
SENATE BILL 5690

State of Washington

66th Legislature

2019 Regular Session

By Senators Saldaña, Keiser, Conway, and Nguyen

Read first time 01/28/19. Referred to Committee on Labor & Commerce.

1 AN ACT Relating to creating the universal worker protections act;
2 amending RCW 39.12.010, 49.46.010, 49.46.010, 50.04.100, 50.04.298,
3 50.12.070, 51.08.070, 51.08.180, and 51.12.020; reenacting and
4 amending RCW 49.48.082; adding a new section to chapter 39.12 RCW;
5 adding new sections to chapter 49.52 RCW; adding a new section to
6 chapter 49.48 RCW; adding a new section to chapter 49.46 RCW; adding
7 a new section to chapter 50.04 RCW; adding a new section to chapter
8 51.12 RCW; adding new chapters to Title 49 RCW; creating new
9 sections; repealing RCW 39.12.100, 50.04.140, 50.04.145, 51.08.181,
10 and 51.08.195; prescribing penalties; providing effective dates; and
11 providing expiration dates.

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

13 NEW SECTION. **Sec. 1.** (1) The legislature finds that:

14 (a) In Washington and across our nation, the basic social safety
15 net is intrinsically connected and derived from employment. However,
16 as our economy has changed, the social contract that full-time work
17 led to basic financial security, retirement benefits, and the ability
18 to provide for one's family, is no longer true for too many people.
19 Additionally, our economy continues to adapt and the circumstances of
20 how and where work is performed, as well as the relationships of
21 those benefiting from work, look very different than fifty years ago.

1 As our communities and economies evolve, there emerge credible and
2 constructive rationales for alternative pathways for performing work,
3 other than the traditional employment model based on hours in a day
4 and shifts in a week construct. However, current economic systems and
5 regulatory frameworks have created an incentive structure that
6 encourages companies to forego social responsibilities to their
7 communities and those performing work for them, by classifying their
8 workers as independent contractors rather than genuine employees. The
9 financial incentives for classifying or misclassifying workers as
10 independent contractors are compelling to even the most scrupulous of
11 employers. Further, those workers that desire the flexibility and
12 autonomy of a traditional employment model have no access to the
13 legal protections, rights, and benefits of a traditional employee.
14 Lastly, there are no ongoing systems or structures for nonemployee
15 workers to come together and advocate for themselves and their work,
16 or for the state to set industry-wide standards as quickly as
17 technology adapts.

18 (b) Washington is uniquely positioned to address this urgent
19 deficiency of our labor market. The nimble and innovative nature of
20 our economy, coupled with our state's commitment to strong
21 communities provides the expertise and capacity to set the standard
22 nationwide for this century's social compact between an economy and
23 the people that it serves.

24 (2) To provide Washington businesses the necessary legal clarity
25 they require to thrive as companies and employers, and ensure a basic
26 and adaptable social safety net is available to all workers,
27 regardless of worker status, the legislature intends to further
28 clarify the definition of "employee" in Washington state and provide
29 a regulatory and benefits structure for nonemployee workers, and
30 establish workers' boards for independent contractors and the
31 companies that rely on their services.

32 **EMPLOYEE FAIR CLASSIFICATION ACT**

33 NEW SECTION. **Sec. 2.** The legislature finds that underground
34 economic activity in this state results in millions of dollars of
35 lost revenue to the state and is unfair to workers and law-abiding
36 businesses. Misclassification is workplace fraud. Theft of wages by
37 employers through misclassification is a significant problem,
38 particularly in low-wage industries. The legislature intends to

1 improve compliance with wage-related and employment-related benefit
2 laws to help address the problems of the underground economy, level
3 the playing field for honest employers and contractors, and protect
4 workers.

5 NEW SECTION. **Sec. 3.** This chapter may be known and cited as the
6 employee fair classification act.

7 NEW SECTION. **Sec. 4.** The definitions in this section apply
8 throughout this chapter unless the context clearly requires
9 otherwise.

- 10 (1) "Department" means the department of labor and industries.
- 11 (2) "Director" means the director of the department of labor and
12 industries or the director's authorized representative.
- 13 (3) "Employ" means to suffer or permit to work.
- 14 (4) (a) "Employee" means a person, including a helper, who
15 performs labor or services for an employer, and includes workers,
16 laborers, and mechanics under RCW 39.12.010. A person may be an
17 employee of two or more employers at the same time.
- 18 (b) "Employee" does not include an independent contractor.
- 19 (c) "Employee" also does not include, for purposes of sections 6,
20 7, 8, and 9 of this act only:
- 21 (i) Any individual employed in casual labor in or about a private
22 home, unless performed in the course of the employer's trade,
23 business, or profession;
- 24 (ii) Any individual employed in the capacity of an outside
25 salesperson paid solely by way of commission, as defined and
26 delimited by the director.
- 27 (iii) Any individual engaged in the activities of an educational,
28 charitable, religious, state or local governmental body or agency, or
29 nonprofit organization where the employer-employee relationship does
30 not in fact exist or where the services are rendered to such
31 organizations gratuitously. If the individual receives reimbursement
32 in lieu of compensation for normally incurred out-of-pocket expenses
33 or receives a nominal amount of compensation per unit of voluntary
34 service rendered, an employer-employee relationship is deemed not to
35 exist for the purpose of this section or for purposes of membership
36 or qualification in any state, local government, or publicly
37 supported retirement system other than that provided under chapter
38 41.24 RCW;

1 (iv) Any individual employed full time by any state or local
2 governmental body or agency who provides voluntary services but only
3 with regard to the provision of the voluntary services. The voluntary
4 services and any compensation therefor shall not affect or add to
5 qualification, entitlement, or benefit rights under any state, local
6 government, or publicly supported retirement system other than that
7 provided under chapter 41.24 RCW;

8 (v) Any newspaper vendor, carrier, or delivery person selling or
9 distributing newspapers on the street, to offices, to businesses, or
10 from house to house and any freelance news correspondent or
11 "stringer" who, using his or her own equipment, chooses to submit
12 material for publication for free or a fee when such material is
13 published;

14 (vi) Any carrier subject to regulation by part 1 of the
15 interstate commerce act;

16 (vii) Any individual engaged in forest protection and fire
17 prevention activities;

18 (viii) Any individual employed by any charitable institution
19 charged with child care responsibilities engaged primarily in the
20 development of character or citizenship or promoting health or
21 physical fitness or providing or sponsoring recreational
22 opportunities or facilities for young people or members of the armed
23 forces of the United States;

24 (ix) Any resident, inmate, or patient of a state, county, or
25 municipal correctional, detention, treatment, or rehabilitative
26 institution;

27 (x) Any individual who holds a public elective or appointive
28 office of the state, any county, city, town, municipal corporation or
29 quasi-municipal corporation, political subdivision, or any
30 instrumentality thereof, or any employee of the state legislature;

31 (xi) All vessel operating crews of the Washington state ferries
32 operated by the department of transportation;

33 (xii) Any individual employed as a seaman on a vessel other than
34 an American vessel; or

35 (xiii) Any farm intern providing his or her services to a small
36 farm that has a special certificate issued under RCW 49.12.470.

37 (5) (a) "Employer" means any of the following that employ a
38 person: (i) An individual; (ii) any form of business entity, or the
39 receiver, trustee, or successor of a business entity; (iii) an
40 administrator or executor of an estate; or (iv) the state or any

1 agency, instrumentality, or political subdivision of the state.
2 "Employer" includes an individual or entity that acts directly or
3 indirectly in the interest of an employer in relation to employing a
4 person. More than one entity may be the "employer," including in
5 circumstances where one entity controls, is controlled by, or is
6 under common control with another employer, or where one entity
7 exerts control over the operations of another employer.

8 (b) "Employer" does not include agencies, authorities, or
9 instrumentalities of the United States, its possessions and
10 territories, the commonwealth of Puerto Rico, or the District of
11 Columbia.

12 (6) "Front pay" means the compensation the employee would earn if
13 reinstated to his or her former position.

14 (7) "Helper" means an individual engaged by an employee to
15 perform work in the employer's usual course of business. The employer
16 of the employee is the employer of the "helper."

17 (8) (a) "Independent contractor" means an individual who performs
18 labor or services for a party when all of the following elements are
19 established:

20 (i) The individual is and will continue to be free from control
21 or direction over the performance of the labor or services by the
22 party for whom the labor or services are performed, both under the
23 contract of labor or service and in fact. Control or direction
24 includes the right to control or direct as well as general control or
25 direction over the individual's physical activities; and

26 (ii) The labor or service is outside the usual course of business
27 for which the labor or service is performed; and

28 (iii) The individual is customarily engaged in an independently
29 established trade, occupation, business, or profession of the same
30 nature as that involved in the contract of labor or service, for
31 which the individual independently establishes the price of the
32 individual's labor or service; and

33 (iv) On the effective date of service, the individual is
34 responsible for filing at the next applicable filing period, both
35 under the contract of service and in fact, a schedule of expenses
36 with the internal revenue service for the type of business the
37 individual is conducting; and

38 (v) On the effective date of service, or within a reasonable
39 period after the effective date of service, the individual has an
40 active and valid account with the department of revenue and other

1 state agencies as required by the particular case, for the business
2 the individual is conducting, for the payment of all state taxes
3 normally paid by employers and businesses and has registered for and
4 received a unified business identifier number from the state of
5 Washington; and

6 (vi) On the effective date of service, the individual is
7 maintaining a separate set of books or records that reflect all items
8 of income and expenses of the business that the individual is
9 conducting; and

10 (vii) If the individual is performing services that require
11 registration under chapter 18.27 RCW or licensing under chapter 19.28
12 RCW for remuneration under an independent contract, on the effective
13 date of the contract for services the individual has a valid
14 contractor registration under chapter 18.27 RCW or an electrical
15 contractor license under chapter 19.28 RCW.

16 (b) In determining whether an individual is an independent
17 contractor, acts taken by an employer to comply with local, state, or
18 federal laws or regulations may not be considered as proof of
19 independent contractor status.

20 (9) "Misclassification" means designating an employee as a
21 nonemployee of the employer.

