

**Chapter 49.85 RCW
GROCERY RETAILERS**

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RCW 49.85.010 Legislative findings. (1) Supermarkets and other grocery retailers are the primary points of distribution for food and other daily necessities for the residents of Washington and are therefore essential to the vitality of every Washington community.

(2) The state has a compelling interest in ensuring the welfare of the residents of its communities through the maintenance of health and safety standards in grocery establishments.

(3) Experienced grocery retail workers with knowledge of proper sanitation procedures, health regulations and laws, and an experience-based understanding of the clientele and communities in which the retailer is located are essential in furthering this interest and the state's investments in health and safety.

(4) A transitional retention period for grocery retail workers upon change of ownership, control, or operation of grocery stores ensures stability throughout the state for these vital workers, which, in turn, results in preservation of health and safety standards.
[2024 c 129 s 1.]

RCW 49.85.015 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Change in control" means any sale, purchase, assignment, acquisition, transfer, contribution, or other disposition of all or substantially all of the assets, cash on hand, or a controlling interest, including by consolidation, merger, or reorganization, of or by the incumbent grocery employer or any person who controls the incumbent grocery employer or any grocery establishment under the operation or control of either the incumbent grocery employer or any person who controls the incumbent grocery employer.

(2) "Eligible grocery worker" means any individual whose primary place of employment is at the grocery establishment subject to a change in control, and who has worked for the incumbent grocery

employer for at least six months prior to the execution of the transfer document. "Eligible grocery worker" does not include a managerial, supervisory, or confidential employee.

(3) "Employment commencement date" means the date on which an eligible grocery worker retained by the successor grocery employer pursuant to this chapter commences work for the successor grocery employer in exchange for benefits and compensation under the terms and conditions established by the successor grocery employer and as required by law.

(4) (a) "Grocery establishment" means a retail store in this state that is over 15,000 square feet in size and that sells primarily household foodstuffs for off-site consumption, including the sale of fresh produce, meats, poultry, fish, deli products, dairy products, canned foods, dry foods, beverages, baked foods, or prepared foods. Other household supplies or other products must be secondary to the primary purpose of food sales.

(b) A distribution center owned and operated by a grocery establishment and used primarily to distribute goods to or from its owned stores is considered a grocery establishment, regardless of its square footage.

(c) A grocery establishment does not include a retail store that has ceased operations for 12 months or more.

(5) "Incumbent grocery employer" means the person that owns, controls, or operates the grocery establishment at the time of the change in control.

(6) "Job classification" means a system for categorizing certain duties into certain jobs.

(7) "Person" means an individual, corporation, partnership, limited partnership, limited liability partnership, limited liability company, business trust, estate, trust, association, joint venture, agency, instrumentality, or any other legal or commercial entity, whether domestic or foreign.

(8) "Successor grocery employer" means the person that owns, controls, or operates the grocery establishment after the change in control. A successor grocery employer may be the same entity as an incumbent employer when a change in control occurs, but the covered employer remains the same. "Successor grocery employer" does not include any person that owns or controls 25 or fewer grocery establishments in the state. A successor grocery employer does not include an establishment operated by a franchisee pursuant to a franchise agreement if the franchisee operates 25 or fewer grocery establishments in the state.

(9) "Transfer document" means the purchase agreement or other document effecting the change in control. [2024 c 129 s 2.]

RCW 49.85.020 Change in control—Incumbent and successor grocer employee lists. (1) (a) The incumbent grocery employer must, within 15 days after the execution of the transfer document, provide to the successor grocery employer and any collective bargaining representative the name, address, date of hire, employment occupation classification, and, if known, the cellular telephone number and email address of each eligible grocery worker.

(b) If the incumbent grocery employer does not provide the information specified in (a) of this subsection within 15 days, the

successor grocery employer may obtain the information from a collective bargaining representative.

