

No. 85949-3

SUPREME COURT
OF THE STATE OF WASHINGTON

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RANDY ANFINSON, JAMES GEIGER and STEVEN HARDIE,
individually and on behalf of others similarly situated,

Respondents,

v.

FEDEX GROUND PACKAGE SYSTEM, INC.

Petitioner.

ANSWER OF FEDEX GROUND TO AMICUS CURIAE BRIEF
OF DEPARTMENT OF LABOR AND INDUSTRIES

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ORIGINAL

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WPI 50.11.017

I. INTRODUCTION

The Department of Labor & Industries (“the Department”) ignores the nature of this class action lawsuit and mischaracterizes the trial court’s hybrid instruction governing the definition of “employee.” In asking this Court to adopt the “economic reality” test of FLSA as the “correct standard” for distinguishing an employee from an independent contractor under Washington’s Minimum Wage Act (MWA), RCW ch. 49.46, the Department omits the critical fact that the class plaintiffs pursued through trial a claim for reimbursement of uniform expenses under Washington’s Industrial Welfare Act (IWA), RCW ch. 49.12 – a claim for which the Department concedes that its own regulation uses “control” as the critical factor in distinguishing an employee from an independent contractor.

The trial court properly crafted its hybrid Instruction 9, which referenced the “control” standard but required the jury to use the FLSA non-exclusive and multiple factors in making the finding that the class plaintiffs were independent contractors for purposes of both plaintiffs’ MWA and IWA claims. With respect to the MWA, the trial court’s instruction properly gave the jury a concrete framework for applying the FLSA factors that the “economic reality” test proposed by the Department lacks. This Court should give no deference to the Department’s newly issued “Technical Bulletin,” published only in November 2009, which is

not available to the public and which contradicts the Department's officially adopted policy that directs Washington businesses and those who provide them services to consider control key under the MWA and other statutes.

II. ARGUMENT IN RESPONSE TO AMICUS

A. **The Trial Court Crafted An Instruction Applicable To The Plaintiffs' Claims Under Both The Minimum Wage Act And The Industrial Welfare Act, Statutes That The Department Only Now Claims To Interpret Differently.**

The Department asserts that this case involves "whether an individual is an employee under the Washington Minimum Wage Act." (DLI Br. 1) But that is only partially correct. Plaintiffs brought two claims for relief: one for overtime wages under the MWA, RCW 49.46.130, and the other for reimbursement of uniform expenses under the Industrial Welfare Act, RCW 49.12.450. (CP 12-13) Plaintiffs maintained their IWA claim through trial, eliciting testimony about FedEx Ground's uniform and apparel policies both as a means of asserting "control" over plaintiffs, in support of their MWA claim, and because FedEx Ground would have been obligated to provide the plaintiffs with their uniforms under the IWA if they were employees. (*e.g.*, 3/5 RP 172-73, 3/11 RP 157, 3/23 RP 109-11) Plaintiffs proposed instructions that

specifically referenced plaintiffs' claims "for the cost of uniforms worn by plaintiffs" or "uniform expenses" under the IWA. (CP 2031, 2032)

The parties stipulated that if the jury found in its special verdict that the class plaintiffs were employees, "FedEx Ground is liable . . . for hours class members worked in excess of 40 per week during the class period and also for uniform reimbursement as determined in phase two of the trial . . ." (3/27 RP 7) Both claims required the jury to determine whether the plaintiffs were "employees." RCW 49.46.130(1) ("no employer shall employ any of his or her employees for a work week longer than forty hours . . ."); RCW 49.12.450(1) ("the obligation of an employer to furnish or compensate an employee for apparel required during work hours shall be determined only under this section."). However, plaintiffs' request for relief under both the MWA and IWA presented distinct statutory claims, as reflected in the fact that the Legislature has specifically imposed the uniform reimbursement obligations under the IWA "[n]otwithstanding the provisions of [the MWA], chapter 49.46 RCW. . ." RCW 49.12.450(1).

