

Labor & Employment Law – 2010 Legislative Session Summary
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The 2010 regular session of the 61st Legislature adjourned *sine die* on March 11, 2010. The first special session of the Legislature convened on March 15, 2010. While any measure not defeated during the regular session is theoretically eligible for consideration during the special session, the acknowledged focus of the special session is on budget and fiscal policy.

One matter remains alive during the special session, and that is a proviso in the proposed supplemental operating budget, Engrossed Substitute Senate Bill 6444, at §§ 205-06, importing a version of union neutrality into the appropriations for the Department of Social and Health Services. The proviso states:

No employer, provider, or entity receiving state funds to provide long-term care services or services to the developmentally disabled may use these funds to assist, promote, or deter union organization.

This language on the use of funds for activity related to union organizing is precisely the prohibition – “assist, promote, or deter union organization” -- that was found pre-empted by the National Labor Relations Act in *United States Chamber of Commerce v. Brown* (2007), the United States Supreme Court decision invalidating identical language in a California statute.

AWB is working during the special session to remove this incipient gag rule from the operating budget. While its scope is limited to two classes of private employers, it would establish a dangerous, and legally dubious, precedent.

An update on this issue will be sent once the special session adjourns. Meanwhile, here is a summary of what passed and what did not pass during the 2010 regular session. A slightly fuller summary of passed bills is provided. The bills are listed roughly in order of priority.

¹ General Counsel and Government Affairs Director, Association of Washington Business. Questions or comments regarding any of the legislation discussed herein may be directed to me at KrisT@AWB.org or (360) 943-1600. AWB legislative positions and priorities may be viewed at <http://www.awb.org/legislativeactioncenter/index.asp>.

What Passed

[Substitute House Bill 3145](#), improving the administration of wage payment act complaints.

Sponsored by Rep. John McCoy, D-Tulalip, this bill amends the 2006 Wage Payment Act by (a) establishing a civil penalty for repeat willful violators of wage payment requirements, (b) tolling the statute of limitations for civil actions during the pendency of an L&I investigation, (c) requiring L&I to provide advance written notice for any extension of the act's 60-day investigation period, (d) providing for successor liability for unpaid wages and penalties, (e) increases minimum penalty amounts, and (f) updates the wage bonding authority of the Department of Labor & Industries. The bill was signed by the Governor on March 12, 2010 and becomes effective June 10, 2010. AWB supported the final, negotiated form of the bill.

[Substitute Senate Bill 5046](#), placing symphony musicians under the jurisdiction of the Public Employment Relations Commission for the purposes of collective bargaining.

This bill, sponsored by Sen. Jeanne Kohl-Welles, D-Seattle, establishes a robust union organizing and collective bargaining statute – including card check recognition of unions -- for employers too small to fall under the jurisdiction of the National Labor Relations Board, which enforces the National Labor Relations Act. These small private sector employers are then placed under the jurisdiction of the state Public Employment Relations Commission which heretofore only had authority to enforce the Public Employees Collective Bargaining Act. While limited in its enacted form to only one industry – small symphony orchestras – organized labor has been clear about its desire to extend this bill to small employers in all industries. The bill was signed by the Governor on March 10, 2010, and becomes effective June 10, 2010. AWB opposed this bill.

[Substitute Senate Bill 6647](#), providing job protection for members of the Civil Air Patrol during emergency service operations.

This bill, sponsored by Sen. Jim Honeyford, R-Sunnyside, amends the volunteer firefighter job protection statute to also include protection for members of the Civil Air Patrol, the civilian auxiliary of the United States Air Force, who are called away from employment during a specified emergency service operation. Employees, under this circumstance, may not be discharged or disciplined because of the absence, lest a complaint be filed with the Department of Labor & Industries who may investigate and order reinstatement and/or withdrawal of discipline. The bill applies to all employers and employees. The bill is expected to be signed by the Governor and become effective June 10, 2010. AWB did not take a position on the bill.

[Substitute Senate Bill 6332](#), concerning human trafficking notifications.

This bill, sponsored by Sen. Jeanne Kohl-Welles, D-Seattle, requires international labor recruitment agencies and domestic employers to provide certain disclosures about workplace rights to foreign workers referred to or hired by a Washington employer. The bill provides a civil cause of action against the employer for failing to provide the required disclosure and directs Labor & Industries to integrate human trafficking information on its required labor law posters. The bill is expected to be signed by the Governor and become effective on June 10, 2010. AWB did not take a position on the bill.

