
SECOND SUBSTITUTE HOUSE BILL 2333

State of Washington

63rd Legislature

2014 Regular Session

By House Appropriations Subcommittee on Health & Human Services (originally sponsored by Representatives Ryu, Sells, Moscoso, Seaquist, S. Hunt, Green, Stanford, Appleton, Reykdal, Fitzgibbon, Habib, Bergquist, Goodman, Farrell, Ormsby, Pollet, and Walkinshaw)

READ FIRST TIME 02/11/14.

1 AN ACT Relating to the employment antiretaliation act; amending RCW
2 49.46.010, 49.46.100, and 39.12.010; reenacting and amending RCW
3 49.48.082; adding new sections to chapter 49.46 RCW; adding a new
4 section to chapter 49.12 RCW; adding new sections to chapter 49.48 RCW;
5 adding new sections to chapter 39.12 RCW; adding new sections to
6 chapter 49.52 RCW; creating a new section; and prescribing penalties.

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

8 NEW SECTION. **Sec. 1.** The legislature finds that many workers are
9 unable to exercise their wage and hour rights because of fear of
10 adverse action or actual adverse action by unscrupulous employers.
11 Employers should not gain a competitive advantage against law abiding
12 business by retaliating or discriminating against their employees. No
13 employee should have to fear adverse action simply for engaging in
14 rights the state of Washington has deemed so important that they are
15 protected by law. It is in the public interest of the state of
16 Washington that employees be able to report concerns to their employers
17 without fear of retaliation or discrimination. The legislature finds
18 that strong, clear, and effective protections for employees will help
19 address the problems of employer retaliation.

1 with regard to the provision of the voluntary services. The voluntary
2 services and any compensation therefor shall not affect or add to
3 qualification, entitlement, or benefit rights under any state, local
4 government, or publicly supported retirement system other than that
5 provided under chapter 41.24 RCW;

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

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

13 (h) Any individual engaged in forest protection and fire prevention
14 activities;

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

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

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

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

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

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

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

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

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

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

13 (8) "Adverse action" means discharging, denying a promotion,
14 demoting, failing to rehire after a seasonal interruption of work,
15 threatening, penalizing, retaliating, engaging in unfair immigration-
16 related practices, filing a false report with a government agency,
17 changing an employee's status to a nonemployee, or otherwise
18 discriminating against an employee. "Adverse action" may involve any
19 aspect of employment, including pay, work hours, responsibilities, or
20 other material change in the terms and condition of employment;

21 (9) "Department" means the department of labor and industries;

22 (10) "Front pay" means the compensation the employee would earn if
23 reinstated to his or her former position;

24 (11) "Interested party" includes: A contractor or subcontractor or
25 an employee of a contractor or subcontractor; the director or the
26 director's designee; an organization whose members' wages, benefits,
27 and conditions of employment are affected by this chapter, including a
28 labor union; or any other organization of workers that exists for the
29 purpose, in whole or in part, of interacting with employers;

30 (12)(a) "Pattern or practice" means that, in addition to the
31 current violation, within the previous ten years the employer was:

32 (i) Convicted of a criminal violation of a state or local law
33 concerning retaliation;

34 (ii) Subject to a court order entering final judgment for a
35 violation of section 3, 9, 14, or 19 of this act, and the judgment was
36 not satisfied or current within thirty days of the later of:

37 (A) The expiration of the time for appealing the order; or

1 (B) If a timely appeal was made, the date of the final resolution
2 of the appeal; or

3 (iii) Subject to a final and binding citation and notice of
4 assessment from the department for a violation of section 3, 9, 14, or
5 19 of this act, and the citation and penalty were not satisfied or
6 current within thirty days of the date the citation became final and
7 binding.

8 (b) For the purposes of this subsection (12), an employer includes
9 a successor employer, as defined in RCW 49.48.082;

10 (13)(a) "Unfair immigration-related practice" includes any of the
11 following practices:

12 (i) Requesting more or different documents than are required under
13 8 U.S.C. Sec. 1324a(b), or a refusal to honor documents tendered
14 pursuant to that section that on their face reasonably appear to be
15 genuine;

16 (ii) Using the federal E-Verify system to check the employment
17 authorization status of a person at a time or in a manner not required
18 under 8 U.S.C. Sec. 1324a(b), or not authorized under any memorandum of
19 understanding governing the use of the federal E-Verify system;

20 (iii) Threatening to file or the filing of a false police report;

21 (iv) Threatening to contact or contacting immigration authorities;

22 (v) Withholding or threatening to destroy documents related to a
23 person's immigration status.

24 (b) "Unfair immigration-related practice" does not include conduct
25 undertaken at the express and specific direction or request of the
26 federal government.

27 NEW SECTION. Sec. 3. A new section is added to chapter 49.46 RCW
28 to read as follows:

29 (1) An employer, any of its agents, or any person acting on behalf
30 of the employer may not take adverse action against any individual or
31 individuals because:

32 (a) An employee or former employee has informed any other person or
33 made a complaint, or the employer believes an employee has informed any
34 other person or made a complaint, including to the employer, the
35 department, the attorney general, or any other person that the employer
36 engaged in conduct that an employee reasonably believes violates this
37 chapter;

1 (b) An employee or former employee demands from the employee's
2 employer a lawful claim under this chapter;

3 (c) An employee or former employee has caused to be instituted, or
4 is about to cause to be instituted, a proceeding under or related to
5 this chapter;

6 (d) An employee or former employee has testified or is about to
7 testify in a proceeding under or related to this chapter;

8 (e) An employee has refused to participate in an activity that
9 would result in a violation of state or federal law;

10 (f) An employee or former employee has sought information about his
11 or her rights under this chapter or informed others about their rights
12 under this chapter;

13 (g) An employee or former employee has, or the employer believes an
14 employee has, otherwise exercised rights protected by this chapter; or

15 (h) An employee or former employee filed a complaint with the
16 department or brought suit in court where the employer was determined
17 to have violated this chapter.

