

No. 94229-3

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

CERTIFICATION FROM
THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

MARIANO CARRANZA and ELISEO MARTINEZ, individually and on
behalf of all others similarly situated,

Petitioners/Plaintiffs,

v.

DOVEX FRUIT COMPANY,

Respondent/Defendant

BRIEF OF AMICUS CURIAE
FAMILIAS UNIDAS POR LA JUSTICIA, FARMWORKER
JUSTICE AND NATIONAL EMPLOYMENT LAW PROJECT

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I. Statement of the Case

Amici Curiae Familias Unidas por La Justicia, Farmworker Justice, and the National Employment Law Project hereby incorporate the Plaintiff's Statement of the Case by reference.

II. Introduction

The minimum wage guarantee of the Washington Minimum Wage Act ("MWA") should be fully effectuated to maximize protection for vulnerable agricultural workers. Many Washington piece-rate farmworkers perform significant amounts of work during which they are unable to earn a piece rate. If employers were not required to pay for this time, farmworkers would be subject to a *de facto* exclusion from the full protections of the MWA's minimum wage guarantee. This Court should interpret the MWA to fully compensate piece-rate workers for *all* work performed. This result is not only required by the letter of the law, but it is also consistent with the remedial purposes of the MWA, a law intended to keep families at the bottom of the economic ladder out of poverty.

As a group with language barriers, limited educational opportunity, and little bargaining power, farmworkers have historically faced poor working conditions, and the nature of their work puts them at risk for injury and death on the job. Because farmworkers lack political power in the legislative arena, they have a lengthy history of being excluded from

the most basic labor law protections enjoyed by virtually all other workers. Thus, farmworkers, who perform some of the state's most difficult labor, have had to fight to achieve the right to minimum wage, paid rest breaks, child labor protections, workers compensation coverage, unemployment insurance - even basic necessities like access to drinking water and bathrooms in the fields. Despite progress over the last several decades, Washington farmworkers are still excluded from state and federal overtime laws and lack collective bargaining rights.

While estimates of the number of farmworkers employed in Washington vary, the most recent Agricultural Census by the U.S. Department of Agriculture found that agricultural businesses in Washington employed 256,036 farmworkers for that year.¹ U.S. Department of Labor National Agricultural Worker Survey results through the same year show that between 7% and 21% of workers in the Western U.S. Migrant Stream are paid by the piece.² Based on these numbers, tens of thousands of farmworkers in Washington are paid piece-rate wages

¹ U.S. Department of Agriculture, *2012 Census of Agriculture - State Data*, 307, http://www.agcensus.usda.gov/Publications/2012/Full_Report/Volume_1,_Chapter_2_U_S_State_Level/st99_2_007_007.pdf (last visited July 25, 2017).

² U.S. Department of Labor, *Findings from the National Agricultural Workers Survey (NAWS) 2011-2012*, 31, https://www.doleta.gov/naws/pages/research/docs/NAWS_Research_Report_11.pdf (2005 – 2012 data on basis of pay).

each year, and a decision on this important wage issue will significantly impact farmworker families across the state.

III. Identity and Interest of *Amici Curiae*

Familias Unidas por la Justicia (Familias) is an independent, Washington-based farmworker labor union founded in 2013 in Skagit County. Familias represents the workers at Sakuma Brothers Berry Farms and recently achieved the first collective bargaining agreement for berry workers in Washington State. Familias members not only hand harvest strawberries, blueberries, blackberries, and raspberries for Sakuma and other berry farms, they work other seasonal jobs to keep their families clothed and fed throughout the year. Thus, Familias members work in a variety of other industrial agricultural operations, harvesting flower bulbs and vegetables (broccoli, cauliflower, and cucumbers), and performing various tasks in area greenhouses.

Familias members, like most harvest workers across the state, are normally paid piece-rate wages for every pound or box of fruit they harvest. However, the workers do many tasks before or after the daily harvest, during which they have no opportunity to earn money by the piece. These tasks include: attending daily harvest meetings and other employee meetings; waiting in line to wash hands and then washing hands according to safety requirements; traveling between harvest locations;

returning harvest equipment to a designated site at the end of the work day; and washing equipment. These tasks can easily take workers 30 minutes or more per day.³

Farmworker Justice (FJ) is a non-profit organization that seeks to empower farmworkers to improve their wages and working conditions, immigration status, health, occupational safety, and access to justice. Farmworker Justice accomplishes these aims through policy monitoring, public education, advocacy, litigation, training, and support for worker organizing. Founded in 1981 and based in Washington, D.C, Farmworker Justice collaborates with organizations throughout the country and has a long history of assisting farmworkers and their organizations regarding rights under wage-hour laws and the H-2A temporary foreign agricultural worker program. FJ's vision is of a future in which farmworkers enjoy the same workplace rights that protect employees in other occupations and exercise them without retaliation; have achieved higher wages, better working conditions, and comprehensive immigration reform; and have adequate access health and job safety information and to health care.

The National Employment Law Project (NELP) is a non-profit legal, policy and research organization with over 45 years of experience

³ The 2017-2019 collective bargaining agreement between Familias and Sakuma now requires Sakuma to pay a \$12 wage for travel time between fields of fruit if workers are required to switch fields during picking.

advocating for the employment and labor rights of low-wage and unemployed workers. NELP seeks to ensure that all employees, and especially the most vulnerable ones, receive the full protection of labor laws. NELP's areas of expertise include the workplace rights of low-wage immigrant workers under state and federal employment laws, with an emphasis on wage and hour rights. NELP has appeared as *amicus* in a number of seminal cases in front of this Court, including *Salas v. Hi-Tech Erectors*, 168 Wn.2d 664 (2010); *Becerra v. Expert Janitorial, LLC*, 181 Wn.2d 186 (2014); and *Lopez Demetrio v. Sakuma Bros. Farms, Inc.*, 183 Wn.2d 649 (2015).

IV. Argument

A. Agricultural workers have faced a long history of poverty and abuse.

The last comprehensive survey, conducted in 2006, concluded the average Washington farmworker household earned approximately \$17,000 a year.⁴ There is reason to believe this income has not meaningfully increased in the past decade.⁵ Even if farmworker household incomes

⁴ Washington State Farmworker Housing Trust, *A Sustainable Bounty: Investing in Our Agricultural Future, The Washington State Farmworker Survey*, 11 (May 2007), <https://static1.squarespace.com/static/58178a6cbe659444e1f37890/t/588d40141b10e309aee5b0bb/1485651993974/SustainableBounty.pdf>.

⁵ As explained by agricultural economist Philip Martin, “[w]hen thinking about and analyzing the wages of farmworkers, it’s of the utmost importance to consider what they’re actually paid—not what they would earn if they worked full-time year-round, since very few of them do.” Philip Martin and Daniel Costa, *Farmworker Wages In California: Large Gap Between Full-time and Actual Earnings*, Economic Policy

increased modestly since 2006, most farmworker families in Washington continue to live at the bottom of the economic ladder, as current federal guidelines indicate that a family of four earning less than \$24,600 per year lives in poverty.⁶ Unfortunately, this is consistent with documented historical patterns of poverty among farmworkers from the 1970s⁷ through the 1990s.⁸

Farmworkers also have endured a history of poor working conditions, broken promises about wages, and dangerous housing and

Institute Working Economics Blog (March 21, 2017, 5:25 p.m.), <http://www.epi.org/blog/farmworker-wages-in-california-large-gap-between-full-time-equivalent-and-actual-earnings>. The U.S. Department of Labor Bureau of Labor Statistics estimates that in 2016 Washington farmworkers performing “crop, nursery, and greenhouse” work had mean annual earnings of \$27,430. U.S. Department of Labor Bureau of Labor Statistics, *Occupational Employment and Wages, May 2016: 45-2092 Farmworkers and Laborers, Crop, Nursery, and Greenhouse*, <https://www.bls.gov/oes/current/oes452092.htm>. But after researchers adjusted California farmworker “annual FTE pay” of \$30,000 for seasonality and turnover, they found that actual farm worker wages were approximately \$17,500 a year. Martin & Costa, *supra*.

⁶ U.S. Department of Health & Human Services, *Poverty Guidelines*, <https://aspe.hhs.gov/poverty-guidelines> (last visited July 25, 2017). Additionally, the U.S. Department of Labor’s National Agricultural Worker Survey regularly finds that 30% of farmworker families nationwide have incomes below 100% of the federal poverty level. U.S.D.O.L. NAWS 2011-2012, *supra*, at iii; U.S. Department of Labor, *Findings from the National Agricultural Workers Survey (NAWS) 2013-2014*, iii, https://www.doleta.gov/naws/pages/research/docs/NAWS_Research_Report_12.pdf.

⁷In considering a challenge to a workers-compensation exclusion, this Court in *Macias v. Department of Labor & Industries*, 100 Wn.2d 263, 274, 668 P.2d 1278, 1285 (1983) was persuaded by demographic information in the record indicating that mean family income for farmworkers prior to 1978 was \$3,834 for seasonal workers and \$3,573 for migrants, and almost three-fourths of the workers surveyed received no other source of income. The federal poverty level for a family of four living on a farm in 1978 was \$5,618. U.S. Census Bureau, *Poverty Thresholds*, <https://www.census.gov/data/tables/time-series/demo/income-poverty/historical-poverty-thresholds.html> (last visited July 25, 2017); *see also* Ronald L. Goldfarb, *Migrant Farm Workers: A Caste of Despair* 17 (1981).