22 (10)(a) "Pattern or practice" means that, in addition to the
23 current violation, within the previous ten years the employer was:

24 (i) Convicted of a criminal violation of a state or local law
25 concerning nonpayment of wages;

26 (ii) Subject to a court order entering final judgment for a
27 violation of this chapter or chapter 39.12, 49.46, 49.48, or 49.52
28 RCW, and the judgment was not satisfied or current within thirty days
29 of the later of: (A) The expiration of the time for appealing the
30 order; or (B) if a timely appeal was made, the date of the final
31 resolution of the appeal; or

32 (iii) Due to a previous violation, subject to a final and binding
33 citation and notice of assessment from the department for a violation
34 of this chapter or chapter 39.12 or 49.48 RCW, or a final
35 determination of violation of chapter 39.12 RCW, and the citation,
36 determination, and penalty was not satisfied or current within thirty
37 days of the date the citation or determination became final and
38 binding.

39 (b) For purposes of this subsection (10), an employer includes a
40 successor employer, as defined in RCW 49.48.082.

1 (11) "Person" means a natural person, firm, partnership,
2 corporation, association, or organization.

3 (12) "Willful" means a knowing and intentional action that is
4 neither accidental nor the result of a bona fide dispute.

5 NEW SECTION. **Sec. 5.** (1) An employer-employee relationship
6 exists when an individual performs labor or services for another
7 individual or entity. The party asserting that an individual is not
8 an employee must establish by a preponderance of the evidence that
9 the individual is an independent contractor or is otherwise not an
10 employee under this chapter.

11 (2) A general contractor is not responsible for violations of an
12 independent contractor or subcontractor under this chapter unless the
13 general contractor exerts substantial control over the day-to-day
14 work of the independent contractor or subcontractor. For purposes of
15 this subsection:

16 (a) "General contractor" means the contractor required to be
17 registered under chapter 18.27 RCW or licensed under chapter 19.28
18 RCW whose business operations for a project require the use of more
19 than one building trade or craft upon a single job or project, under
20 a single building permit, and who has responsibility to superintend
21 the project as a whole.

22 (b) "Subcontractor" means a contractor who engages in a business
23 that is required to be registered under chapter 18.27 RCW or licensed
24 under chapter 19.28 RCW and who is not a general contractor.

25 NEW SECTION. **Sec. 6.** (1) An employer may not willfully
26 misclassify an employee as an independent contractor.

27 (2) A person may not charge an employee who has been
28 misclassified as an independent contractor a fee, or make any
29 deductions from compensation for any purpose, including for goods,
30 materials, space rental, services, government licenses, repair,
31 equipment maintenance, or fines arising from the employment where any
32 of the acts would have violated the law if the individual had not
33 been misclassified.

34 (3) A person may not require or request an employee to enter into
35 an agreement or sign a document that results in the misclassification
36 of the employee as an independent contractor or otherwise does not
37 accurately reflect the employee's relationship with the employer.

1 (4) A person may not perform the following acts for the purpose
2 of facilitating or evading detection of a violation of this chapter:

3 (a) Form, assist in, or induce the formation of a corporation,
4 partnership, limited liability company, or other business entity; or

5 (b) Pay or collect a fee for use of a foreign or domestic
6 corporation, partnership, limited liability company, or other
7 business entity.

8 (5) A person may not, for remuneration, conspire with, aid and
9 abet, assist, or advise an employer with the intent of violating this
10 chapter.

11 NEW SECTION. **Sec. 7.** (1) The department may conduct an
12 investigation if it obtains information indicating a person may have
13 violated this chapter, but the department may not investigate a
14 violation of this chapter that occurred more than three years before
15 the date of the violation. For the purposes of this section, a
16 violation occurs from the initial date of misclassification and for
17 as long as the employee continues to be misclassified. The three-year
18 period is tolled during any period of time that an employer, any of
19 its agents, or any person acting on behalf of the employer, deters an
20 individual from filing a complaint under this section.

21 (2) If the department determines that a person violated this
22 chapter, it may:

23 (a) For a violation of section 10 of this act, order the employer
24 to pay a civil penalty of not less than one thousand dollars and not
25 more than ten thousand dollars;

26 (b) For a violation of section 6 of this act, order the person to
27 pay a civil penalty of: (i) Not less than one thousand dollars and
28 not more than ten thousand dollars per employee; or (ii) if the
29 person has engaged in a pattern or practice of violations, not less
30 than ten thousand dollars and not more than twenty-five thousand
31 dollars per employee;

32 (c) For a violation of section 6 of this act, order persons,
33 including employers, to jointly and severally pay the following: (i)
34 Three times the amount of wages, salary, and employment benefits
35 denied or withheld, except benefits under Title 50 or 51 RCW; and
36 (ii) reimbursement for payroll taxes under Title 50 or 51 RCW and the
37 value of any other state payroll taxes paid or state benefits lost by
38 the employee;

1 (d) In addition, for a violation of section 6 of this act, order
2 the employer to reinstate and properly classify the employee. The
3 director may award front pay in lieu of reinstatement; and

4 (e) Determine whether to initiate collection procedures pursuant
5 to RCW 51.16.150 through 51.16.190 to enforce its orders under (c)
6 and (d) of this subsection, and send a copy of its determination,
7 including any supporting documentation, to the employment security
8 department.

9 (3) The department must consider referrals based on a court
10 finding of a violation of section 6 of this act to determine whether
11 to initiate collection procedures.

12 (4)(a) The department must adjust the penalty amounts in
13 subsection (2) of this section beginning January 1, 2021, and on each
14 January 1st thereafter, to reflect the percentage change in the
15 consumer price index, calculated as follows: The index for the
16 calendar year preceding the year in which the January 1st calculation
17 is made, to be known as "calendar year A," is divided by the index
18 for the calendar year preceding calendar year A, and the resulting
19 ratio is multiplied by the penalty amount in effect on December 31st
20 immediately preceding the January 1st on which the respective
21 calculation is made.

22 (b) For the purposes of this subsection, "index" means the same
23 as the definition in RCW 2.12.037(1).

24 (5) An employer may appeal the department's determination
25 pursuant to RCW 49.48.084.

26 (6) The department must deposit civil penalties collected under
27 this chapter into the employee fair classification act account
28 created in section 11 of this act.

29 (7) This section expires January 2, 2021.

30 NEW SECTION. **Sec. 8.** (1) The department may conduct an
31 investigation if it obtains information indicating a person may have
32 violated this chapter, but the department may not investigate a
33 violation of this chapter that occurred more than three years before
34 the date of the violation. For the purposes of this section, a
35 violation occurs from the initial date of misclassification and for
36 as long as the employee continues to be misclassified. The three-year
37 period is tolled during any period of time that an employer, any of
38 its agents, or any person acting on behalf of the employer, deters an
39 individual from filing a complaint under this section.

1 (2) If the department determines that a person violated this
2 chapter, it must:

3 (a) For a violation of section 10 of this act, order the employer
4 to pay a civil penalty of not less than one thousand dollars and not
5 more than ten thousand dollars;

6 (b) For a violation of section 6 of this act, order the person to
7 pay a civil penalty of: (i) Not less than one thousand dollars and
8 not more than ten thousand dollars per employee; or (ii) if the
9 person has engaged in a pattern or practice of violations, not less
10 than ten thousand dollars and not more than twenty-five thousand
11 dollars per employee;

12 (c) For a violation of section 6 of this act, order persons,
13 including employers, to jointly and severally pay the following: (i)
14 Three times the amount of wages, salary, and employment benefits
15 denied or withheld, except benefits under Title 50 or 51 RCW; and
16 (ii) reimbursement for payroll taxes under Title 50 or 51 RCW and the
17 value of any payroll taxes paid or benefits lost by the employee;

18 (d) In addition, for a violation of section 6 of this act, order
19 the employer to reinstate and properly classify the employee. The
20 director may award front pay in lieu of reinstatement;

21 (e) Determine whether to initiate collection procedures pursuant
22 to RCW 51.16.150 through 51.16.190 to enforce its orders under (c)
23 and (d) of this subsection, and send a copy of its determination,
24 including any supporting documentation, to the employment security
25 department; and

26 (f) Consider referrals based on a court finding of a violation of
27 section 6 of this act to determine whether to initiate collection
28 procedures.

29 (3)(a) The department must adjust the penalty amounts in
30 subsection (2) of this section beginning January 1, 2021, and on each
31 January 1st thereafter, to reflect the percentage change in the
32 consumer price index, calculated as follows: The index for the
33 calendar year preceding the year in which the January 1st calculation
34 is made, to be known as "calendar year A," is divided by the index
35 for the calendar year preceding calendar year A, and the resulting
36 ratio is multiplied by the penalty amount in effect on December 31st
37 immediately preceding the January 1st on which the respective
38 calculation is made.

39 (b) For the purposes of this subsection, "index" means the same
40 as the definition in RCW 2.12.037(1).

1 (4) An employer may appeal the department's determination
2 pursuant to RCW 49.48.084.

3 (5) The department must deposit civil penalties collected under
4 this chapter into the employee fair classification act account
5 created in section 11 of this act.

6 NEW SECTION. **Sec. 9.** (1) An individual aggrieved by a violation
7 of section 6 of this act may bring suit on behalf of himself or
8 herself or on behalf of any other individual who is similarly
9 situated.

10 (2) If a court determines that a person or persons, including
11 employers, violated section 6 of this act, it:

12 (a) Shall order persons, including employers, to jointly and
13 severally pay the greater of:

14 (i) Three times the amount of any wages including overtime,
15 salary, and employment benefits unlawfully denied or withheld except
16 benefits under Titles 50 and 51 RCW; or

17 (ii) Statutory damages for each employee aggrieved by the
18 violation. Statutory damages must not be less than one thousand
19 dollars and not more than ten thousand dollars per employee, unless
20 the person engaged in a pattern or practice of violations, in which
21 case the statutory damages must be not less than ten thousand dollars
22 and not more than twenty-five thousand dollars per employee;

23 (b) May order persons, including employers, to jointly and
24 severally pay the employee reimbursement for any taxes and the value
25 of any benefits paid by the employee; and

26 (c) Shall order persons, including employers, to jointly and
27 severally pay attorneys' fees and costs.

