
SUBSTITUTE SENATE BILL 5632

State of Washington

59th Legislature

2005 Regular Session

By Senate Committee on Labor, Commerce, Research & Development
(originally sponsored by Senators Schoesler, Hewitt, Mulliken,
Parlette, Rasmussen, Roach, Jacobsen, Haugen and Honeyford)

READ FIRST TIME 03/02/05.

1 AN ACT Relating to voluntary compliance with safety standards by
2 small agricultural employers; and amending RCW 49.17.250 and 43.05.090.

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

4 **Sec. 1.** RCW 49.17.250 and 1991 c 89 s 2 are each amended to read
5 as follows:

6 (1) In carrying out the responsibilities for the development of a
7 voluntary compliance program under the authority of RCW 49.17.050(8)
8 and the rendering of advisory and consultative services to employers,
9 the director: (a) May grant an employer's application for advice and
10 consultation(~~(, and)~~); (b) shall, except as provided in subsection
11 (3)(b) of this section, consider an initial visit to a small farming
12 operation to be a visit for advice and consultation; (c) for the
13 purpose of affording (~~such~~) consultation and advice under either (a)
14 or (b) of this subsection, may visit the employer's work place.
15 (~~Such~~) Consultation and advice shall be limited to (~~the~~) matters
16 (~~specified in the request~~) affecting the interpretation and
17 applicability of safety and health standards to the conditions,
18 structures, machines, equipment, apparatus, devices, materials,
19 methods, means, and practices in the employer's work place, as

1 specified in the employer's request, if any. The director in granting
2 any requests for or otherwise performing consultative or advisory
3 service may provide for an alternative means of affording consultation
4 and advice other than on-site consultation, including, but not limited
5 to geographic or industry-specific safety education forums or
6 conferences conducted solely by the department or in cooperation with
7 one or more industry or trade associations.

8 (2) The director, or an authorized representative, will make
9 recommendations regarding the elimination of any hazards disclosed
10 within the scope of the on-site consultation. No visit to an
11 employer's work place made under subsection (1) of this section shall
12 be regarded as an inspection or investigation under the authority of
13 this chapter, and no notices or citations shall be issued, nor, shall
14 any civil penalties be assessed upon such visit, nor shall any
15 authorized representative of the director designated to render advice
16 and consult with employers under the voluntary compliance program have
17 any enforcement authority: PROVIDED, That in the event an on-site
18 visit discloses a serious violation of a health and safety standard as
19 defined in RCW 49.17.180(6), and the hazard of such violation is either
20 not abated by the cooperative action of the employer, or, is not
21 subject to being satisfactorily abated by the cooperative action of the
22 employer, the director shall either invoke the administrative
23 restraining authority provided in RCW 49.17.130 or seek the issuance of
24 injunctive process under the authority of RCW 49.17.170 or invoke both
25 such remedies.

26 (3)(a) Nothing in this section shall be construed as providing
27 immunity to any employer who has made application for consultative
28 services during the pendency of the granting of such application from
29 inspections or investigations conducted under RCW 49.17.070 or any
30 inspection conducted as a result of a complaint, nor immunity from
31 inspections under RCW 49.17.070 or inspections resulting from a
32 complaint subsequent to the conclusion of the consultative period.

33 (b) An initial visit of a small farming operation resulting from a
34 report of a work-related injury or fatality shall not be considered a
35 visit for advice and consultation under subsection (1) of this section.

36 (c) This section shall not be construed as requiring an inspection
37 under RCW 49.17.070 of any work place which has been visited for
38 consultative purposes. However, in the event of a subsequent

1 inspection, the director, or an authorized representative, may in his
2 or her discretion take into consideration any information obtained
3 during the consultation visit of that work place in determining the
4 nature of an alleged violation and the amount of penalties to be
5 assessed, if any. ((Such))

6 (d) Rules ((and regulations to be promulgated pursuant to)) adopted
7 under this section shall provide that in all instances of serious
8 violations as defined in RCW 49.17.180(6) which are disclosed in any
9 consultative period, shall be corrected within a specified period of
10 time at the expiration of which an inspection will be conducted under
11 the authority of RCW 49.17.070. All employers requesting or receiving
12 consultative services shall be advised of the provisions of this
13 section and the rules adopted by the director relating to the voluntary
14 compliance program.

15 (e) Information obtained by the department as a result of
16 ((employer requested)) consultation and training services provided
17 under this section shall be deemed confidential and shall not be open
18 to public inspection, but may be included in a service report in
19 accordance with (f) of this subsection, or a report made pursuant to
20 RCW 43.05.090, and thereby disclosed to the employer's employees or
21 their collective bargaining representatives.

22 (f) Within thirty days of receipt, the employer shall make
23 voluntary services reports available to employees or their collective
24 bargaining representatives for review. Employers may satisfy the
25 availability requirement by requesting a copy of the reports from the
26 department.

27 (g) The director may provide by rule for the frequency, manner, and
28 method of the rendering of consultative services to employers, and for
29 the scheduling and priorities in granting applications consistent with
30 the availability of personnel, and in such a manner as not to
31 jeopardize the enforcement requirements of this chapter.

32 (4) For the purposes of this section, a "small farming operation"
33 means an employer that:

34 (a) Is engaged in the growing of or harvesting of crops, the
35 raising of livestock or poultry, or related activities conducted on
36 sites such as a farm, ranch, orchard, dairy farm, or similar farming
37 operation;

1 (b) Employs ten or fewer employees on the day of the visit and at
2 all times during the twelve months preceding the visit; and

3 (c) Has not housed any seasonal or temporary farm workers in
4 permanent or temporary structures located on or off the property of the
5 employer during the twelve months preceding the visit.

6 "Small farming operation" shall be interpreted to be consistent
7 with that term as it is defined or used by the United States department
8 of labor, occupational safety and health administration in the
9 administration of the federal occupational safety and health act (29
10 U.S.C. chapter 15).

11 **Sec. 2.** RCW 43.05.090 and 1996 c 206 s 4 are each amended to read
12 as follows:

13 (1) Following a consultative visit pursuant to RCW 49.17.250, the
14 department of labor and industries shall issue a report to the employer
15 that the employer shall make available to its employees. The report
16 shall contain:

17 (a) A description of (~~the~~) any condition that is not in
18 compliance and the text of the specific section or subsection of the
19 applicable state or federal law or rule;

20 (b) A statement of what is required to achieve compliance;

21 (c) The date by which the department requires compliance to be
22 achieved;

23 (d) Notice of means to contact technical assistance services
24 provided by the department; and

25 (e) Notice of when, where, and to whom a request to extend the time
26 to achieve compliance for good cause may be filed with the department.

27 (2) Following a compliance inspection pursuant to RCW 49.17.120,
28 the department of labor and industries shall issue a citation for
29 violations of industrial safety and health standards. The citation
30 shall not assess a penalty if the violations:

31 (a) Are determined not to be of a serious nature;

32 (b) Have not been previously cited;

33 (c) Are not willful; and

34 (d) Do not have a mandatory penalty under chapter 49.17 RCW.

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