⁸ Daniel Rothenberg, *With these Hands: the Hidden World of Migrant Farmworkers Today* 6 and 24 (1998).

transportation.⁹ These conditions have largely followed farmworkers into the twenty-first century, as most farmworkers continue to lack the leverage to demand improved terms and conditions of work. Nationally, 70% of farmworkers are immigrants, at least two thirds have fewer than 10 years of schooling, and two thirds speak little or no English.¹⁰

Farmworker advocates continue to observe high rates of wage theft, overcrowded and substandard housing, dangerous vehicles used in farmworker transport, and commonplace sexual harassment.¹¹ As explained by *amicus curiae* United Farm Workers of America, agricultural work also continues to be among the most dangerous occupations in the nation and the state, with workers at greater risk than workers in other

⁹ See generally Goldfarb preface and ch. 2, 3 (“America has allowed a caste of despair to continue in a land of plenty.” In 1975, attorney Ronald Goldfarb was appointed by a federal court to monitor U.S. Department of Labor’s provision of services to farmworkers; by 1981, he had written a book pleading with American society to help farmworkers. *Id.* at viii-xvi); Rothenberg ch. 1-4 (“Not surprisingly, only the most marginalized workers . . . accept these conditions [F]armworkers commonly experience abuses not found in other industries.” *Id.* at 25).

¹⁰ Farmworker Justice, *Unfinished Harvest: The Agricultural Worker Protection Act at 30*, 3 (2013), <http://www.farmworkerjustice.org/sites/default/files/FarmworkerJusticeUnfinishedHarvest.pdf>.

¹¹ *Id.* at 9; Bon Appetit Management Company Foundation & United Farm Workers, *Inventory of Farmworker Issues and Protections in the United States* 10 (March 2011), http://www.bamco.com/content/uploads/2016/08/farmworkerinventory_0428_2011_updated2016.pdf.

sectors of incurring musculoskeletal injuries, being exposed to pesticides, and even being killed on the job.¹²

B. Agricultural workers have been and continue to be excluded from basic labor and employment protections enjoyed by other workers.

For decades, despite the fact that farm labor is some of the most arduous work our state has to offer, agricultural workers have been routinely excluded from basic workplace protections other workers take for granted.¹³ Minimum wage and overtime benefits, collective bargaining rights, child labor protections, workers compensation, unemployment insurance, and rest and meal breaks are some of those basic rights that farmworkers have been routinely denied. To overcome these legislative exclusions, farmworkers have been forced to fight numerous legal and policy battles in an effort to be protected like workers in other industries. Many of these historical inequities still exist today.

¹² Brief of *Amici Curiae* United Farmworkers of America, Migrant Clinicians Network, and Northwest Immigrant Rights Project at § IV (2); Bon Appetit & Oxfam, *supra* at 43-45 (pesticide exposure).

¹³ See Rothenberg, *supra* at 54 (“The continued poverty and marginalization of farmworkers draws attention to the profound structural inequities that define our nation’s farm labor system.”).

1. Exclusion from state and federal minimum wage guarantees and overtime protections.

The first national minimum wage came as a part of the New Deal, with passage of the Fair Labor Standards Act in 1938.¹⁴ Though the statute applied to nearly every major industry, farmworkers, who at that time were predominately black and southern, were excluded from FLSA's minimum wage and overtime protections.¹⁵ It wasn't until 1966 that farmworkers on large farms—comprising less than half of all farmworkers—were included in FLSA's minimum wage protections.¹⁶

In 1959, the Washington legislature passed the Minimum Wage Act, its first statewide minimum wage law. Laws of 1959, ch. 294. Farmworkers were also categorically excluded from state minimum-wage and overtime protections. *See id.* Thirty years later, during which time other workers enjoyed regular increases in their minimum wages, Washington farmworkers finally achieved the right to minimum wage. Tellingly, this had to be achieved through the initiative process, as farmworkers lacked the political power in Olympia to overcome entrenched agricultural interests, who successfully stopped an effort to

¹⁴ Marc Linder, *Migrant Workers and Minimum Wages: Regulating the Exploitation of Agricultural Labor in the United States* 130 (1992).

¹⁵ *Id.* at 153-54; 159-63; Pub. L. No. 75-718 § 13(a)(6), 52 Stat. 1060 (codified as 29 U.S.C. §213(a)(6) (1938)).

¹⁶ Goldfarb, *supra* at 152-156.

grant minimum wage and overtime benefits to farmworkers in 1975.¹⁷ It wasn't until 1988 that Washington voters finally included farmworkers in the minimum wage through Initiative 518. *See* Laws of 1989, ch. 1. §1. However, farmworkers continue to be excluded from the overtime protections of both FLSA and the MWA. 29 U.S.C. § 213(b)(12); RCW 49.46.130(2)(g). This is true despite the fact that farmworkers work long hours,¹⁸ which significantly heightens the risk of on-the-job injuries.¹⁹

2. *Exclusion from collective bargaining protections.*

Farmworkers are also excluded from the collective bargaining protections of the National Labor Relations Act. National Labor Relations Act, Pub. L. No. 74-198, §2, 49 Stat. 449, 450 (1935), *codified as amended at* 29 U.S.C. § 152(3). The NLRA, like FLSA, was a major piece of New Deal legislation designed to improve the lot of workers.²⁰ The bill that became the NLRA started out giving farmworkers, like other workers, the right to organize and bargain collectively, but the bill was soon

¹⁷ *See* Senate Amendment to Engrossed Substitute House Bill No. 32, adopted May 13, 1975 (last-minute amendment to minimum-wage expansion bill that preserved exclusion of farmworkers) (attached hereto as appendix A).

¹⁸ According to the 2013-2014 National Agricultural Workers Survey, workers in fruit and nut crops averaged 47 hours a week. U.S.D.O.L. NAWS 2013-2014, *supra* at 21.

¹⁹ A.E. Dembe, *et. al.*, *The impact of overtime and long work hours on occupational injuries and illnesses: new evidence from the United States*, *Occup. Environ. Med.* 2005; 62:588-597.

²⁰ *See* Goldfarb, *supra* at 168-173.

stripped of those protections.²¹ A proponent of the farmworker exclusion said in 1935: “I am in favor of giving agricultural workers every protection, but just now I believe in biting off one mouthful at a time. . . . [t]here will be opportunity later, and I hope soon, to take care of the agricultural workers.”²² Eighty years later, farmworkers in Washington continue to lack collective bargaining rights,²³ which has a direct effect on workers’ ability to come together to negotiate terms and conditions of work with their employers. One indication of the effect of the exclusion of farmworkers from formal union labor protections is that according to the 2000-2009 National Agricultural Worker Survey results, a mere one percent of interviewed farmworkers stated they had worked under a union contract at any time during the previous two years.²⁴ Today, *only two* of Washington’s 36,000 farms (.00006 %) employ workers protected by union contracts.²⁵

²¹ *Id.* at 171; Juan F. Perea, *The Echoes of Slavery: Recognizing the Racist Origin of the Agricultural and Domestic Worker Exclusion from the National Labor Relations Act*, 72 Ohio State Law J. 120-22 (2011).

²² Goldfarb, *supra* at 172.

²³ Washington’s Little Norris LaGuardia Act offers protections for farmworker concerted activity, but has no mechanism for workers to compel their employers to hold union elections or to bargain union contracts. *See* chapter 49.32 RCW.

²⁴ Bon Appetit & Oxfam, *supra* at 27.

²⁵ *See* Oscar Rosales Castañeda & Maria Quintana, *Farm Workers in Washington State History Project, Timeline: Farm Worker Organizing In Washington State*, https://depts.washington.edu/civilr/farmwk_timeline.htm (last visited July 25, 2017) (“1995: the UFW . . . signs a contract to unionize the workers at the Chateau Ste. Michelle Winery in the Yakima Valley, the first such victory in farmworker organizing in Washington State.”); Associated Press, *Pickers at Washington state berry farm approve contract, \$12-an-hour minimum wage* (June 17, 2017),

3. *Exclusion from child labor laws.*

Until 1990, no child labor laws existed in Washington agriculture, and even current laws protect child farmworkers less than children in other industries. Child labor regulations for nearly all other industries have been in effect in Washington since 1950,²⁶ but it took until 1989 for the Legislature to direct the Department of Labor and Industries to establish baseline protections for children working in agriculture, Laws of 1989, ch. 380, § 85, and until 1990 for those rules to take effect, 14 Wash. St. Reg. §38 (1990), *codified at* WAC 296-131-115. Even with those regulations, agriculture is the only industry in Washington that is permitted to employ 12- and 13-year-old children. WAC 296-131-115 (children may hand harvest berries, bulbs, cucumbers, and spinach). Farmworker children are permitted to work longer days and more hours in a week than their peers in other jobs, *compare* WAC 296-131-120 *with* WAC 296-125-027,²⁷ and in some cases are permitted to work 7 days a week, WAC 296-131-120(4). 16- and 17-year-old farmworkers may engage in hazardous activities that minors in other industries are not allowed to do, such as driving tractors,

<http://www.seattletimes.com/seattle-news/pickers-at-washington-state-berry-farm-approve-contract-12-an-hour-minimum-wage/>; Washington State Department of Agriculture, *Agriculture: A Cornerstone of Washington's Economy* (last updated June 1, 2017), <https://agr.wa.gov/aginwa/> (36,000 farms in Washington).

²⁶ Washington State Department of Labor & Industries, *Minimum Wage and Welfare Order No. 49* (effective July 10, 1950) (attached hereto as appendix B).

