

SENATE BILL 5212

State of Washington

52nd Legislature

1991 Regular Session

By Senators Anderson, Skratek and McMullen; by request of Department of Labor & Industries.

Read first time January 24, 1991. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to confidential information acquired by the
2 department of labor and industries through research, experiments,
3 demonstrations, and employer-requested services; and amending RCW
4 49.17.210, 49.17.250, and 51.36.060.

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

6 **Sec. 1.** RCW 49.17.210 and 1973 c 80 s 21 are each amended to read
7 as follows:

8 The director is authorized to conduct, either directly or by grant
9 or contract, research, experiments, and demonstrations as may be of aid
10 and assistance in the furtherance of the objects and purposes of this
11 chapter. Employer identity, employee identity, and personal
12 identifiers of voluntary participants in research, experiments, and
13 demonstrations shall be deemed confidential and shall not be released
14 or open to public inspection. Information obtained from such voluntary
15 activities shall not be deemed to be medical information for the

1 purpose of RCW 51.36.060 and shall not be released. The director, in
2 his or her discretion, is authorized to grant a variance from any rule
3 or regulation or portion thereof, whenever he or she determines that
4 such variance is necessary to permit an employer to participate in an
5 experiment approved by the director, (~~which~~) and the experiment is
6 designed to demonstrate or validate new and improved techniques to
7 safeguard the health or safety of employees. Any such variance shall
8 require that all due regard be given to the health and safety of all
9 employees participating in any experiment.

10 **Sec. 2.** RCW 49.17.250 and 1973 c 80 s 25 are each amended to read
11 as follows:

12 (1) In carrying out (~~his~~) the responsibilities for the
13 development of a voluntary compliance program under the authority of
14 RCW 49.17.050(8) and the rendering of advisory and consultative
15 services to employers, the director may grant an employer's application
16 for advice and consultation, and for the purpose of affording such
17 consultation and advice visit the employer's work place. Such
18 consultation and advice shall be limited to the matters specified in
19 the request affecting the interpretation and applicability of safety
20 and health standards to the conditions, structures, machines,
21 equipment, apparatus, devices, materials, methods, means, and practices
22 in the employer's work place. The director in granting any requests
23 for consultative or advisory service may provide for an alternative
24 means of affording consultation and advice other than on-site
25 consultation.

26 (2) The director, or (~~his~~) an authorized representative, (~~may~~)
27 will make recommendations regarding the elimination of any hazards
28 disclosed within the scope of the on-site consultation. No visit to an
29 employer's work place shall be regarded as an inspection or

1 investigation under the authority of this chapter, and no notices or
2 citations shall be issued, nor, shall any civil penalties be assessed
3 upon such visit, nor shall any authorized representative of the
4 director designated to render advice and consult with employers under
5 the voluntary compliance program have any enforcement authority:
6 PROVIDED, That in the event an on-site visit discloses a serious
7 violation of a health and safety standard as defined in RCW
8 49.17.180(6), and the hazard of such violation is either not abated by
9 the cooperative action of the employer, or, is not subject to being
10 satisfactorily abated by the cooperative action of the employer, the
11 director shall either invoke the administrative restraining authority
12 provided in RCW 49.17.130 or seek the issuance of injunctive process
13 under the authority of RCW 49.17.170 or invoke both such remedies.

14 (3) Nothing in this section shall be construed as providing
15 immunity to any employer who has made application for consultative
16 services during the pendency of the granting of such application from
17 inspections or investigations conducted under RCW 49.17.070 or any
18 inspection conducted as a result of a complaint, nor immunity from
19 inspections under RCW 49.17.070 or inspections resulting from a
20 complaint subsequent to the conclusion of the consultative period.
21 This section shall not be construed as requiring an inspection under
22 RCW 49.17.070 of any work place which has been visited for consultative
23 purposes. However, in the event of a subsequent inspection, the
24 director, or ((his)) an authorized representative, may in his or her
25 discretion take into consideration any information obtained during the
26 consultation visit of that work place in determining the nature of an
27 alleged violation and the amount of penalties to be assessed, if any.
28 Such rules and regulations to be promulgated pursuant to this section
29 shall provide that in all instances of serious violations as defined in
30 RCW 49.17.180(6) which are disclosed in any consultative period, shall

1 be corrected within a specified period of time at the expiration of
2 which an inspection will be conducted under the authority of RCW
3 49.17.070. All employers requesting consultative services shall be
4 advised of the provisions of this section and the rules adopted by the
5 director relating to the voluntary compliance program. Information
6 obtained as a result of employer-requested consultation and training
7 services shall be deemed confidential and shall not be open to public
8 inspection. The director may provide by rule for the frequency,
9 manner, and method of the rendering of consultative services to
10 employers, and for the scheduling and priorities in granting
11 applications consistent with the availability of personnel, and in such
12 a manner as not to jeopardize the enforcement requirements of this
13 chapter.

14 **Sec. 3.** RCW 51.36.060 and 1989 c 12 s 17 are each amended to read
15 as follows:

16 Physicians examining or attending injured workers under this title
17 shall comply with rules and regulations adopted by the director, and
18 shall make such reports as may be requested by the department or self-
19 insurer upon the condition or treatment of any such worker, or upon any
20 other matters concerning such workers in their care. Except under RCW
21 49.17.210 and 49.17.250, all medical information in the possession or
22 control of any person and relevant to the particular injury in the
23 opinion of the department pertaining to any worker whose injury or
24 occupational disease is the basis of a claim under this title shall be
25 made available at any stage of the proceedings to the employer, the
26 claimant's representative, and the department upon request, and no
27 person shall incur any legal liability by reason of releasing such
28 information.