
SUBSTITUTE HOUSE BILL 2136

State of Washington

66th Legislature

2020 Regular Session

By House Rural Development, Agriculture, & Natural Resources
(originally sponsored by Representatives Orcutt, Blake, and Shewmake)

READ FIRST TIME 01/29/20.

1 AN ACT Relating to extending the farm internship program;
2 reenacting and amending RCW 49.46.010; adding a new section to
3 chapter 49.12 RCW; adding a new section to chapter 50.04 RCW; adding
4 a new section to chapter 51.16 RCW; and providing expiration dates.

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

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 49.12
7 RCW to read as follows:

8 (1) The director shall establish a farm internship pilot project
9 for the employment of farm interns on small farms under special
10 certificates at wages, if any, as authorized by the department and
11 subject to such limitations as to time, number, proportion, and
12 length of service as provided in this section and as prescribed by
13 the department.

14 (2) A small farm may employ no more than three interns at one
15 time under this section.

16 (3) A small farm must apply for a special certificate on a form
17 made available by the director. The application must set forth: The
18 name of the farm and a description of the farm seeking the
19 certificate; the type of work to be performed by a farm intern; a
20 description of the internship program; the period of time for which
21 the certificate is sought and the duration of an internship; the

1 number of farm interns for which a special certificate is sought; the
2 wages, if any, that will be paid to the farm intern; any room and
3 board, stipends, and other remuneration the farm will provide to a
4 farm intern; and the total number of workers employed by the farm.

5 (4) Upon receipt of an application, the department shall review
6 the application and issue a special certificate to the requesting
7 farm within fifteen days if the department finds that:

8 (a) The farm qualifies as a small farm;

9 (b) There have been no serious violations of chapter 49.46 RCW or
10 Title 51 RCW that provide reasonable grounds to believe that the
11 terms of an internship agreement may not be complied with;

12 (c) The issuance of a certificate will not create unfair
13 competitive labor cost advantages nor have the effect of impairing or
14 depressing wage or working standards established for experienced
15 workers for work of a like or comparable character in the industry or
16 occupation at which the intern is to be employed;

17 (d) A farm intern will not displace an experienced worker; and

18 (e) The farm demonstrates that the interns will perform work for
19 the farm under an internship program that: (i) Provides a curriculum
20 of learning modules and supervised participation in farm work
21 activities designed to teach farm interns about farming practices and
22 farm enterprises; (ii) is based on the bona fide curriculum of an
23 educational or vocational institution; and (iii) is reasonably
24 designed to provide the intern with vocational knowledge and skills
25 about farming practices and enterprises. In assessing an internship
26 program, the department may consult with relevant college and
27 university departments and extension programs and state and local
28 government agencies involved in the regulation or development of
29 agriculture.

30 (5) A special certificate issued under this section must specify
31 the terms and conditions under which it is issued, including: The
32 name of the farm; the duration of the special certificate allowing
33 the employment of farm interns and the duration of an internship; the
34 total number of interns authorized under the special certificate; the
35 authorized wage rate, if any; and any room and board, stipends, and
36 other remuneration the farm will provide to the farm intern. A farm
37 intern may be paid at wages specified in the certificate only during
38 the effective period of the certificate and for the duration of the
39 internship.

1 (6) If the department denies an application for a special
2 certificate, notice of denial must be mailed to the farm. The farm
3 listed on the application may, within fifteen days after notice of
4 such action has been mailed, file with the director a petition for
5 review of the denial, setting forth grounds for seeking such a
6 review. If reasonable grounds exist, the director or the director's
7 authorized representative may grant such a review and, to the extent
8 deemed appropriate, afford all interested persons an opportunity to
9 be heard on such review.

10 (7) Before employing a farm intern, a farm must submit a
11 statement on a form made available by the director stating that the
12 farm understands: The requirements of the industrial welfare act,
13 this chapter, that apply to farm interns; that the farm must pay
14 workers' compensation premiums in the assigned intern risk class and
15 must pay workers' compensation premiums for nonintern work hours in
16 the applicable risk class; and that if the farm does not comply with
17 subsection (8) of this section, the director may revoke the special
18 certificate.