28 (3) If a court determines that an employer violated section 6 of
29 this act, it may order the employer to pay any taxes owed and award
30 injunctive or other equitable relief, including reinstatement and
31 reclassification of the employee with terms and conditions at least
32 as favorable as those that applied when the employee was
33 misclassified, including rate of compensation, value of any benefits,
34 and hours of work. The court may award front pay in lieu of
35 reinstatement.

36 (4) A civil action under this section must be brought no later
37 than three years after the violation occurred. For the purposes of
38 this section, a violation occurs from the initial date of
39 misclassification and for as long as the employee continues to be

1 misclassified. The three-year period is tolled during any period of
2 time that an employer, any of its agents, or any person acting on
3 behalf of the employer deters an individual from bringing an action
4 under this section.

5 NEW SECTION. **Sec. 10.** (1) If an employer engages an individual
6 to perform labor or services for remuneration and considers the
7 individual to be an independent contractor, the employer shall
8 provide that individual with the following notice:

9 "Every worker has the right to be properly classified as an
10 employee rather than an independent contractor if the
11 individual does not meet the requirements of an independent
12 contractor under the law known as the employee fair
13 classification act.

14 If you believe you or someone else has been improperly
15 classified as an independent contractor under the employee
16 fair classification act, you have the right to challenge this
17 classification by filing a complaint with the department of
18 labor and industries or by bringing an action in state
19 court."

20 (2) The notice required by this section must be in English,
21 Spanish, and any other language or languages primarily spoken by the
22 majority of the workforce. The notice must also be posted in a
23 conspicuous place in each of the employer's offices in the state and
24 at each job site where a worker classified as an independent
25 contractor performs labor or services.

26 NEW SECTION. **Sec. 11.** The employee fair classification act
27 account is created in the state treasury. All receipts from civil
28 penalties issued under section 7 of this act must be deposited in the
29 account. Moneys in the account may be spent only after appropriation.
30 Expenditures from the account may be used only for enforcement of
31 this chapter.

32 NEW SECTION. **Sec. 12.** The department may adopt rules to
33 implement this chapter. In addition, the department shall develop a
34 plan for strategic enforcement of this chapter, prioritizing
35 industries and workplaces with a high concentration of violations.

1 **Sec. 13.** RCW 39.12.010 and 1989 c 12 s 6 are each amended to
2 read as follows:

3 (1) The "prevailing rate of wage," for the intents and purposes
4 of this chapter, shall be the rate of hourly wage, usual benefits,
5 and overtime paid in the locality, as hereinafter defined, to the
6 majority of workers, laborers, or mechanics, in the same trade or
7 occupation. In the event that there is not a majority in the same
8 trade or occupation paid at the same rate, then the average rate of
9 hourly wage and overtime paid to such laborers, workers, or mechanics
10 in the same trade or occupation shall be the prevailing rate. If the
11 wage paid by any contractor or subcontractor to laborers, workers, or
12 mechanics on any public work is based on some period of time other
13 than an hour, the hourly wage for the purposes of this chapter shall
14 be mathematically determined by the number of hours worked in such
15 period of time.

16 (2) The "locality" for the purposes of this chapter shall be the
17 largest city in the county wherein the physical work is being
18 performed.

19 (3) The "usual benefits" for the purposes of this chapter shall
20 include the amount of:

21 (a) The rate of contribution irrevocably made by a contractor or
22 subcontractor to a trustee or to a third person pursuant to a fund,
23 plan, or program; and

24 (b) The rate of costs to the contractor or subcontractor which
25 may be reasonably anticipated in providing benefits to workers,
26 laborers, and mechanics pursuant to an enforceable commitment to
27 carry out a financially responsible plan or program which was
28 communicated in writing to the workers, laborers, and mechanics
29 affected, for medical or hospital care, pensions on retirement or
30 death, compensation for injuries or illness resulting from
31 occupational activity, or insurance to provide any of the foregoing,
32 for unemployment benefits, life insurance, disability and sickness
33 insurance, or accident insurance, for vacation and holiday pay, for
34 defraying costs of apprenticeship or other similar programs, or for
35 other bona fide fringe benefits, but only where the contractor or
36 subcontractor is not required by other federal, state, or local law
37 to provide any of such benefits.

38 (4) "Employee" has the same meaning as "laborers, workers, and
39 mechanics."

1 (5) "Independent contractor" has the meaning provided in section
2 4 of this act.

3 (6) An "interested party" for the purposes of this chapter shall
4 include a contractor, subcontractor, an employee of a contractor or
5 subcontractor, an organization whose members' wages, benefits, and
6 conditions of employment are affected by this chapter, and the
7 director of labor and industries or the director's designee.

8 NEW SECTION. Sec. 14. A new section is added to chapter 39.12
9 RCW to read as follows:

10 An employer-employee relationship exists when a laborer, worker,
11 or mechanic performs labor for another individual or entity. The
12 party asserting that an individual is not an employee must establish
13 by a preponderance of the evidence that the individual is an
14 independent contractor.

15 **WAGE DEDUCTIONS**

16 NEW SECTION. Sec. 15. A new section is added to chapter 49.52
17 RCW to read as follows:

18 "Employ," "employee," "employer," and "independent contractor"
19 have the meanings provided in section 4 of this act.

20 NEW SECTION. Sec. 16. A new section is added to chapter 49.52
21 RCW to read as follows:

22 (1) An employer-employee relationship exists when an individual
23 performs labor or services for another individual or entity. The
24 party asserting that an individual is not an employee must establish
25 by a preponderance of the evidence that the individual is an
26 independent contractor.

27 (2) A general contractor is not responsible for violations of an
28 independent contractor or subcontractor under this chapter unless the
29 general contractor exerts substantial control over the day-to-day
30 work of the independent contractor or subcontractor. For purposes of
31 this section, "general contractor" and "subcontractor" have the
32 meanings provided in section 5 of this act.

33 **WAGE PAYMENT ACT**

1 **Sec. 17.** RCW 49.48.082 and 2010 c 42 s 1 are each reenacted and
2 amended to read as follows:

3 The definitions in this section apply throughout this section and
4 RCW 49.48.083 through 49.48.086:

5 (1) "Citation" means a written determination by the department
6 that a wage payment requirement has been violated.

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

8 (3) "Determination of compliance" means a written determination
9 by the department that wage payment requirements have not been
10 violated.

11 (4) "Director" means the director of the department of labor and
12 industries, or the director's authorized representative.

13 (5) "Employee" has the meaning provided in: (a) RCW 49.46.010 for
14 purposes of a wage payment requirement set forth in RCW 49.46.020 or
15 49.46.130; and (b) (~~RCW 49.12.005~~) section 4 of this act for
16 purposes of a wage payment requirement set forth in RCW 49.48.010,
17 49.52.050, or 49.52.060.

18 (6) "Employ" has the meaning provided in section 4 of this act.

19 ~~(7) "Employer" has the meaning provided in ((RCW 49.46.010 for~~
20 ~~purposes of a wage payment requirement set forth in RCW 49.46.020,~~
21 ~~49.46.130, 49.48.010, 49.52.050, or 49.52.060)) section 4 of this~~
22 ~~act.~~

23 ~~((7))~~ (8) "Independent contractor" has the meaning provided in
24 section 4 of this act.

25 (9) "Notice of assessment" means a written notice by the
26 department that, based on a citation, the employer shall pay the
27 amounts assessed under RCW 49.48.083.

28 ~~((8))~~ (10) "Repeat willful violator" means any employer that
29 has been the subject of a final and binding citation and notice of
30 assessment for a willful violation of a wage payment requirement
31 within three years of the date of issue of the most recent citation
32 and notice of assessment for a willful violation of a wage payment
33 requirement.

34 ~~((9))~~ (11) "Successor" means any person to whom an employer
35 quitting, selling out, exchanging, or disposing of a business sells
36 or otherwise conveys in bulk and not in the ordinary course of the
37 employer's business, more than fifty percent of the property, whether
38 real or personal, tangible or intangible, of the employer's business.

39 ~~((10))~~ (12) "Wage" has the meaning provided in RCW 49.46.010.

1 ((~~11~~)) (13) "Wage complaint" means a complaint from an employee
2 to the department that asserts that an employer has violated one or
3 more wage payment requirements and that is reduced to writing.

4 ((~~12~~)) (14) "Wage payment requirement" means a wage payment
5 requirement set forth in RCW 49.46.020, 49.46.130, 49.48.010,
6 49.52.050, or 49.52.060, and any related rules adopted by the
7 department.

8 ((~~13~~)) (15) "Willful" means a knowing and intentional action
9 that is neither accidental nor the result of a bona fide dispute, as
10 evaluated under the standards applicable to wage payment violations
11 under RCW 49.52.050(2).

12 NEW SECTION. **Sec. 18.** A new section is added to chapter 49.48
13 RCW to read as follows:

14 (1) An employer-employee relationship exists when an individual
15 performs labor or services for another individual or entity. The
16 party asserting that an individual is not an employee must establish
17 by a preponderance of the evidence that the individual is an
18 independent contractor or is otherwise not an employee under this
19 chapter.

20 (2) A general contractor is not responsible for violations of a
21 bona fide independent contractor or subcontractor under this chapter
22 unless the general contractor exerts substantial control over the
23 day-to-day work of the independent contractor or subcontractor. For
24 purposes of this section, "general contractor" and "subcontractor"
25 have the meanings provided in section 5 of this act.

