

---

**SENATE BILL 6261**

---

**State of Washington**

**66th Legislature**

**2020 Regular Session**

**By** Senators McCoy, Saldaña, Conway, Kuderer, Hasegawa, Wilson, C.,  
Das, Nguyen, and Keiser

Read first time 01/14/20. Referred to Committee on Labor & Commerce.

1 AN ACT Relating to strengthening the farm labor contractor system  
2 by removing an exemption for nonprofits, prohibiting retaliation and  
3 the use of farm labor contractors in certain circumstances, and  
4 establishing liability for related violations; amending RCW 19.30.190  
5 and 19.30.200; and reenacting and amending RCW 19.30.010.

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

7 **Sec. 1.** RCW 19.30.010 and 2017 c 253 s 1 are each reenacted and  
8 amended to read as follows:

9 The definitions in this section apply throughout this chapter  
10 unless the context clearly requires otherwise.

11 (1) "Agricultural employee" means any person who renders, or has  
12 rendered, personal services to, or under the direction of, an  
13 agricultural employer in connection with the employer's agricultural  
14 activity.

15 (2) "Agricultural employer" means any person engaged in  
16 agricultural activity, including the growing, producing, or  
17 harvesting of farm or nursery products, or engaged in the forestation  
18 or reforestation of lands, which includes but is not limited to the  
19 planting, transplanting, tubing, precommercial thinning, and thinning  
20 of trees and seedlings, the clearing, piling, and disposal of brush

1 and slash, the harvest of Christmas trees, and other related  
2 activities.

3 (3) "Director" as used in this chapter means the director of the  
4 department of labor and industries of the state of Washington.

5 (4) "Farm labor contracting activity" means recruiting,  
6 soliciting, employing, supplying, transporting, or hiring  
7 agricultural employees.

8 (5) "Farm labor contractor" means any person, or his or her agent  
9 or subcontractor, who, for a fee, performs any farm labor contracting  
10 activity. "Farm labor contractor" does not include a person  
11 performing farm labor contracting activity solely for a small  
12 forestland owner as defined in RCW 76.09.450 who receives services of  
13 no more than two agricultural employees at any given time.

14 (6) "Fee" means:

15 (a) Any money or other valuable consideration paid or promised to  
16 be paid for services rendered or to be rendered by a farm labor  
17 contractor.

18 (b) Any valuable consideration received or to be received by a  
19 farm labor contractor for or in connection with any of the services  
20 described in subsection (4) of this section, and shall include the  
21 difference between any amount received or to be received by him, and  
22 the amount paid out by him for or in connection with the rendering of  
23 such services.

24 (7) "Person" includes any individual, firm, partnership,  
25 association, corporation, or unit or agency of state or local  
26 government.

27 (8) This chapter shall not apply to employees of the employment  
28 security department acting in their official capacity or their  
29 agents, nor to any common carrier or full time regular employees  
30 thereof while transporting agricultural employees, nor to any person  
31 who performs any of the services enumerated in subsection (4) of this  
32 section only within the scope of his or her regular employment for  
33 one agricultural employer on whose behalf he or she is so acting,  
34 unless he or she is receiving a commission or fee, which commission  
35 or fee is determined by the number of workers recruited(~~(, or to a~~  
36 ~~nonprofit corporation or organization which performs the same~~  
37 ~~functions for its members. Such nonprofit corporation or organization~~  
38 ~~shall be one in which:~~

1 ~~(a) None of its directors, officers, or employees are deriving~~  
2 ~~any profit beyond a reasonable salary for services performed in its~~  
3 ~~benefit.~~

4 ~~(b) Membership dues and fees are used solely for the maintenance~~  
5 ~~of the association or corporation).~~

6 **Sec. 2.** RCW 19.30.190 and 1985 c 280 s 13 are each amended to  
7 read as follows:

8 (1) No farm labor contractor ((or)), agricultural employer, or  
9 any person acting on behalf of a farm labor contractor or  
10 agricultural employer, may ((discharge or in any other manner  
11 discriminate)) take adverse action against any employee ((because))  
12 or former employee who:

13 ~~((1) The employee)) (a) Has made a claim against the farm labor~~  
14 ~~contractor or agricultural employer ((for compensation for the~~  
15 ~~employee's personal services.)) related in any way to the employee or~~  
16 ~~former employee's employment;~~