²⁷ For example, during the school year WAC 296-131-120(2)(A) allows minors under 16 in agriculture to work up to 21 hours per week, while WAC 296-131-120(2)(A) restricts minors under 16 in other occupations to a maximum of 16 hours per week – 5 hours less.

busses, and trucks, operating harvester machines and combines, harvesting or pruning 20 feet off the ground, working in manure pits, and working inside fruit or grain storage areas “designed to retain an oxygen deficient or toxic atmosphere.” *Compare* WAC 296-131-125 with WAC 296-125-030 and WAC 296-125-033.²⁸

4. *Exclusion from workers’ compensation coverage.*

Farmworkers also did not gain full workers’ compensation coverage until 1983. Prior to 1971, Washington excluded all agricultural workers from workers’ compensation coverage believing it unnecessary as coverage was originally limited to “hazardous” occupations, and “farming was generally not a hazardous activity.” *Macias v. Dep’t of Labor & Indus.*, 100 Wn.2d 263, 265-66, 668 P.2d 1278, 1280 (1983); *see* Laws of 1911, ch. 74, §§ 2, 4 (providing mandatory coverage for workers in railroads, ferries, construction, factories, breweries, laundries, etc.). In 1971, the Legislature passed a bill providing coverage but excluding agricultural workers who had not yet earned \$150 from their employer. *Macias*, 100 Wn.2d 263 at 266.²⁹ Farmworkers ultimately challenged that exclusion, and this Court struck it down on constitutional grounds in 1983,

²⁸ *See also summaries in* Department of Labor & Industries, *Young Workers in Agriculture*, <http://lni.wa.gov/IPUB/700-096-909.pdf> (last visited July 25, 2017); Department of Labor & Industries, *Teens at Work: Facts for Employers, Parents, and Teens*, <http://lni.wa.gov/IPUB/700-022-000.pdf> (last visited July 25, 2017).

²⁹ This exclusion was drafted to sunset one year after passage, but then-Governor Evans vetoed the sunset provision. *Macias*, 100 Wn.2d at 266.

holding agriculture was “an extremely dangerous occupation” and that “workers' compensation . . . is as basic a necessity to life as health care,” and concluding that the exclusion was an “infringement on [workers’] fundamental right to travel, which denies them equal protection of the law.” *Id.* at 274-75.

5. *Exclusion from unemployment insurance benefits.*

Until 1989, many farmworkers had no right to unemployment benefits in Washington. In 1935, Congress excluded farmworkers from coverage of the new Social Security Act,³⁰ and as a result, farmworkers were also excluded from unemployment compensation coverage.³¹ It wasn't until 1976 that Congress expanded federal coverage to some farmworkers on the largest farms.³² Again, it took until 1989 for the Washington Legislature to grant unemployment insurance coverage to farmworkers on all farms. Laws of 1989, ch. 380, §§ 78-83 (codified in various sections of title 50 RCW) (attached hereto as appendix C).

6. *Exclusion from basic sanitation and hydration regulations.*

Until 1979, Washington Farm Workers had no right to potable water in the fields, 8 Wash. St. Reg. § 115 (1979), and it wouldn't be until 1987 that they achieved the right to toilets and handwashing facilities in

³⁰ Linder, *supra* at 147.

³¹ Perea, *supra* at 109; Goldfarb, *supra* at 163.

³² Goldfarb, *supra* at 166-167.

their workplaces, WAC 296-306-300 & WAC 296-306-310 (1987 supp.).

The national battle for basic field sanitation was a long one. In 1972, farmworkers petitioned the U.S. Department of Labor to require access to drinking water, handwashing facilities, and toilets in their workplaces.

Farmworker Justice Fund v. Brock, 811 F.2d 613, 614 (1987). The federal appeals court judge who finally compelled USDOL to promulgate a rule in 1987 said this:

This appeal culminates a 14-year struggle to compel the Secretary of Labor under the Occupational and Health Safety Act . . . to issue a field sanitation standard providing access to drinking water and toilets for several million American agricultural workers. The rulemaking record demonstrates beyond dispute that lack of drinking water and toilets causes the spread of contagion, bladder disease, and heat-prostration among farmworkers. Yet resistance to issuing the standard, a counterpart of which is already in place for every other OSHA-covered type of employment, has been intractable. An arsenal of administrative law doctrines has provided the justification for ricocheting the case between the agency and the courts for over a decade: a decade in which field workers have gone without benefit of drinking water or the most rudimentary sanitary facilities. With our decision today ordering the field sanitation rule to issue, we hope to bring to an end this disgraceful chapter of legal neglect.

Id.

7. *Exclusion from meal and rest breaks.*

While workers in other industries—including most workers whose employment required no physical exertion—had the right to meal periods and paid rest breaks starting in 1976, it would take until 1990 for farmworkers to gain the same rights. Department of Labor & Industries, *Order 76-15* (filed 5/17/76) (codified as WAC 296-126-092); 14 Wash. St. Reg. § 37 (1990) (codified as WAC 296-131-020). Additionally, as this Court is aware, prior to the 2015 decision in *Lopez Demetrio v. Sakuma Brothers Farms, Inc.*, 183 Wn.2d 649, 659, 355 P.3d 258 (2015), farmworkers performing piece-rate labor in Washington were denied paid rest breaks that were required by regulation. *See id.* at 656. This industry practice resulted in a *de facto* exclusion of piece-rate farmworkers from this key safety and health regulation. *See id.* at 658.

C. Minimum wage guarantees should be fully effectuated to maximize protection for vulnerable agricultural workers.

Washington has "a long and proud history of being a pioneer in the protection of employee rights." *Drinkwitz v. Alliant Techsystems, Inc.*, 140 Wn.2d 291, 300, 996 P.2d 582 (2000). Consistent with this history, the MWA is a remedial statute that must be liberally construed consistent with its purpose to protect employees. *Anfinson v. FedEx Ground Package Sys., Inc.*, 174 Wn.2d 851, 870, 281 P.3d 289 (2012). As this Court recognized

in *Anfinson*, the MWA’s minimum wage protections seek to guard against “the evils and dangers resulting from wages too low to buy the bare necessities of life” and “to insure that every person whose employment contemplated compensation should not be compelled to sell his services for less than the prescribed minimum wage.” *Id.* (internal quotations omitted).

The MWA plainly requires that workers be paid the minimum wage for all hours worked. RCW 49.46.020; *Stevens v. Brink’s Home Security, Inc.*, 162 Wn.2d 42, 47, 169 P.3d 473 (2007). Should this Court determine that ambiguity exists and construction of the statute is necessary, *see Bostain v. Food Exp., Inc.*, 159 Wn.2d 700, 708-09, 153, P.3d 846, 850 (2007), an hourly measure of minimum wage compliance best fulfills the protective purposes of the Act. If Dovex’s position were adopted by the Court, *amici* berry workers could easily be deprived of 30 minutes or more of pay per day for uncompensated work time. Assuming a six-day workweek and the current minimum wage of \$11.00 per hour, that amounts to more than \$130 per month – a significant sum for a farmworker family living paycheck to paycheck and one that can make the difference between affording food, medicine and other basic necessities, or going without.

Requiring piece-rate farmworkers to work without pay during their non-piece-rate working time would be a *de facto* exemption from the law that would result in inequitable application of the MWA to farm workers. This outcome would undercut the remedial purposes of the MWA and result in farm workers making in-kind donations of their labor to agricultural employers. Farmworkers are not engaged in volunteer work; rather they perform strenuous labor that brings the bounty of Washington's harvests to market and deserve to be fully compensated for that work.

V. Conclusion

Farmworkers continue to experience poverty-level wages despite the importance of their work to our state economy and to consumers, who benefit greatly from the variety of fruits and vegetables that fill our grocery stores. Unfortunately, farmworkers experience disadvantages, in part, from discriminatory labor and employment laws that deprive farmworkers of the full protection of our laws. The minimum wage provision of the MWA is one of the protections farmworkers can count on while working for an industry that continues to benefit from exemptions crafted in the Jim Crow era. Washington courts should continue to remove such structural impediments, consistent with Washington law, to ensure all workers are fairly compensated for all hours they spend on the job and

away from their families. This Court should hold that piece-rate farmworkers are entitled to separate pay for work time in which they cannot earn money by the piece.

Respectfully submitted this 31st day of July, 2017.

COLUMBIA LEGAL SERVICES



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DECLARATION OF SERVICE

I, Rachael Pashkowski, a paralegal at Columbia Legal Services, certify under penalty of perjury under the laws of the State of Washington that on this day I caused a copy of the foregoing to be served by email, pursuant to agreement by counsel, upon the following counsel of record:

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DATED at Wenatchee, Washington, this 31st day of July, 2017.



Rachael Pashkowski

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APPENDIX A

**STATE OF WASHINGTON
PRINTED BILLS
OF THE
LEGISLATURE
FORTY-FOURTH SESSION
HOUSE**

1-100

1975-76
**REGULAR
AND
EXTRAORDINARY
SESSIONS**

Senate Amendment to Engrossed Substitute
House Bill No. 32

By Senator Newschwander

On page 1, line 6 of the title, strike
"; and declaring an emergency"

Adopted May 13, 1975

Senate Amendment to Engrossed Substitute House
Bill No. 32

By Senators Donohue and Morrison

On page 1, beginning on line 26, after "(a)"
strike all the material down through and including "{(b))}"
on line 14, and insert:

"Any individual employed (i) on a farm, in the
employ of any person, in connection with the cultivation
of the soil, or in connection with raising or harvesting
any agricultural or horticultural commodity, including
raising, shearing, feeding, caring for, training, and
management of livestock, bees, poultry, and furbearing
animals and wildlife, or in the employ of the owner or
tenant or other operator of a farm in connection with the
operation, management, conservation, improvement, or main-
tenance of such farm and its tools and equipment; or (ii)
in packing, packaging, grading, storing or delivering
to storage, or to market or to a carrier for transportation
to market, any agricultural or horticultural commodity;
and the exclusions from the term "employee" provided in
this item shall not be deemed applicable with respect to
commercial canning, commercial freezing, or any other
commercial processing, or with respect to services per-
formed in connection with the cultivation, raising, har-
vesting, and processing of oysters or in connection with
any agricultural or horticultural commodity after its
delivery to a terminal market for distribution for con-
sumption;

(b)"

Restore original subsection letters consecutively.