26 **MINIMUM WAGE ACT**

27 **Sec. 19.** RCW 49.46.010 and 2015 c 299 s 3 are each amended to
28 read as follows:

29 As used in this chapter:

30 (1) "Department" means the department of labor and industries;

31 (2) "Director" means the director of labor and industries;

32 ((~~2~~)) (3) "Employ" (~~includes to permit to work~~) has the
33 meaning provided in section 4 of this act;

34 ((~~3~~)) (4) "Employee" (~~includes any individual employed by an~~
35 employer but) has the meaning provided in section 4 of this act and
36 shall not include:

1 (a) Any individual (i) employed as a hand harvest laborer and
2 paid on a piece rate basis in an operation which has been, and is
3 generally and customarily recognized as having been, paid on a piece
4 rate basis in the region of employment; (ii) who commutes daily from
5 his or her permanent residence to the farm on which he or she is
6 employed; and (iii) who has been employed in agriculture less than
7 thirteen weeks during the preceding calendar year;

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

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

17 (d) Any individual engaged in the activities of an educational,
18 charitable, religious, state or local governmental body or agency, or
19 nonprofit organization where the employer-employee relationship does
20 not in fact exist or where the services are rendered to such
21 organizations gratuitously. If the individual receives reimbursement
22 in lieu of compensation for normally incurred out-of-pocket expenses
23 or receives a nominal amount of compensation per unit of voluntary
24 service rendered, an employer-employee relationship is deemed not to
25 exist for the purpose of this section or for purposes of membership
26 or qualification in any state, local government, or publicly
27 supported retirement system other than that provided under chapter
28 41.24 RCW;

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

36 (f) Any newspaper vendor, carrier, or delivery person selling or
37 distributing newspapers on the street, to offices, to businesses, or
38 from house to house and any freelance news correspondent or
39 "stringer" who, using his or her own equipment, chooses to submit

1 material for publication for free or a fee when such material is
2 published;

3 (g) Any carrier subject to regulation by part 1 of the interstate
4 commerce act;

5 (h) Any individual engaged in forest protection and fire
6 prevention activities;

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

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

16 (k) Any resident, inmate, or patient of a state, county, or
17 municipal correctional, detention, treatment or rehabilitative
18 institution;

19 (l) Any individual who holds a public elective or appointive
20 office of the state, any county, city, town, municipal corporation or
21 quasi municipal corporation, political subdivision, or any
22 instrumentality thereof, or any employee of the state legislature;

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

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

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

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

35 ~~((4))~~ (5) "Employer" ~~((includes any individual, partnership,~~
36 ~~association, corporation, business trust, or any person or group of~~
37 ~~persons acting directly or indirectly in the interest of an employer~~
38 ~~in relation to an employee)) has the meaning provided in section 4 of
39 this act;~~

1 ~~((5))~~ (6) "Occupation" means any occupation, service, trade,
2 business, industry, or branch or group of industries or employment or
3 class of employment in which employees are gainfully employed;

4 ~~((6))~~ (7) "Retail or service establishment" means an
5 establishment seventy-five percent of whose annual dollar volume of
6 sales of goods or services, or both, is not for resale and is
7 recognized as retail sales or services in the particular industry;

8 ~~((7))~~ (8) "Wage" means compensation due to an employee by
9 reason of employment, payable in legal tender of the United States or
10 checks on banks convertible into cash on demand at full face value,
11 subject to such deductions, charges, or allowances as may be
12 permitted by rules of the director.

13 **Sec. 20.** RCW 49.46.010 and 2015 c 299 s 3 are each amended to
14 read as follows:

15 As used in this chapter:

16 (1) "Department" means the department of labor and industries;

17 (2) "Director" means the director of labor and industries;

18 ~~((2))~~ (3) "Employ" ~~((includes to permit to work))~~ has the
19 meaning provided in section 4 of this act;

20 ~~((3))~~ (4) "Employee" ~~((includes any individual employed by an~~
21 employer but)) has the meaning provided in section 4 of this act and
22 shall not include:

23 (a) Any individual (i) employed as a hand harvest laborer and
24 paid on a piece rate basis in an operation which has been, and is
25 generally and customarily recognized as having been, paid on a piece
26 rate basis in the region of employment; (ii) who commutes daily from
27 his or her permanent residence to the farm on which he or she is
28 employed; and (iii) who has been employed in agriculture less than
29 thirteen weeks during the preceding calendar year;

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

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

1 (d) Any individual engaged in the activities of an educational,
2 charitable, religious, state or local governmental body or agency, or
3 nonprofit organization where the employer-employee relationship does
4 not in fact exist or where the services are rendered to such
5 organizations gratuitously. If the individual receives reimbursement
6 in lieu of compensation for normally incurred out-of-pocket expenses
7 or receives a nominal amount of compensation per unit of voluntary
8 service rendered, an employer-employee relationship is deemed not to
9 exist for the purpose of this section or for purposes of membership
10 or qualification in any state, local government, or publicly
11 supported retirement system other than that provided under chapter
12 41.24 RCW;

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

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

26 (g) Any carrier subject to regulation by part 1 of the interstate
27 commerce act;

28 (h) Any individual engaged in forest protection and fire
29 prevention activities;

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

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

1 (k) Any resident, inmate, or patient of a state, county, or
2 municipal correctional, detention, treatment or rehabilitative
3 institution;

4 (l) Any individual who holds a public elective or appointive
5 office of the state, any county, city, town, municipal corporation or
6 quasi municipal corporation, political subdivision, or any
7 instrumentality thereof, or any employee of the state legislature;

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

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

12 (o) An individual who is at least sixteen years old but under
13 twenty-one years old, in his or her capacity as a player for a junior
14 ice hockey team that is a member of a regional, national, or
15 international league and that contracts with an arena owned,
16 operated, or managed by a public facilities district created under
17 chapter 36.100 RCW;

18 ~~((4))~~ (5) "Employer" ~~((includes any individual, partnership,~~
19 ~~association, corporation, business trust, or any person or group of~~
20 ~~persons acting directly or indirectly in the interest of an employer~~
21 ~~in relation to an employee))~~ has the meaning provided in section 4 of
22 this act;

23 ~~((5))~~ (6) "Occupation" means any occupation, service, trade,
24 business, industry, or branch or group of industries or employment or
25 class of employment in which employees are gainfully employed;

26 ~~((6))~~ (7) "Retail or service establishment" means an
27 establishment seventy-five percent of whose annual dollar volume of
28 sales of goods or services, or both, is not for resale and is
29 recognized as retail sales or services in the particular industry;

30 ~~((7))~~ (8) "Wage" means compensation due to an employee by
31 reason of employment, payable in legal tender of the United States or
32 checks on banks convertible into cash on demand at full face value,
33 subject to such deductions, charges, or allowances as may be
34 permitted by rules of the director.

35 NEW SECTION. **Sec. 21.** A new section is added to chapter 49.46
36 RCW to read as follows:

37 (1) An employer-employee relationship exists when an individual
38 performs labor or services for another individual or entity. The
39 party asserting that an individual is not an employee must establish

1 by a preponderance of the evidence that the individual is an
2 independent contractor or is otherwise not an employee under this
3 chapter.

4 (2) A general contractor is not responsible for violations of an
5 independent contractor or subcontractor under this chapter unless the
6 general contractor exerts substantial control over the day-to-day
7 work of the independent contractor or subcontractor. For purposes of
8 this section, "general contractor" and "subcontractor" have the same
9 meanings provided in section 5 of this act.

10 UNEMPLOYMENT INSURANCE

11 NEW SECTION. **Sec. 22.** A new section is added to chapter 50.04
12 RCW to read as follows:

13 The services of an independent contractor, as defined in section
14 4 of this act, are not services in employment under this title.

15 **Sec. 23.** RCW 50.04.100 and 1982 1st ex.s. c 18 s 14 are each
16 amended to read as follows:

17 "Employment," subject only to the other provisions of this title,
18 means personal service, of whatever nature, unlimited by the
19 relationship of master and servant as known to the common law or any
20 other legal relationship, including service in interstate commerce,
21 performed for wages or under any contract calling for the performance
22 of personal services, written or oral, express or implied. The party
23 asserting that services performed are not services in employment must
24 establish by a preponderance of the evidence that an individual is an
25 independent contractor or that the services are otherwise not in
26 employment under this title.

27 (~~Except as provided by RCW 50.04.145,~~) Personal services
28 performed for an employing unit by one or more contractors or
29 subcontractors acting individually or as a partnership, which do not
30 meet the provisions of ((RCW 50.04.140)) section 22 of this act,
31 shall be considered employment of the employing unit: PROVIDED,
32 HOWEVER, That such contractor or subcontractor shall be an employer
33 under the provisions of this title in respect to personal services
34 performed by individuals for such contractor or subcontractor.

35 **Sec. 24.** RCW 50.04.298 and 2007 c 146 s 8 are each amended to
36 read as follows:

1 For the purposes of this title:

2 (1) "Professional employer organization" means a person or entity
3 that enters into an agreement with one or more client employers to
4 provide professional employer services. "Professional employer
5 organization" includes entities that use the term "staff leasing
6 company," "permanent leasing company," "registered staff leasing
7 company," "employee leasing company," "administrative employer," or
8 any other name, when they provide professional employer services to
9 client employers. The following are not classified as professional
10 employer organizations: Independent contractors in (~~RCW 50.04.140~~)
11 section 22 of this act; temporary staffing services companies and
12 services referral agencies as defined in RCW 50.04.245; third-party
13 payers as defined in RCW 50.04.248; or labor organizations.

14 (2) "Client employer" means any employer who enters into a
15 professional employer agreement with a professional employer
16 organization.

17 (3) "Coemployer" means either a professional employer
18 organization or a client employer that has entered into a
19 professional employer agreement.

20 (4) "Covered employee" means an individual performing services
21 for a client employer that constitutes employment under this title.

22 (5) "Professional employer services" means services provided by
23 the professional employer organization to the client employer, which
24 include, but are not limited to, human resource functions, risk
25 management, or payroll administration services, in a coemployment
26 relationship.

27 (6) "Coemployment relationship" means a relationship that is
28 intended to be ongoing rather than temporary or project-specific,
29 where the rights, duties, and obligations of an employer in an
30 employment relationship are allocated between coemployers pursuant to
31 a professional employer agreement and state law. A coemployment
32 relationship exists only if a majority of the employees performing
33 services to a client employer, or to a division or work unit of a
34 client employer, are covered employees. In determining the allocation
35 of rights and obligations in a coemployment relationship:

36 (a) The professional employer organization has only those
37 employer rights and is subject only to those obligations specifically
38 allocated to it by the professional employer agreement or state law;

39 (b) The client employer has those rights and obligations
40 allocated to it by the professional employer agreement or state law,

1 as well as any other right or obligation of an employer that is not
2 specifically allocated by the professional employer agreement or
3 state law.