(2) The successor grocery employer must maintain a preferential hiring list of eligible grocery workers identified by the incumbent grocery employer or collective bargaining representative pursuant to subsection (1) of this section and must hire from that list for a period beginning upon the execution of the transfer document and continuing for 180 days after the grocery establishment is fully operational and open to the public under the successor grocery employer.

(3) If the successor grocery employer extends an offer of employment to an eligible grocery worker pursuant to this chapter, the successor grocery employer must retain written verification of that offer for at least three years after the date of the offer. The verification must include the name, address, date of hire, and employment occupation classification of each eligible grocery worker. [2024 c 129 s 3.]

RCW 49.85.025 Change in control—Employee retention—Transition period.

(1) A successor grocery employer must retain each eligible grocery worker hired pursuant to this chapter for at least 180 days after the eligible grocery worker's employment commencement date. During this 180-day transition employment period, eligible grocery workers must be employed under the terms and conditions established by the successor grocery employer and pursuant to the terms of a relevant collective bargaining agreement, if any.

(2) If, within the period established in RCW 49.85.020(2), the successor grocery employer determines that it requires fewer eligible grocery workers than were required by the incumbent grocery employer, the successor grocery employer must retain eligible grocery workers by seniority within each job classification to the extent that comparable job classifications exist or pursuant to the terms of a relevant collective bargaining agreement, if any. Nonclassified eligible grocery workers must be retained by seniority and according to experience, or pursuant to the terms of a relevant collective bargaining agreement, if any.

(3) During the 180-day transition employment period, the successor grocery employer may not discharge without cause an eligible grocery worker retained pursuant to this chapter.

(4) At the end of the 180-day transition employment period, the successor grocery employer must make a written performance evaluation for each eligible grocery worker retained pursuant to this chapter. If the eligible grocery worker's performance during the 180-day transition employment period is satisfactory, the successor grocery employer must consider offering the eligible grocery worker continued employment under the terms and conditions established by the successor grocery employer and as required by law. The successor grocery employer must retain a record of the written performance evaluation for at least three years. [2024 c 129 s 4.]

RCW 49.85.030 Change in control—Applicability—Dislocated grocery worker allowance.

(1) This section only applies to a successor grocery employer that, after a change in control, will own, control, or operate 20 or more grocery establishments.

(2) Notwithstanding other provisions of this chapter, if a successor grocery employer does not hire an eligible grocery worker following a change in control or does not retain an eligible grocery worker for at least 180 days following the change in control or the eligible grocery worker's employment commencement date, whichever is later, the successor grocery company must, unless the eligible grocery worker has quit or has been discharged for cause, provide the eligible grocery employee a dislocated grocery worker allowance equal to one week of pay for each full year of employment with the incumbent grocery employer. The rate of the dislocated grocery worker allowance will be the average regular rate of compensation received during the eligible grocery worker's last three years of employment with the incumbent grocery employer or the final regular rate of compensation paid to the eligible grocery worker, whichever is higher.

(3) The successor grocery employer must provide the greater of the dislocated grocery worker allowance required pursuant to:

(a) Subsection (2) of this section; or

(b) The terms of a relevant collective bargaining agreement, if any. [2024 c 129 s 5.]

RCW 49.85.035 Change in control—Public notice. (1) The incumbent grocery employer must post public notice of the change in control at the location of the affected grocery establishment within five business days following the execution of the transfer document. Notice must remain posted during any closure of the grocery establishment and until the grocery establishment is fully operational and open to the public under the successor grocery employer.

(2) Notice must include, but is not limited to:

(a) The name of the incumbent grocery employer and its contact information;

(b) The name of the successor grocery employer and its contact information; and

(c) The effective date of the change in control.

(3) Notice must be posted in a conspicuous place at the grocery establishment in a manner to be readily viewed by eligible grocery workers and other employees, customers, and members of the public. [2024 c 129 s 6.]

RCW 49.85.040 Adverse action—Assertion of employee rights. (1) An employer must not refuse to employ, terminate, reduce the compensation of, or otherwise take adverse action against any employee for seeking to enforce the employee's rights under this chapter, including participating in proceedings, opposing any practice prescribed by this chapter, or otherwise asserting rights under this chapter.