The IWA was first enacted during the Progressive era to address "inadequate wages and unsanitary conditions of labor." RCW 49.12.010. *See* Laws 1913, ch. 174. As originally enacted, the IWA created an Industrial Welfare Commission to fix minimum wages for women and to

regulate child labor. See *Parrish v. West Coast Hotel Co.*, 185 Wash. 581, 55 P.2d 1083 (1936), *aff'd*, 300 U.S. 379, 57 S.Ct. 578, 81 L.Ed. 703 (1937); *Larsen v. Rice*, 100 Wash. 642, 171 Pac. 1037 (1918). The IWA is not patterned after FLSA. It is similar to the California Labor Code, which also created an Industrial Welfare Commission to regulate the hours and conditions of labor. Cal. Labor Code §§ 1171, *et seq.* See *Martinez v. Combs*, 49 Cal. 4th 35, 231 P.3d 259, 109 Cal.Rptr.3d 514 (2010) (discussed in Court of Appeals Opinion at 159 Wn. App. 35, 58, ¶ 51).¹

As the Department notes (DLI Br. 4 n.3), the MWA was patterned after FLSA. But it was enacted in 1959, over twenty years after FLSA. Laws 1959 ch. 294. This “1959 act is entirely different from the earlier one [IWA], and, we are told, follows the pattern of the Federal Fair Labor Standards Act.” *Peterson v. Hagan*, 56 Wn.2d 48, 56, 351 P.2d 127 (1960).

The Department argues that because the IWA is a “different act,” it contains a “narrower” test for determining employee status than the MWA, conceding that the IWA test is based on control of the manner and means of work. (DLI Br. 8 n.6) Indeed, the Department in 1974 adopted

¹ By focusing solely on the MWA in reversing the jury’s verdict based on the trial court’s hybrid Instruction 9, the Court of Appeals also overlooked the parallels between Washington’s IWA and the California Labor Code when it held that the trial court should not have considered California decisions in combining the FLSA factors with the “right of control.” 159 Wn. App. 35, 57-58, ¶¶ 48-52.

a published regulation, after formal notice in the Washington Register and comment from interested parties, which excludes from the definition of employee “[i]ndependent contractors where said individuals control the manner of doing the work and the means by which the result is to be accomplished.” WAC 296-126-002(2)(c).

Plaintiffs relied on the regulation in proposing an instruction that would have directed the jury to “determine whether an individual is an employee or an independent contractor” based on “whether the defendant had the right of control over the physical conduct of the services performed.” (CP 1077) The trial court then took into account the fact that plaintiffs brought their uniform reimbursement claims under a statute that “has no counterpart in the FLSA” when it crafted its hybrid instruction for purposes of the MWA and IWA based upon both the non-exclusive FLSA economic reality factors and on “control” concepts wholly consistent with the Department’s own regulation. (3/2 RP 44-45)

That the IWA contains a control test for employment status is not unusual. Many different statutes, including statutes administered by the Department, reference the right to control as the key to determining independent contractor status. For instance, the Department has published “A Guide to Hiring Independent Contractors in Washington State” to determine independent contractor status for purposes of *all* statutes

administered by the Department, including wage and hour laws. The Department's "Guide" uses factors similar to those in the trial court's Instruction 9 to determine which party has control: "The key test is whether or not you are supervising."²

As the Department concedes that "control" is the critical factor under the IWA, this Court should reject its argument challenging the trial court's Instruction No. 9 governing the jury's determination of that claim.

B. The Trial Court's Instruction Incorporating Both The Non-Exclusive Economic Reality Factors And The Right To Control Test Was Not Reversible Error In This Particular Case.

Regardless whether the Court adopts the Department's position that the "economic reality" test of FLSA provides the exclusive method of determining whether an employment or independent contractor relationship exists under the MWA, the Department is wrong for a second reason in arguing that trial court's Instruction 9 improperly "narrows the definition of employee under the MWA." (DLI Br. 13) The trial court crafted a hybrid instruction that took into consideration the Department's own "control" test under the IWA as well as the non-exclusive "economic

² See <http://www.lni.wa.gov/IPUB/101-063-000.pdf> (published Sept. 2010) (attached as Appendix A). Similarly, the Department of Revenue's test for excise tax purposes has as its "most important consideration . . . the employer's right to control the employee," using a long list of factors similar to those recited in Instruction 9. WAC 458-20-105. The Department of Employment Security is required to determine independent contractor status based on right to control and actual control, as well as other factors. RCW 50.04.140.

reality” factors identified by the federal courts. Particularly where, as here, class plaintiffs never asked that the jury be separately instructed on their IWA claim, the trial court did not err in giving the jury a single instruction that allowed both parties to argue their theories of the case under both statutes.