4 (7) "Professional employer agreement" means a written contract
5 between a client employer and a professional employer organization
6 that provides for: (a) The coemployment of covered employees; and (b)
7 the allocation of employer rights and obligations between the client
8 and the professional employer organization with respect to the
9 covered employees.

10 **Sec. 25.** RCW 50.12.070 and 2013 c 250 s 1 are each amended to
11 read as follows:

12 (1)(a) Each employing unit shall keep true and accurate work
13 records, containing such information as the commissioner may
14 prescribe. Such records shall be open to inspection and be subject to
15 being copied by the commissioner or his or her authorized
16 representatives at any reasonable time and as often as may be
17 necessary. The commissioner may require from any employing unit any
18 sworn or unsworn reports with respect to persons employed by it,
19 which he or she deems necessary for the effective administration of
20 this title.

21 (b) An employer who contracts with another person or entity for
22 work subject to chapter 18.27 or 19.28 RCW shall obtain and preserve
23 a record of the unified business identifier account number for and
24 compensation paid to the person or entity performing the work. In
25 addition to the penalty in subsection (3) of this section, failure to
26 obtain or maintain the record is subject to RCW 39.06.010.

27 (2)(a) Each employer shall register with the department and
28 obtain an employment security account number. Each employer shall
29 make periodic reports at such intervals as the commissioner may by
30 regulation prescribe, setting forth the remuneration paid for
31 employment to workers in its employ, the full names and social
32 security numbers of all such workers, and the total hours worked by
33 each worker and such other information as the commissioner may by
34 regulation prescribe.

35 (b) If the employing unit fails or has failed to report the
36 number of hours in a reporting period for which a worker worked, such
37 number will be computed by the commissioner and given the same force
38 and effect as if it had been reported by the employing unit. In
39 computing the number of such hours worked, the total wages for the

1 reporting period, as reported by the employing unit, shall be divided
2 by the dollar amount of the state's minimum wage in effect for such
3 reporting period and the quotient, disregarding any remainder, shall
4 be credited to the worker: PROVIDED, That although the computation so
5 made will not be subject to appeal by the employing unit, monetary
6 entitlement may be redetermined upon request if the department is
7 provided with credible evidence of the actual hours worked. Benefits
8 paid using computed hours are not considered an overpayment and are
9 not subject to collections when the correction of computed hours
10 results in an invalid or reduced claim; however:

11 (i) A contribution paying employer who fails to report the number
12 of hours worked will have its experience rating account charged for
13 all benefits paid that are based on hours computed under this
14 subsection; and

15 (ii) An employer who reimburses the trust fund for benefits paid
16 to workers and fails to report the number of hours worked shall
17 reimburse the trust fund for all benefits paid that are based on
18 hours computed under this subsection.

19 (3) Any employer who fails to keep and preserve records required
20 by this section shall be subject to a penalty determined by the
21 commissioner but not to exceed two hundred fifty dollars or two
22 hundred percent of the quarterly tax for each offense, whichever is
23 greater.

24 (4) Upon referral from the department of labor and industries
25 pursuant to section 7 of this act, the employment security department
26 may initiate procedures for improper recordkeeping and the recovery
27 of contributions, interest, and penalties.

28 (5) The commissioner must consider referrals based on a court
29 finding of a violation of section 6 of this act and may initiate
30 procedures for improper recordkeeping and the recovery of
31 contributions, interest, and penalties.

32 **INDUSTRIAL INSURANCE**

33 **Sec. 26.** RCW 51.08.070 and 2008 c 102 s 2 are each amended to
34 read as follows:

35 "Employer" means any person, body of persons, corporate or
36 otherwise, and the legal representatives of a deceased employer, all
37 while engaged in this state in any work covered by the provisions of
38 this title, by way of trade or business, or who contracts with one or

1 more workers (~~(, the essence of which is the personal labor of such~~
2 ~~worker or workers)~~). Or as an exception to the definition of
3 employer, persons or entities are not employers when they contract or
4 agree to remunerate the services performed by an (~~(individual who~~
5 ~~meets the tests set forth in subsections (1) through (6) of RCW~~
6 ~~51.08.195 or the separate tests set forth in RCW 51.08.181 for work~~
7 ~~performed that requires registration under chapter 18.27 RCW or~~
8 ~~licensing under chapter 19.28 RCW)~~) independent contractor as defined
9 in section 4 of this act.

10 **Sec. 27.** RCW 51.08.180 and 2008 c 102 s 3 are each amended to
11 read as follows:

12 "Worker" means every person in this state who is engaged in the
13 employment of an employer under this title, whether by way of manual
14 labor or otherwise in the course of his or her employment; also every
15 person in this state who is engaged in the employment of or who is
16 working under an independent contract, (~~(the essence of which is his~~
17 ~~or her personal labor for an employer under this title,)~~) whether by
18 way of manual labor or otherwise, in the course of his or her
19 employment, (~~(or as an exception to the definition of worker, a~~
20 ~~person is not a worker if)~~) unless he or she (~~(meets the tests set~~
21 ~~forth in subsections (1) through (6) of RCW 51.08.195 or the separate~~
22 ~~tests set forth in RCW 51.08.181 for work performed that requires~~
23 ~~registration under chapter 18.27 RCW or licensing under chapter 19.28~~
24 ~~RCW)~~) meets the definition of independent contractor as defined in
25 section 4 of this act: PROVIDED, That a person is not a worker for
26 the purpose of this title, with respect to his or her activities
27 attendant to operating a truck which he or she owns, and which is
28 leased to a common or contract carrier.

29 NEW SECTION. **Sec. 28.** A new section is added to chapter 51.12
30 RCW to read as follows:

31 An employer-employee relationship exists when an individual
32 performs labor or services for another individual or entity. The
33 party asserting that an individual is not an employee must establish
34 by a preponderance of the evidence that the individual is an
35 independent contractor, or otherwise not an employee or worker under
36 this chapter. This presumption also applies at the board of
37 industrial insurance appeals and may be rebutted by a preponderance
38 of the evidence.

1 **Sec. 29.** RCW 51.12.020 and 2015 c 236 s 4 are each amended to
2 read as follows:

3 The following are the only employments which shall not be
4 included within the mandatory coverage of this title:

5 (1) Any person employed as a domestic (~~servant~~) worker in a
6 private home by an employer who has less than two employees regularly
7 employed forty or more hours a week in such employment.

8 (2) Any person employed to do gardening, maintenance, or repair,
9 in or about the private home of the employer. For the purposes of
10 this subsection, "maintenance" means the work of keeping in proper
11 condition, "repair" means to restore to sound condition after damage,
12 and "private home" means a person's place of residence.

13 (3) A person whose employment is not in the course of the trade,
14 business, or profession of his or her employer and is not in or about
15 the private home of the employer.

16 (4) Any person performing services in return for aid or
17 sustenance only, received from any religious or charitable
18 organization.

19 (5) Sole proprietors or partners.

20 (6) Any child under eighteen years of age employed by his or her
21 parent or parents in agricultural activities on the family farm.

22 (7) Jockeys while participating in or preparing horses for race
23 meets licensed by the Washington horse racing commission pursuant to
24 chapter 67.16 RCW.

25 (8) (a) Except as otherwise provided in (b) of this subsection,
26 any bona fide officer of a corporation voluntarily elected or
27 voluntarily appointed in accordance with the articles of
28 incorporation or bylaws of the corporation, who at all times during
29 the period involved is also a bona fide director, and who is also a
30 shareholder of the corporation. Only such officers who exercise
31 substantial control in the daily management of the corporation and
32 whose primary responsibilities do not include the performance of
33 manual labor are included within this subsection.

34 (b) Alternatively, a corporation that is not a "public company"
35 as defined in RCW 23B.01.400 may exempt eight or fewer bona fide
36 officers, who are voluntarily elected or voluntarily appointed in
37 accordance with the articles of incorporation or bylaws of the
38 corporation and who exercise substantial control in the daily
39 management of the corporation, from coverage under this title without
40 regard to the officers' performance of manual labor if the exempted

1 officer is a shareholder of the corporation, or may exempt any number
2 of officers if all the exempted officers are related by blood within
3 the third degree or marriage. If a corporation that is not a "public
4 company" elects to be covered under subsection (8)(a) of this
5 section, the corporation's election must be made on a form prescribed
6 by the department and under such reasonable rules as the department
7 may adopt.

8 (c) Determinations respecting the status of persons performing
9 services for a corporation shall be made, in part, by reference to
10 Title 23B RCW and to compliance by the corporation with its own
11 articles of incorporation and bylaws. For the purpose of determining
12 coverage under this title, substance shall control over form, and
13 mandatory coverage under this title shall extend to all workers of
14 this state, regardless of honorary titles conferred upon those
15 actually serving as workers.

16 (d) A corporation may elect to cover officers who are exempted by
17 this subsection in the manner provided by RCW 51.12.110.

18 (9) Services rendered by a musician or entertainer under a
19 contract with a purchaser of the services, for a specific engagement
20 or engagements when such musician or entertainer performs no other
21 duties for the purchaser and is not regularly and continuously
22 employed by the purchaser. A purchaser does not include the leader of
23 a group or recognized entity who employs other than on a casual basis
24 musicians or entertainers.

25 (10) Services performed by a newspaper vendor, carrier, or
26 delivery person selling or distributing newspapers on the street, to
27 offices, to businesses, or from house to house and any freelance news
28 correspondent or "stringer" who, using his or her own equipment,
29 chooses to submit material for publication for free or a fee when
30 such material is published.

31 (11) Services performed by an insurance producer, as defined in
32 RCW 48.17.010, or a surplus line broker licensed under chapter 48.15
33 RCW.

34 (12) Services performed by a booth renter. However, a person
35 exempted under this subsection may elect coverage under RCW
36 51.32.030.

37 (13) Members of a limited liability company, if either:

38 (a) Management of the company is vested in its members, and the
39 members for whom exemption is sought would qualify for exemption

1 under subsection (5) of this section were the company a sole
2 proprietorship or partnership; or

3 (b) Management of the company is vested in one or more managers,
4 and the members for whom the exemption is sought are managers who
5 would qualify for exemption under subsection (8) of this section were
6 the company a corporation.