18 (2) If an employer takes adverse action against an employee or
19 former employee within ninety days of an activity described in
20 subsection (1) of this section, the employer is presumed to have acted
21 in retaliation in violation of subsection (1) of this section.
22 However, in the case of seasonal work that ended before the close of
23 the ninety day period, the presumption also applies if the employer
24 fails to rehire a former employee at the next opportunity for work in
25 the same position. The employer may rebut the presumption with clear
26 and convincing evidence that the adverse action was taken for a
27 permissible purpose.

28 (3) A complaint or other communication by an employee triggers the
29 protections of this section regardless of whether the complaint or
30 communication is in writing or makes explicit reference to this
31 chapter.

32 (4) A violation of this section is a gross misdemeanor.

33 NEW SECTION. **Sec. 4.** A new section is added to chapter 49.46 RCW
34 to read as follows:

35 (1) An individual aggrieved or an interested party filing on behalf
36 of an individual aggrieved by section 3 of this act may file a
37 complaint with the director.

1 (2) If an individual aggrieved or an interested party filing on
2 behalf of an individual aggrieved files a complaint with the
3 department, the director may investigate the complaint. If, following
4 an investigation, the director determines that an employer violated
5 section 3 of this act, the director may order the employer to comply
6 with any one or more of the following:

7 (a) Pay a civil penalty of not less than one thousand dollars and
8 not more than ten thousand dollars per individual aggrieved. The
9 department must deposit civil penalties under this section in the
10 supplemental pension fund established under RCW 51.44.033.

11 (b)(i) Subject to (b)(ii) of this subsection, pay any aggrieved
12 individual not less than one thousand dollars and not more than ten
13 thousand dollars.

14 (ii) If an employee or former employee is the aggrieved individual,
15 pay the individual the greater of:

16 (A) The amount of any civil penalty imposed under (a) of this
17 subsection; or

18 (B) Three times the amount of any wages, salary, and employment
19 benefits unlawfully denied or withheld, except benefits under Title 50
20 or 51 RCW.

21 (c) If the aggrieved individual is a former employee of the
22 violating employer, reinstate the aggrieved individual as an employee
23 at not less than the most recent rate of pay received by the employee.
24 The director may award front pay in lieu of reinstatement.

25 (3) An appeal from the director's determination may be taken in
26 accordance with chapter 34.05 RCW, with the prevailing party entitled
27 to recover reasonable costs and attorneys' fees.

28 (4) The director may not investigate any alleged violation under
29 this section that occurred more than three years before the date that
30 the employee filed the complaint. This period is tolled during any
31 period of time that an employer, any of its agents, or any person
32 acting on behalf of the employer deters an individual from filing a
33 complaint.

34 NEW SECTION. **Sec. 5.** A new section is added to chapter 49.46 RCW
35 to read as follows:

36 (1) An individual aggrieved by a violation of section 3 of this act

1 may bring suit on behalf of himself or herself or on behalf of any
2 other individuals similarly situated.

3 (2) If a court determines that an employer violated section 3 of
4 this act, the court, unless prohibited by federal law:

5 (a)(i) Shall award statutory damages for each individual aggrieved
6 by the violation. Subject to (a)(ii) of this subsection, statutory
7 damages must not be less than one thousand dollars and not more ten
8 thousand dollars per individual, unless the employer engaged in a
9 pattern or practice of violations, in which case the statutory damages
10 must be not less than ten thousand dollars and not more than twenty-
11 five thousand dollars per individual;

12 (ii) If an employee or former employee is the individual subject to
13 adverse action, the court shall award the greater of:

14 (A) The amounts specified in (a)(i) of this subsection; or

15 (B) Three times the amount of any wages, salary, and employment
16 benefits unlawfully denied or withheld, except benefits under Title 50
17 or 51 RCW;

18 (b) May award actual damages sustained by the individual;

19 (c) May order injunctive or other equitable relief if the aggrieved
20 individual is an employee or former employee of the violating employer.
21 The relief may include:

22 (i) Reinstatement of the former employee as an employee to his or
23 her former position at not less than the most recent rate of
24 compensation received by the employee, including the value of any
25 benefits; or

26 (ii) Front pay in lieu of reinstatement;

27 (d)(i) For a first violation, may order the appropriate government
28 agencies to suspend all licenses that are held by the violating party
29 for a period of up to fourteen days. The licenses that are subject to
30 suspension are all licenses, certifications, or registrations held by
31 the violating party specific to the business location or locations
32 where the adverse action occurred;

33 (ii) For a second violation, the court may order the appropriate
34 government agencies to suspend all licenses that are held by the
35 violating party for a period of up to thirty days. The licenses that
36 are subject to suspension are all licenses held by the violating party
37 specific to the business location or locations where the adverse action
38 occurred;

1 (iii) For a third violation, the court may order the appropriate
2 government agencies to suspend all licenses that are held by the
3 violating party for a period of up to ninety days. The licenses that
4 are subject to suspension are all licenses held by the violating party
5 specific to the business location or locations where the adverse action
6 occurred.

