

Domestic Workers Work Group Session

May 24, 2022



Agenda

- Welcome and update – Maggie Leland
- Review Action Items from Last Meeting
- Outreach Campaigns
- Possible Recommendations
- Other Things to Consider
- Process for Recommendations and Report
- Session Recap

Legislative direction

2021-23 biennial budget created work group to:

- Investigate how to make it easier for employers to provide workers' comp coverage for domestic workers.
- Recommend legislative, regulatory or other changes.
- Explore possible role of nonprofit organizations that assist and refer domestic workers and day laborers.

Action Items from March Meeting

- Survey relaunched
 - Relaunched March 31
- Time loss/wages and pandemic
 - Based on wages at time of injury
 - Typically look back 3 months to establish a pattern
 - If a pattern can not be established, we can look back up to 12 months
- Claims retaliation
- Barriers for homeowners and domestic workers
- Outreach campaigns

Claims Retaliation

- How would this process work with a domestic worker who filed a workers compensation claim, if a covered worker?
 - A claim would need to be filed within 90 days of the discriminatory act
 - The discriminatory act would need to be in connection to a workplace injury or L&I claim
 - The agency reviews discrimination based on the specifics of each case

Outreach Campaign - Examples

- SB 5761 (requiring all employers of 15 or more to post salary info in job postings)
 - Awareness campaign:
 - Online advertising, paid social media, targeted print advertising to employers
 - Direct mail: Awareness and reminder letters to employers
 - News releases, agency social media to registered employers and potential employees: No additional cost.

Outreach Campaign - Examples

continued

- Agricultural overtime, ESSB 5172, passed in 2021 session (this affected an estimated 275k workers and 7-10k employers)
 - Spending: Paid social media ads, boosted social media posts, radio, online advertising, paid radio interviews.
- “Executive, Administrative & Professional” overtime rule change, L&I rulemaking, approved in December 2019
- Spending: Extensive online ad campaign, paid social media advertising, boosted social media posts, insert card in worker’s comp mailing

Outreach Campaign - Examples

continued

- 2019 Established the Small Business Outreach Grants
 - L&I contracts with employer-trusted organization to help inform their members and constituents about L&I requirements, resources and services
 - Legislature has provided funding through budget provisos, authorizing the use spending on these funds

Current Law

RCW 51.12.020

- (1) Any person employed as a domestic servant in a private home by an employer who has less than two employees regularly employed 40 or more hours a week in such employment.
- (2) Any person employed to do gardening, maintenance, or repair, in or about the private home of the employer. For the purposes of this subsection, “maintenance” means the work of keeping in proper condition, “repair” means to restore to sound condition after damage, and “private home” means a person’s place of residence.

Possible Recommendations

1. Remove the exemptions in RCW 51.12.020

- (1) Any person employed as a domestic servant in a private home by an employer who has less than two employees regularly employed forty or more hours a week in such employment.

and/or

- (2) Any person employed to do gardening, maintenance, or repair, in or about the private home of the employer. For the purposes of this subsection, "maintenance" means the work of keeping in proper condition, "repair" means to restore to sound condition after damage, and "private home" means a person's place of residence.

Possible Recommendations

continued

2. Amend RCW 51.12.020 (1)*

a) Domestic Workers

- Lower requirement for the minimum hours worked.
- Currently regularly 40 hours per week.
- Lower requirement for minimum two or more employees.

b) Day laborers

- Establish a threshold similar to domestic workers

3. Other recommendations?

*Based on current policy definition, will only impact domestic workers, not day laborers.

Other Things to Consider

- Create statutory definition for domestic workers.
 - Include day laborers
- Range of people working for homeowners
 - Ex: neighbor kid mowing lawn
- Relevant Statutes (see supplemental document)
- Household employer barriers
- Worker barriers
- L&I barriers
- Role of Intermediary Non-Profit Organizations
 - CDE example

Barriers for Homeowners & Domestic Workers

Households	Workers
<ul style="list-style-type: none">▪ Need a UBI (DOR & L&I registration)▪ Quarterly reporting/zero reporting▪ Tracking of hours▪ Need to know what work will be done beforehand (day laborers)▪ Knowledge of workers compensation laws	<ul style="list-style-type: none">▪ Personal labor and independent-contractor tests▪ Wage determination<ul style="list-style-type: none">– All employers– How easily would a worker be able to provide the necessary information?▪ Fear of retaliation/distrust in government▪ Knowledge of rights

L&I Barriers

- Fund solvency
 - Ensure premiums collected cover the cost of claims
- Statutory limitations
 - See Relevant Statutes Document
- Process & technological changes
- Enforcement/audit
 - Challenges identifying impacted homeowners
- Outreach

Role of Intermediary Non-Profit Organizations

- Consumer Directed Employer (CDE) – Home Care Aides
 - Legal employer of the Individual Provider (IP) for certain purposes, including:
 - withholding, filing and paying income and employment taxes including compensation premiums and unemployment taxes
 - providing other administrative and employment-related supports
 - setting wages and benefits for individual providers
 - Rates include labor (wages, benefits, and any associated taxes) and administrative rates
 - primary right to select, dismiss, assign hours and supervise the work
 - Required to have a statewide presence.
 - If IP is funded by Medicaid, they must be part of the CDE.
- What are the options for intermediary non-profits to facilitate workers compensation coverage?