7 ~~((14) A driver providing commercial transportation services as
8 defined in RCW 48.177.005. The driver may elect coverage in the
9 manner provided by RCW 51.32.030.~~

10 ~~(15) For hire vehicle operators under chapter 46.72 RCW who own
11 or lease the for hire vehicle, chauffeurs under chapter 46.72A RCW
12 who own or lease the limousine, and operators of taxicabs under
13 chapter 81.72 RCW who own or lease the taxicab. An owner or lessee
14 may elect coverage in the manner provided by RCW 51.32.030.)~~

15 **WORKERS' BOARDS AND PORTABLE BENEFITS FOR WORKERS**

16 NEW SECTION. **Sec. 30.** The definitions in this section apply
17 throughout this chapter unless the context clearly requires
18 otherwise.

19 (1) "Benefit provider" means a nonprofit entity that is eligible
20 to provide benefits to eligible beneficiaries under section 42 of
21 this act.

22 (2) "Contributing agent" means a business, organization,
23 corporation, limited liability company, partnership, or any other
24 entity that facilitates the provision of services by intermediary
25 employees to consumers.

26 (3) "Covered contributing agent" means any contributing agent
27 determined by the department to be subject to the determinations of a
28 workers' board.

29 (4) "Covered intermediary employee" means any intermediary
30 employee eligible for representation by a workers' board. Covered
31 intermediary employees must have worked at least thirty cumulative
32 hours, or the lesser of either thirty tasks, trips, or shifts in the
33 industry to qualify for representation in a calendar year.

34 (5) "Department" means the department of labor and industries.

35 (6) "Eligible beneficiary" means any intermediary employee who
36 meets the minimum thresholds under this chapter to receive
37 contributions from a contributing agent under sections 40 and 41 of
38 this act.

1 (7) "Eligible contributing agent representative" means an
2 organization or association eligible to represent contributing agents
3 in a given industry through a workers' board. Organizations are
4 eligible if they:

5 (a) Pay workers in the industry for labor or services for which
6 no W-2 tax document is filed; and

7 (b) Represent at least ten distinct contributing agents in the
8 industry.

9 (8) "Eligible worker representative" means an organization or
10 association eligible to represent covered intermediary employees in a
11 given industry through a workers' board. Organizations are eligible
12 if they:

13 (a) Are not an employer, employment agency, referral agency, or
14 contributing agent;

15 (b) Have a conflict of interest policy prohibiting the
16 participation of any individual in a decision-making role, if the
17 individual pays covered intermediary employees to complete services
18 in the industry for which the organization is seeking representation
19 rights;

20 (c) Meet the requirements of 26 U.S.C. Sec. 501(c)(3), (4), (5),
21 or (6) of the federal internal revenue code and is an organization
22 that exists for the betterment of workers, including covered
23 intermediary employees in the workforce for which the organization is
24 seeking representation rights;

25 (d) Engage in public advocacy to promote the health and well-
26 being of workers;

27 (e) Have a governing structure that promotes workers' decision-
28 making power; and

29 (f) Represent at least one hundred covered intermediary employees
30 in the industry.

31 (9) "Intermediary employee" means any worker, regardless of
32 corporate status, who is not an employee under this chapter and who
33 provides services for financial compensation through a contributing
34 agent.

35 (10) "Represented intermediary employee" means any intermediary
36 employee who has agreed to have a worker organization represent the
37 employee on a workers' board and pays that organization a fee to do
38 so.

39 (11) "Validated contributing agent representative" means an
40 eligible contributing agent representative that:

1 (a) Pays intermediary employees for labor or services;

2 (b) Represents at least ten distinct contributing agents in the
3 industry; and

4 (c) Has been approved by the department to represent contributing
5 agents on the workers' board.

6 (12) "Validated worker representative" means an eligible worker
7 representative that has been approved by the department to represent
8 workers on the workers' board.

9 (13) "Workers' board" means a board of industry, worker, and
10 department representatives required to set wages, rates, and working
11 standards for specific industries under section 34 of this act.

12 NEW SECTION. **Sec. 31.** (1) Subject to sections 37 and 39 of this
13 act, the department must establish a minimum base rate for all
14 intermediary employees of contributing agents. Payments to such
15 workers may not be less than equivalent to the state minimum wage.
16 Any and all tips or gratuity must be in addition to the base rate and
17 may not be included in the calculation of state minimum wage
18 equivalency. The determination must:

19 (a) Be based on both time spent performing services in accordance
20 with the scope of work and address any time spent on call or waiting
21 for a job where the worker is unable to do other work; and

22 (b) Address all types of payment for services including, but not
23 limited to, hourly, piecemeal, or transaction-based payments.

24 (2)(a) Intermediary employees may not be paid less than the rate
25 established under this section.

26 (b) Covered intermediary employees may not be paid less than the
27 rate determined by the workers' board for the specific industry in
28 which the covered intermediary employee works.

29 NEW SECTION. **Sec. 32.** (1) Contributing agents with fewer than
30 five intermediary employees must submit annual reports to the
31 department disclosing the following information:

32 (a) Aggregated data about intermediary employees, including:

33 (i) The total number of intermediary employees who have completed
34 more than thirty hours, tasks, trips, or shifts with the contributing
35 agent during the calendar year;

36 (ii) Data about contributions to portable benefit accounts,
37 including the average amount contributed to each intermediary

1 employee portable benefit account: Per hour, task, trip, or shift
2 worked; and per year;

3 (b) Data about wage theft and abuse, including:

4 (i) The number of intermediary employees who completed hours,
5 tasks, trips, or shifts, but were not compensated for their labor;
6 and

7 (ii) All reports from intermediary employees of sexual harassment
8 or other forms of abuse experienced during the course of performing
9 hours, tasks, trips, or shifts, and the contributing agent's response
10 to the reports.

11 (2) Contributing agents with five or more intermediary employees
12 must submit an annual report to the department including the
13 information required in subsection (1) of this section, and the
14 following information, as applicable:

15 (a) Disaggregated data about intermediary employees, including:

16 (i) All known demographics of intermediary employees, including
17 gender, race, age, and primary language spoken at home;

18 (ii) Average hours per week performed by each intermediary
19 employee;

20 (iii) Average annual number of hours, tasks, trips, or shifts
21 offered to each intermediary employee;

22 (iv) Average annual number of hours, tasks, trips, or shifts
23 performed by each intermediary employee;

24 (v) Average number of months since each intermediary employee
25 completed at least five hours, tasks, trips, or shifts;

26 (vi) Average pay rates per hours, tasks, trips, or shifts
27 collected by each intermediary employee;

28 (vii) The zip codes in which each intermediary employee primarily
29 completes hours, tasks, trips, or shifts;

30 (viii) The tenth, twenty-fifth, fiftieth, seventy-fifth, and
31 ninetieth percentile of payouts to intermediary employees per job,
32 per week, and per year;

33 (ix) The number of intermediary employees providing services each
34 calendar month and over the course of the calendar year; and

35 (x) The median time or miles an intermediary employee is active
36 on the contributing agent's app, when applicable, and the time or
37 miles the intermediary employee is paid while on the app;

38 (b) Data about worker turnover and retention, including:

39 (i) The number of intermediary employees terminated each quarter
40 within the last year;

1 (ii) The number of intermediary employees with zero payments each
2 quarter;

3 (iii) The proportion of intermediary employees terminated by the
4 contributing agent, out of all intermediary employees whose
5 relationship with the contributing agent ended or where there has
6 been zero payments in the last two quarters; and

7 (iv) The grounds or justifications for terminations within the
8 last year;

9 (c) Data about payment rates, including:

10 (i) Average and median rate per hour, task, trip, or shift,
11 disaggregated by zip code;

12 (ii) Average and equivalent hourly wage;

13 (iii) Whether the rates are set by the contributing agent or the
14 intermediary employee;

15 (iv) If variable or surge pricing is used, the hourly rate per
16 task, trip, or shift for the highest ten percent of rates; and

17 (v) If bonus or promotional payments are used, the policies for
18 the offering of bonuses or promotional pricing;

19 (d) Data about benefits and benefit contributions, including:

20 (i) Any benefits or protections, including industrial insurance,
21 auto insurance, or expense reimbursement, provided directly by the
22 contributing agent to the intermediary employee and the terms for
23 provision of such benefits or protections; and

24 (ii) The twenty-fifth, fiftieth, and seventy-fifth percentile of
25 portable benefit contributions to eligible beneficiaries' portable
26 benefit accounts over the year;

27 (e) Policies, practices, and algorithms of the contributing
28 agent, including:

29 (i) Any written agreement signed between the contributing agent
30 and the intermediary employee at the beginning of the contracting
31 relationship or the terms most recently accepted by the intermediary
32 employee;

33 (ii) Policies outlining the ability of an intermediary employee
34 to decline or alter the task, trip, or shift offered; and

35 (iii) The algorithm used to offer intermediary employees tasks,
36 trips, or shifts;

37 (f) Conflict of interest disclosures, including a disclosure of
38 any third-party recipients of individualized or aggregate worker
39 data; and

1 (g) Data reported to the department shall not include the name,
2 contact information, or other identifying information of individual
3 intermediary employees.

4 (3) The department must adopt rules establishing financial
5 penalties for failure to comply with this section.

6 NEW SECTION. **Sec. 33.** (1) Every three years, the department
7 must contract with two third-party entities to complete studies of
8 eligible beneficiaries and covered intermediary employees. Surveys
9 must address factors such as:

10 (a) The total number of intermediary employees, eligible
11 beneficiaries, and covered intermediary employees in the state;

12 (b) The demographic characteristics of eligible beneficiaries and
13 covered intermediary employees;

14 (c) The satisfaction by eligible beneficiaries and covered
15 intermediary employees in work outside of traditional W-2 employment;

16 (d) The total household income and benefits available to eligible
17 beneficiaries and covered intermediary employees;

18 (e) The benefits that eligible beneficiaries receive from their
19 portable benefit accounts; and

20 (f) Unmet needs experienced by eligible beneficiaries and covered
21 intermediary employees.