7 (e) Shall award attorneys' fees and costs.

8 (3) A civil action under this section must be brought no later than
9 three years after the violation occurred. This period is tolled during
10 any period of time that an employer, any of its agents, or any person
11 acting on behalf of the employer deters an individual from bringing an
12 action under this section.

13 **Sec. 6.** RCW 49.46.100 and 2010 c 8 s 12044 are each amended to
14 read as follows:

15 ~~((1))~~ Any employer who hinders or delays the director or his or
16 her authorized representatives in the performance of his or her duties
17 in the enforcement of this chapter, or refuses to admit the director or
18 his or her authorized representatives to any place of employment, or
19 fails to make, keep, and preserve any records as required under the
20 provisions of this chapter, or falsifies any such record, or refuses to
21 make any record accessible to the director or his or her authorized
22 representatives upon demand, or refuses to furnish a sworn statement of
23 such record or any other information required for the proper
24 enforcement of this chapter to the director or his or her authorized
25 representatives upon demand, or pays or agrees to pay wages at a rate
26 less than the rate applicable under this chapter, or otherwise violates
27 any provision of this chapter or of any regulation issued under this
28 chapter shall be deemed in violation of this chapter and shall, upon
29 conviction therefor, be guilty of a gross misdemeanor.

30 ~~((2) Any employer who discharges or in any other manner
31 discriminates against any employee because such employee has made any
32 complaint to his or her employer, to the director, or his or her
33 authorized representatives that he or she has not been paid wages in
34 accordance with the provisions of this chapter, or that the employer
35 has violated any provision of this chapter, or because such employee
36 has caused to be instituted or is about to cause to be instituted any
37 proceeding under or related to this chapter, or because such employee~~

1 ~~has testified or is about to testify in any such proceeding shall be~~
2 ~~deemed in violation of this chapter and shall, upon conviction~~
3 ~~therefor, be guilty of a gross misdemeanor.))~~

4 **INDUSTRIAL WELFARE ACT**

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

7 (1) An employer, any of its agents, or any person acting on behalf
8 of the employer may not take adverse action against any individual or
9 individuals because an employee has updated or attempted to update his
10 or her personal information, unless the change is directly related to
11 the skill set or knowledge required for the job.

12 (2) If an employer takes adverse action against an employee or
13 former employee within ninety days of an activity described in
14 subsection (1) of this section, the employer is presumed to have acted
15 in retaliation in violation of subsection (1) of this section.
16 However, in the case of seasonal work that ended before the close of
17 the ninety day period, the presumption also applies if the employer
18 fails to rehire a former employee at the next opportunity for work in
19 the same position. The employer may rebut the presumption with clear
20 and convincing evidence that the adverse action was taken for a
21 permissible purpose.

22 (3) For the purposes of this section, "adverse action" has the same
23 meaning as in RCW 49.46.010.

24 (4) An interested party or individual aggrieved by this section may
25 file a complaint under section 4 of this act.

26 (5) An individual aggrieved by a violation of this section may also
27 bring suit on behalf of himself or herself or on behalf of any other
28 individuals similarly situated under section 5 of this act.

29 (6) A violation of this section is a gross misdemeanor.

30 **WAGE PAYMENT ACT**

31 **Sec. 8.** RCW 49.48.082 and 2010 c 42 s 1 are each reenacted and
32 amended to read as follows:

33 The definitions in this section apply throughout this section and
34 RCW 49.48.083 through 49.48.086:

- 1 (1) "Citation" means a written determination by the department that
2 a wage payment requirement has been violated.
- 3 (2) "Department" means the department of labor and industries.
- 4 (3) "Determination of compliance" means a written determination by
5 the department that wage payment requirements have not been violated.
- 6 (4) "Director" means the director of the department of labor and
7 industries, or the director's authorized representative.
- 8 (5) "Employee" has the meaning provided in: (a) RCW 49.46.010 for
9 purposes of a wage payment requirement set forth in RCW 49.46.020 or
10 49.46.130; and (b) RCW 49.12.005 for purposes of a wage payment
11 requirement set forth in RCW 49.48.010, 49.52.050, or 49.52.060.
- 12 (6) "Employer" has the meaning provided in RCW 49.46.010 for
13 purposes of a wage payment requirement set forth in RCW 49.46.020,
14 49.46.130, 49.48.010, 49.52.050, or 49.52.060.
- 15 (7) "Notice of assessment" means a written notice by the department
16 that, based on a citation, the employer shall pay the amounts assessed
17 under RCW 49.48.083.
- 18 (8) "Repeat willful violator" means any employer that has been the
19 subject of a final and binding citation and notice of assessment for a
20 willful violation of a wage payment requirement within three years of
21 the date of issue of the most recent citation and notice of assessment
22 for a willful violation of a wage payment requirement.
- 23 (9) "Successor" means any person to whom an employer quitting,
24 selling out, exchanging, or disposing of a business sells or otherwise
25 conveys in bulk and not in the ordinary course of the employer's
26 business, more than fifty percent of the property, whether real or
27 personal, tangible or intangible, of the employer's business.
- 28 (10) "Wage" has the meaning provided in RCW 49.46.010.
- 29 (11) "Wage complaint" means a complaint from an employee to the
30 department that asserts that an employer has violated one or more wage
31 payment requirements and that is reduced to writing.
- 32 (12) "Wage payment requirement" means a wage payment requirement
33 set forth in RCW 49.46.020, 49.46.130, 49.48.010, 49.52.050, or
34 49.52.060, and any related rules adopted by the department.
- 35 (13) "Willful" means a knowing and intentional action that is
36 neither accidental nor the result of a bona fide dispute, as evaluated
37 under the standards applicable to wage payment violations under RCW
38 49.52.050(2).