19 (8) The director may revoke a special certificate issued under
20 this section if a farm fails to: Comply with the requirements of the
21 industrial welfare act, this chapter, that apply to farm interns; pay
22 workers' compensation premiums in the assigned intern risk class; or
23 pay workers' compensation premiums in the applicable risk class for
24 nonintern work hours.

25 (9) Before the start of a farm internship, the farm and the
26 intern must sign a written agreement and send a copy of the agreement
27 to the department. The written agreement must, at a minimum:

28 (a) Describe the internship program offered by the farm,
29 including the skills and objectives the program is designed to teach
30 and the manner in which those skills and objectives will be taught;

31 (b) Explicitly state that the intern is not entitled to
32 unemployment benefits or minimum wages for work and activities
33 conducted pursuant to the internship program for the duration of the
34 internship;

35 (c) Describe the responsibilities, expectations, and obligations
36 of the intern and the farm, including the anticipated number of hours
37 of farm activities to be performed by and the anticipated number of
38 hours of curriculum instruction provided to the intern per week;

39 (d) Describe the activities of the farm and the type of work to
40 be performed by the farm intern; and

1 (e) Describes any wages, room and board, stipends, and other
2 remuneration the farm will provide to the farm intern.

3 (10) The department must limit the administrative costs of
4 implementing the internship pilot program by relying on farm
5 organizations and other stakeholders to perform outreach and inform
6 the farm community of the program and by limiting employee travel to
7 the investigation of allegations of noncompliance with program
8 requirements.

9 (11) The definitions in this subsection apply throughout this
10 section unless the context clearly requires otherwise.

11 (a) "Farm intern" means an individual who provides services to a
12 small farm under a written agreement and primarily as a means of
13 learning about farming practices and farm enterprises.

14 (b) "Farm internship program" means an internship program
15 described under subsection (4)(e) of this section.

16 (c) "Small farm" means a farm:

17 (i) Organized as a sole proprietorship, partnership, or
18 corporation;

19 (ii) That reports on the applicant's schedule F of form 1040 or
20 other applicable form filed with the United States internal revenue
21 service annual sales less than two hundred fifty thousand dollars;
22 and

23 (iii) Where all the owners or partners of the farm provide
24 regular labor to and participate in the management of the farm, and
25 own or lease the productive assets of the farm.

26 (12) The department shall monitor and evaluate the farm
27 internships authorized by this section and report to the appropriate
28 committees of the legislature by December 31, 2024. The report must
29 include, but not be limited to: The number of small farms that
30 applied for and received special certificates; the number of interns
31 employed as farm interns; the nature of the educational activities
32 provided to the farm interns; the wages and other remuneration paid
33 to farm interns; the number of and type of workers' compensation
34 claims for farm interns; the employment of farm interns following
35 farm internships; and other matters relevant to assessing farm
36 internships authorized in this section.

37 (13) This section expires December 31, 2025.

38 NEW SECTION. **Sec. 2.** A new section is added to chapter 50.04
39 RCW to read as follows:

1 (1) Except for services subject to RCW 50.44.010, 50.44.020,
2 50.44.030, or 50.50.010, the term "employment" does not include
3 service performed in agricultural labor by a farm intern providing
4 his or her services under a farm internship program as established in
5 section 1 of this act.

6 (2) For purposes of this section, "agricultural labor" means:

7 (a) Services performed on a farm, in the employ of any person, in
8 connection with the cultivation of the soil, or in connection with
9 raising or harvesting any agricultural or horticultural commodity,
10 including raising, shearing, feeding, caring for, training, and
11 management of livestock, bees, poultry, and furbearing animals and
12 wildlife, or in the employ of the owner or tenant or other operator
13 of a farm in connection with the operation, management, conservation,
14 improvement, or maintenance of such farm and its tools and equipment;

15 (b) Services performed in packing, packaging, grading, storing,
16 or delivering to storage, or to market or to a carrier for
17 transportation to market, any agricultural or horticultural
18 commodity; but only if such service is performed as an incident to
19 ordinary farming operations. The exclusions from the term
20 "employment" provided in this subsection (2)(b) are not applicable
21 with respect to commercial packing houses, commercial storage
22 establishments, commercial canning, commercial freezing, or any other
23 commercial processing or with respect to services performed in
24 connection with the cultivation, raising, harvesting, and processing
25 of oysters or raising and harvesting of mushrooms; or

26 (c) Direct local sales of any agricultural or horticultural
27 commodity after its delivery to a terminal market for distribution or
28 consumption.

