20 representatives, or any organized group of persons.

21 (7) The term "safety and health standard" means a standard which
22 requires the adoption or use of one or more practices, means,
23 methods, operations, or processes reasonably necessary or appropriate
24 to provide safe or healthful employment and places of employment.

25 (8) The term "workplace" means any plant, yard, premises, room,
26 or other place where an employee or employees are employed for the
27 performance of labor or service over which the employer has the right
28 of access or control, and includes, but is not limited to, all
29 workplaces covered by industrial insurance under Title 51 RCW, as now
30 or hereafter amended.

31 (9) The term "working day" means a calendar day, except
32 Saturdays, Sundays, and all legal holidays as set forth in RCW
33 1.16.050, as now or hereafter amended, and for the purposes of the
34 computation of time within which an act is to be done under the
35 provisions of this chapter, shall be computed by excluding the first
36 working day and including the last working day.

37 **Sec. 4.** RCW 49.46.010 and 2015 c 299 s 3 are each amended to
38 read as follows:

39 As used in this chapter:

1 (1) "Director" means the director of labor and industries;
2 (2) "Employ" includes to permit to work;
3 (3) "Employee" includes any individual employed by an employer
4 but shall not include:
5 (a) Any individual (i) employed as a hand harvest laborer and
6 paid on a piece rate basis in an operation which has been, and is
7 generally and customarily recognized as having been, paid on a piece
8 rate basis in the region of employment; (ii) who commutes daily from
9 his or her permanent residence to the farm on which he or she is
10 employed; and (iii) who has been employed in agriculture less than
11 thirteen weeks during the preceding calendar year;
12 (b) Any individual employed in casual labor in or about a private
13 home, unless performed in the course of the employer's trade,
14 business, or profession;
15 (c) Any individual employed in a bona fide executive,
16 administrative, or professional capacity or in the capacity of
17 outside salesperson as those terms are defined and delimited by rules
18 of the director. However, those terms shall be defined and delimited
19 by the human resources director pursuant to chapter 41.06 RCW for
20 employees employed under the director of personnel's jurisdiction;
21 (d) Any individual engaged in the activities of an educational,
22 charitable, religious, state or local governmental body or agency, or
23 nonprofit organization where the employer-employee relationship does
24 not in fact exist or where the services are rendered to such
25 organizations gratuitously. If the individual receives reimbursement
26 in lieu of compensation for normally incurred out-of-pocket expenses
27 or receives a nominal amount of compensation per unit of voluntary
28 service rendered, an employer-employee relationship is deemed not to
29 exist for the purpose of this section or for purposes of membership
30 or qualification in any state, local government, or publicly
31 supported retirement system other than that provided under chapter
32 41.24 RCW;
33 (e) Any individual employed full time by any state or local
34 governmental body or agency who provides voluntary services but only
35 with regard to the provision of the voluntary services. The voluntary
36 services and any compensation therefor shall not affect or add to
37 qualification, entitlement, or benefit rights under any state, local
38 government, or publicly supported retirement system other than that
39 provided under chapter 41.24 RCW;

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

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

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

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

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

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

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

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

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

31 (o) Any farm intern providing his or her services to a small farm
32 which has a special certificate issued under RCW 49.12.470;

33 (p) An individual who is at least sixteen years old but under
34 twenty-one years old, in his or her capacity as a player for a junior
35 ice hockey team that is a member of a regional, national, or
36 international league and that contracts with an arena owned,
37 operated, or managed by a public facilities district created under
38 chapter 36.100 RCW;

39 (4) "Employer" includes any individual, partnership, association,
40 corporation, business trust, or any person or group of persons acting

1 directly or indirectly in the interest of an employer in relation to
2 an employee. A franchisor, as defined in RCW 19.100.010, is not an
3 employer of a franchisee, as defined in RCW 19.100.010, or of an
4 employee of a franchisee;

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

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

12 (7) "Wage" means compensation due to an employee by reason of
13 employment, payable in legal tender of the United States or checks on
14 banks convertible into cash on demand at full face value, subject to
15 such deductions, charges, or allowances as may be permitted by rules
16 of the director.

