
SENATE BILL 6349

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By Senators Ranker, Holmquist, Haugen, Hobbs, Becker, Shin, and Roach

Read first time 01/12/10. Referred to Committee on Labor, Commerce & Consumer Protection.

1 AN ACT Relating to a farm internship program; amending RCW
2 49.46.010 and 50.04.150; adding a new section to chapter 51.16 RCW; and
3 adding a new chapter to Title 49 RCW.

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

5 NEW SECTION. **Sec. 1.** (1) The director shall provide for the
6 employment of farm interns under special certificates issued pursuant
7 to rules adopted by the department, at wages lower than the minimum
8 wage applicable under RCW 49.46.020 and subject to such limitations as
9 to time, number, proportion, and length of service as prescribed by the
10 department. Application for a certificate authorizing the employment
11 of farm interns must be made jointly by the farm and the farm intern
12 upon forms made available by the director. The application must set
13 forth: A description of the activities of the farm seeking the
14 certificate; the type of work to be performed by the farm intern; a
15 description of the intern program; and the total number of workers
16 employed by the farm. A copy of the internship agreement executed
17 between the farm and the intern must be submitted with the application.

18 (2) Upon receipt of an application, the department shall review the

1 application and issue a certificate to the requesting farm if the
2 department finds:

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

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

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

12 (d) The internship program is reasonably designed to provide the
13 intern with vocational knowledge and skills about farming practices and
14 activities. In making this determination, the department may consult
15 with relevant university departments and extension programs and state
16 and local government agencies involved in the regulation or development
17 of agriculture.

18 (3) A certificate issued under this section must specify: The name
19 of the intern; the name of the farm; the nature of the internship
20 program; the authorized subminimum wage rate, if any, and the period of
21 time during which such wage rate may be paid; and any room and board,
22 stipends, and other remuneration the employer will provide to the farm
23 intern. A certificate is effective for a period to be designated by
24 the director based on the internship program, and a farm intern
25 employed under such a certificate may be paid subminimum wages only
26 during the effective period of the certificate.

27 (4) If the department denies an application for a special
28 certificate, notice of denial must be mailed to the farm. The farm or
29 the farm intern listed on the application may, within fifteen days
30 after notice of such action has been mailed, file with the director a
31 petition for review of the denial, setting forth grounds for seeking
32 such a review. If reasonable grounds exist, the director or the
33 director's authorized representative may grant such a review and to the
34 extent deemed appropriate afford all interested persons an opportunity
35 to be heard on such review.

36 (5) Prior to the start of any farm internship program, the farm and
37 the intern must execute a written agreement that at a minimum:

1 (a) Describes the internship program offered by the farm, including
2 the skills and objectives the program is designed to teach and the
3 manner in which those skills and objectives will be taught;

4 (b) Explicitly states that the intern is not entitled to wages for
5 work and activities conducted pursuant to the internship program for
6 the duration of the internship;

7 (c) Describes the responsibilities, expectations, and obligations
8 of the intern and the farm including the anticipated number of hours of
9 farm activities to be performed by the intern per week;

10 (d) Describes the activities of the farm seeking the certificate
11 and the type of work to be performed by the farm intern; and

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

14 (6) The definitions in this subsection apply throughout this
15 section unless the context clearly requires otherwise.

16 (a) "Department" means the department of labor and industries.

17 (b) "Director" means the director of the department.

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

21 (d) "Farm internship program" means an educational program that
22 provides a curriculum of learning modules and supervised participation
23 in farm work activities designed to teach farm interns about farming
24 practices and farm enterprises.

25 (e) "Small farm" means a farm:

26 (i) Organized as a sole proprietorship, partnership, or
27 corporation;

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

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

34 NEW SECTION. **Sec. 2.** A new section is added to chapter 51.16 RCW
35 to read as follows:

36 The department shall adopt rules to provide a reduced workers'

1 compensation premium for farm interns participating in a farm
2 internship program. The rules must include any requirements for
3 obtaining the reduced premium that must be met by small farms.

4 **Sec. 3.** RCW 49.46.010 and 2002 c 354 s 231 are each amended to
5 read as follows:

6 As used in this chapter:

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

8 (2) "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 (3) "Employ" includes to permit to work;

14 (4) "Employer" includes any individual, partnership, association,
15 corporation, business trust, or any person or group of persons acting
16 directly or indirectly in the interest of an employer in relation to an
17 employee;

18 (5) "Employee" includes any individual employed by an employer but
19 shall not include:

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

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

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

36 (d) Any individual engaged in the activities of an educational,
37 charitable, religious, state or local governmental body or agency, or

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

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

17 (f) Any newspaper vendor or carrier;

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

20 (h) Any individual engaged in forest protection and fire prevention
21 activities;

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

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

31 (k) Any resident, inmate, or patient of a state, county, or
32 municipal correctional, detention, treatment or rehabilitative
33 institution;

34 (l) Any individual who holds a public elective or appointive office
35 of the state, any county, city, town, municipal corporation or quasi
36 municipal corporation, political subdivision, or any instrumentality
37 thereof, or any employee of the state legislature;

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

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

5 (o) Any farm intern providing his or her services under a farm
6 internship program as established in section 1 of this act;

7 (6) "Occupation" means any occupation, service, trade, business,
8 industry, or branch or group of industries or employment or class of
9 employment in which employees are gainfully employed;

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

14 **Sec. 4.** RCW 50.04.150 and 1989 c 380 s 78 are each amended to read
15 as follows:

16 Except as otherwise provided in RCW 50.04.155, the term
17 "employment" shall not include service performed in agricultural labor
18 by a farm intern providing his or her services under a farm internship
19 program as established in section 1 of this act, or by individuals who
20 are enrolled as students and regularly attending classes, or are
21 between two successive academic years or terms, at an elementary
22 school, a secondary school, or an institution of higher education as
23 defined in RCW 50.44.037 and in the case of corporate farms not covered
24 under RCW 50.04.155, the provisions regarding family employment in RCW
25 50.04.180 shall apply.

26 Agricultural labor (~~((is defined as services performed))~~) includes:

27 (1) Services performed on a farm, in the employ of any person, in
28 connection with the cultivation of the soil, or in connection with
29 raising or harvesting any agricultural or horticultural commodity,
30 including raising, shearing, feeding, caring for, training, and
31 management of livestock, bees, poultry, and furbearing animals and wild
32 life, or in the employ of the owner or tenant or other operator of a
33 farm in connection with the operation, management, conservation,
34 improvement, or maintenance of such farm and its tools and equipment;
35 (~~(or)~~)

36 (2) Services performed in packing, packaging, grading, storing, or
37 delivering to storage, or to market or to a carrier for transportation

1 to market, any agricultural or horticultural commodity; but only if
2 such service is performed as an incident to ordinary farming
3 operations. The exclusions from the term "employment" provided in this
4 (~~paragraph~~) subsection (2) shall not be deemed to be applicable with
5 respect to commercial packing houses, commercial storage
6 establishments, commercial canning, commercial freezing, or any other
7 commercial processing or with respect to services performed in
8 connection with the cultivation, raising, harvesting and processing of
9 oysters or raising and harvesting of mushrooms or in connection with
10 any agricultural or horticultural commodity after its delivery to a
11 terminal market for distribution for consumption; or

12 (3) Direct local sales conducted by farm interns participating in
13 a farm internship program as defined in section 1 of this act of any
14 agricultural or horticultural commodity after its delivery to a
15 terminal market for distribution or consumption.

16 NEW SECTION. **Sec. 5.** Sections 1 of this act constitutes a new
17 chapter in Title 49 RCW.

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