29 (3) This section expires December 31, 2025.

30 **Sec. 3.** RCW 49.46.010 and 2015 c 299 s 3 are each reenacted and
31 amended to read as follows:

32 As used in this chapter:

33 (1) "Director" means the director of labor and industries;

34 (2) "Employ" includes to permit to work;

35 (3) "Employee" includes any individual employed by an employer
36 but shall not include:

37 (a) Any individual (i) employed as a hand harvest laborer and
38 paid on a piece rate basis in an operation which has been, and is
39 generally and customarily recognized as having been, paid on a piece

1 rate basis in the region of employment; (ii) who commutes daily from
2 his or her permanent residence to the farm on which he or she is
3 employed; and (iii) who has been employed in agriculture less than
4 thirteen weeks during the preceding calendar year;

5 (b) Any individual employed in casual labor in or about a private
6 home, unless performed in the course of the employer's trade,
7 business, or profession;

8 (c) Any individual employed in a bona fide executive,
9 administrative, or professional capacity or in the capacity of
10 outside salesperson as those terms are defined and delimited by rules
11 of the director. However, those terms shall be defined and delimited
12 by the human resources director pursuant to chapter 41.06 RCW for
13 employees employed under the director of personnel's jurisdiction;

14 (d) Any individual engaged in the activities of an educational,
15 charitable, religious, state or local governmental body or agency, or
16 nonprofit organization where the employer-employee relationship does
17 not in fact exist or where the services are rendered to such
18 organizations gratuitously. If the individual receives reimbursement
19 in lieu of compensation for normally incurred out-of-pocket expenses
20 or receives a nominal amount of compensation per unit of voluntary
21 service rendered, an employer-employee relationship is deemed not to
22 exist for the purpose of this section or for purposes of membership
23 or qualification in any state, local government, or publicly
24 supported retirement system other than that provided under chapter
25 41.24 RCW;

26 (e) Any individual employed full time by any state or local
27 governmental body or agency who provides voluntary services but only
28 with regard to the provision of the voluntary services. The voluntary
29 services and any compensation therefor shall not affect or add to
30 qualification, entitlement, or benefit rights under any state, local
31 government, or publicly supported retirement system other than that
32 provided under chapter 41.24 RCW;

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

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

1 (h) Any individual engaged in forest protection and fire
2 prevention activities;

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

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

12 (k) Any resident, inmate, or patient of a state, county, or
13 municipal correctional, detention, treatment or rehabilitative
14 institution;

15 (l) Any individual who holds a public elective or appointive
16 office of the state, any county, city, town, municipal corporation or
17 quasi municipal corporation, political subdivision, or any
18 instrumentality thereof, or any employee of the state legislature;

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

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

23 (o) Until December 31, 2025, any farm intern providing his or her
24 services to a small farm which has a special certificate issued under
25 section 1 of this act;

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

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

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

39 (6) "Retail or service establishment" means an establishment
40 seventy-five percent of whose annual dollar volume of sales of goods

1 or services, or both, is not for resale and is recognized as retail
2 sales or services in the particular industry;

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

8 NEW SECTION. **Sec. 4.** A new section is added to chapter 51.16
9 RCW to read as follows:

10 (1) The department shall adopt rules to provide special workers'
11 compensation risk class or classes for farm interns providing
12 agricultural labor pursuant to a farm internship program under
13 section 1 of this act. The rules must include any requirements for
14 obtaining a special risk class that must be met by small farms.

15 (2) This section expires December 31, 2025.

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