
Labor & Workforce Development Committee

HB 2412

Brief Description: Increasing protections for employees under the Washington industrial safety and health act of 1973.

Sponsors: Representatives Kenney, Sells, Reykdal, Moscoso, Miloscia, Green, Ormsby, Hasegawa, Roberts, Hudgins, Cody and Moeller.

Brief Summary of Bill

- Increases civil and criminal penalties for violations under the Washington Industrial Safety and Health Act.
- Provides that upon request, the Director (or designee) of the Department of Labor and Industries must meet with a victim, provide information to a victim, and, for incidents resulting in death or serious injury, give the victim an opportunity to make a statement before the parties.
- Increases the time to file a discrimination complaint from 30 to 180 days and adds discrimination for reporting any unsafe condition to the employer and other reporting.

Hearing Date: 1/18/12

Staff: Joan Elgee (786-7106).

Background:

Under the Washington Industrial Health and Safety Act (WISHA), the Department of Labor and Industries (Department) has authority to adopt safety and health standards governing the conditions of employment in all workplaces. The Director of the Department (Director) may inspect and investigate work places. For purposes of WISHA, the Director includes the Director's designee.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

If the Director believes that an employer has violated a safety or health standard, the Director must issue a citation. Civil penalties range from up to \$7,000 for a non-serious violation to up to \$70,000 for a willful or repeated violation. Appeals of citations are heard by the Board of Industrial Insurance Appeals (Board) and the Director may reassume jurisdiction for a redetermination before the Board hears the matter. Employees and employee representatives have an opportunity to participate in the Board hearing and to object or support the Director's reassumption of jurisdiction.

Criminal penalties are established for certain violations and if the Director has reasonable cause to believe that a crime has occurred, the Director must refer the case to the prosecuting attorney. Criminal penalties range from a fine of not more than \$1,000 or imprisonment for not more than six months, or both, for a person who gives advance notice of an inspection, to a fine of not more than \$200,000 or imprisonment of not more than one year, or both, for a violation after a first conviction for a willful and knowing violation that caused death.

A person may not discharge or otherwise discriminate against an employee who files a complaint, testifies in a WISHA proceeding, or for certain other activities. A person who believes he or she has been discriminated against may file a complaint with the Director within 30 days after the violation. The Director must investigate and if the Director determines that a violation has occurred, the Director must bring an action in superior court. If the Director determines that a violation has not occurred, the employee may bring an action. The superior court has jurisdiction to restrain violations and order all appropriate relief, including rehiring or reinstatement and back pay.

Summary of Bill:

Civil and criminal penalties are increased for WISHA violations. A criminal penalty is created for willfully violating any requirement that caused serious bodily injury but did not cause death. In addition, separate civil penalties are created for certain violations that caused death. The Director must adjust civil penalties at least every four years based on the change in the Consumer Price Index for all urban wage earners. The penalty provisions apply to violations committed after the effective date.

The prohibition against discrimination includes discrimination for reporting any injury, illness, or unsafe condition to the employer, agent of the employer, or safety and health committee involved or safety and health representative involved. The time to file a discrimination complaint is increased from 30 to 180 days.

The Director must take certain actions at the request of a victim or the victim's representative. A "victim" is an employee who had a workplace injury that is the subject of an inspection or investigation, or the victim's family member if the employee is killed or cannot reasonably exercise the employee's rights. For an incident resulting in death or serious injury, the Director must provide the victim or victim's representative an opportunity to appear and make a statement before the parties conducting any settlement negotiations during reassumption of jurisdiction by the Director or appeal before the Board. This opportunity must take place before the Director agrees to modify or withdraw a citation. In all cases, upon request, the Director must meet with the victim or victim's representative before the Director decides whether to issue a citation and provide: (1) a copy of any citation or report at no cost; (2) notice of any employer appeal; and

(3) an explanation of the right to participate in any appeal. A "serious injury" is an injury or illness requiring hospitalization or resulting in a loss of one or more days of work. The Director must establish procedures to inform victims and their representatives of their rights and for the informal review of any claim of denial of a right.

Appropriation: None.

Fiscal Note: Requested on January 13, 2012.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.