1 (14) "Adverse action" means discharging, denying a promotion,
2 demoting, failing to rehire after a seasonal interruption of work,
3 threatening, penalizing, retaliating, engaging in unfair immigration-
4 related practices, filing a false report with a government agency,
5 changing an employee's status to a nonemployee, or otherwise
6 discriminating against an employee. "Adverse action" may involve any
7 aspect of employment, including pay, work hours, responsibilities, or
8 other material change in the terms and condition of employment.

9 (15) "Front pay" means the compensation the employee would earn if
10 reinstated to his or her former position.

11 (16) "Interested party" includes: A contractor or subcontractor or
12 an employee of a contractor or subcontractor; the director or the
13 director's designee; an organization whose members' wages, benefits,
14 and conditions of employment are affected by this chapter, including a
15 labor union; or any other organization of workers that exists for the
16 purpose, in whole or in part, of interacting with employers.

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

19 (i) Convicted of a criminal violation of a state or local law
20 concerning retaliation;

21 (ii) Subject to a court order entering final judgment for a
22 violation of section 3, 9, 14, or 19 of this act, and the judgment was
23 not satisfied or current within thirty days of the later of:

24 (A) The expiration of the time for appealing the order; or

25 (B) If a timely appeal was made, the date of the final resolution
26 of the appeal; or

27 (iii) Subject to a final and binding citation and notice of
28 assessment from the department for a violation of section 3, 14, or 19
29 of this act, and the citation and penalty were not satisfied or current
30 within thirty days of the date the citation became final and binding.

31 (b) For the purposes of this subsection (17), an employer includes
32 a successor employer, as defined in RCW 49.48.082.

33 (18)(a) "Unfair immigration-related practice" includes any of the
34 following practices:

35 (i) Requesting more or different documents than are required under
36 8 U.S.C. Sec. 1324a(b), or a refusal to honor documents tendered
37 pursuant to that section that on their face reasonably appear to be
38 genuine;

1 (ii) Using the federal E-Verify system to check the employment
2 authorization status of a person at a time or in a manner not required
3 under 8 U.S.C. Sec. 1324a(b), or not authorized under any memorandum of
4 understanding governing the use of the federal E-Verify system;

5 (iii) Threatening to file or the filing of a false police report;

6 (iv) Threatening to contact or contacting immigration authorities;

7 (v) Withholding or threatening to destroy documents related to a
8 person's immigration status.

9 (b) "Unfair immigration-related practice" does not include conduct
10 undertaken at the express and specific direction or request of the
11 federal government.

12 NEW SECTION. Sec. 9. (1) An employer, any of its agents, or any
13 person acting on behalf of the employer may not take adverse action
14 against any individual or individuals because:

15 (a) An employee or former employee has informed any other person or
16 made a complaint, or the employer believes an employee has informed any
17 other person or made a complaint, including to the employer, the
18 department, the attorney general, or any other person that the employer
19 engaged in conduct that an employee reasonably believes violates this
20 chapter;

21 (b) An employee or former employee demands from the employee's
22 employer a lawful claim under this chapter;

23 (c) An employee or former employee has caused to be instituted, or
24 is about to cause to be instituted, a proceeding under or related to
25 this chapter;

26 (d) An employee or former employee has testified or is about to
27 testify in a proceeding under or related to this chapter;

28 (e) An employee has refused to participate in an activity that
29 would result in a violation of state or federal law;

30 (f) An employee or former employee has sought information about his
31 or her rights under this chapter or informed others about their rights
32 under this chapter;

33 (g) An employee or former employee has, or the employer believes an
34 employee has, otherwise exercised rights protected by this chapter; or

35 (h) An employee or former employee filed a complaint with the
36 department or brought suit in court where the employer was determined
37 to have violated this chapter.

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

11 (3) A complaint or other communication by an employee triggers the
12 protections of this section regardless of whether the complaint or
13 communication is in writing or makes explicit reference to this
14 chapter.

15 (4) A violation of this section is a gross misdemeanor.

16 NEW SECTION. **Sec. 10.** (1) An individual aggrieved or an
17 interested party filing on behalf of an individual aggrieved by section
18 9 of this act may file a complaint with the director on behalf of
19 himself or herself. If an individual aggrieved or an interested party
20 filing on behalf of an individual aggrieved files a complaint with the
21 department, the director may investigate the complaint.

22 (2) If, following an investigation, the director determines that an
23 employer violated section 9 of this act, it may order the employer to
24 comply with any one or more of the following:

25 (a) Pay a civil penalty of not less than one thousand dollars and
26 not more than ten thousand dollars per individual aggrieved. The
27 department must deposit civil penalties under this section in the
28 supplemental pension fund established under RCW 51.44.033.

29 (b)(i) Subject to (b)(ii) of this subsection, pay any aggrieved
30 individual not less than one thousand dollars and not more than ten
31 thousand dollars.