22 (2) One contract must be issued to a worker organization that:

23 (a) Is not an employer, employment agency, referral agency, or
24 contributing agent;

25 (b) Has proven relationships with eligible beneficiaries or
26 covered intermediary employees;

27 (c) Has proven experience organizing hard-to-reach populations;

28 (d) Represents workers who are demographically diverse;

29 (e) Has the capacity amongst its staff to conduct research in at
30 least three languages; and

31 (f) Has successfully conducted research with workers in the past.

32 (3) The second contract must be issued to a university research
33 department or similar nonpartisan entity that:

34 (a) Has expertise in survey research with hard-to-reach
35 populations; and

36 (b) Has a record of published research with academic rigor.

37 (4) Each contractor must submit a report summarizing the survey
38 to the appropriate committee of the legislature by December 15th of
39 the year in which the survey was conducted.

1 NEW SECTION. **Sec. 34.** (1) The department must, subject to the
2 requirements set forth in this section, convene workers' boards for
3 nonemployee workers in Washington state.

4 (a) The department must create five discrete nonemployee industry
5 categories for the purposes of convening and implementing workers'
6 boards: Caregiving and domestic services or other services performed
7 in and about the home, passenger transport, product movement, sales,
8 and certificated professional services.

9 (b) Every three years, the department must evaluate and redefine
10 industry categories, based on data reported by contributing agents
11 and information gathered from surveys of eligible beneficiaries and
12 covered intermediary employees.

13 (2) Once any eligible worker representative provides a showing of
14 interest by presenting evidence that they represent the lesser of two
15 hundred fifty covered intermediary employees or one-half percent of
16 the industry, the department must indicate that the organization is
17 validated, and a workers' board must be established in the industry.
18 After the department indicates that one eligible worker
19 representative is validated:

20 (a) Additional eligible worker representatives may present
21 evidence that they represent at least one hundred covered
22 intermediary employees to gain representation rights on the workers'
23 board; and

24 (b) Eligible contributing agent representatives may present
25 evidence that they represent at least five distinct contributing
26 agents to gain representation rights on the workers' board.

27 NEW SECTION. **Sec. 35.** (1) Within ninety days of the department
28 validating an eligible worker representative, all contributing agents
29 in the industry in which a workers' board has been established must
30 provide the validated worker representatives physical access to the
31 intermediary employees, and submit a list of intermediary employees'
32 names and contact information to validated worker representatives,
33 including the intermediary employees':

34 (a) Full names;

35 (b) All known phone numbers, including cellular phones and
36 landline or fixed-line phones;

37 (c) Email addresses; and

38 (d) Physical addresses.

1 (2) The department may determine whether an intermediary employee
2 is a covered intermediary employee in one of two ways:

3 (a) For positions, job titles, classifications, or tasks that
4 require certification or licensure, the department must determine
5 which positions, job titles, classifications, or tasks fall within
6 the workers' board's scope; and

7 (b) For all other positions, job titles, classifications, or
8 tasks, the validated worker representative must provide the
9 department with the list of contributing agents that fall within the
10 workers' board's scope.

11 (3) A named contributing agent has one month from provision of
12 the contributing agent list to the department to appeal the inclusion
13 of their intermediary employees in the workers' board's scope.

14 (4) Within ninety days of the department validating an eligible
15 worker representative, all contributing agents must notify all of its
16 covered intermediary employees of the workers' board and their right
17 to choose a representative.

18 (5) Inclusion within the scope of the workers' board must be
19 based on community of interest factors including, but not limited to,
20 duties, skills, working conditions, and other job-related issues.

21 (6) Data required in subsection (1) of this section may not be
22 reported to the department and must be reported directly to validated
23 worker representatives. A third party may be used to transfer this
24 data if appropriate to ensure adequate protection of the data.

25 NEW SECTION. **Sec. 36.** (1) The workers' board shall be composed
26 of three validated worker representatives, three validated
27 contributing agent representatives, and four representatives of the
28 department.

29 (2)(a) Worker positions must be distributed among validated
30 worker representatives in accordance with the number of workers the
31 organization represents. Validated worker representatives must
32 appoint individuals for each of the seats they are allotted.

33 (b) Contributing agent positions must be distributed among
34 validated contributing agent representatives in accordance with the
35 number of intermediary employees the organization represents.
36 Validated contributing agent representatives must appoint individuals
37 for each of the seats they are allotted.

38 (c) If there are more validated organizations than seats, only
39 the most representative organizations are to be seated on the board.

1 (d) The director of the department must appoint the department
2 representatives.

3 (3) Workers' board members serve four-year terms. Of the initial
4 members: One worker, one contributing agent, and one department
5 representative must be appointed for a two-year term; one worker, one
6 contributing agent, and one department representative must be
7 appointed to a three-year term; and the remaining representative must
8 be appointed to a four-year term. Thereafter, members must be
9 appointed for four-year terms.

10 (4) Members of the workers' board must be reimbursed for travel
11 expenses as provided in RCW 43.03.050 and 43.03.060.

12 (5) The workers' board may adopt bylaws for its own procedures,
13 including quorum requirements, frequency of meetings, and provision
14 of translation and interpretation services.

15 NEW SECTION. **Sec. 37.** (1) The workers' board must:

16 (a) Ascertain the wages and benefits necessary to provide for the
17 full participation in society of covered intermediary employees;

18 (b) Promote safe working conditions, training, and professional
19 development for covered intermediary employees; and

20 (c) Promote effective enforcement of standards across the
21 industry.

22 (2) Every three years, the workers' board must issue
23 determinations on aspects of the industry that affect workers' well-
24 being, including minimum standards for:

25 (a) Hourly wages, or the equivalent in task, shift, or trip
26 rates, including the type and structure of payment;

27 (b) Rules about scheduling and the availability of tasks, shifts,
28 or trips;

29 (c) Portable benefit contribution rates per hour, shift, or trip;

30 (d) The proportion of portable benefit contributions that can be
31 used for administrative purposes;

32 (e) Leave policies;

33 (f) Certification standards and access to training;

34 (g) Any benefits, such as auto insurance and mileage
35 reimbursement, provided directly by the contributing agent to the
36 intermediary employee; and

37 (h) Other aspects of working conditions, as raised by validated
38 worker representatives or validated contributing agent
39 representatives on the workers' board.

1 (3) The standards established by the workers' board may meet or
2 exceed, but may not fall below, standards established in statute,
3 including minimum wages established in chapter 49.46 RCW, and
4 established in this chapter, including minimum rates, benefit
5 contributions, or the proportion of benefit contributions allowable
6 for administrative purposes.

7 (4) If an established workers' board fails to make determinations
8 under this section within any four-year period, the department must
9 institute increases in the minimum rates and benefit contributions
10 for the industry in accordance with inflation as determined by the
11 department.

12 NEW SECTION. **Sec. 38.** (1) Each member of the workers' board has
13 one vote.

14 (2) Representatives of the department must:

15 (a) Provide administrative and logistical assistance;

16 (b) Provide guidance about current law and the operations of the
17 department;

18 (c) Convene and facilitate meetings; and

19 (d) Monitor the workers' board's compliance with federal and
20 state law, and the mandate of the workers' board.

21 (3) Determinations by the workers' board must be set through
22 majority vote. However, a majority of validated worker
23 representatives, validated contributing agent representatives, and
24 state representatives is required for determinations that decrease
25 rates or worker protections.

26 (4) The workers' board must hold public hearings during each
27 three-year determination cycle to gather information about the
28 current living and working conditions of covered intermediary
29 employees. These hearings must be held throughout the state,
30 especially in geographies with a known concentration of covered
31 intermediary employees.

32 (a) The hearings must be open to all individuals or
33 organizations.

34 (b) Validated worker representatives and validated contributing
35 agent representatives not represented on the workers' board have
36 priority in hearings, with time allocated in accordance with the
37 number of workers or agents represented.

1 NEW SECTION. **Sec. 39.** (1) When the workers' board reaches a
2 determination, through consensus or majority vote, the workers'
3 board's determination must be adopted as a policy by the department.

4 (2) If the workers' board fails to reach a determination within
5 the required time period, the department's minimum rates under
6 section 31 of this act take effect.

7 (3) The department may adopt rules implementing the policies
8 provided by the workers' board under this section.

9 NEW SECTION. **Sec. 40.** (1) Contributing agents must contribute
10 funds to benefit providers to provide benefits to eligible
11 beneficiaries.

12 (a) The requirement to contribute funds under this chapter only
13 applies when the eligible beneficiary for whom the contributing agent
14 is making a contribution provides services in the state.

15 (b) The contribution amount must be five percent of the total
16 charge collected from the consumer for each transaction of services
17 provided or one dollar for every hour that the worker provided
18 services to the consumer, whichever is less. If determined per hour,
19 the determination must be prorated per minute.

20 (c) Contributions must be in addition to pay and may not be
21 counted toward the minimum base rate.

22 (d) Contributions must be assessed for every hour, transaction,
23 or production unit that the eligible beneficiary provided services
24 through the contributing agent.

25 (e) Contributions must be made to the benefit provider on no less
26 than a monthly basis and no later than fifteen days after the end of
27 the month in which the eligible beneficiary services were provided.

28 (2) The contribution amounts earned by the eligible beneficiary
29 under this section belong to the eligible beneficiary and the
30 eligible beneficiary may accrue benefits based on contributions from
31 more than one contributing agent.

32 (3) Contributions may exceed, but not go below, those established
33 in sections 37 and 39 of this act as the result of a workers' board
34 determination.

35 NEW SECTION. **Sec. 41.** (1) All eligible beneficiaries must
36 receive industrial insurance under Title 51 RCW. Contributing agents
37 must collect the portion of the contribution amount sufficient to
38 provide industrial insurance under Title 51 RCW and remit those

1 amounts to the department. The amounts necessary shall be determined
2 by the department based on appropriate risk classifications.

3 (2) The contributing agents must remit the remainder of the
4 contribution amount to the assigned benefit provider.

5 (3) Based on the contributions received, benefit providers must
6 ensure that benefits are provided to eligible beneficiaries as set
7 forth in this section.