Further, contrary to the Department’s contention (DLI Br. 12), the trial court did not in fact adopt the common law distinction between employees and independent contractors for purposes of tort liability in Instruction 9. Compare WPI 50.11.01; *Hollingberry v. Dunn*, 68 Wn.2d 75, 79-81, 411 P.2d 431 (1966). In addition to telling the jury that it should consider “all the evidence bearing on the question,” the court incorporated all six factors of the FLSA standard set out in *Donovan v. Sureway Cleaners*, 656 F.2d 1368, 1370-72 (9th Cir. 1981). And in rejecting both the defendant’s and the plaintiffs’ proposed instructions, the trial court instead anchored its hybrid instruction in the concept of “control” because it gave the jury far more concrete guidance than the nebulous concept of “economic reality.”³

³ Because there is “no substantive conflict” between the “economic realities test” and a standard that focuses on “the hiring party’s right to control” using non-exclusive factors, see *Simpson v. Ernst & Young*, 100 F.3d 436, 442-43 (6th Cir. 1996), cert. denied, 520 U.S. 1248 (1997), the trial court emphasized that its instruction allowed both sides to argue their respective theories of the case. (3/27 RP 19-20)

Plaintiffs themselves conceded before trial that the term “control” in the instruction’s preamble “articulate[d] a guiding principle,” and was preferable to leaving the jury at sea in assessing the “economic reality” of the parties’ relationship. (3/2 RP 26-27) In doing so, they echoed the concerns of Judge Easterbrook, who while rejecting strict application of the common law “control” test for vicarious liability in determining employee status for purposes of FLSA, observed that the term economic “reality” encompasses millions of facts, and unless we have a legal rule with which to sift the material from the immaterial, we might as well examine the facts through a kaleidoscope.” *Secretary of Labor v. Lauritzen*, 835 F.2d 1529, 1539 (7th Cir. 1987) (Easterbrook, J., concurring), *cert. denied*, 488 U.S. 898 (1988).⁴

The trial court’s reference to the right of control gave the jury a functional basis for distinguishing whether class plaintiffs were in fact “independent” contractors – that is, whether they were in business for themselves – which was the key issue in dispute during this four week trial. The trial court’s single hybrid instruction, which Judge Erlick

⁴ This difficulty is apparent from the Technical Bulletin itself, which while cautioning that “[t]hese questions are not inclusive of all that might need to be asked,” lists several dozen questions to be addressed in evaluating the relationship. DLI Technical Bulletin at 1. And contrary to its argument as amici, the Department in its Bulletin begins its analysis by noting that “case law suggests that the first factor on the degree of control by the business over the worker is very important.” DLI Technical Bulletin at 1.

drafted after extensive input from both parties,⁵ was an accurate statement of law that allowed both sides to argue their respective theories of the case. “The number and specific language of the instructions are matters left to the trial court’s discretion.” *Douglas v. Freeman*, 117 Wn.2d 242, 256, 814 P.2d 1160 (1991). This deferential standard of review is particularly appropriate where, as here, the court crafts a single instruction addressing multiple claims when neither party proposes that the jury be separately instructed on each claim. *Cross v. Cleaver*, 142 F.3d 1059, 1074-76 (8th Cir. 1998) (rejecting appellant’s challenge to retaliation instruction that combined claims under Missouri state law and Title VII). The Court should reject the Department’s contention that Instruction 9 was reversible error because the trial court’s hybrid instruction did not misstate the law under the IWA and MWA, and allowed each party to argue their respective theories of the case.

⁵ The Court of Appeals also employed an incorrect standard in holding that any instructional error was presumed prejudicial because the instruction was given “on behalf of the party in whose favor the verdict was returned.” 159 Wn. App. 35, 44, ¶ 12 n. 10, *citing State v. Wanrow*, 88 Wn.2d 221, 237, 559 P.2d 548 (1977). FedEx Ground did not propose Instruction 9, it was not given on its behalf, and prejudice cannot be presumed. Even if an instruction contains an erroneous statement of law, it is reversible error only where it actually prejudices the complaining party. *See Hue v. Farmboy Spray Co., Inc.*, 127 Wn.2d 67, 92, 896 P.2d 682 (1995) (“an instruction’s erroneous statement of the applicable law is reversible error where it prejudices a party.”).

C. The Court Should Not Give Retroactive Deference To The Department's Non-Public Interpretation Of The MWA In A "Technical Bulletin" That Contradicts The Department's Prior Consistent Interpretation Of The Term "Employee" For Over 50 Years.