[Substitute Senate Bill 6591](#), revising the procedure for resolving complaints filed with the Human Rights Commission.

This bill, sponsored by Sen. Adam Kline, D-Seattle, allows the Human Rights Commission, in receiving an unfair practice complaint under the Washington Law Against Discrimination to make a finding of no reasonable cause and dismiss the complaint if, upon initial review, the facts stated in the complaint fail to state an unfair practice. Otherwise, Commission staff would proceed to a full investigation of the complaint. The bill is expected to be signed by the Governor and become effective on June 10, 2010. AWB took no position on the bill, but notes that it is a helpful amendment to Commission procedures.

[Engrossed House Bill 2805](#), concerning public works involving off-site prefabricated materials.

This bill, sponsored by Rep. Timm Ormsby, D-Spokane, requires contractors and subcontractors on public works projects estimated to cost over \$1 million to submit information about certain off-site prefabricated items produced outside Washington to the Department of Labor and Industries as a part of the Affidavit of Wages Paid form. The bill is expected to be signed by the Governor and become effective on June 10, 2010. AWB opposed the bill.

[Substitute House Bill 2555](#), authorizing Labor & Industries to issue subpoenas to enforce production of information related to electricians and electrical installations.

This bill, sponsored by Rep. Steve Conway, D-Tacoma, authorizes the Department of Labor and Industries to issue subpoenas to enforce the production and examination of necessary information when there is reason to believe a violation of laws relating to electricians and electrical installations has occurred. The bill was signed by the Governor on March 15, 2010 and becomes effective June 10, 2010. AWB did not take a position on the bill.

[Substitute House Bill 2789](#), authorizing the issuance of subpoenas for purposes of agency investigations of underground economy activity.

This bill, sponsored by Rep. Steve Conway, D-Tacoma, creates a process for the Department of Labor and Industries, the Employment Security Department, and the Department of Revenue to seek judicial approval of a subpoena in advance of its issuance, where judicial approval would be required by Art. I, § 7 of the Washington Constitution (*see State v. Miles*, 160 Wn.2d 236 (2007)). The subject matter of the subpoena would be the agency's investigation of underground economy activity (e.g., failing to register or license appropriately, or pay required taxes such as B&O, workers' compensation, or unemployment insurance premiums). The bill was signed by the Governor on March 12, 2010, and becomes effective on June 10, 2010. AWB did not take a position on the bill.

[Second Substitute Senate Bill 6575](#), concerning the recommendations of the joint legislative task force on the underground economy.

This bill, sponsored by Sen. Jeanne Kohl-Welles, D-Seattle, requires contractors who fail to register with the Department of Labor and Industries to take a training class, in addition to registering, to be eligible for a reduced penalty for a first-time offense; and creates a dedicated account for contractor registration. The bill is expected to be signed by the Governor and become effective on June 10, 2010. AWB did not take a position on the bill.

[Substitute Senate Bill 6349](#), establishing a farm labor internship program.

This bill, sponsored by Sen. Kevin Ranker, D-San Juan Island, requires the Department of Labor and Industries to establish a farm internship pilot project in San Juan and Skagit Counties, sets standards for farm internship programs, exempts services of farm interns from the Minimum Wage Act and from covered employment for purposes of unemployment insurance, and requires the Department to report to the Legislature by December 31, 2011. The bill is expected to be signed by the Governor and become effective on June 10, 2010. AWB did not take a position on the bill (but objected to its funding out of the workers' compensation trust fund until that diversion was remedied by amendment).

[Senate Bill 5798](#), broadening the scope of health care providers who may prescribe medical marijuana.

This bill, sponsored by Sen. Jeanne Kohl-Welles, D-Seattle, expands the providers who may prescribe medical marijuana to eligible patients to include physician assistants, naturopaths, and advanced registered nurse practitioners. Medical marijuana use may affect the workplace when it comes to disability and accommodation issues, including accommodation of off-site use, regulation of workplace impairment from use, and enforcement of a company's drug-free workplace policy despite use. The bill is expected to be signed by the Governor and become effective on June 10, 2010. AWB did not take a position on the bill.

[Substitute Senate Bill 6590](#), addressing the public policy of honesty amongst law enforcement officers.