(2) This section applies to an employee who mistakenly, but in good faith, alleges noncompliance with this chapter. [2024 c 129 s 7.]

RCW 49.85.045 Employee cause of action—Remedies—Notice of violation. (1) An aggrieved employee or an employee representative, such as a collective bargaining representative or nonprofit corporation, may bring an action in the superior court of the state of

Washington for violations of this chapter and may be awarded the following:

(a) Hiring and reinstatement rights pursuant to this chapter. For violations of the retention provision, the 180-day transition employment period does not commence until the eligible grocery worker's employment commencement date with the successor grocery employer;

(b) Front pay or back pay for each day during which the violation continues;

(c) The value of the benefits the employee would have received under any benefit plans;

(d) Reasonable attorneys' fees and costs to any employee or employee representative who prevails in an enforcement action.

(2) Before an employee or an employee representative brings an action in the superior court of the state of Washington for a violation of this chapter, both of the following requirements must be met:

(a) The employee has provided written notice to the employer of the provisions of this chapter alleged to have been violated and the facts to support the alleged violation; and

(b) The employer has not cured the alleged violation within 30 calendar days from receipt of the written notice. [2024 c 129 s 8.]

RCW 49.85.050 Food desert exemption. This chapter does not apply to grocery establishments that will be located in geographic areas designated by the United States department of agriculture as food deserts, based on the original food desert measure contained in the Food Access Research Atlas, provided that both of the following apply:

(1) More than six years have elapsed since the most recent grocery establishment was located in the area designated as a food desert; and

(2) The grocery establishment stocks and, during normal business hours, sells fresh fruit and vegetables in amounts and of a quality that is comparable to what the establishment sells in its three geographically closest stores, which are located outside of the food desert. [2024 c 129 s 9.]

RCW 49.85.055 Change in control—Grocery retailer merger—Closures in food deserts—Notice requirements. (1) In the case of a change of control from a merger, a successor grocery employer may not cause a grocery establishment that is located in a geographic area designated by the United States department of agriculture as a food desert to cease being fully operational and open to the public until the establishment provides a written notice to the city council, county council, local health department, and attorney general 180 days before the establishment ceases to be fully operational and open to the public.

(2) The notice required by subsection (1) of this section must include both of the following:

(a) A written analysis and explanation, including data, of how residents living in the geographic area designated by the United States department of agriculture as a food desert will be able, at comparable costs, including transportation costs, time off work, and

child care costs, to purchase food after the establishment ceases being fully operational and open to the public; and

(b) A profit and loss statement for the establishment consistent with generally accepted accounting principles for the two years prior to the merger attested to by a responsible officer of the successor employer. [2024 c 129 s 10.]

RCW 49.85.060 Small employer exemption. (1) This chapter does not apply to an incumbent grocery employer and the successor grocery employer executing the transfer document with that incumbent grocery employer, if the sum of both of the following is less than 300:

(a) The number of grocery workers employed immediately prior to the change in control by the incumbent grocery employer across that employer's grocery establishments nationwide; and

(b) The number of grocery workers employed immediately prior to the change in control by the successor grocery employer across that employer's grocery establishments nationwide.

(2) For purposes of this section only, the following definitions apply:

(a) "Grocery establishment," as used in this section, has the same meaning as defined in RCW 49.85.015, but also includes grocery establishments in other states in the United States.

(b) "Grocery worker," as used in this section, means any individual whose primary place of employment is at a grocery establishment that is owned, controlled, or operated by the incumbent or successor grocery employer, as applicable. [2024 c 129 s 11.]

RCW 49.85.065 Preemption. This chapter does not preempt any city, county, or city and county ordinances that provide equal or greater protection to eligible grocery workers. [2024 c 129 s 13.]

RCW 49.85.900 Wrongful termination action not limited. This chapter is not to be construed to limit an eligible grocery worker's right to bring legal action for wrongful termination. [2024 c 129 s 12.]