This Court should also reject the Department's assertion that it "adopted" the economic realities "test" by issuing an internal, non-public Technical Bulletin in 2009. The Department's recent interpretation is entitled to no deference because it has not consistently "adopted and applied such interpretation as a matter of agency policy." See *Cowiche Canyon Conversancy v. Bosley*, 118 Wn.2d 801, 815, 828 P.2d 549 (1992). "Unlike administrative rules and other formally promulgated agency regulations, internal policies and directives generally do not create law." *Joyce v. Dept. of Corrections*, 155 Wn.2d 306, 323, 119 P.3d 825 (2005). The Technical Bulletin cited by the Department was not adopted after notice and comment, and is not even available to the public on the Department's website. To the contrary, the Department consistently informs the public to apply a "control" test in distinguishing an "employee" from an independent contractor, similar to its formally adopted regulation, WAC 296-126-002(2)(c). See, e.g., DLI "A Guide to Hiring Independent Contractors in Washington State", available at <http://www.lni.wa.gov/IPUB/101-063-000.pdf> (Appendix A).

Whatever relevance the Department's 2009 "Technical Bulletin" may now have in deciding independent contractor status under the MWA, the "economic reality" test was not official agency policy during the class period of 2001-2005, or at the time of trial in March 2009.⁶ See *Cowiche Canyon*, 118 Wn.2d at 815 ("Nothing here establishes such an agency policy, and nothing shows any uniformly applied interpretation."). Nor can FedEx Ground be bound by it. RCW 42.56.040 (agency has obligation to publish and make public "statements of general policy or interpretations of general applicability formulated and adopted by the agency;" party "may not in any manner be required to resort to, or be adversely affected by, a matter . . . not so published."). During the class period, at the time of trial, and until the Department issued its internal non-public Technical Bulletin in November 2009, the Department's only interpretation of the term "employee" under either the IWA or the MWA was anchored in whether "said individuals control the manner of doing the

⁶ Over FedEx Ground's objection, after the briefing below was closed and two days before oral argument, class plaintiffs on July 12, 2010 filed as supplemental authority in the Court of Appeals a version of the Technical Bulletin that had not been disseminated by the agency and that was unavailable to the general public, marked "DRAFT DATED 4/25/2008." (DLI Br. 9 n.7) The draft was never made available to the trial court when it was crafting its hybrid instruction in March 2009. The Court of Appeals nevertheless gave "great weight" to the draft in reversing the jury verdict, citing it as an "additional reason for our conclusion that the 'economic realities' test is the proper test to use for purposes of the MWA." 159 Wn. App. 35, 54-55, ¶¶ 39-40.

work and the means by which the result is to be accomplished.” WAC 296-126-002(2)(c).

The Department’s argument that this Court should give “deference” to this newly crafted interpretation of the MWA thus rings hollow. (DLI Br. 10-11) The Department has not established that the Technical Bulletin is the Department’s official pronouncement reflecting its “definitive analysis of the issue in question.” *Western Telepage, Inc. v. City of Tacoma*, 140 Wn.2d 599, 611-12, 998 P.2d 884 (2000) (“DOR did not adopt a rule on the issue in this case, nor did it adopt an interpretive guideline or a policy statement). See *Weyerhaeuser Co. v. Cowlitz County*, 109 Wn.2d 363, 372, 745 P.2d 488 (1987) (agency bulletin not entitled to deference; “The bulletin is an informal newsletter with no official status and has no effect on the language and intent of the statute.”). The Department has failed to advance any reason why its new interpretation, fifty years after the MWA’s passage, should be entitled to any deference.

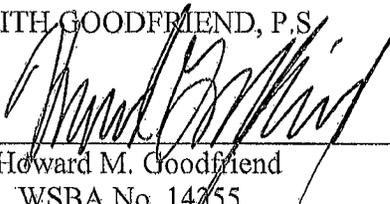
III. CONCLUSION

The Department’s assertion that hybrid Instruction 9 was error ignores the fact that the plaintiffs asserted, and the trial court instructed the jury on, claims under both the Minimum Wage Act and the Industrial Welfare Act. The Department concedes that the IWA uses control as the

critical factor in distinguishing an employee from an independent contractor. The trial court's hybrid instruction combining both IWA and MWA claims was not prejudicial error justifying vacation of the jury's verdict after a four week trial.

Dated this 2nd day of February, 2012.

