

---

HOUSE BILL 2049

---

State of Washington

65th Legislature

2017 Regular Session

By Representatives Blake, Dye, Steele, Springer, Buys, and Condotta

Read first time 02/09/17. Referred to Committee on Labor & Workplace Standards.

1 AN ACT Relating to payment of production-based compensation wages  
2 for the employment and use of labor in agricultural activities and in  
3 the production, handling, and storage of farm products; adding a new  
4 section to chapter 49.46 RCW; and declaring an emergency.

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

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 49.46  
7 RCW to read as follows:

8 (1) For employers electing to pay production-based safe harbor  
9 compensation under this chapter, the production-based safe harbor  
10 compensation shall not be less than one hundred eight percent of the  
11 applicable state minimum wage then in effect for the period of time  
12 within which production-based safe harbor compensation activity is  
13 being performed and other compensation is not being paid, as measured  
14 using a weekly averaging calculation as authorized in WAC  
15 296-126-021, or such other calculation method as authorized by law,  
16 and at all times during which production-based safe harbor  
17 compensation is being paid, the employee is provided all breaks or  
18 rest periods as required by law.

19 (2) In calculating the qualification of one hundred eight percent  
20 of the applicable state minimum wage then in effect of production-  
21 based safe harbor compensation, all hours during which the employee

1 is authorized or required by the employer to be on duty on the  
2 employer's premises or at a prescribed work location for purposes of  
3 performing the activities for which the production-based safe harbor  
4 compensation is being paid, inclusive of breaks, rest periods, and  
5 time spent on activities directly and indirectly associated with the  
6 activity, except to the extent the employee is specifically and  
7 separately compensated for a portion of such time on an hourly or  
8 other lawful basis, shall be included in the calculation and deemed  
9 compensated by payment of the greater of the production-based safe  
10 harbor compensation or one hundred eight percent of the applicable  
11 state minimum wage then in effect.

12 (3)(a) To encourage and expedite full compensation of employees  
13 for break times, rest and recovery periods, and time spent on  
14 activities directly and indirectly associated with the activity on  
15 which the production-based safe harbor compensation is calculated  
16 that occurred prior to the effective date of this section, employers  
17 may elect to pursue either of the following remedies:

18 (i) The employer may make payments to each of its employees for  
19 previously uncompensated or undercompensated break times, rest and  
20 recovery periods, time spent on activities directly and indirectly  
21 associated with the activity and other nonproductive time for the  
22 prior three years from the effective date of this section; or

23 (ii) The employer may pay each employee an amount equal to four  
24 percent of the employee's gross earnings for work performed on a  
25 production basis or piece work compensation basis during the three-  
26 year period prior to the effective date of this section, less the  
27 amounts previously and separately paid to that employee for break  
28 times, rest and recovery periods, time spent on activities directly  
29 and indirectly associated with the activity and other nonproductive  
30 time, if any.

31 (b) Employers must make reasonable and good faith efforts to  
32 locate and pay employees the amounts required under this subsection,  
33 and if after reasonable and good faith efforts, employers are unable  
34 to locate any employees entitled to the payments, employers may pay  
35 the amounts due the employees to the department of labor and  
36 industries, with the supporting records of the employees entitled  
37 this compensation, which shall have the same effect as though the  
38 compensation was paid to the employees entitled to that compensation.

39 (4)(a) Employers that have paid the compensation as provided in  
40 subsection (3) of this section within twelve months of the effective

1 date of this section, shall have an affirmative defense to any claim  
2 or cause of action for the recovery wages, recordkeeping claims,  
3 damages or penalties, based solely upon the employer's failure to  
4 timely pay the employee compensation for break times, rest and  
5 recovery periods, and time spent on activities directly and  
6 indirectly associated with the activity on which piece rate wages  
7 were calculated, whenever instituted.

8 (b) An employer who makes a reasonable and good faith effort to  
9 pay the compensation as provided in subsection (3) of this section,  
10 but who solely through good faith error fails to make a payment to  
11 one or more employees as described in subsection (3) of this section,  
12 shall not lose the affirmative defense set forth in this subsection  
13 as a result of that good faith error if the employer, within thirty  
14 days of discovery or notice of the error, pays the compensation as  
15 described in subsection (3) of this section to the employee.

16 (5) For purposes of this section, "production-based safe harbor  
17 compensation" means a wage rate that may be paid to employees in  
18 connection with work related to the growing, production, handling, or  
19 storage of farm products as defined in RCW 7.48.310(4) or in  
20 performing agricultural activities as defined in RCW 7.48.310(1),  
21 based upon the employee's job performance as measured through the  
22 number of (a) units picked, packed, or manufactured; (b) tasks  
23 performed; (c) events completed; or (d) other measurable recurring  
24 circumstances produced, completed, or performed.

25 NEW SECTION. **Sec. 2.** This act is necessary for the immediate  
26 preservation of the public peace, health, or safety, or support of  
27 the state government and its existing public institutions, and takes  
28 effect immediately.

--- END ---