Adopted May 13, 1975

ENGROSSED SUBSTITUTE HOUSE BILL NO. 32

State of Washington
44th Regular Session

by Representatives Parker and
Adams

Filed with the Chief Clerk of the House of Representatives December 19,
1974, for introduction January 13, 1975. Referred to Committee
on Labor.

1 AN ACT Relating to minimum wages; amending section 1, chapter 294,
2 Laws of 1959 as last amended by section 1, chapter 107, Laws
3 of 1974 ex. sess. and RCW 49.46.010; amending section 2,
4 chapter 294, Laws of 1959 as last amended by section 1,
5 chapter 9, Laws of 1973 2nd ex. sess. and RCW 49.46.020;
6 adding a new section to chapter 49.46 RCW; and declaring an
7 emergency.

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

9 Section 1. Section 1, chapter 294, Laws of 1959 as last
10 amended by section 1, chapter 107, Laws of 1974 ex. sess. and RCW
11 49.46.010 are each amended to read as follows:

12 As used in this chapter:

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

14 (2) "Wage" means compensation due to an employee by reason of
15 his employment, payable in legal tender of the United States or
16 checks on banks convertible into cash on demand at full face value,
17 subject to such deductions, charges, or allowances as may be
18 permitted by regulations of the director under *RCW 49.46.050;

19 (3) "Employ" includes to suffer or to permit to work;

20 (4) "Employer" includes any individual, partnership,
21 association, corporation, business trust, or any person or group of
22 persons acting directly or indirectly in the interest of an employer
23 in relation to an employee;

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

26 (a) ((Any individual employed (i) on a farm; in the employ of
27 any person; in connection with the cultivation of the soil; or in
28 connection with raising or harvesting any agricultural or
29 horticultural commodity; including raising; shearing; feeding; caring
30 for; training; and management of livestock; bees; poultry; and

1 furbearing animals and wildlife; or in the employ of the owner or
2 tenant or other operator of a farm in connection with the operation;
3 management; conservation; improvement; or maintenance of such farm
4 and its tools and equipment; or (ii) in packing; packaging; grading;
5 storing or delivering to storage; or to market or to a carrier for
6 transportation to market; any agricultural or horticultural
7 commodity; and the exclusions from the term "employee" provided in
8 this item shall not be deemed applicable with respect to commercial
9 canning; commercial freezing; or any other commercial processing; or
10 with respect to services performed in connection with the
11 cultivation; raising; harvesting; and processing of oysters or in
12 connection with any agricultural or horticultural commodity after its
13 delivery to a terminal market for distribution for consumption;

14 (b)) Any individual employed in domestic service in or about
15 a private home;

16 ((c)) (b) Any individual employed in a bona fide executive,
17 administrative, or professional capacity or in the capacity of
18 outside salesman (as such terms are defined and delimited by
19 regulations of the director);

20 ((d) Any individual employed by the United States;

21 (e)) (c) Any individual engaged in the activities of an
22 educational, charitable, religious, or nonprofit organization where
23 the employer-employee relationship does not in fact exist or where
24 the services are rendered to such organizations gratuitously;

25 ((f)) (d) Any newspaper vendor or carrier;

26 ((g)) (e) Any carrier subject to regulation by Part 1 of the
27 Interstate Commerce Act;

28 ((h)) (f) Any individual engaged in forest protection and
29 fire prevention activities;

30 ((i) Any individual employed by the state, any county, city,
31 or town, municipal corporation or quasi-municipal corporation;
32 political subdivision, or any instrumentality thereof;

33 (j)) (g) Any individual employed by any charitable
34 institution charged with child care responsibilities engaged
35 primarily in the development of character or citizenship or promoting
36 health or physical fitness or providing or sponsoring recreational

Senate Committee Amendment to Engrossed Substitute House Bill
No. 32

By Committee on Labor

On page 2, line 22, after "religious," and before "or" insert
"governmental agency,"

MAY 12 1975

ADOPTED

9 institution.

10 (1) Any individual who holds a public elective or appointive
11 office of the state, any county, city, town, municipal corporation or
12 quasi municipal corporation, political subdivision, or any
13 instrumentality thereof, or any employee of the state legislature.

14 (6) "Occupation" means any occupation, service, trade,
15 business, industry, or branch or group of industries or employment or
16 class of employment in which employees are gainfully employed.

17 Sec. 2. Section 2, chapter 294, Laws of 1959 as last amended
18 by section 1, chapter 9, Laws of 1973 2nd ex. sess. and RCW 49.46.020
19 are each amended to read as follows:

20 (1) Every employer shall pay to each of his employees who have
21 reached the age of eighteen years wages at a rate of not less than
22 one dollar and sixty cents per hour except as may be otherwise
23 provided under subsections (2) through (7) of this section or as
24 otherwise provided under this chapter: PROVIDED, That beginning the
25 calendar year 1974, the applicable rate under this section shall be

Senate Amendments to Engrossed Substitute
House Bill No. 32

By Senators Grant/Morrison/Ridder

On page 3, line 26, strike "the calendar
year 1975" and insert "((the-calendar-year
1974)) with the effective date of this act"

On page 3, line 36, strike "the calendar
year 1975" and insert "with the effective
date of this act"

Adopted May 12, 1975

1 opportunities or facilities for young people or members of the armed
2 forces of the United States;

3 ~~((*)~~) (h) Any individual whose duties require that he reside
4 or sleep at the place of his employment or who otherwise spends a
5 substantial portion of his work time subject to call, and not engaged
6 in the performance of active duties;

7 (i) Any resident, inmate, or patient of a state, county, or
8 municipal correctional, detention, treatment or rehabilitative
9 institution.

10 (j) Any individual who holds a public elective or appointive
11 office of the state, any county, city, town, municipal corporation or
12 quasi municipal corporation, political subdivision, or any
13 instrumentality thereof, or any employee of the state legislature.

14 (6) "Occupation" means any occupation, service, trade,
15 business, industry, or branch or group of industries or employment or
16 class of employment in which employees are gainfully employed.

17 Sec. 2. Section 2, chapter 294, Laws of 1959 as last amended
18 by section 1, chapter 9, Laws of 1973 2nd ex. sess. and RCW 49.46.020
19 are each amended to read as follows:

20 (1) Every employer shall pay to each of his employees who have
21 reached the age of eighteen years wages at a rate of not less than
22 one dollar and sixty cents per hour except as may be otherwise
23 provided under subsections (2) through (7) of this section or as
24 otherwise provided under this chapter: PROVIDED, That beginning the
25 calendar year 1974, the applicable rate under this section shall be
26 one dollar and eighty cents per hour, and beginning the calendar year
27 1975 the applicable rate under this section shall be two dollars and
28 ten cents an hour, and beginning the calendar year 1976 the
29 applicable rate under this section shall be two dollars and thirty
30 cents an hour.

31 (2) Any individual eighteen years of age or older, unless
32 exempt under the provisions of section 1(5)(i) of this 1975
33 amendatory act, employed by the state, any county, city, town,
34 municipal corporation or quasi municipal corporation, political
35 subdivision, or any instrumentality thereof shall be paid wages
36 beginning the calendar year 1975, at a rate of not less than two

Senate Amendments to Engrossed Substitute
House Bill No. 32
By Senators Grant/Morrison/Ridder

On page 4, line 7, strike "the calendar year 1975" and insert "with the effective date of this act"

On page 4, line 14, strike "the calendar year 1975" and insert "with the effective date of this act"

Adopted May 12, 1975

Senate Committee Amendment to Engrossed Substitute House B
No. 32
By Committee on Labor

On page 4, line 8, after "dollars" and before "an" insert "ten cents"

MAY 12 1975

ADOPTED

Senate Amendment to Engrossed Substitute House
Bill No. 32
By Senator Grant

On page 4, line 15 of the engrossed substitute bill, a Senate Amendment to Engrossed Substitute House Bill No. 32
"and to" insert "and" before "and" insert
By Senators Grant/Morrison/Ridder

26 On page 4, line 25, strike "the calendar year
27 1975" and insert "with the effective date of
28 this act"

29 Adopted May 13, 1975
30
31
32

33 Senate Amendment to Engrossed Substitute House
34 Bill No. 32
35 By Senators Donohue and Morrison

36 On page 4, beginning on line 30, strike all the
material down through line 15 of page 5.

Adopted May 13, 1975

1 dollars an hour, and beginning the calendar year 1976 at a rate of
2 not less than two dollars and twenty cents an hour, and beginning the
3 calendar year 1977 at a rate of not less than two dollars and thirty
4 cents an hour.

5 (3) Any individual eighteen years of age or older engaged in
6 performing services in a nursing home licensed pursuant to chapter
7 18.51 RCW, shall be paid wages beginning the calendar year 1975, at a
8 rate of not less than two dollars an hour, and beginning the calendar
9 year 1976, at a rate of not less than two dollars and twenty cents an
10 hour, and beginning the calendar year 1977, at a rate of not less
11 than two dollars and thirty cents an hour.

12 (4) Any individual eighteen years of age or older engaged in
13 performing services in a hospital licensed pursuant to chapter 70.41
14 RCW, or chapter 71.12 RCW, shall be paid wages beginning the calendar
15 year 1975, at a rate of not less than two dollars an hour, and
16 beginning the calendar year 1976, at a rate of not less than two
17 dollars and twenty cents an hour, and beginning the calendar year
18 1977 at a rate of not less than two dollars and thirty cents an hour.

19 (5) Any individual eighteen years of age or older employed in
20 a retail or service establishment and who is so employed primarily in
21 connection with the preparation or offering of food or beverages for
22 human consumption, either on the premises, or by such services as
23 catering, banquet, box lunch, or curb or counter service, to the
24 public, to employees, or to members or guests of members of clubs
25 shall be paid wages beginning the calendar year 1975, at a rate of
26 not less than two dollars an hour, and beginning the calendar year
27 1976, at a rate of not less than two dollars and twenty cents at
28 hour, and beginning the calendar year 1977, at a rate of not less
29 than two dollars and thirty cents an hour.