SMITH GOODFRIEND, P.S.

By: 

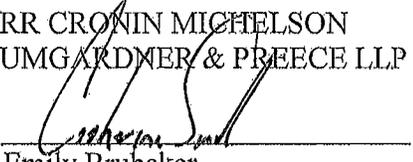
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DECLARATION OF SERVICE

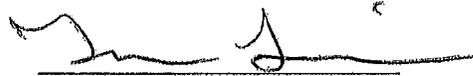
The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on February 2, 2012, I arranged for service of the Answer of FedEx Ground to Amicus Curiae Brief of Department of Labor and Industries, to the Court and to counsel for the parties to this action as follows:

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Dmitri Iglitzin Lawrence R. Schwerin Schwerin Campbell Barnard Iglitzin & Lavitt LLP 18 W. Mercer St., Suite 400 Seattle, WA 98119	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input checked="" type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-Mail
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DATED at Seattle, Washington this 2nd day of February, 2012.



Tara D. Friesen



Washington State Department of
Labor & Industries

A Guide to Hiring Independent Contractors in Washington State

You may be an employer with requirements – and not know it.

**Ask yourself these three questions about the people
doing the work to help you understand your requirements.**



**Do they bring more
than their personal
labor to the job?**



**Are they working
without your
supervision?**



**Do they have an
established,
independent business?**



Are you an employer?

Do you always know what your responsibilities are for the people you hire?

If they are “employees,” they have certain rights under the law. Specifically, you — the employer — must usually:

- Pay workers’ compensation
- Meet wage and hour requirements
- Pay unemployment tax
- Maintain a safe workplace

But what’s the definition of an employee?

In some cases, a self-proclaimed “independent contractor” is actually a worker who has at least some of these protections under the law.

Not understanding your requirements can leave your business vulnerable to unwanted penalties and even lawsuits from independent contractors and their employees.

To help protect you and your business, ask yourself the three questions in this brochure. As always, if you’re not sure, please call for help. Or you can check one of the many Web sites inside this publication.

Safety note: Did you know?

If it's your job site, you are responsible for the on-site safety of all employees, whether they work for you, your contractor, a subcontractor or someone else. See Page 6 for details.

Ask yourself:

1

Are you hiring someone for more than personal labor?

■ Are they bringing employees?

If you are hiring someone who is bringing his/her own employees to perform the work, and **you are not supervising this work** (see Page 4), then that person is not your employee.

Note: Your subcontractor is responsible for his/her own employees. Make sure he/she is registered as an employer with L&I and is current with workers' comp premiums. If not, you will be held responsible for unpaid premiums. For more information, refer to *Avoid Liability for Your Subcontractor's Unpaid Workers' Comp Premiums* (L&I publication P262-262-000).

■ Or... are they bringing heavy equipment?

If you are hiring someone who brings more than "ordinary hand tools" to the job and you are not supervising the work (see Page 4), then he/she is not your employee. Examples of heavy equipment include earth-moving equipment, such as a backhoe or bulldozer, an on-site rain gutter manufacturing machine, a metal lathe, a feller-buncher or a skidder.

Your answer?

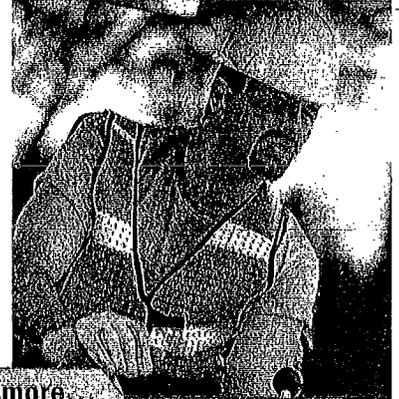
Answer "yes" to ONE of the above questions?

Then, usually:

- No workers' compensation premiums due
- No wage and hour requirements
- No unemployment tax
- Always keep your job site safe

Answer "no" to BOTH?

Then, ask yourself the question on the next page.



For more...

Related RCWs:

61.08.180

Read an RCW or WAC:
[www.leg.wa.gov/
LawsAndAgencyRules/](http://www.leg.wa.gov/LawsAndAgencyRules/)

Call for assistance:
360-902-4817



Ask yourself:

2 Are you supervising?

You may be hiring someone who does not bring employees or heavy equipment to the job, but is still not your employee.

The key test is whether or not you are supervising.

