

# HOUSE BILL ANALYSIS

## HB 1369

**Brief Description:** Concerning the issuance of citations under the Washington industrial safety and health act.

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**Sponsors:** Clements and Conway

**Hearing:** February 8, 1999

### Brief Summary of Bill

- **Directs L & I to excuse WISHA violations that were a result of unpreventable employee misconduct.**
- **Establishes the elements for proving unpreventable employee misconduct.**

### BACKGROUND:

The health and safety of Washington workplaces are protected by the Washington Industrial Safety and Health Act (WISHA). The act establishes a general duty for employers covered by the act to provide work places that are free from recognized hazards. It also requires employers to comply with specific safety and health standards adopted by the Department of Labor and Industries. As part of these duties, employers have a responsibility to take steps to eradicate preventable hazards, including preventing conduct by employees that violate safety and health standards.

To insure compliance with WISHA, department representatives inspect and investigate workplaces. After an inspection, if the department's representative believes that an employer has violated WISHA, a rule adopted under WISHA, or the conditions of a variance granted the employer, the department may cite the employer. Employers receiving citations are subject to civil penalties. Citations may be appealed to the Board of Industrial Insurance Appeals.

Various federal courts and the Board of Industrial Insurance Appeals have recognized an

"unpreventable employee misconduct" defense to WISHA citations. If an employer can prove that a hazardous situation was caused by unpreventable employee misconduct, the department must excuse the violation. To prove that an accident was the result of unpreventable employee misconduct, an employer must show (1) it established work rules to prevent the violation; (2) the rules were adequately communicated to employees; (3) it took steps to discover violations; and (4) it effectively enforced the rules when infractions were discovered.

**SUMMARY OF BILL:**

The Department of Labor and Industries may not issue a citation to an employer for a violation of a safety or health standard under the Washington Industrial Safety and Health Act if:

- (1) The employer has a thorough written safety program, including work rules, training, and equipment designed to prevent the violation.
- (2) The employer's program and rules were adequately communicated to employees.
- (3) The employer takes reasonable measures to discover violations of the safety rules and takes reasonable corrective action when the violations are discovered.
- (4) The employer enforces its safety program in practice, not just in theory.

This limitation on issuing citations does not apply to violations that have a substantial probability of causing death or serious physical harm to an employee.

**RULES AUTHORITY:** The bill does not contain provisions addressing the rule making powers of an agency.

**FISCAL NOTE:** Not requested.

**EFFECTIVE DATE:** Ninety days after adjournment of a session in which bill is passed.