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## Labor & Workplace Standards Committee

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### HB 1601

**Brief Description:** Creating the universal worker protections act.

**Sponsors:** Representatives Stonier, Sells, Appleton, Doglio, Ortiz-Self, Jenkins, Valdez, Hudgins, Pollet, Stanford and Macri.

#### Brief Summary of Bill

- Creates the Employee Fair Classification Act, which creates new provisions prohibiting the misclassification of employees as independent contractors and creates remedies, including civil penalties and damages.
- Provides for the creation of workers' boards, when certain thresholds are met, to set minimum pay rates and other labor standards for workers in certain industries.
- Establishes procedures for creating portable benefits for workers in certain industries.
- Specifies certain rights for workers and prohibits retaliation.
- Requires contributing agents to provide data and reports about workers.
- Requires the Department of Labor and Industries to investigate complaints, impose sanctions, conduct surveys, and fulfill other duties.

**Hearing Date:** 2/4/19

**Staff:** Trudes Tango (786-7384).

#### **Background:**

##### Employee Status.

Employment standards and benefits, such as industrial insurance, unemployment insurance, and minimum wages, generally apply only if an employer-employee relationship exists rather than an independent contractor relationship. Various multipart tests are used to determine whether an

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individual is an independent contractor. Some tests are created in statute and others are based on common law. The test a person may be subject to depends on the employment standard or benefit at issue.

#### Wage Boards/Labor Standards Boards.

Generally, a wage board is an entity composed of business, labor, and public members tasked by the state labor agency with recommending a minimum wage or other standards for a particular occupation or industry. For example, in 2015, New York's Governor directed the Commissioner of New York's Department of Labor to convene a wage board for fast food workers. After 10 hearings, the Commissioner adopted a recommendation that phased in minimum wage increases.

#### **Summary of Bill:**

##### Employee Fair Classification Act.

The Employee Fair Classification Act (EFCA) is enacted. Certain actions by employers and other persons are prohibited, such as: willfully misclassifying an employee as an independent contractor; requiring or requesting an employee to agree to or sign a document that results in misclassification; and other acts.

An employer-employee relationship exists when an individual performs labor or services for an employer. Proof that an individual is not an employee must be established by a preponderance of the evidence. Definitions of "employee" and "independent contractor" are created. An "independent contractor" is an individual who performs labor or services under a new test created under the EFCA, which is similar to the test used in the context of industrial insurance. The EFCA independent contractor tests apply to prevailing wage, wage deductions, the Wage Payment Act, the Minimum Wage Act, unemployment insurance, and industrial insurance. Existing statutory tests are repealed. In addition, a common law test used for industrial insurance is eliminated. Enforcement of the EFCA may be through administrative procedures and court action.

##### Workers' Boards.

*Establishing Minimum Base Rate.* The Department of Labor and Industries (L&I) must establish a minimum base rate for all "intermediary employees." An intermediary employee is any worker, regardless of corporate status, who is not an employee and who provides services for financial compensation through a "contributing agent." A "contributing agent" is any entity that facilitates the provision of services by intermediary employees to consumers.

Intermediary employees may not be paid less than the minimum base rate. "Covered intermediary employees" (intermediary employees eligible for representation by a workers' board) may not be paid less than the rate determined by the workers' board.

*Procedures for Establishing a Workers' Board.* Procedures are established to create workers' boards for specified industries, if certain conditions are met. For the purposes of convening workers' boards, the L&I must create five distinct nonemployee industry categories: (1) caregiving and domestic services or other services performed in and about the home; (2) passenger transport; (3) product movement; (4) sales; and (5) certificated professional services. Every three years, the L&I must evaluate and redefine industry categories, based on data reported by contributing agents and information gathered from surveys.

An "eligible worker representative" is an organization or association eligible to represent covered intermediary employees in a given industry through a workers' board. Once an eligible worker representative provides a showing of interest by presenting evidence that it represents either 250 covered intermediary employees or 0.5 percent of the industry, whichever is less, then the L&I must indicate that the representative is "validated," and a workers' board must be established for that industry.

Within 90 days of the L&I validating an eligible worker representative:

- all contributing agents in the industry for which a workers' board is established must provide the validated worker representative physical access to the intermediary employees and a list of intermediary employee's names and contact information; and
- all contributing agents must notify all its covered intermediary employees of the workers' board and their right to choose a representative.

For positions or jobs that require certification or licensure, the L&I must determine which positions, job titles, classifications, or tasks fall within the workers' board's scope. For all other positions or jobs, the validated worker representatives must provide the L&I with the list of contributing agents that fall within the workers' board's scope. A contributing agent may appeal the inclusion of its intermediary employees in the workers' board's scope.

*Composition of the Workers' Board.* The workers' board must be composed of three validated worker representatives, three validated contributing agent representatives, and four representatives from the L&I. Provisions are created regarding the distribution of seats when there are multiple validated representatives, the terms for board members, the adoption of bylaws, and other procedures.