- You ARE NOT supervising if you are only scheduling and inspecting the work.
- You ARE supervising if you are telling your worker or a subcontractor's workers how to do the job, assigning tasks, training, keeping time sheets, paying a wage or setting regular hours.

Laws addressing the idea of supervision talk about having "direction and control" over the worker or having control of the "means and methods" of the work.

Having a UBI number or a contractor's registration with L&I is NOT enough proof that your workers are unsupervised, independent contractors. If you are supervising, they are your employees.



For more...

Related RCWs

51.08.180

51.08.195

Read an RCW or WAC

www.leg.wa.gov/

[LawsAndAgencyRules/](#)

Call for assistance

860-802-4817

Your answer?

Answer "yes" to Question #2?

Then, usually:

Workers' compensation premiums are due

Wage and hour rules apply

Unemployment tax due

Always keep your job site safe!

Answer "no" to Question #2?

Ask yourself the question on the next page.



Ask yourself:

3 Do they have an established business of their own?

Are you still unsure about your responsibilities to your workers? You can double-check by answering the questions below. A "yes" answer to questions 1 - 6, and question 7 if it applies, usually means the individual has a business of his/her own, so you are not responsible for workers' comp premiums, unemployment tax, or wage and hour requirements.

- Supervision:** Do they perform the work free of your direction and control? (See Page 4.)
- Separate business:** Do they offer services that are different from what you provide? *Or*, do they maintain and pay for a place of business that is separate from yours? *Or*, do they perform their service in a location that is separate from your business or job sites?
- Previously established business:** Do they have an established, independent business that existed before you hired? Documentation may include other customers or advertising.
- IRS taxes:** When you entered into the contract, was this person responsible for filing a tax return with the IRS for his or her business?
- Required registrations:** Are they up-to-date on their required Washington State business registrations? Ask the Dept. of Revenue if their business license (UBI) is active. If they are an employer, check their workers' compensation account with L&I. (See back for how.)
- Maintains books:** Do they maintain their own set of books dedicated to the expenses and earnings of their business?
- Construction trades:** If the work performed is in the construction trades, do they have an active contractor registration or electrical contractor's license?

Note: If you plan to treat your worker/subcontractor as an independent, make sure you can prove they are. For your protection, you should always ask the person you are hiring to show you the above documents.

Your answer?

Answer "yes" to ALL questions on this page?

Then, usually:
No workers compensation premiums due
No wage and hour requirements
No unemployment tax
Always keep your job site safe

Answer "no" to ANY of the questions on this page?

Did you also decide on Page 3 that the worker was NOT bringing more than personal labor to the job? If so, you usually DO have workers' comp, wage and hour, unemployment tax and safety responsibilities to the worker(s) you are hiring.

For more...

Related RCWs:

Industrial Insurance:

51.16.070

51.08.180

51.08.181

51.08.195

Unemployment Insurance:

50.04.140

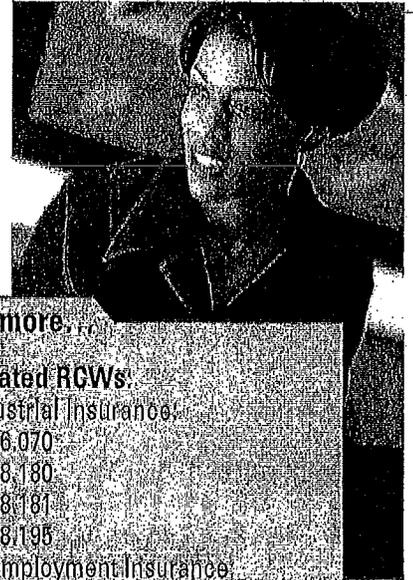
Read an RCW or WAC

www.leg.wa.gov/

LawsAndAgencyRules/

Call for assistance:

360-902-4817





Your job site must be safe

You are required to keep your job site safe for all *employees*, whether they work for you, your contractor, a subcontractor or someone else.

The definition of "employee" differs among Washington's safety, industrial insurance and wage and hour laws. For this reason, WISHA (Washington Industrial Safety and Health Act) safety standards MAY apply at your work site even when you are not required to pay your workers' compensation premiums.

Note: You may not be technically liable for the safety of some people on your job site because they are not considered *employees* under WISHA. These people include those who are:

- ... on your job site as the supervisor of their own employees, who are doing the work.
- ... doing work that requires a license or certificate giving them legal permission to do the job, such as an electrician or plumber. (A contractor registration is not enough.)
- ... doing work that requires the use of heavy equipment (not vehicles used for transportation) they have provided (not just rented) to the job site.
- ... on the job site, but who are not making the bulk of their profit from their own personal labor. (They may be delivering materials, for example.)