17 NEW SECTION. **Sec. 5.** A new section is added to chapter 49.52
18 RCW to read as follows:

19 For purposes of this chapter, a franchisor, as defined in RCW
20 19.100.010, is not an employer of a franchisee, as defined in RCW
21 19.100.010, or of an employee of a franchisee.

22 **Sec. 6.** RCW 49.60.040 and 2009 c 187 s 3 are each reenacted and
23 amended to read as follows:

24 The definitions in this section apply throughout this chapter
25 unless the context clearly requires otherwise.

26 (1) "Aggrieved person" means any person who: (a) Claims to have
27 been injured by an unfair practice in a real estate transaction; or
28 (b) believes that he or she will be injured by an unfair practice in
29 a real estate transaction that is about to occur.

30 (2) "Any place of public resort, accommodation, assemblage, or
31 amusement" includes, but is not limited to, any place, licensed or
32 unlicensed, kept for gain, hire, or reward, or where charges are made
33 for admission, service, occupancy, or use of any property or
34 facilities, whether conducted for the entertainment, housing, or
35 lodging of transient guests, or for the benefit, use, or
36 accommodation of those seeking health, recreation, or rest, or for
37 the burial or other disposition of human remains, or for the sale of
38 goods, merchandise, services, or personal property, or for the

1 rendering of personal services, or for public conveyance or
2 transportation on land, water, or in the air, including the stations
3 and terminals thereof and the garaging of vehicles, or where food or
4 beverages of any kind are sold for consumption on the premises, or
5 where public amusement, entertainment, sports, or recreation of any
6 kind is offered with or without charge, or where medical service or
7 care is made available, or where the public gathers, congregates, or
8 assembles for amusement, recreation, or public purposes, or public
9 halls, public elevators, and public washrooms of buildings and
10 structures occupied by two or more tenants, or by the owner and one
11 or more tenants, or any public library or educational institution, or
12 schools of special instruction, or nursery schools, or day care
13 centers or children's camps: PROVIDED, That nothing contained in this
14 definition shall be construed to include or apply to any institute,
15 bona fide club, or place of accommodation, which is by its nature
16 distinctly private, including fraternal organizations, though where
17 public use is permitted that use shall be covered by this chapter;
18 nor shall anything contained in this definition apply to any
19 educational facility, columbarium, crematory, mausoleum, or cemetery
20 operated or maintained by a bona fide religious or sectarian
21 institution.

22 (3) "Commission" means the Washington state human rights
23 commission.

24 (4) "Complainant" means the person who files a complaint in a
25 real estate transaction.

26 (5) "Covered multifamily dwelling" means: (a) Buildings
27 consisting of four or more dwelling units if such buildings have one
28 or more elevators; and (b) ground floor dwelling units in other
29 buildings consisting of four or more dwelling units.

30 (6) "Credit transaction" includes any open or closed end credit
31 transaction, whether in the nature of a loan, retail installment
32 transaction, credit card issue or charge, or otherwise, and whether
33 for personal or for business purposes, in which a service, finance,
34 or interest charge is imposed, or which provides for repayment in
35 scheduled payments, when such credit is extended in the regular
36 course of any trade or commerce, including but not limited to
37 transactions by banks, savings and loan associations or other
38 financial lending institutions of whatever nature, stock brokers, or
39 by a merchant or mercantile establishment which as part of its

1 ordinary business permits or provides that payment for purchases of
2 property or service therefrom may be deferred.

3 (7)(a) "Disability" means the presence of a sensory, mental, or
4 physical impairment that:

5 (i) Is medically cognizable or diagnosable; or

6 (ii) Exists as a record or history; or

7 (iii) Is perceived to exist whether or not it exists in fact.

8 (b) A disability exists whether it is temporary or permanent,
9 common or uncommon, mitigated or unmitigated, or whether or not it
10 limits the ability to work generally or work at a particular job or
11 whether or not it limits any other activity within the scope of this
12 chapter.