*Duties of the Workers' Board.* The workers' board must: (1) ascertain wages and benefits necessary to provide for the full participation in society of covered intermediary employees; (2) promote safe working conditions, training, and professional development of covered intermediary employees; and (3) promote effective enforcement of standards across the industry.

Every three years, the workers' board must issue determinations on aspects of the industry, including minimum standards for, among other things: (1) hourly wages or rates; (2) rules about scheduling; (3) portable benefit contribution rates; (4) leave policies; (5) certification standards and access to training; and (6) other aspects of working conditions raised by board members.

*Determinations Made by the Workers' Board.* Each member of the workers' board has one vote. Determinations by the workers' board must be made by majority vote, except decreases in rates or protections must be made by a majority of validated worker representatives, majority of validated contributing agent representatives, and majority of state representatives. Provisions are established regarding the workers' board meetings, staffing, and required public hearings.

The workers' board's determinations must be adopted by the L&I as policy. If the workers' board fails to reach a determination within the required time period, the L&I's minimum base rates take effect and the L&I must institute increases in the minimum rates and benefit contributions based on inflation.

### Portable Benefits.

Contributing agents must contribute funds to "benefit providers" to provide benefits to eligible beneficiaries. "Benefit providers" are nonprofit entities that meet certain minimum requirements. Eligible beneficiaries are intermediary employees who meet minimum thresholds to receive contributions.

Contributions from contributing agents must be 5 percent of the total charge collected from the consumer for each transaction of services provided, or \$1 for every hour that the worker provided services, whichever is less. Contributions must be in addition to pay and may not count toward the minimum base rate.

The contribution amounts earned by the eligible beneficiary belong to the eligible beneficiary and the eligible beneficiary may accrue benefits based on contribution from more than one contributing agent.

Benefit providers must provide some or all of the following benefits: (1) health insurance; (2) paid time off; (3) retirement benefits; and (4) other benefits as determined by benefit providers. Benefit providers may use up to 10 percent of contribution funds for administration costs. Eligible beneficiaries must select a benefit provider and may change providers once per year.

All eligible beneficiaries must receive industrial insurance under the state's Industrial Insurance Act. Contributing agents must collect the portion of the contribution amount sufficient to provide industrial insurance and remit those amounts to the L&I. The amounts necessary shall be determined by the L&I based on appropriate risk classifications.

### Rights of Intermediary Employees.

Specific rights are established for covered intermediary employees, including the right to organize, the right to communicate freely with other workers and discuss terms and conditions of work with other workers, without interference or retribution from contributing agents, and other rights.

Contributing agents are prohibited from engaging in certain conduct, such as performing surveillance of workers' organizing activities, reducing a worker's access to wages for exercising worker rights, adopting work rules that reasonably tend to inhibit workers from exercising their rights, and other conduct.

There is a rebuttable presumption of retaliation if a contributing agent takes an adverse action against a person within 90 days of the person exercising his or her rights.

The requirements of contributing agents and the benefits provided may not be considered in determinations of an eligible beneficiary's employment status or the contributing agent's employment relationship to the eligible beneficiary.

### Reports from Contributing Agents.

Contributing agents must submit annual reports to the L&I disclosing certain information. Contributing agents with fewer than five intermediary employees must report aggregated data about intermediary employees and data about wage theft and sexual abuse reported by intermediary employees. Contributing agents with five or more intermediary employees must

submit reports that also disclose: (1) disaggregated data about intermediary employees; (2) data about worker turnover and retention; (3) data about payment rates; (4) data about benefits and benefit contributions; (5) policies, practices, and algorithms of the contributing agent; and (6) conflict of interest disclosures, including disclosure of any third-party recipients of worker data.

Duties of the Department of Labor and Industries.

The L&I must: designate staff dedicated to investigation and enforcement; monitor compliance; establish fees on contributing agents to fund the L&I's compliance efforts; provide procedures for worker-led complaints; establish monetary penalties; and adopt other implementation rules.

The L&I must contract with eligible worker representatives to conduct outreach and education. Contributing agents must provide organizations conducting outreach and education access to workers through all reasonable means, including worksites, user data, and payment data.

Every three years, the L&I must contract with two third-party entities to conduct surveys addressing, among other things: (1) the number of intermediary employees, eligible beneficiaries, and covered intermediary employees in the state; (2) demographic data; (3) benefits eligible beneficiaries receive from portable benefit accounts; and (4) unmet needs of eligible beneficiaries and covered intermediary employees. One contract must be issued to a worker organization that meets certain specified qualifications. One contract must be issued to a university research department or similar nonpartisan entity.

Reports must be submitted to the appropriate committees of the Legislature.

**Appropriation:** None.

**Fiscal Note:** Requested on January 24, 2019.

**Effective Date:** This bill takes effect 90 days after adjournment of the session in which the bill is passed, except for section 20, relating to definitions, which takes effect December 31, 2019 and section 8, relating to investigations of the EFCA, which takes effect January 1, 2021.