Process for Recommendations and Report

- Will include introductory summary of existing law.
- Recommendations from the work group
 - L&I would provide guidance on effects of ideas offered during meetings.
- Testimonials will be used to support the recommendations provided by work group.
 - Data from survey results may be used as supplemental information.
- Key dates
 - Final recommendations collected at July 26 session.
 - Report due to Governor's Office by Nov. 4.

Session Recap

- Identify decisions, action items.
- Capture “parking lot” items for future sessions.
- Confirm next steps.

Questions?

Future agenda items?

Additional Resources

L&I legislative website

- <https://lni.wa.gov/agency/legislature>
- Domestic Workers Workgroup* DWW schedule (2021/2022)
 - Meeting materials
 - Agendas with log-on information

L&I point of contact

- Email questions/comments to Cheryl Mills at cheryl.mills@lni.wa.gov

*Under Workgroup tab on right of website.

thank you!

Casual Labor

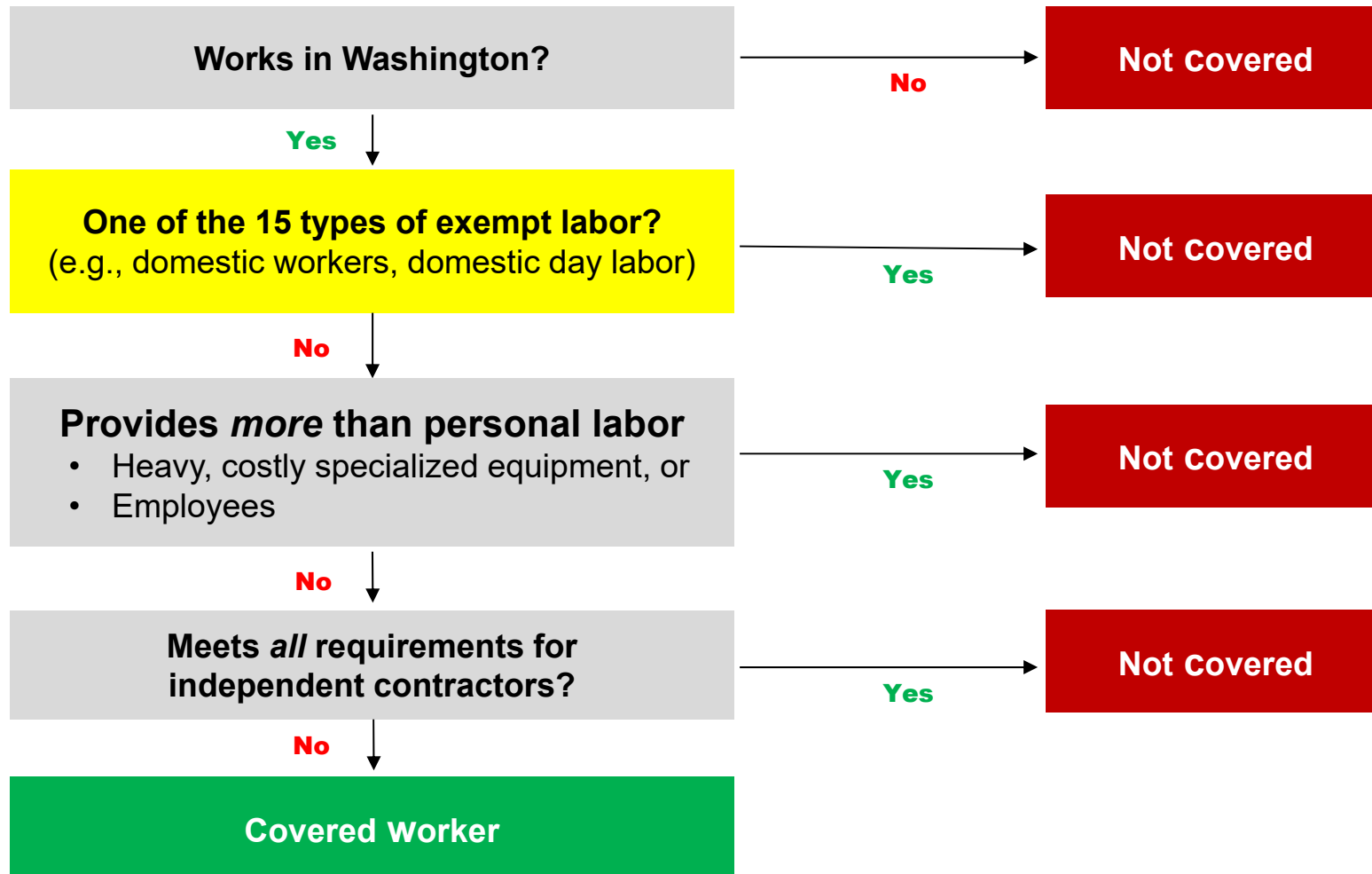
- Seattle Ordinance Definition of “Domestic Worker” does not include any individual who is:
 - Working on a casual basis.
 - Casual refers to work that is:
 - 1) irregular, uncertain, or incidental in nature and duration, and
 - 2) different in nature from the type of paid work in which the worker is customarily engaged in.
- WA Minimum Wage Act does not apply to any individual “employed in casual labor in or about a private home”
 - Determined based on the scope, duration and continuity of employment