30 (6) Any individual eighteen years of age or older employed:
31 (i) On a farm in the employ of any person, in connection with the
32 cultivation of the soil, or in connection with raising or harvesting
33 any agricultural or horticultural commodity, including raising,
34 shearing, feeding, caring for, training, and management of livestock,
35 bees, poultry, and furbearing animals and wildlife, or in the employ
36 of the owner or tenant or other operator of a farm in connection with

Senate Amendment to Engrossed Substitute
House Bill No. 32
By Senators Mardesich and Morrison

On page 5, beginning on line 16, strike all
the matter down through line 22.

Adopted May 14, 1975

Senate Amendment to Engrossed Substitute House
Bill No. 32
By Senator Morrison

On page 5, line 31, after "amended" insert
"and the provision of this subsection shall not
apply to employees who request compensating time off
in lieu of overtime pay"

Adopted May 13, 1975

20 compensation for his employment in excess of the hours above
21 specified at a rate not less than one and one-half times the regular
22 rate at which he is employed, except that the provisions of this
23 subsection (1) shall not apply to any person defined in RCW
24 49.46.010 (5) (j) as now or hereafter amended.

25 (2) No public agency shall be deemed to have violated
26 subsection (1) of this section with respect to the employment of any
27 employee in fire protection activities or any employee in law
28 enforcement activities (including security personnel in correctional
29 institutions) if: (a) In a work period of twenty-eight consecutive
30 days the employee receives for tours of duty which in the aggregate
31 exceed two hundred and forty hours; or (b) in the case of such an
32 employee to whom a work period of at least seven but less than
33 twenty-eight days applies, in his work period the employee receives
34 for tours of duty which in the aggregate exceed a number of hours
35 which bears the same ratio to the number of consecutive days in his
36 work period as two hundred forty hours bears to twenty-eight days;

1 the operation, management, conservation, improvement, or maintenance
2 of such farm and its tools and equipment; or (iii) in packing,
3 packaging, grading, storing or delivering to storage, or to market or
4 to a carrier for transportation to market, any agricultural or
5 horticultural commodity; or (iiii) in commercial canning, commercial
6 freezing, or any other commercial processing, in connection with the
7 cultivation, raising, harvesting, and processing of oysters or in
8 connection with any agricultural or horticultural commodity after its
9 delivery to a terminal market for distribution for consumption shall
10 be paid wages beginning the calendar year 1975, at a rate of not less
11 than one dollar and eighty cents an hour, and beginning the calendar
12 year 1976 at a rate of not less than two dollars an hour, and
13 beginning the calendar year 1977 at a rate of not less than two
14 dollars and twenty cents an hour, and beginning calendar year 1978 at
15 a rate of not less than two dollars and thirty cents an hour.

16 NEW SECTION. Sec. 3. There is added to chapter 49.46 RCW a
17 new section to read as follows:

18 (1) No employer shall employ any of his employees for a
19 workweek longer than forty hours unless such employee receives
20 compensation for his employment in excess of the hours above
21 specified at a rate not less than one and one-half times the regular
22 rate at which he is employed, except that the provisions of this
23 subsection (1) shall not apply to any person defined in RCW
24 49.46.010(5)(j) as now or hereafter amended.

25 (2) No public agency shall be deemed to have violated
26 subsection (1) of this section with respect to the employment of any
27 employee in fire protection activities or any employee in law
28 enforcement activities (including security personnel in correctional
29 institutions) if: (a) In a work period of twenty-eight consecutive
30 days the employee receives for tours of duty which in the aggregate
31 exceed two hundred and forty hours; or (b) in the case of such an
32 employee to whom a work period of at least seven but less than
33 twenty-eight days applies, in his work period the employee receives
34 for tours of duty which in the aggregate exceed a number of hours
35 which bears the same ratio to the number of consecutive days in his
36 work period as two hundred forty hours bears to twenty-eight days;

1 compensation at a rate not less than one and one-half times the
2 regular rate at which he is employed.
3 NEW SECTION. Sec. 4. This 1975 amendatory act is necessary
4 for the immediate preservation of the public health, safety and interest.

Senate Amendment to Engrossed Substitute House
Bill No. 32
By Senator Morrison

On page 6, line 26, after "consumption" insert
": PROVIDED FURTHER, That this section shall not
apply in the event that a federal law exists which
regulates the work hours or work week of an industry,
business or any employee or group of employees"

Adopted May 13, 1975

Senate Amendment to Engrossed Substitute House
Bill No. 32
By Senator Newschwander

On page 6, beginning on line 27, strike section 4.

Adopted May 13, 1975

Senate Amendment to Engrossed Substitute House
Bill No. 32
By Senator Grant

On page 6, beginning on line 27, insert a new
section 4 as follows:

"NEW SECTION. Sec. 4. The director of the
department of labor and industries and the commissioner
of employment security shall each notify employers of
the requirements of this act through their regular
quarterly notices to employers.

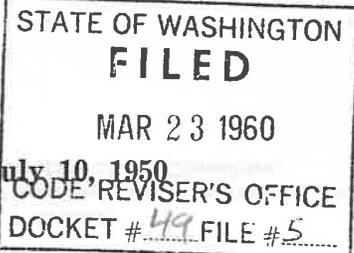
Adopted May 13, 1975

1 compensation at a rate not less than one and one-half times the
2 regular rate at which he is employed.

3 NEW SECTION. Sec. 4. This 1975 amendatory act is necessary
4 for the immediate preservation of the public peace, health, and
5 safety, the support of the state government and its existing public
6 institutions, and shall take effect immediately.

APPENDIX B

DEPARTMENT OF LABOR AND INDUSTRIES
INDUSTRIAL WELFARE COMMITTEE
OF THE
STATE OF WASHINGTON



Minimum Wage and Welfare Order No. 49, Effective July 10, 1950

MINORS

Dated April 3, 1950, Olympia, Washington

TO WHOM IT MAY CONCERN:

TAKE NOTICE: That pursuant to and by virtue of authority vested in it by Chapter 174 of the Session Laws of the State of Washington for 1913, and after notice of conference having been duly given, and a conference held, in the manner provided by law, the Industrial Welfare Committee, after consideration of evidence and recommendations of the Conference, found and concluded that Industrial Welfare Order No. 42, enacted by the Industrial Welfare Committee on October 1, 1942, should be altered, revised and vacated and a new order enacted;

NOW, THEREFORE, the Industrial Welfare Committee of the State of Washington does hereby vacate and cancel said Order No. 42, and hereby enacts its Revised Order as follows:

APPLICABILITY OF ORDER

THIS ORDER shall apply to all minors employed in any industry or establishment in the State of Washington who are not expressly covered by another Minimum Wage and Welfare Order issued by the Industrial Welfare Committee, **EXCEPT:**

Minors employed:

- a. By common carrier railroads, sleeping car companies and freight or express companies subject to regulations of Federal Law.
- b. In agricultural labor.
- c. In domestic work or chores performed in or about private residences.
- d. In a vocational education, work experience or apprentice training program, when such program is properly supervised by school personnel or in accordance with written agreements and approved training schedules.
- e. Directly by a telephone or telegraph company.

THIS ORDER shall not apply to newspaper vendors and newspaper carriers.

DEFINITIONS

For the purpose of this Order:

- (1) A "minor" is a person of either sex under the age of eighteen (18) years.
- (2) The term "employee" shall mean any minor who is employed to work in any industry or establishment in the State of Washington other than those expressly excluded by the foregoing paragraphs.
- (3) The term "employer" shall mean any person, association, corporation, co-partnership, or municipal corporation, engaged in an industry or establishment covered by this Order and who (or which) employs any minor covered by this Order.
- (4) The term "agricultural labor" shall mean employment
 - (a) On a farm, in the employ of any person in connection with the cultivating of the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including raising, shearing, feeding, caring for, training and management of livestock, bees, poultry, and furbearing animals and wildlife, or in the employ of the owner or tenant or other operator of a farm in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment; or
 - (b) In handling, planting, packing, packaging, grading, storing, or delivering to storage or to a market or to a carrier for transportation to market, any agricultural or horticultural commodity; but only if such service is performed as an incident to ordinary farming operations, or, in the case of fruits and vegetables in their raw and natural state, as an incident to the preparation of such fruits and vegetables for market. The provisions of this paragraph shall not be deemed to be applicable with respect to services performed in connection with commercial canning or commercial freezing or any other commercial processing which changes the character of the product from its raw and natural state or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.

MINIMUM WAGES

Minimum wages for all minors covered by this Order, in the State of Washington shall be FIFTY CENTS (50¢) per hour, regardless of the manner in which they are computed, except when another Order (or Orders) issued by the Industrial Welfare Committee of the State of Washington provides a different minimum.

Whenever the Administrator of the Wage and Hour Division of the United States Department of Labor shall issue a certificate or certificates permitting the employment of learners, apprentices, messengers, and handicapped workers, at wage rates below the minimums herein fixed, the payment of wages in accordance with such permits shall not constitute a violation of this Order.