32 (ii) If an employee or former employee is the aggrieved individual,
33 pay the individual the greater of:

34 (A) The amount of any civil penalty imposed under (a) of this
35 subsection; or

36 (B) Three times the amount of any wages, salary, and employment

1 benefits unlawfully denied or withheld, except benefits under Title 50
2 or 51 RCW.

3 (c) If the aggrieved individual is a former employee of the
4 violating employer, reinstate the aggrieved individual as an employee
5 at not less than the most recent rate of pay received by the employee.
6 The director may award front pay in lieu of reinstatement.

7 (3) An appeal from the director's determination may be taken in
8 accordance with chapter 34.05 RCW, with the prevailing party entitled
9 to recover reasonable costs and attorneys' fees.

10 (4) The director may not investigate any alleged violation under
11 this section that occurred more than three years before the date that
12 the employee filed the complaint. This period is tolled during any
13 period of time that an employer, any of its agents, or any person
14 acting on behalf of the employer deters an individual from filing a
15 complaint.

16 NEW SECTION. **Sec. 11.** (1) An individual aggrieved by a violation
17 of section 9 of this act may bring suit on behalf of himself or herself
18 or on behalf of any other individuals similarly situated.

19 (2) If a court determines that an employer violated section 9 of
20 this act, the court, unless prohibited by federal law:

21 (a)(i) Shall award statutory damages for each individual aggrieved
22 by the violation. Subject to (a)(ii) of this subsection, statutory
23 damages must not be less than one thousand dollars and not more ten
24 thousand dollars per individual, unless the employer engaged in a
25 pattern or practice of violations, in which case the statutory damages
26 must be not less than ten thousand dollars and not more than twenty-
27 five thousand dollars per individual;

28 (ii) If an employee or former employee is the individual subject to
29 adverse action, the court shall award the greater of:

30 (A) The amounts specified in (a)(i) of this subsection; or

31 (B) Three times the amount of any wages, salary, and employment
32 benefits unlawfully denied or withheld, except benefits under Title 50
33 or 51 RCW;

34 (b) May award actual damages sustained by the individual;

35 (c) May order injunctive or other equitable relief if the aggrieved
36 individual is an employee or former employee of the violating employer.
37 The relief may include:

1 (i) Reinstatement of the former employee as an employee to his or
2 her former position at not less than the most recent rate of
3 compensation received by the employee, including the value of any
4 benefits; or

5 (ii) Front pay in lieu of reinstatement;

6 (d)(i) For a first violation, may order the appropriate government
7 agencies to suspend all licenses that are held by the violating party
8 for a period of up to fourteen days. The licenses that are subject to
9 suspension are all licenses, certifications, or registrations held by
10 the violating party specific to the business location or locations
11 where the adverse action occurred;

12 (ii) For a second violation, the court may order the appropriate
13 government agencies to suspend all licenses that are held by the
14 violating party for a period of up to thirty days. The licenses that
15 are subject to suspension are all licenses held by the violating party
16 specific to the business location or locations where the adverse action
17 occurred;

18 (iii) For a third violation, the court may order the appropriate
19 government agencies to suspend all licenses that are held by the
20 violating party for a period of up to ninety days. The licenses that
21 are subject to suspension are all licenses held by the violating party
22 specific to the business location or locations where the adverse action
23 occurred.

24 (e) Shall award attorneys' fees and costs.

25 (3) A civil action under this section must be brought no later than
26 three years after the violation occurred. This period is tolled during
27 any period of time that an employer, any of its agents, or any person
28 acting on behalf of the employer deters an individual from bringing an
29 action under this section.

30 NEW SECTION. **Sec. 12.** Sections 9 through 11 of this act are each
31 added to chapter 49.48 RCW.

32 **PREVAILING WAGE**

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

1 The definitions in this section apply throughout this chapter
2 unless the context clearly requires otherwise.

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

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

37 (4) An "interested party" (~~for the purposes of this chapter~~
38 ~~shall~~) includes a contractor, subcontractor, an employee of a

1 contractor or subcontractor, an organization whose members' wages,
2 benefits, and conditions of employment are affected by this chapter,
3 and the director of labor and industries or the director's designee.

4 (5) "Adverse action" means discharging, denying a promotion,
5 demoting, failing to rehire after a seasonal interruption of work,
6 threatening, penalizing, retaliating, engaging in unfair immigration-
7 related practices, filing a false report with a government agency,
8 changing an employee's status to a nonemployee, or otherwise
9 discriminating against an employee. "Adverse action" may involve any
10 aspect of employment, including pay, work hours, responsibilities, or
11 other material change in the terms and condition of employment.

12 (6) "Department" means the department of labor and industries.

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

15 (8) "Interested party" includes: A contractor or subcontractor or
16 an employee of a contractor or subcontractor; the director or the
17 director's designee; an organization whose members' wages, benefits,
18 and conditions of employment are affected by this chapter, including a
19 labor union; or any other organization of workers that exists for the
20 purpose, in whole or in part, of interacting with employers.

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

23 (i) Convicted of a criminal violation of a state or local law
24 concerning retaliation;

25 (ii) Subject to a court order entering final judgment for a
26 violation of section 3, 9, 14, or 19 of this act, and the judgment was
27 not satisfied or current within thirty days of the later of:

28 (A) The expiration of the time for appealing the order; or

29 (B) If a timely appeal was made, the date of the final resolution
30 of the appeal; or

31 (iii) Subject to a final and binding citation and notice of
32 assessment from the department for a violation of section 3, 9, or 19
33 of this act, and the citation and penalty were not satisfied or current
34 within thirty days of the date the citation became final and binding.

