

February 24, 2017

The Honorable Mark Schoesler  
Senate Majority Leader  
Washington State Legislature  
PO Box 40409  
Olympia, WA 98504

The Honorable Sharon Nelson  
Senate Democratic Leader  
Washington State Legislature  
PO Box 40434  
Olympia, WA 98504

**RE: Senate Bill 5720**

Dear Senator Schoesler and Senator Nelson:

In its 2015 decision, *Lopez-Demetrio v. Sakuma Brothers Farms*, the state Supreme Court unanimously ruled that agricultural employers in Washington must pay employees for rest breaks separate and apart from piece-rate wage payments. The court also made clear that growers must pay farm workers the piece-rate wage for their rest breaks, not just the minimum wage, and holds any growers that denied pay for rest breaks liable for that back pay.

In 2016, the Dept. of Labor and Industries (LNI) held a series of implementation meetings with agricultural employers, farm workers, labor and business, and workers' rights advocates to implement the unanimous Supreme Court ruling. After several months of in person discussion, ample and transparent comment period, policy ES.C.6.2, administrative policy (and procedure) for meal and rest break calculation for agricultural workers, was made final August 2016.

For employers who take full advantage of Senate Bill 5720's safe harbor provisions, the new law would deny farm workers their right to recover in court the full amount of their unpaid wages, including unpaid or miscalculated rest breaks. Adding insult to injury, SB 5720 would allow employers to avoid responsibility for payment of wages for work performed outside production. The undersigned organizations write to express strong opposition to SB 5720, a bill that amounts to legislated wage theft.

**SB 5720 was drafted to provide special immunity to agricultural employers that refuse to pay for all hours worked by their low-wage workers.** Agricultural workers, who are often paid by piece-rate, filed lawsuits against their employers to recover unpaid wages for hours they worked outside of their piece rate work. SB 5720 is the employer response.

**SB 5720 attempts allow employers to avoid paying their piece rate employees for time worked outside of piece-rate work.** While this issue is currently on appeal before the WA Supreme Court, the workers are confident they will receive a similar ruling as achieved in *Lopez-Demetrio* (the rest-break case). SB 5720 seeks to give employers immunity from such a ruling that would result in piece-rate workers being denied payment for work on required tasks such as:

- Attending mandatory safety meetings;
- Waiting for equipment to be delivered;
- Putting on safety equipment before or after piece-rate work;
- Traveling 30 minutes between orchard blocks during the work day;
- Carrying a ladder 100 yards or more to a company trailer so that it can be transported to the next orchard block.

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**SB 5720 does nothing to ensure piece-rate workers are paid for rest breaks or work outside production in the future.** The bill sets no requirements that piece-rate farm workers be fairly paid going forward. It just creates a way for agricultural employers to trigger a “safe harbor” that protects them from lawsuits for failing to pay for all hours worked, thus incentivizing bad behavior by employers.

**Rather than providing clarity, SB 5720 muddies the waters with vague and inaccurate references to “workweek averaging” and a regulation that specifically excludes agricultural labor.** To be clear, this language (in Section 1, subsection (1) of the bill) has one purpose: to give employers immunity from suit for refusing to pay for certain work time in which workers are unable to earn a piece rate.

The bill allows employers to take the fruits of their workers’ labor without paying for it. Every other Washington employer is required to pay for this work time. Suggesting that farmworkers, who earn very little as it is, should not be paid for all their work, is bad policy.

For these reasons, we the undersigned organizations urge you to oppose SB 5720.

Sincerely,

*ACLU-WA*

*AFT-WA*

*Columbia Legal Services*

*Community to Community*

*El Centro de la Raza*

*Fair Work Center*

*Faith Action Network*

*Familias Unidas por la Justicia*

*IAM 751*

*IBEW 77*

*OneAmerica*

*National Employment Law  
Project*

*Progreso: Latino Progress  
Puget Sound Advocates for  
Retirement Action*

*SEIU 925*

*Sheet Metal Workers Local 66*

*SPEEA, IFPTE Local 2001*

*Statewide Poverty Action  
Network*

*Teamsters 117*

*Teamsters Joint Council 28  
UFCW 367*

*Washington Building Trades  
Washington CAN*

*Washington Employment  
Lawyers Association*

*Washington Wage Claim Project*

*Washington State Labor*

*Council, AFL-CIO*

*WPEA UFCW 365*

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