HOURS

- (1) No Minor shall be employed more than five (5) hours without a meal period, on the employee's time, of at least thirty (30) minutes.
- (2) There shall be a rest period on the employer's time of ten (10) minutes in every four-hour period of employment.
- (3) Minors 14 and 15 years of age shall not be employed more than eight (8) hours in any one day or six (6) days in any one week. In computing the hours, one-half (½) the total attendance hours in school shall be included. When school is not in session said Minors shall not be employed more than forty (40) hours in any one week.
- (4) Minors 16 and 17 years of age shall not be employed more than eight (8) hours in any one day or six (6) days in any one week except in seasonal industries or in cases of emergency.
- (5) Minors 14 and 15 years of age shall not be permitted to work after the hours of 7:00 P. M. or before 6 A. M. (Pacific Standard Time), unless such employment is specifically authorized by the terms of this Order, or by a permit specifically authorizing such employment issued by the Industrial Welfare Committee of the State Department of Labor and Industries, or its duly designated agent for the issuance of such permit.
- (6) Minor boys 14 and 15 years of age may be issued permits to work in approved amusement industries not more than six (6) days a week and not later than 7:00 P. M. (Pacific Standard Time.)
- (7) Minors 16 and 17 years of age attending school may be employed after 7:00 P. M. (Pacific Standard Time) for such hours not exceeding eight (8) hours in any one day, and in such employments, as shall be specifically authorized in the individual permits issued to each minor, when upon investigation by the Supervisor of Women and Minors in Industry the conditions of employment are found not detrimental to the welfare of the minors or their school program. Such permits shall not be issued to girls unless satisfactory assurance is given the Industrial Welfare Committee of the State Department of Labor and Industries or its authorized agent that such minors are to be safely conveyed to their homes.

WORK PERMITS AND PROOF OF AGE CERTIFICATES

(1) No minor shall be employed in any occupation covered by this Order unless the Employer has on file during the period of employment an unexpired work certificate or permit issued by the Industrial Welfare Committee of the State Department of Labor and Industries or its duly designated agent for the issuance of such permit. Such permit will not be issued except upon presentation of such evidence of age as is required by the Industrial Welfare Committee.

The issuance of a certificate or permit to work shall not authorize or excuse a violation of the State of Washington Compulsory School Attendance Law, and shall not be issued to any minor legally required to attend school when school is in session except with the approval of the school authorities.

EMPLOYMENT PROHIBITED TO ALL MINORS

- (1) No minor shall be employed in any occupation which the State Department of Labor and Industries, through its Industrial Welfare Committee, shall upon due notice and hearing find and by order declare to be particularly hazardous for the employment of minors under the ages specified in such Order as detrimental to their health or morals.
- (2) No minor shall be permitted to work in any of the following occupations:
 - (a) In any place where intoxicating liquor is served in the same room.
 - (b) As driver or helper on State Licensed motor vehicles in traffic congested areas.
 - (c) In operating, tending or in dangerous proximity to dangerous power driven machinery.
 - (d) In connection with the commercial operation of a 35 millimeter projection machine in a motion picture theatre or public building.
 - (e) To give signals to engineers in logging operations, or to receive and forward signals.
 - (f) As an engineer, or within dangerous proximity to any cables, rigging or hazardous machinery.

EMPLOYMENT PROHIBITED TO ALL MINORS

No minor girl shall be employed as:

- (a) A shaker in a laundry, except on hand towels, handkerchiefs, napkins and similar small articles.
- (b) In or in connection with a barber shop.
- (c) A canvasser or peddler from house to house.
- (d) An elevator operator.
- (e) A clerk selling cigars or tobacco.
- (f) A hotel messenger.
- (g) A cabaret performer.
- (h) In shooting galleries, penny arcades, bowling alleys.
- (i) A public messenger (i.e., one whose services are available to the public for hire), except that girls 16 and 17 years of age will be permitted as building messengers in buildings within a radius of three blocks from one another.

EMPLOYMENT ENTIRELY PROHIBITED TO MINORS UNDER 16 YEARS OF AGE

Minors under sixteen (16) years of age shall not be permitted to operate machinery in connection with processing or manufacturing plants.

EMPLOYMENTS PROHIBITED TO MINORS UNDER 14 YEARS OF AGE

Minors under fourteen (14) years of age shall not be employed in the following occupations unless such employment is specifically authorized by a permit issued by a Judge of the Superior Court of the State of Washington:

- (a) In stock room work in warehouses.
- (b) As clerks in mercantile establishments.
- (c) In offices as errand or office maintenance workers.
- (d) In cafes as bus boys or dishwashers or helpers.
- (e) As service station attendants.
- (f) In other occupations which the Industrial Welfare Committee, after due notice and hearing, shall have determined to be hazardous or detrimental to the welfare of the minor.

EMPLOYMENT OF MINORS 14 TO 18 YEARS OF AGE

Minors 14 to 18 years of age may be employed in any occupation or industry except where such employment is expressly prohibited by this Order or by statute of the State of Washington, provided that all the conditions and requirements of this Order are complied with.

WORKING CONDITIONS

(1) All places where minors are employed shall be maintained in a safe and sanitary condition. The requirements for safety, sanitation and first aid shall be in conformity with the safety standards, rules and regulations as adopted by the Division of Safety of the Department of Labor and Industries.

(2) Every room in which minors are employed shall be adequately heated and ventilated, and supplied with adequate natural or artificial light in accordance with the General Safety Standards of the Department of Labor and Industries.

(3) Each such room shall be provided with a smooth, tight floor, which can be kept clean and sanitary. Where wet processes are employed, the floors must be adequately drained so that there will be no unreasonable depth of liquid at any point. Where floors are wet, wooden racks or grating of an adequate height shall be provided at such points.

(4) Toilet rooms shall be provided for women and female minors sufficiently separated and isolated to insure privacy, which rooms shall be maintained in a sanitary condition, adequately lighted, heated and ventilated. A sufficient number of wash bowls or sink space shall be located either within the toilet room or adjacent to the toilet room. Any wash bowls or sinks not so located shall be installed in an approved location. Sufficient soap and either individual or paper towels shall be provided.

(5) Employers shall provide for adequate keeping of employee's outer clothing during working hours, and for their work clothes during non-working hours. When the occupation requires a change of clothing, a suitable space adequately heated shall be provided where employees may make such change in privacy.

(6) (a) A suitable rest room for women and female minors shall be provided, and shall be properly ventilated and heated. (b) An adequate cloak room shall be provided. (c) An adequate lunch room furnished with tables and chairs, and facilities for heating water shall be provided: *Provided, however,* that where less than ten (10) women and female minors are regularly employed, the Supervisor of Women and Minors in Industry, upon application and showing, may permit a modified compliance with the foregoing part of this section or any part of the same.

(7) No female minor shall be required or permitted to lift or carry an excessive weight.

(8) No female minor shall be knowingly employed for a period of four weeks before confinement for pregnancy or four weeks thereafter.

RECORDS

Records showing the name of minors employed, dates of employment, wages paid and the hours worked by them, shall be kept by the Employer and available for inspection by the representatives of the Industrial Welfare Committee of the State Department of Labor and Industries at all reasonable times.

POSTING OF ORDER

The Employer shall post a copy of this Order in all places where minor workers are employed.

SEPARABILITY

If the application of any provision of this Order, or any section, subsection, subdivision, sentence, clause, phrase, word or portion of this Order shall be held invalid or unconstitutional, the remaining provisions thereof shall not be affected thereby but shall continue to be given full force and effect as if the part so held invalid or unconstitutional had not been included therein.

PENALTIES

The Supervisor of Women and Minors in Industry shall investigate the complaint of any individual alleging that this Order has been violated. Any person employing a minor in violation of this Order shall upon conviction thereof be punished in accordance with the applicable laws of the State of Washington, Rem. Rev. Stat., Section 7636, now states as follows: "Any person employing a woman or minor for whom a minimum wage or standard conditions of labor have been specified, at less than said minimum wage, or under conditions of labor prohibited by order of the Commission; or violating any other of the provisions of this Act, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be punished by a fine of not less than Twenty-Five Dollars (\$25.00) nor more than One Hundred Dollars (\$100.00)."

EFFECTIVE DATE

Order No. 42 enacted AUGUST 15, 1942, is hereby vacated as of the date this Order No. 49 becomes effective.

This Order No. 49 becomes effective July 10, 1950.

INDUSTRIAL WELFARE COMMITTEE FOR THE STATE OF WASHINGTON

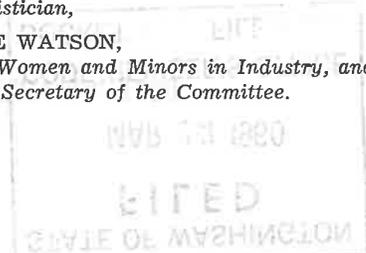
A. M. JOHNSON,
Director and Chairman of the Committee,

JOHN SHAUGHNESSY,
Supervisor of Industrial Insurance,

FRED W. SMITH,
Supervisor of Industrial Relations,

EDITH L. NORMAN,
Industrial Statistician,

ISABELLE NOBLE WATSON,
*Supervisor of Women and Minors in Industry, and
Executive Secretary of the Committee.*



APPENDIX C

the exemption or his or her spouse during the previous year for the treatment or care of either person in a nursing home.

(6) "Disposable income" means adjusted gross income as defined in the federal internal revenue code, as amended prior to January 1, ((1986)) 1989, or such subsequent date as the director may provide by rule consistent with the purpose of this section, plus all of the following items to the extent they are not included in or have been deducted from adjusted gross income:

- (a) Capital gains;
- (b) Amounts deducted for loss;
- (c) Amounts deducted for depreciation;
- (d) Pension and annuity receipts;
- (e) Military pay and benefits other than attendant-care and medical-aid payments;
- (f) Veterans benefits other than attendant-care and medical-aid payments;
- (g) Federal social security act and railroad retirement benefits;
- (h) Dividend receipts; and
- (i) Interest received on state and municipal bonds.

(7) "Cotenant" means a person who resides with the person claiming the exemption and who has an ownership interest in the residence.

NEW SECTION. Sec. 7. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 8. This act shall take effect April 1, 1990, and shall be effective for taxes levied for collection in 1991 and thereafter.

- Passed the House April 21, 1989.
- Passed the Senate April 14, 1989.
- Approved by the Governor May 13, 1989.
- Filed in Office of Secretary of State May 13, 1989.