8 (a) Benefit providers must solicit input from eligible
9 beneficiaries regarding which benefits to provide.

10 (b) Benefit providers must provide some or all of the following
11 benefits:

12 (i) Health insurance including, but not limited to, subsidies to
13 purchase health insurance on the health benefit exchange;

14 (ii) Paid time off;

15 (iii) Retirement benefits; and

16 (iv) Other benefits determined by the benefit providers.

17 (c) Benefit providers may also offer other benefits or services
18 to eligible beneficiaries to address the unique needs of a specific
19 industry or eligible beneficiary groups including, but not limited
20 to:

21 (i) Tax assistance;

22 (ii) Emergency loans; and

23 (iii) Other benefits.

24 (d) Benefit providers may provide benefits directly or through
25 vendors approved by the benefit provider.

26 (e) Benefit providers may advocate on behalf of the eligible
27 beneficiaries regarding benefits.

28 (f) Benefit providers may use up to ten percent of contribution
29 funds received for administration of benefits and advocacy on behalf
30 of eligible beneficiaries.

31 NEW SECTION. **Sec. 42.** (1) The department must adopt rules for
32 organizations to become benefit providers.

33 (2) At a minimum, the rules on benefit providers must require:

34 (a) The benefit provider to be a nonprofit organization operating
35 under 26 U.S.C. Sec. 501(c)(3) of the federal internal revenue code;

36 (b) At least one-half of the organization's board of directors to
37 be comprised of eligible beneficiaries performing work for
38 contributing agents or representatives of bona fide independent
39 organizations of such workers;

1 (c) The organization to be independent from all business
2 entities, organizations, corporations, or individuals that would
3 pursue any financial interest in conflict with that of the eligible
4 beneficiaries;

5 (d) All actions of the organization regarding providing benefits
6 must be for the sole purpose of maximizing benefits to eligible
7 beneficiaries;

8 (e) The board of directors of the organization to hold a
9 fiduciary duty to the eligible beneficiaries with respect to the
10 provision of benefits; and

11 (f) The organization to demonstrate adequate viability and
12 financial sufficiency to successfully and sustainably deliver
13 benefits, as determined by the department. At a minimum, the
14 organization must have:

15 (i) Cash reserves in a sufficient amount, as determined by the
16 department;

17 (ii) Liability coverage for an amount determined by the
18 department;

19 (iii) Access to bonding; and

20 (iv) Other demonstrated competencies as determined by the
21 department.

22 (3) As administered by the department, an eligible beneficiary
23 entitled to benefits under this chapter must select a benefit
24 provider and be given the option to change the selected benefit
25 provider once per year. Eligible beneficiaries must be provided
26 information regarding available benefit providers and be able to
27 easily select their chosen benefit provider.

28 NEW SECTION. **Sec. 43.** (1) Covered intermediary employees have
29 the right to:

30 (a) Organize and communicate freely with other workers;

31 (b) Discuss terms and conditions of work with other workers and
32 with contributing agents;

33 (c) Form, join, or assist worker organizations;

34 (d) Testify during board public hearings, without restraint on
35 the content of their speech; and

36 (e) Take action with other workers to improve their working
37 conditions or raise work-related complaints with the workers' board.

38 (2) No contributing agent may interfere with, restrain, or coerce
39 intermediary employees from exercising rights under subsection (1) of

1 this section. Validated worker representatives must operate free from
2 influence by contributing agents. Contributing agents may not:

3 (a) Threaten workers with or impose adverse consequences for
4 exercising their rights;

5 (b) Threaten workers with or impose adverse consequences related
6 to a worker's immigration status for exercising their rights;

7 (c) Terminate a worker for exercising their rights;

8 (d) Reduce a worker's access to wages, tips, shifts, tasks, or
9 trips for exercising their rights;

10 (e) Promise a worker benefits, rewards, or compensation if the
11 worker rejects participation on the workers' board;

12 (f) Prohibit workers from talking about workers' board activities
13 during work time;

14 (g) Perform surveillance of workers' organizing activities;

15 (h) Solicit individual workers to participate in campaign
16 advertisements; and

17 (i) Adopt, maintain, or enforce work rules that reasonably tend
18 to inhibit workers from exercising their rights.

19 (3) There shall be a rebuttable presumption of retaliation if a
20 contributing agent takes an adverse action against a person within
21 ninety calendar days of the person's exercise of rights. The standard
22 of proof for retaliation is that the protected activity was a
23 motivating factor in the adverse action. For the purposes of this
24 subsection, "adverse action" means terminating, discharging, denying
25 a promotion, demoting, failing to rehire after seasonal interruption
26 of work, threatening, penalizing, retaliating, engaging in unfair
27 immigration related practices, filing a false report with a
28 government agency, changing an intermediary employee's status or pay
29 rate or structure, eliminating eligibility for incentives or
30 "bonuses," or otherwise discriminating against the person.

31 NEW SECTION. **Sec. 44.** (1) The department must adopt rules to
32 implement and administer the delivery of benefits within this chapter
33 and administer and enforce workers' boards, including rules for:

34 (a) Monitoring compliance of contributing agents;

35 (b) Establishing a fee on contributing agents to fund the
36 department's compliance efforts;

37 (c) Monitoring compliance of benefit providers, including the
38 ability to remove benefit providers that are out of compliance with
39 the criteria established under this chapter;

1 (d) Providing procedures for eligible beneficiaries to select
2 benefit providers, to change their selections annually, and to
3 receive notices of the right to select different benefit providers;

4 (e) Providing procedures for community-based enforcement,
5 including worker-led or worker organization-led complaints;

6 (f) Administering industrial insurance coverage for eligible
7 beneficiaries under this chapter; and

8 (g) Establishing penalties on any contributing agents or eligible
9 beneficiaries out of compliance. Such penalties may be used to fund
10 the department's compliance efforts. If the penalty results directly
11 from a complaint by a benefit provider or validated worker
12 representative, the collected award must be split between the
13 department and the complainant.

14 (2) The department must designate staff dedicated to the
15 investigation and enforcement of laws concerning intermediary
16 employees. Both contributing agents and qualified benefit providers
17 may be subject to unannounced audits by the department.

18 (3) In addition to any remedies provided by the department to an
19 eligible beneficiary for a contributing agent's noncompliance, an
20 eligible beneficiary may bring a private cause of action against a
21 contributing agent for the contributing agent's failure to comply
22 with the contribution requirements under this chapter.

23 (4) The department must adopt rules to implement and administer
24 performance of workers' boards within this chapter, including:

25 (a) Allowing represented workers to report violations of portable
26 benefit contribution requirements or compliance with board
27 determinations to the department. The department must investigate
28 these complaints with the same diligence as any other employment or
29 labor law violation;

30 (b) Providing validated worker representatives with standing to
31 file complaints on the behalf of represented workers; and

32 (c) Establishing monetary penalties for a contributing agent
33 found to be in violation of the standards established by the board.
34 The department must set the amount of monetary penalties at no less
35 than three times the amount owed in wages or benefit contributions.
36 If the penalty results directly from a complaint by a benefit
37 provider or validated worker representative, the collected award must
38 be split between the department and the complainant.

1 NEW SECTION. **Sec. 45.** (1) The department must contract with
2 eligible worker representatives to implement outreach and education
3 to eligible beneficiaries and covered intermediary employees.

4 (2) Organizations conducting outreach and education must educate
5 eligible beneficiaries and covered intermediary employees about their
6 legal rights, and help eligible beneficiaries and intermediary
7 employees file reports of violations of laws and standards, including
8 portable benefit contribution requirements and standards established
9 by the workers' board.

10 (3) Contributing agents must provide organizations conducting
11 outreach and education access to workers through all reasonable means
12 including, but not limited to, worksites, user data, and payment
13 data.

14 NEW SECTION. **Sec. 46.** The requirements on contributing agents
15 and the benefits provided to eligible beneficiaries under this
16 chapter may not be considered in determinations of an eligible
17 beneficiary's employment status or the contributing agent's
18 employment relationship to the eligible beneficiary.

19 NEW SECTION. **Sec. 47.** (1) Sections 2 through 12 of this act
20 constitute a new chapter in Title 49 RCW.

21 (2) Sections 30 through 46 of this act constitute a new chapter
22 in Title 49 RCW.

23 NEW SECTION. **Sec. 48.** If any provision of this act or its
24 application to any person or circumstance is held invalid, the
25 remainder of the act or the application of the provision to other
26 persons or circumstances is not affected.

27 NEW SECTION. **Sec. 49.** If any part of this act is found to be in
28 conflict with federal requirements that are a prescribed condition to
29 the allocation of federal funds to the state or the eligibility of
30 employers in this state for federal unemployment tax credits, the
31 conflicting part of this act is inoperative solely to the extent of
32 the conflict, and the finding or determination does not affect the
33 operation of the remainder of this act. Rules adopted under this act
34 must meet federal requirements that are a necessary condition to the
35 receipt of federal funds by the state or the granting of federal
36 unemployment tax credits to employers in this state.

1 NEW SECTION. **Sec. 50.** The following acts or parts of acts are
2 each repealed:

3 (1) RCW 39.12.100 (Independent contractors—Criteria) and 2009 c
4 63 s 1;

5 (2) RCW 50.04.140 (Employment—Exception tests) and 1991 c 246 s 6
6 & 1945 c 35 s 15;

7 (3) RCW 50.04.145 (Employment—Exclusions) and 2008 c 102 s 1,
8 1983 1st ex.s. c 23 s 25, & 1982 1st ex.s. c 18 s 13;

9 (4) RCW 51.08.181 ("Worker"—Registered contractor and electrician
10 exclusions) and 2008 c 102 s 5; and

11 (5) RCW 51.08.195 ("Employer" and "worker"—Additional exception)
12 and 2008 c 102 s 4 & 1991 c 246 s 1.

13 NEW SECTION. **Sec. 51.** Section 19 of this act expires December
14 31, 2019.

15 NEW SECTION. **Sec. 52.** Section 20 of this act takes effect
16 December 31, 2019.

17 NEW SECTION. **Sec. 53.** Section 8 of this act takes effect
18 January 1, 2021.

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