17 ~~((2) The employee)) (b) Has caused to be instituted, or is about~~  
18 ~~to cause to be instituted, any proceedings under or related to ((RCW~~  
19 ~~19.30.180.)) this chapter;~~

20 ~~((3) The employee)) (c) Has testified or is about to testify in~~  
21 ~~any such proceedings((-));~~

22 ~~((4) The employee)) (d) Has discussed or consulted with anyone~~  
23 ~~concerning the employee((-s)) or another person's employment rights~~  
24 ~~((under this chapter.)) or safety and health laws or regulations;~~

25 (e) Has informed any other person or made a complaint, or the  
26 employer believes the employee or former employee has informed any  
27 other person or made a complaint, including to the employer, the  
28 director, the attorney general, or any other person, that the  
29 employer engaged in conduct that the employee or former employee  
30 reasonably believes violates this chapter or any employment or safety  
31 and health laws or regulations;

32 (f) Has refused to participate in an activity that would result  
33 in a violation of any state or federal employment or safety and  
34 health laws or regulations;

35 (g) Has sought information about the employee or former  
36 employee's rights under any employment or safety and health laws or  
37 regulations, or informed others about their rights;

1 (h) Has, or the employer believes the employee or former employee  
2 has, otherwise exercised rights under any employment or safety and  
3 health laws or regulations; or

4 (i) Engaged in, or benefited from, any concerted activity to  
5 improve working conditions as protected by RCW 49.32.020.

6 (2) If an employer takes adverse action against an employee or  
7 former employee within ninety days of an activity described in  
8 subsection (1) of this section, the employer is presumed to have  
9 acted in retaliation in violation of subsection (1) of this section.  
10 However, in the case of seasonal work, the presumption also applies  
11 if the employer fails to rehire a former employee at the next  
12 opportunity for work in the same position. The employer may rebut the  
13 presumption with clear and convincing evidence that the adverse  
14 action was taken for a permissible purpose.

15 (3) A complaint or other communication by an employee or former  
16 employee triggers the protections of this section regardless of  
17 whether the complaint or communication is in writing or makes  
18 explicit reference to this chapter.

19 (4) For purposes of this section:

20 (a) "Adverse action" means discharging, denying a promotion,  
21 demoting, failing to rehire after seasonal interruption of work,  
22 intimidating, threatening, coercing, blacklisting, penalizing,  
23 retaliating against, engaging in unfair immigration-related  
24 practices, filing a false report with a government agency, changing  
25 an employee's status to a nonemployee, or otherwise discriminating  
26 against an employee. "Adverse action" may involve any aspect of  
27 employment, including pay, work hours, responsibilities, or other  
28 material change in the terms or conditions of employment.

29 (b) (i) "Unfair immigration-related practice" includes any of the  
30 following:

31 (A) Requesting more or different documents than are required  
32 under 8 U.S.C. Sec. 1324a(b), or a refusal to honor documents  
33 tendered pursuant to that section that on their face reasonably  
34 appear to be genuine;

35 (B) Using the federal e-verify system to check the employment  
36 authorization status of a person at a time or in a manner not  
37 required under 8 U.S.C. Sec. 1324a(b), or not authorized under any  
38 memorandum of understanding governing the use of the federal e-verify  
39 system;

40 (C) Threatening to file or the filing of a false police report;

1        (D) Threatening to contact or contacting immigration authorities;  
2 or  
3        (E) Withholding or threatening to destroy documents related to a  
4 person's immigration status.  
5        (ii) "Unfair immigration-related practice" does not include  
6 conduct undertaken at the express and specific direction or request  
7 of the federal government.

8        **Sec. 3.** RCW 19.30.200 and 2000 c 171 s 48 are each amended to  
9 read as follows:

10        No person may utilize the services of any farm labor contractor  
11 to supply any agricultural worker unless the person first takes  
12 reasonable steps to determine that the farm labor contractor  
13 possesses a valid license required by this chapter. Any person who  
14 ~~((knowingly uses the services of an unlicensed farm labor~~  
15 ~~contractor)) violates this section shall be personally, jointly, and  
16 severally liable with the person acting as a farm labor contractor to  
17 the same extent and in the same manner as provided in this chapter.  
18 ~~((In making determinations under this section, any user may rely))~~  
19 The only defense that may be asserted to avoid liability under this  
20 section is that the person relied upon either the license issued by  
21 the director to the farm labor contractor under RCW 19.30.030 or the  
22 director's representation that such contractor is licensed as  
23 required by this chapter.~~

--- END ---