CHAPTER 380

[House Bill No. 2222]

AGRICULTURE—PESTICIDE REGULATION AND UNEMPLOYMENT AND WORKERS' COMPENSATION COVERAGE FOR AGRICULTURAL EMPLOYEES

AN ACT Relating to state regulatory programs; amending RCW 15.58.030, 15.58.040, 15.58.050, 15.58.060, 15.58.065, 15.58.070, 15.58.080, 15.58.110, 15.58.120, 15.58.130, 15.58.150, 15.58.160, 15.58.170, 15.58.180, 15.58.200, 15.58.210, 15.58.220, 15.58.230, 15.58.240, 15.58.250, 15.58.260, 15.58.280, 15.58.290, 15.58.330, 15.58.335, 15.58.340, 15.58.910, 17.21.020, 17.21.030, 17.21.040, 17.21.050, 17.21.070, 17.21.080, 17.21.100, 17.21.110, 17.21.122, 17.21.126, 17.21.129, 17.21.130, 17.21.140, 17.21.150, 17.21.160, 17.21.180, 17.21.190, 17.21.200, 17.21.220, 17.21.230, 17.21.240, 17.21.250, 17.21.260, 17.21.270, 17.21.280, 17.21.290, 17.21.315, 17.21.320, 17.21.910, 70.104.030, 50.04.150, 50.29.025, 50.20.100, and 50.29.062; adding new sections to chapter 15.58 RCW; adding new sections to chapter 17.21 RCW; adding new sections to chapter 49.70 RCW; adding new sections to chapter 70.104 RCW; adding

a new chapter to Title 49 RCW; creating new sections; repealing RCW 15.58.190, 15.58.930, 17.21.090, 17.21.120, 17.21.124, and 17.21.205; prescribing penalties; and providing effective dates.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. Section 3, chapter 190, Laws of 1971 ex. sess. as last amended by section 26, chapter 182, Laws of 1982 and RCW 15.58.030 are each amended to read as follows:

As used in this chapter the words and phrases defined in this section shall have the meanings indicated unless the context clearly requires otherwise.

- (1) ("Pesticide" means, but is not limited to: (a) Any substance or mixture of substances intended to prevent, destroy, control, repel, or mitigate any insect, rodent, nematode, mollusk, fungus, weed and any other form of plant or animal life or virus (except virus on or in living man or other animal) which is normally considered to be a pest or which the director may declare to be a pest; (b) any substance or mixture of substances intended to be used as a plant regulator, defoliant or desiccant; (c) any substance or mixture of substances intended to be used as a spray adjuvant; and (d) any other substances intended for such use as may be named by the director by regulation.
- (2) "Device" means any instrument or contrivance intended to trap, destroy, control, repel, or mitigate pests including devices used in conjunction with pesticides such as lindane vaporizers.
- (3) "Insecticide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any insect, other arthropod, or mollusk pest.
- (4) "Fungicide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any fungi.
- (5) "Rodenticide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate rodents or any other vertebrate animal which the director may declare by regulation to be a pest.
- (6) "Herbicide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any weed, including algae and other aquatic weeds.
- (7) "Nematocide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate nematodes.
- (8) "Plant regulator" means any substance or mixture of substances intended through physiological action, to accelerate or retard the rate of growth or maturation, or to otherwise alter the behavior of ornamental or crop plants but shall not include substances insofar as they are intended to be used as plant nutrients, trace elements, nutritional chemicals, plant inoculants, or soil amendments.

forms shall be accessible and available for copying and shall be stored in a location suitable to preserve their physical integrity. The employer shall maintain and preserve the forms required under this section for no less than seven years. The records shall include an estimation of the total amount of each pesticide listed on the forms.

(5) After the effective date of this section, if an employer has failed to maintain and preserve the forms as required, the employer shall be subject to any applicable penalties authorized under this chapter or chapter 49.17 RCW.

(6) If activities for which forms are maintained cease at a workplace, the forms shall be filed with the department. If an employer subject to this section is succeeded or replaced in that function by another person, the person who succeeds or replaces the employer shall retain the forms as required by this section but is not liable for violations committed by the former employer under this chapter or rules adopted under this chapter, including violations relating to the retention and preservation of forms.

(7) The employer shall provide copies of the forms, on request, to an employee or the employee's designated representative in the case of an industrial insurance claim filed under Title 51 RCW with the department of labor and industries, treating medical personnel, the pesticide incident reporting and tracking review panel, or department representative. The designated representative or treating medical personnel are not required to identify the employee represented or treated. The department shall keep the name of any affected employee confidential in accordance with RCW 49.17.080(1). If an employee, a designated representative, treating medical personnel, or the pesticide incident reporting and tracking review panel requests a copy of a form and the employer refuses to provide a copy, the requester shall notify the department of the request and the employer's refusal. Within seven working days, the department shall request that the employer provide the department with all pertinent copies, except that in a medical emergency the request shall be made within two working days. The employer shall provide copies of the form to the department within twenty-four hours after the department's request.

(8) The department of labor and industries and the department of agriculture shall jointly adopt, by rule, one form that satisfies the information requirements of this section and RCW 17.21.100. Records kept by the employer on the prescribed form under RCW 17.21.100 may be used to comply with the workplace pesticide list information requirements under this section.

Sec. 78. Section 16, chapter 35, Laws of 1945 as last amended by section 2, chapter 292, Laws of 1977 ex. sess. and RCW 50.04.150 are each amended to read as follows:

Except as otherwise provided in RCW 50.04.155, the term "employment" shall not include service performed in agricultural labor (except as

~~otherwise provided in RCW 50.04.155~~) by individuals who are enrolled as students and regularly attending classes, or are between two successive academic years or terms, at an elementary school, a secondary school, or an institution of higher education as defined in RCW 50.44.037 and in the case of corporate farms not covered under RCW 50.04.155, the provisions regarding family employment in RCW 50.04.180 shall apply.

Agricultural labor is defined as services performed:

(1) On a farm, in the employ of any person, in connection with the cultivation of the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wild life, or in the employ of the owner or tenant or other operator of a farm in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment; or

(2) In packing, packaging, grading, storing, or delivering to storage, or to market or to a carrier for transportation to market, any agricultural or horticultural commodity; but only if such service is performed as an incident to ordinary farming operations. The exclusions from the term "employment" provided in this paragraph shall not be deemed to be applicable with respect to commercial packing houses, commercial storage establishments, commercial canning, commercial freezing, or any other commercial processing or with respect to services performed in connection with the cultivation, raising, harvesting and processing of oysters or raising and harvesting of mushrooms or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.

Sec. 79. Section 5, chapter 205, Laws of 1984 as last amended by section 3, chapter 171, Laws of 1987 and RCW 50.29.025 are each amended to read as follows:

The contribution rate for each employer shall be determined under this section.

(1) A fund balance ratio shall be determined by dividing the balance in the unemployment compensation fund as of the June 30th immediately preceding the rate year by the total remuneration paid by all employers subject to contributions during the second calendar year preceding the rate year and reported to the department by the following March 31st. The division shall be carried to the fourth decimal place with the remaining fraction, if any, disregarded. The fund balance ratio shall be expressed as a percentage.

(2) The interval of the fund balance ratio, expressed as a percentage, shall determine which tax schedule in subsection (5) of this section shall be in effect for assigning tax rates for the rate year. The intervals for determining the effective tax schedule shall be:

Interval of the Fund Balance Ratio Expressed as a Percentage

3.40 and above	A
2.90 to 3.39	B
2.40 to 2.89	C
1.90 to 2.39	D
1.40 to 1.89	E
Less than 1.40	F

(3) An array shall be prepared, listing all qualified employers in ascending order of their benefit ratios. The array shall show for each qualified employer: (a) Identification number; (b) benefit ratio; (c) taxable payrolls for the four calendar quarters immediately preceding the computation date and reported to the department by the cut-off date; (d) a cumulative total of taxable payrolls consisting of the employer's taxable payroll plus the taxable payrolls of all other employers preceding him or her in the array; and (e) the percentage equivalent of the cumulative total of taxable payrolls.

(4) Each employer in the array shall be assigned to one of twenty rate classes according to the percentage intervals of cumulative taxable payrolls set forth in subsection (5) of this section: PROVIDED, That if an employer's taxable payroll falls within two or more rate classes, the employer and any other employer with the same benefit ratio shall be assigned to the lowest rate class which includes any portion of the employer's taxable payroll.