35 (b) For the purposes of this subsection (9), an employer includes
36 a successor employer, as defined in RCW 49.48.082.

37 (10)(a) "Unfair immigration-related practice" includes any of the
38 following practices:

1 (i) Requesting more or different documents than are required under
2 8 U.S.C. Sec. 1324a(b), or a refusal to honor documents tendered
3 pursuant to that section that on their face reasonably appear to be
4 genuine;

5 (ii) Using the federal E-Verify system to check the employment
6 authorization status of a person at a time or in a manner not required
7 under 8 U.S.C. Sec. 1324a(b), or not authorized under any memorandum of
8 understanding governing the use of the federal E-Verify system;

9 (iii) Threatening to file or the filing of a false police report;

10 (iv) Threatening to contact or contacting immigration authorities;

11 (v) Withholding or threatening to destroy documents related to a
12 person's immigration status.

13 (b) "Unfair immigration-related practice" does not include conduct
14 undertaken at the express and specific direction or request of the
15 federal government.

16 NEW SECTION. Sec. 14. (1) An employer, any of its agents, or any
17 person acting on behalf of the employer may not take adverse action
18 against any individual or individuals because:

19 (a) An employee or former employee has informed any other person or
20 made a complaint, or the employer believes an employee has informed any
21 other person or made a complaint, including to the employer, the
22 department, the attorney general, or any other person that the employer
23 engaged in conduct that an employee reasonably believes violates this
24 chapter;

25 (b) An employee or former employee demands from the employee's
26 employer a lawful claim under this chapter;

27 (c) An employee or former employee has caused to be instituted, or
28 is about to cause to be instituted, a proceeding under or related to
29 this chapter;

30 (d) An employee or former employee has testified or is about to
31 testify in a proceeding under or related to this chapter;

32 (e) An employee has refused to participate in an activity that
33 would result in a violation of state or federal law;

34 (f) An employee or former employee has sought information about his
35 or her rights under this chapter or informed others about their rights
36 under this chapter;

1 (g) An employee or former employee has, or the employer believes an
2 employee has, otherwise exercised rights protected by this chapter; or

3 (h) An employee or former employee filed a complaint with the
4 department or brought suit in court where the employer was determined
5 to have violated this chapter.

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 acted
9 in retaliation in violation of subsection (1) of this section.
10 However, in the case of seasonal work that ended before the close of
11 the ninety day period, the presumption also applies if the employer
12 fails to rehire a former employee at the next opportunity for work in
13 the same position. The employer may rebut the presumption with clear
14 and convincing evidence that the adverse action was taken for a
15 permissible purpose.

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

20 (4) A violation of this section is a gross misdemeanor.

21 NEW SECTION. **Sec. 15.** (1) An individual aggrieved or an
22 interested party filing on behalf of an individual aggrieved by section
23 14 of this act may file a complaint with the director on behalf of
24 himself or herself. If an individual aggrieved or an interested party
25 filing on behalf of an individual aggrieved files a complaint with the
26 department, the director may investigate the complaint.

27 (2) If, following an investigation, the director determines that an
28 employer violated section 14 of this act, the director may order the
29 employer to comply with any one or more of the following:

30 (a) Pay a civil penalty of not less than one thousand dollars and
31 not more than ten thousand dollars per individual aggrieved. The
32 department must deposit civil penalties under this section in the
33 supplemental pension fund established under RCW 51.44.033.

34 (b)(i) Subject to (b)(ii) of this subsection, pay any aggrieved
35 individual not less than one thousand dollars and not more than ten
36 thousand dollars.

1 (ii) If an employee or former employee is the aggrieved individual,
2 pay the individual the greater of:

3 (A) The amount of any civil penalty imposed under (a) of this
4 subsection; or

5 (B) Three times the amount of any wages, salary, and employment
6 benefits unlawfully denied or withheld, except benefits under Title 50
7 or 51 RCW.

8 (c) If the aggrieved individual is a former employee of the
9 violating employer, reinstate the aggrieved individual as an employee
10 at not less than the most recent rate of pay received by the employee.
11 The director may award front pay in lieu of reinstatement.

12 (3) An appeal from the director's determination may be taken in
13 accordance with chapter 34.05 RCW, with the prevailing party entitled
14 to recover reasonable costs and attorneys' fees.

15 (4) The director may not investigate any alleged violation under
16 this section that occurred more than three years before the date that
17 the employee filed the complaint. This period is tolled during any
18 period of time that an employer, any of its agents, or any person
19 acting on behalf of the employer deters an individual from filing a
20 complaint.

21 NEW SECTION. **Sec. 16.** (1) An individual aggrieved by a violation
22 of section 14 of this act may bring suit on behalf of himself or
23 herself or on behalf of any other individuals similarly situated.