13 (c) For purposes of this definition, "impairment" includes, but
14 is not limited to:

15 (i) Any physiological disorder, or condition, cosmetic
16 disfigurement, or anatomical loss affecting one or more of the
17 following body systems: Neurological, musculoskeletal, special sense
18 organs, respiratory, including speech organs, cardiovascular,
19 reproductive, digestive, (~~genitor~~) genito-urinary, hemic and
20 lymphatic, skin, and endocrine; or

21 (ii) Any mental, developmental, traumatic, or psychological
22 disorder, including but not limited to cognitive limitation, organic
23 brain syndrome, emotional or mental illness, and specific learning
24 disabilities.

25 (d) Only for the purposes of qualifying for reasonable
26 accommodation in employment, an impairment must be known or shown
27 through an interactive process to exist in fact and:

28 (i) The impairment must have a substantially limiting effect upon
29 the individual's ability to perform his or her job, the individual's
30 ability to apply or be considered for a job, or the individual's
31 access to equal benefits, privileges, or terms or conditions of
32 employment; or

33 (ii) The employee must have put the employer on notice of the
34 existence of an impairment, and medical documentation must establish
35 a reasonable likelihood that engaging in job functions without an
36 accommodation would aggravate the impairment to the extent that it
37 would create a substantially limiting effect.

38 (e) For purposes of (d) of this subsection, a limitation is not
39 substantial if it has only a trivial effect.

1 (8) "Dog guide" means a dog that is trained for the purpose of
2 guiding blind persons or a dog that is trained for the purpose of
3 assisting hearing impaired persons.

4 (9) "Dwelling" means any building, structure, or portion thereof
5 that is occupied as, or designed or intended for occupancy as, a
6 residence by one or more families, and any vacant land that is
7 offered for sale or lease for the construction or location thereon of
8 any such building, structure, or portion thereof.

9 (10) "Employee" does not include any individual employed by his
10 or her parents, spouse, or child, or in the domestic service of any
11 person.

12 (11) "Employer" includes any person acting in the interest of an
13 employer, directly or indirectly, who employs eight or more persons,
14 and does not include any religious or sectarian organization not
15 organized for private profit. A franchisor, as defined in RCW
16 19.100.010, is not an employer of a franchisee, as defined in RCW
17 19.100.010, or of an employee of a franchisee.

18 (12) "Employment agency" includes any person undertaking with or
19 without compensation to recruit, procure, refer, or place employees
20 for an employer.

21 (13) "Families with children status" means one or more
22 individuals who have not attained the age of eighteen years being
23 domiciled with a parent or another person having legal custody of
24 such individual or individuals, or with the designee of such parent
25 or other person having such legal custody, with the written
26 permission of such parent or other person. Families with children
27 status also applies to any person who is pregnant or is in the
28 process of securing legal custody of any individual who has not
29 attained the age of eighteen years.

30 (14) "Full enjoyment of" includes the right to purchase any
31 service, commodity, or article of personal property offered or sold
32 on, or by, any establishment to the public, and the admission of any
33 person to accommodations, advantages, facilities, or privileges of
34 any place of public resort, accommodation, assemblage, or amusement,
35 without acts directly or indirectly causing persons of any particular
36 race, creed, color, sex, sexual orientation, national origin, or with
37 any sensory, mental, or physical disability, or the use of a trained
38 dog guide or service animal by a person with a disability, to be
39 treated as not welcome, accepted, desired, or solicited.

1 (15) "Honorably discharged veteran or military status" means a
2 person who is:

3 (a) A veteran, as defined in RCW 41.04.007; or

4 (b) An active or reserve member in any branch of the armed forces
5 of the United States, including the national guard, coast guard, and
6 armed forces reserves.

7 (16) "Labor organization" includes any organization which exists
8 for the purpose, in whole or in part, of dealing with employers
9 concerning grievances or terms or conditions of employment, or for
10 other mutual aid or protection in connection with employment.

11 (17) "Marital status" means the legal status of being married,
12 single, separated, divorced, or widowed.

13 (18) "National origin" includes "ancestry."