For more...

Related RCWs & WACs

RCW 49.17

Safety and Health Code Rules

WAC 296-800-400

Read an RCW or WAC:

www.leg.wa.gov/

LawsAndAgencyRules/

More on workplace safety requirements:

www.lni.wa.gov/Safety/Basics/Steps

Or call 1-800-423-7233

Still, the best practice is to make sure your job site is safe for everyone.



Questions we are often asked

But he had a contractor's license!

I subcontracted some work to a guy who has a contractor's registration with L&I. Doesn't that mean he's not my employee?

Not necessarily. L&I auditors look at "direction and control" and other factors when making this call. If you are supervising or managing a worker's daily tasks, even when he is registered, then this worker is considered your employee (See Page 4).

Can I be sued?

Someone working on my job site claims he hurt himself because of an unsafe condition. Can he sue me?

Your employees cannot sue you for their work-related injuries. Their only legal remedy is the workers' compensation benefit to which they are entitled. However, independent contractors and their employees can sue you if they are hurt as a result of your negligence, or the negligence of one of your employees.

What are wage and hour requirements?

I'm paying workers' comp premiums for my five landscape workers. Do I have to meet wage and hour requirements? What are they?

In general, if you are required to pay workers' compensation premiums, you also are required to meet state wage and hour requirements, which require employers to:

- Pay minimum wage for all hours worked and overtime for hours over 40 in a work week.
- Keep accurate payroll records for all hours worked.
- Provide pay statements.
- Give rest breaks and meal periods.
- Obtain a minor work permit endorsement and follow minor work regulations for employees under 18.

Note: There are some exceptions for "white collar" workers, casual laborers and agricultural workers. In addition, there may be no wage and hour requirements for registered contractors with their own established businesses, even when they are being closely supervised. Call your local L&I office if you have questions.

Unemployment tax — Washington Employment Security Department

When do I pay unemployment tax for my workers?

In general, unemployment tax must be paid to the Washington Employment Security Department when you are required to pay workers' compensation premiums for the worker.

Related RCWs: www.esd.wa.gov or call the Employment Security Department's Employer Status Unit at 360-902-9360.



Still have questions?

■ Check out our Web sites:

L&I home page: www.Lni.wa.gov

Report fraud: www.Fraud.Lni.wa.gov (or call 1-888-811-5974)

Register or renew registration/license online: www.Licensing.Lni.wa.gov

Look up a contractor: www.Contractors.Lni.wa.gov

Pay quarterly premiums online: www.QuarterlyReports.Lni.wa.gov

Check status of a workers' compensation account for a business:
www.PremiumStatus.Lni.wa.gov

Check workplace safety rules and issues: www.SafetyRules.Lni.wa.gov

For unemployment tax questions, visit:

Employment Security Department at www.esd.wa.gov or call the
Employment Security Department's Employer Status Unit at 360-902-9360.

To check the status of a Washington business license (UBI), visit:

Department of Revenue at www.DOR.wa.gov/content/home

■ Visit your local L&I office. For maps and directions visit: www.Offices.Lni.wa.gov

■ Phone your local L&I office:

Aberdeen	360-833-8200	Mount Vernon	360-416-3000
Bellevue	425-990-1400	Port Angeles	360-417-2700
Bellingham	360-847-7300	Pullman	509-334-5296
Bremerton	360-415-4000	Seattle	206-815-2800
Colville	509-884-7417	Spokane	509-324-2600
East Wenatchee	509-886-6600	Tacoma	253-896-3800
Everett	425-290-1300	Tukwila	206-835-1000
Kelso	360-876-6900	Tumwater	360-902-6799
Kennelworth	509-735-0100	Vancouver	360-896-2300
Moses Lake	509-764-6900	Yakima	509-454-3700

This publication is a general guide that explains some of L&I's rules and policies. It is not a legal interpretation, but is intended to help you determine when you are required to pay premiums and unemployment tax for those you hire, as well as when wage and hour and safety requirements apply on the job site. For more specific information, please call us or visit one of our sites.

Other formats for persons with disabilities are available on request. Call 1-800-547-8367. TDD users, call 360-902-5797. L&I is an equal opportunity employer.