24 (2) If a court determines that an employer violated section 14 of
25 this act, the court, unless prohibited by federal law:

26 (a)(i) Shall award statutory damages for each individual aggrieved
27 by the violation. Subject to (a)(ii) of this subsection, statutory
28 damages must not be less than one thousand dollars and not more ten
29 thousand dollars per individual, unless the employer engaged in a
30 pattern or practice of violations, in which case the statutory damages
31 must be not less than ten thousand dollars and not more than twenty-
32 five thousand dollars per individual;

33 (ii) If an employee or former employee is the individual subject to
34 adverse action, the court shall award the greater of:

35 (A) The amounts specified in (a)(i) of this subsection; or

36 (B) Three times the amount of any wages, salary, and employment

1 benefits unlawfully denied or withheld, except benefits under Title 50
2 or 51 RCW;

3 (b) May award actual damages sustained by the individual;

4 (c) May order injunctive or other equitable relief if the aggrieved
5 individual is an employee or former employee of the violating employer.
6 The relief may include:

7 (i) Reinstatement of the former employee as an employee to his or
8 her former position at not less than the most recent rate of
9 compensation received by the employee, including the value of any
10 benefits; or

11 (ii) Front pay in lieu of reinstatement;

12 (d)(i) For a first violation, may order the appropriate government
13 agencies to suspend all licenses that are held by the violating party
14 for a period of up to fourteen days. The licenses that are subject to
15 suspension are all licenses, certifications, or registrations held by
16 the violating party specific to the business location or locations
17 where the adverse action occurred;

18 (ii) For a second violation, the court may order the appropriate
19 government agencies to suspend all licenses that are held by the
20 violating party for a period of up to thirty days. The licenses that
21 are subject to suspension are all licenses held by the violating party
22 specific to the business location or locations where the adverse action
23 occurred;

24 (iii) For a third violation, the court may order the appropriate
25 government agencies to suspend all licenses that are held by the
26 violating party for a period of up to ninety days. The licenses that
27 are subject to suspension are all licenses held by the violating party
28 specific to the business location or locations where the adverse action
29 occurred.

30 (e) Shall award attorneys' fees and costs.

31 (3) A civil action under this section must be brought no later than
32 three years after the violation occurred. This period is tolled during
33 any period of time that an employer, any of its agents, or any person
34 acting on behalf of the employer deters an individual from bringing an
35 action under this section.

36 NEW SECTION. **Sec. 17.** Sections 14 through 16 of this act are each
37 added as new sections to chapter 39.12 RCW.

1 **WAGE DEDUCTIONS**

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

4 (1) "Adverse action" means discharging, denying a promotion,
5 demoting, failing to rehire after a seasonal interruption of work,
6 threatening, penalizing, retaliating, engaging in unfair immigration-
7 related practices, filing a false report with a government agency,
8 changing an employee's status to a nonemployee, or otherwise
9 discriminating against an employee. "Adverse action" may involve any
10 aspect of employment, including pay, work hours, responsibilities, or
11 other material change in the terms and condition of employment.

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

13 (3) "Director" means the director of the department of labor and
14 industries.

15 (4) "Front pay" means the compensation the employee would earn if
16 reinstated to his or her former position.

17 (5) "Interested party" includes: A contractor or subcontractor or
18 an employee of a contractor or subcontractor; the director or the
19 director's designee; an organization whose members' wages, benefits,
20 and conditions of employment are affected by this chapter, including a
21 labor union; or any other organization of workers that exists for the
22 purpose, in whole or in part, of interacting with employers.

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

25 (i) Convicted of a criminal violation of a state or local law
26 concerning retaliation;

27 (ii) Subject to a court order entering final judgment for a
28 violation of section 3, 9, 14, or 19 of this act, and the judgment was
29 not satisfied or current within thirty days of the later of:

30 (A) The expiration of the time for appealing the order; or

31 (B) If a timely appeal was made, the date of the final resolution
32 of the appeal; or

33 (iii) Subject to a final and binding citation and notice of
34 assessment from the department for a violation of section 3, 9, or 15
35 of this act, and the citation and penalty were not satisfied or current
36 within thirty days of the date the citation became final and binding.

37 (b) For the purposes of this subsection (6), an employer includes
38 a successor employer, as defined in RCW 49.48.082.

1 (7)(a) "Unfair immigration-related practice" means any of the
2 following practices:

3 (i) Requesting more or different documents than are required under
4 8 U.S.C. Sec. 1324a(b), or a refusal to honor documents tendered
5 pursuant to that section that on their face reasonably appear to be
6 genuine;

7 (ii) Using the federal E-Verify system to check the employment
8 authorization status of a person at a time or in a manner not required
9 under 8 U.S.C. Sec. 1324a(b), or not authorized under any memorandum of
10 understanding governing the use of the federal E-Verify system;

11 (iii) Threatening to file or the filing of a false police report;

12 (iv) Threatening to contact or contacting immigration authorities;

13 (v) Withholding or threatening to destroy documents related to a
14 person's immigration status.

15 (b) "Unfair immigration-related practice" does not include conduct
16 undertaken at the express and specific direction or request of the
17 federal government.

18 NEW SECTION. **Sec. 19.** (1) An employer, any of its agents, or any
19 person acting on behalf of the employer may not take adverse action
20 against any individual or individuals because:

21 (a) An employee or former employee has informed any other person or
22 made a complaint, or the employer believes an employee has informed any
23 other person or made a complaint, including to the employer, the
24 department, the attorney general, or any other person that the employer
25 engaged in conduct that an employee reasonably believes violates this
26 chapter;

27 (b) An employee or former employee demands from the employee's
28 employer a lawful claim under this chapter;

29 (c) An employee or former employee has caused to be instituted, or
30 is about to cause to be instituted, a proceeding under or related to
31 this chapter;

32 (d) An employee or former employee has testified or is about to
33 testify in a proceeding under or related to this chapter;

34 (e) An employee has refused to participate in an activity that
35 would result in a violation of state or federal law;

36 (f) An employee or former employee has sought information about his

1 or her rights under this chapter or informed others about their rights
2 under this chapter;

3 (g) An employee or former employee has, or the employer believes an
4 employee has, otherwise exercised rights protected by this chapter; or

5 (h) An employee or former employee filed a complaint with the
6 department or brought suit in court where the employer was determined
7 to have violated this chapter.