14 (19) "Person" includes one or more individuals, partnerships,
15 associations, organizations, corporations, cooperatives, legal
16 representatives, trustees and receivers, or any group of persons; it
17 includes any owner, lessee, proprietor, manager, agent, or employee,
18 whether one or more natural persons; and further includes any
19 political or civil subdivisions of the state and any agency or
20 instrumentality of the state or of any political or civil subdivision
21 thereof.

22 (20) "Premises" means the interior or exterior spaces, parts,
23 components, or elements of a building, including individual dwelling
24 units and the public and common use areas of a building.

25 (21) "Real estate transaction" includes the sale, appraisal,
26 brokering, exchange, purchase, rental, or lease of real property,
27 transacting or applying for a real estate loan, or the provision of
28 brokerage services.

29 (22) "Real property" includes buildings, structures, dwellings,
30 real estate, lands, tenements, leaseholds, interests in real estate
31 cooperatives, condominiums, and hereditaments, corporeal and
32 incorporeal, or any interest therein.

33 (23) "Respondent" means any person accused in a complaint or
34 amended complaint of an unfair practice in a real estate transaction.

35 (24) "Service animal" means an animal that is trained for the
36 purpose of assisting or accommodating a sensory, mental, or physical
37 disability of a person with a disability.

38 (25) "Sex" means gender.

39 (26) "Sexual orientation" means heterosexuality, homosexuality,
40 bisexuality, and gender expression or identity. As used in this

1 definition, "gender expression or identity" means having or being
2 perceived as having a gender identity, self-image, appearance,
3 behavior, or expression, whether or not that gender identity, self-
4 image, appearance, behavior, or expression is different from that
5 traditionally associated with the sex assigned to that person at
6 birth.

7 **Sec. 7.** RCW 50.04.080 and 2013 c 250 s 3 are each amended to
8 read as follows:

9 "Employer" means any individual or type of organization,
10 including any partnership, association, trust, estate, joint stock
11 company, insurance company, limited liability company, or
12 corporation, whether domestic or foreign, or the receiver, trustee in
13 bankruptcy, trustee, or the legal representative of a deceased
14 person, having any person in employment or, having become an
15 employer, has not ceased to be an employer as provided in this title.
16 A franchisor, as defined in RCW 19.100.010, is not an employer of a
17 franchisee, as defined in RCW 19.100.010, or of an employee of a
18 franchisee.

19 **Sec. 8.** RCW 51.08.070 and 2008 c 102 s 2 are each amended to
20 read as follows:

21 "Employer" means any person, body of persons, corporate or
22 otherwise, and the legal representatives of a deceased employer, all
23 while engaged in this state in any work covered by the provisions of
24 this title, by way of trade or business, or who contracts with one or
25 more workers, the essence of which is the personal labor of such
26 worker or workers. Or as an exception to the definition of employer,
27 persons or entities are not employers when they contract or agree to
28 remunerate the services performed by an individual who meets the
29 tests set forth in subsections (1) through (6) of RCW 51.08.195 or
30 the separate tests set forth in RCW 51.08.181 for work performed that
31 requires registration under chapter 18.27 RCW or licensing under
32 chapter 19.28 RCW. A franchisor, as defined in RCW 19.100.010, is not
33 an employer of a franchisee, as defined in RCW 19.100.010, or of an
34 employee of a franchisee.

35 NEW SECTION. **Sec. 9.** If any provision of this act or its
36 application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other
2 persons or circumstances is not affected.

3 NEW SECTION. **Sec. 10.** If any part of this act is found to be in
4 conflict with federal requirements that are a prescribed condition to
5 the allocation of federal funds to the state or the eligibility of
6 employers in this state for federal unemployment tax credits, the
7 conflicting part of this act is inoperative solely to the extent of
8 the conflict, and the finding or determination does not affect the
9 operation of the remainder of this act. Rules adopted under this act
10 must meet federal requirements that are a necessary condition to the
11 receipt of federal funds by the state or the granting of federal
12 unemployment tax credits to employers in this state.

--- END ---