This bill, sponsored by Sen. Adam Kline, D-Seattle, and in response to *Kitsap County Deputy Sheriff's Guild v. Kitsap County*, 167 Wn.2d 428 (2009) (reversing the county's termination of a deputy sheriff for acts of dishonesty in the absence of a public policy requiring honest in official dealings), establishes and declares a new public policy for the state that all commissioned, appointed, and elected law enforcement personnel be truthful and honest in the conduct of their official duties. The bill is expected to be signed by the Governor and become effective on June 10, 2010. AWB did not take a position on the bill.

[Substitute House Bill 2403](#), concerning military leave for public employees.

This bill, sponsored by Rep. Dawn Morrell, D-Puyallup, clarifies the law governing public employee leaves of absence of military duty in that military leave shall be granted for military duty, training, and drills including state National Guard service, and that employees may only be charged with military leave for days in which the employee was regularly scheduled to work. The bill is expected to be signed by the Governor and become effective on June 10, 2010. AWB did not take a position on the bill.

What Didn't Pass

[Engrossed House Bill 2444](#) – **family leave for educational purposes**. Sponsored by Rep. Brendan Williams, D-Olympia, this bill would have amended the Washington Family Leave Act to provide an additional leave of absence, limited to four hours in a 12-month period, for an employee to participate in a child's educational activities. The provision would apply to all

employers and employees regardless of size, length of service, or number of hours worked, and would turn on the mutual agreement of employer and employee as to scheduling the leave. After passing the House, the bill did not emerge from the Senate.

[Substitute House Bill 2764](#) – **job protection for pandemic flu.** Sponsored by Rep. Steve Conway, D-Tacoma, this bill would have provided job protection to employees who miss work during a period of declared pandemic influenza and who are either suffering from the symptoms of pandemic influenza or are absent to receive medical diagnosis or care for symptoms of pandemic influenza. The bill did not emerge from the House.

[House Bill 2737](#) – **intermittent rest breaks.** Sponsored by Rep. Steve Conway, D-Tacoma and essentially an attack on the use of intermittent rest breaks, this bill would have codified the existing Labor & Industries regulation on meal and rest breaks and then require that, for use of intermittent rest breaks, an employer would have to obtain a waiver from the Department of Labor & Industries indicating that the nature of the work permits intermittent, rather than scheduled, rest breaks. The bill did not emerge from the House.

[Substitute House Bill 1329](#) – **unionizing child care centers.** Sponsored by Rep. Eric Pettigrew, D-Seattle, this bill would have allowed for unionization of the directors and workers of state-subsidized child care centers and collective bargaining with the Governor over, predominately, the level of state subsidy to the care centers. After passing the House, the bill did not emerge from the Senate.

[Engrossed Second Substitute House Bill 3024](#) – **meal and rest breaks in hospitals.** Sponsored by Rep. Steve Conway, D-Tacoma, and essentially an attack on the use of intermittent rest breaks in the hospital setting, this bill would have required uninterrupted meal and rest breaks for hospital employees. After passing the House, the bill did not emerge from the Senate.

[Second Substitute House Bill 3062](#) – **collective bargaining for interpreters.** Sponsored by Rep. Steve Conway, D-Tacoma, this bill would have made the governor the public employer of language access providers (interpreters) who provide services to clients of the state, primarily through agreements with the Department of Social and Health Services. The interpreters, once organized, would then be able to collectively bargain with the Governor on various subjects including economic matters, work rules, training, etc. The bill did not emerge from the House.

[House Bill 2993](#) – **leave for legislators.** Sponsored by Rep. Sam Hunt, D-Olympia, this bill would have provided a leave of absence to employees elected to serve in the state Legislature during the period of a regular or special session. The bill did not emerge from the House.

[House Bill 3139](#) – **training wage.** Sponsored by Rep. Cary Condotta, R-Wenatchee, this bill would have allowed employers, under certain circumstances, to pay a training wage below the state minimum wage to new employees for a specified period of time. The bill did not emerge from the House.

[Senate Bill 6725](#) – **public policy.** Sponsored by Sen. Adam Kline, D-Seattle as an expansive whistleblower protection bill, this bill would have protected employees from retaliation for conduct that promoted public policy by establishing a new cause of action for retaliation separate from the common law tort of wrongful discharge in violation of public policy. The bill did not emerge from the Senate.