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

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

22 (4) A violation of this section is a gross misdemeanor.

23 NEW SECTION. **Sec. 20.** (1) An individual aggrieved or an
24 interested party filing on behalf of an individual aggrieved by section
25 19 of this act may file a complaint with the director on behalf of
26 himself or herself. If an individual aggrieved or an interested party
27 filing on behalf of an individual aggrieved files a complaint with the
28 department, the director may investigate the complaint.

29 (2) If, following an investigation, the director determines that an
30 employer violated section 19 of this act, the director may order the
31 employer to comply with any one or more of the following:

32 (a) Pay a civil penalty of not less than one thousand dollars and
33 not more than ten thousand dollars per individual aggrieved. The
34 department must deposit civil penalties under this section in the
35 supplemental pension fund established under RCW 51.44.033.

36 (b)(i) Subject to (b)(ii) of this subsection, pay any aggrieved

1 individual not less than one thousand dollars and not more than ten
2 thousand dollars.

3 (ii) If an employee or former employee is the aggrieved individual,
4 pay the individual the greater of:

5 (A) The amount of any civil penalty imposed under (a) of this
6 subsection; or

7 (B) Three times the amount of any wages, salary, and employment
8 benefits unlawfully denied or withheld, except benefits under Title 50
9 or 51 RCW.

10 (c) If the aggrieved individual is a former employee of the
11 violating employer, reinstate the aggrieved individual as an employee
12 at not less than the most recent rate of pay received by the employee.
13 The director may award front pay in lieu of reinstatement.

14 (3) An appeal from the director's determination may be taken in
15 accordance with chapter 34.05 RCW, with the prevailing party entitled
16 to recover reasonable costs and attorneys' fees.

17 (4) The director may not investigate any alleged violation under
18 this section that occurred more than three years before the date that
19 the employee filed the complaint. This period is tolled during any
20 period of time that an employer, any of its agents, or any person
21 acting on behalf of the employer deters an individual from filing a
22 complaint.

23 NEW SECTION. **Sec. 21.** (1) An individual aggrieved by a violation
24 of section 19 of this act may bring suit on behalf of himself or
25 herself or on behalf of any other individuals similarly situated.

26 (2) If a court determines that an employer violated section 19 of
27 this act, the court, unless prohibited by federal law:

28 (a)(i) Shall award statutory damages for each individual aggrieved
29 by the violation. Subject to (a)(ii) of this subsection, statutory
30 damages must not be less than one thousand dollars and not more ten
31 thousand dollars per individual, unless the employer engaged in a
32 pattern or practice of violations, in which case the statutory damages
33 must be not less than ten thousand dollars and not more than twenty-
34 five thousand dollars per individual;

35 (ii) If an employee or former employee is the individual subject to
36 adverse action, the court shall award the greater of:

37 (A) The amounts specified in (a)(i) of this subsection; or

1 (B) Three times the amount of any wages, salary, and employment
2 benefits unlawfully denied or withheld, except benefits under Title 50
3 or 51 RCW;

4 (b) May award actual damages sustained by the individual;

5 (c) May order injunctive or other equitable relief if the aggrieved
6 individual is an employee or former employee of the violating employer.
7 The relief may include:

8 (i) Reinstatement of the former employee as an employee to his or
9 her former position at not less than the most recent rate of
10 compensation received by the employee, including the value of any
11 benefits; or

12 (ii) Front pay in lieu of reinstatement;

13 (d)(i) For a first violation, may order the appropriate government
14 agencies to suspend all licenses that are held by the violating party
15 for a period of up to fourteen days. The licenses that are subject to
16 suspension are all licenses, certifications, or registrations held by
17 the violating party specific to the business location or locations
18 where the adverse action occurred;

19 (ii) For a second violation, the court may order the appropriate
20 government agencies to suspend all licenses that are held by the
21 violating party for a period of up to thirty days. The licenses that
22 are subject to suspension are all licenses held by the violating party
23 specific to the business location or locations where the adverse action
24 occurred;

25 (iii) For a third violation, the court may order the appropriate
26 government agencies to suspend all licenses that are held by the
27 violating party for a period of up to ninety days. The licenses that
28 are subject to suspension are all licenses held by the violating party
29 specific to the business location or locations where the adverse action
30 occurred.

31 (e) Shall award attorneys' fees and costs.

32 (3) A civil action under this section must be brought no later than
33 three years after the violation occurred. This period is tolled during
34 any period of time that an employer, any of its agents, or any person
35 acting on behalf of the employer deters an individual from bringing an
36 action under this section.

1 NEW SECTION. **Sec. 22.** Sections 18 through 21 of this act are each
2 added as new sections to chapter 49.52 RCW.

3 NEW SECTION. **Sec. 23.** If any provision of this act or its
4 application to any person or circumstance is held invalid, the
5 remainder of the act or the application of the provision to other
6 persons or circumstances is not affected.

--- END ---