(5) The contribution rate for each employer in the array shall be the rate specified in the following table for the rate class to which he or she has been assigned, as determined under subsection (4) of this section, within the tax schedule which is to be in effect during the rate year:

Percent of Cumulative Taxable Payrolls		Schedule of Contribution Rates for Effective Tax Schedule						
From	To	Class	A	B	C	D	E	F
0.00	5.00	1	0.48	0.58	0.98	1.48	1.88	2.48
5.01	10.00	2	0.48	0.78	1.18	1.68	2.08	2.68
10.01	15.00	3	0.58	0.98	1.38	1.78	2.28	2.88
15.01	20.00	4	0.78	1.18	1.58	1.98	2.48	3.08
20.01	25.00	5	0.98	1.38	1.78	2.18	2.68	3.18
25.01	30.00	6	1.18	1.58	1.98	2.38	2.78	3.28
30.01	35.00	7	1.38	1.78	2.18	2.58	2.98	3.38
35.01	40.00	8	1.58	1.98	2.38	2.78	3.18	3.58
40.01	45.00	9	1.78	2.18	2.58	2.98	3.38	3.78

45.01	50.00	10	1.98	2.38	2.78	3.18	3.58	3.98
50.01	55.00	11	2.28	2.58	2.98	3.38	3.78	4.08
55.01	60.00	12	2.48	2.78	3.18	3.58	3.98	4.28
60.01	65.00	13	2.68	2.98	3.38	3.78	4.18	4.48
65.01	70.00	14	2.88	3.18	3.58	3.98	4.38	4.68
70.01	75.00	15	3.08	3.38	3.78	4.18	4.58	4.78
75.01	80.00	16	3.28	3.58	3.98	4.38	4.68	4.88
80.01	85.00	17	3.48	3.78	4.18	4.58	4.88	4.98
85.01	90.00	18	3.88	4.18	4.58	4.88	4.98	5.18
90.01	95.00	19	4.28	4.58	4.98	5.08	5.18	5.38
95.01	100.00	20	5.40	5.40	5.40	5.40	5.40	5.40

(6) The contribution rate for each employer not qualified to be in the array shall be ~~((a rate equal to the average industry tax rate as determined by the commissioner, however, the rate may not be less than one percent: PROVIDED, That))~~ as follows:

(a) Employers who do not meet the definition of "qualified employer" by reason of failure to pay contributions when due shall be assigned the contribution rate of five and four-tenths percent;

(b) The contribution rate for employers exempt as of December 31, 1989, who are newly covered under the section 78, chapter . . . , Laws of 1989, (section 78 of this act) amendment to RCW 50.04.150 and not yet qualified to be in the array shall be 2.5 percent for employers whose standard industrial code is "016", "017", "018", "021", or "081"; and

(c) For all other employers not qualified to be in the array, the contribution rate shall be a rate equal to the average industry rate as determined by the commissioner; however, the rate may not be less than one percent. Assignment of employers by the commissioner to industrial classification, for purposes of this subsection, shall be in accordance with established classification practices found in the "Standard Industrial Classification Manual" issued by the federal office of management and budget to the third digit provided in the Standard Industrial Classification code.

Sec. 80. Section 78, chapter 35, Laws of 1945 as last amended by section 6, chapter 33, Laws of 1977 ex. sess. and RCW 50.20.100 are each amended to read as follows:

Suitable work for an individual is employment in an occupation in keeping with the individual's prior work experience, education, or training and if the individual has no prior work experience, special education, or training for employment available in the general area, then employment which the individual would have the physical and mental ability to perform, and for individuals with base year work experience in agricultural labor, any agricultural labor available from any employer shall be deemed suitable unless it meets the conditions in RCW 50.20.110 or the commissioner finds elements of specific work opportunity unsuitable for a particular individual.

In determining whether work is suitable for an individual, the commissioner shall also consider the degree of risk involved to the individual's health, safety, and morals, the individual's physical fitness, the individual's length of unemployment and prospects for securing local work in the individual's customary occupation, the distance of the available work from the individual's residence, and such other factors as the commissioner may deem pertinent, including state and national emergencies.

Sec. 81. Section 6, chapter 205, Laws of 1984 and RCW 50.29.062 are each amended to read as follows:

Predecessor and successor employer contribution rates shall be computed in the following manner:

(1) If the successor is an employer at the time of the transfer, his or her contribution rate shall remain unchanged for the remainder of the rate year in which the transfer occurs. From and after January 1 following the transfer, the successor's contribution rate for each rate year shall be based on his or her experience with payrolls and benefits including the experience of the acquired business or portion of a business from the date of transfer, as of the regular computation date for that rate year.

(2) If the successor is not an employer at the time of the transfer, he or she shall pay contributions at the rate class assigned to the predecessor employer at the time of the transfer for the remainder for that rate year and continuing until such time as he or she qualifies for a different rate in his or her own right.

(3) If the successor is not an employer at the time of the transfer and simultaneously acquires the business or a portion of the business of two or more employers in different rate classes, his or her rate from the date the transfer occurred until the end of that rate year and until he or she qualifies in his or her own right for a new rate, shall be the highest rate class applicable at the time of the acquisition to any predecessor employer who is a party to the acquisition.

(4) The contribution rate on any payroll retained by a predecessor employer shall remain unchanged for the remainder of the rate year in which the transfer occurs.

(5) In all cases, from and after January 1 following the transfer, the predecessor's contribution rate for each rate year shall be based on his or her experience with payrolls and benefits as of the regular computation date for that rate year including the experience of the acquired business or portion of business up to the date of transfer: PROVIDED, That if all of the predecessor's business is transferred to a successor or successors, the predecessor shall not be a qualified employer until he or she satisfies the requirements of a "qualified employer" as set forth in RCW 50.29.010.

NEW SECTION. Sec. 82. (1) It is the intent of the legislature that the department assist agricultural employers in mitigating the costs of the state's unemployment insurance program. The department shall work with

members of the agricultural community to: Improve understanding of the program's operation; increase compliance with work-search requirements; provide prompt notification of potential claims against an employer's experience rating; inform employers of their rights; inform employers of the actions necessary to appeal a claim and to protect their rights; and reduce claimant and employer fraud. These efforts shall include:

- (a) Conducting employer workshops and community seminars;
- (b) Developing new educational materials; and
- (c) Developing forms that use lay language.

(2) The employment security department, the department of labor and industries, the department of licensing, and the department of revenue shall develop a plan to implement voluntary combined reporting for agricultural employers by January 1, 1991. The departments shall submit the plan to the legislature by January 10, 1990, and include recommendations for legislation necessary to standardize and simplify statutory coverage and other requirements. Such standardization shall be as consistent with federal requirements as possible.

The departments shall consult with representatives of agricultural employer and labor associations and general business associations in the development of the plan and legislation. The departments shall ensure that they accommodate the needs of small agricultural employers in particular.

(3) The department shall report to the appropriate standing committees of the legislature by January 10, 1990, 1991, and 1992 and include a description of the activities of the department to carry out the intents of this section and provide quantitative data where possible on the effectiveness of the activities undertaken by the department to comply with the intents of this section during the previous calendar year.

NEW SECTION. Sec. 83. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Agricultural employment" or "employment" means employment in agricultural labor as defined in RCW 50.04.150.

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

(3) "Employer" means any person, firm, corporation, partnership, business trust, legal representative, or other business entity that engages in any agricultural activity in this state and employs one or more employees.

(4) "Employee" means a person employed in agricultural employment, and includes a person who is working under an independent contract the essence of which is personal labor in agricultural employment whether by way of manual labor or otherwise. However, "employee" shall not include immediate family members of the officers of any corporation, partnership, sole proprietorship, or other business entity, or officers of any closely held corporation engaged in agricultural production of crops or livestock.

(5) "Minor" means an employee who is under the age of eighteen years.

NEW SECTION. Sec. 84. (1) Each employer required to keep employment records under RCW 49.46.070, shall retain such records for three years.

(2) Each employer shall furnish to each employee at the time the employee's wages are paid an itemized statement showing the pay basis in hours or days worked, the rate or rates of pay, the gross pay, and all deductions from the pay for the respective pay period.

NEW SECTION. Sec. 85. The department shall establish an advisory committee on agricultural labor to develop recommendations for rules to provide labor standards for agricultural employment of minors. The advisory committee shall be composed of: A representative of the department of labor and industries; a representative of the department of agriculture; representatives of the agricultural employer and employee communities; and one legislator from each caucus of the house of representatives and the senate, to be appointed by the speaker of the house of representatives and president of the senate, respectively.

Based upon the recommendations of the advisory committee and considerations as to the nature of agricultural employment and usual crop cultural and harvest requirements, the director shall adopt rules under chapter 34.05 RCW which only address the following:

(1) The employment of minors, providing for annual notification to the department of intent to hire minors, and including provisions that both encourage school attendance and provide flexible hours that will meet the requirements of agricultural employment; and

(2) The provision of rest and meal periods for agricultural employees, taking into account naturally occurring work breaks where possible. The initial rules shall be adopted no later than July 1, 1990.

NEW SECTION. Sec. 86. Any violation of the provisions of this chapter or rules adopted hereunder shall be a class I civil infraction. The director shall have the authority to issue and enforce civil infractions according to chapter 7.80 RCW.

NEW SECTION. Sec. 87. Sections 83 through 86 of this act shall constitute a new chapter in Title 49 RCW.

NEW SECTION. Sec. 88. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 89. If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder

of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state.

NEW SECTION. Sec. 90. Sections 69 and 71 through 73 of this act shall take effect on January 1, 1990.

NEW SECTION. Sec. 91. Sections 78 through 81 of this act shall take effect on January 1, 1990.

NEW SECTION. Sec. 92. Section 76 of this act shall take effect on July 1, 1990.

Passed the House April 23, 1989.

Passed the Senate April 23, 1989.

Approved by the Governor May 13, 1989.

Filed in Office of Secretary of State May 13, 1989.

CHAPTER 381

[Substitute House Bill No. 1133]

CHILD CARE FACILITIES DEVELOPMENT—EMPLOYER INVOLVEMENT

AN ACT Relating to encouraging employer involvement in child care facilities development and services; amending RCW 74.13.085 and 74.13.090; adding new sections to chapter 74.13 RCW; creating a new section; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature finds that the increasing difficulty of balancing work life and family needs for parents in the workforce has made the availability of quality, affordable child care a critical concern for the state and its citizens. The prospect for labor shortages resulting from the aging of the population and the importance of the quality of the workforce to the competitiveness of Washington businesses make the availability of quality child care an important concern for the state and its businesses.

The legislature further finds that making information on child care options available to businesses can help the market for child care adjust to the needs of businesses and working families. The legislature further finds that investments are necessary to promote partnerships between the public and private sectors, educational institutions, and local governments to increase the supply, affordability, and quality of child care in the state.

Sec. 2. Section 1, chapter 213, Laws of 1988 and RCW 74.13.085 are each amended to read as follows:

It shall be the policy of the state of Washington to:

(1) Recognize the family as the most important social and economic unit of society and support the central role parents play in child rearing. All parents are encouraged to care for and nurture their children through the traditional methods of parental care at home. However, ~~((to the extent child care services are used,))~~ there has been a dramatic increase in participation

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