Scenarios: Who is a covered worker?

Scenario	Coverage requirements/options
1. If homeowner hires a business to provide domestic or household workers...	Business (not homeowner) must provide workers' comp coverage for the workers.
2. If a domestic worker operates as a business owner...	Worker <i>may elect</i> to purchase coverage for self, but <i>must</i> cover any employees.
3. If a homeowner directly hires domestic help (fewer than 2 full-time)...	Homeowner is not required to provide workers' comp coverage, but may elect to do so. The worker cannot choose to cover him/herself.

Independent Contractor Test

Which workers covered by workers' comp?



DW Relevant Statutes

- Personal Labor Test
 - RCW 51.08.180
- Employment Security Department
 - RCW 50.04.160

Personal Labor Test – RCW 51.08.180

"Worker" means every person in this state who is engaged in the employment of an employer under this title, whether by way of manual labor or otherwise in the course of his or her employment; also every person in this state who is engaged in the employment of or who is working under an independent contract, the essence of which is his or her personal labor for an employer under this title, whether by way of manual labor or otherwise, in the course of his or her employment, or as an exception to the definition of worker, a person is not a worker if he or she meets the tests set forth in subsections (1) through (6) of RCW 51.08.195 or the separate tests set forth in RCW 51.08.181 for work performed that requires registration under chapter 18.27 RCW or licensing under chapter 19.28 RCW: PROVIDED, That a person is not a worker for the purpose of this title, with respect to his or her activities attendant to operating a truck which he or she owns, and which is leased to a common or contract carrier.

Independent-Contractor tests

Must meet all 6 (or 7) provisions

1. Free from control or direction by the hiring entity.
2. Contractor's business must be separate and different from the hiring entity's.
3. The individual is customarily engaged in an independently established trade, occupation, profession, or business, of the same nature as that involved in the contract of service.
4. Responsible for filing schedule of expenses with IRS tax returns.
5. Properly registered/licensed with state agencies (e.g., DOR).
6. Maintains separate income/expense records for the business.
7. ***For construction contractors only:*** Possesses valid contractor registration or electrical contractor license.

Workgroup members

10-member work group, appointed by governor

Worker Representatives	Employer Representatives
Directly affected domestic workers (2) <ul style="list-style-type: none">• Silvia Gonzalez• Kasey Bowen	Employers of domestic workers (2) <ul style="list-style-type: none">• Puja Dhawan, Care for All with Respect & Equity• TBD
Directly affected day laborers (2) <ul style="list-style-type: none">• Fred DuBon• TBD	Employer of domestic day laborers (1) <ul style="list-style-type: none">• TBD
Unions/worker centers (2) <ul style="list-style-type: none">• Tina Sigurdson, SEIU 775• Joe Kendo, WA State Labor Council	Nonprofit that works with employers (1) <ul style="list-style-type: none">• Dana Barnett, Hand in Hand

Report & recommendations by November 4, 2022

Approved schedule & meeting details

2021	
July 27	10 AM–Noon
September 28	10 AM–Noon
November 30	10 AM–Noon
2022	
January 25	10 AM–Noon
March 29	10 AM–Noon
May 24	10 AM–Noon
July 26	10 AM–Noon
September 27	10 AM–Noon

- Workgroup sessions held via Zoom.
- Log-on information for can be found in the agenda for each meeting as posted on the L&I legislative website.
- Approved by DWW members in August 2021.

Process for Report & Recommendations

- Capture materials, as presented to the work group.
- L&I staff to draft.
- Reviewed by workgroup members.
- Timeline for review TBD.
- Submit to legislature by Nov 4, 2022.
- If there are recommendations L&I can implement, department will take into consideration.