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HOUSE BILL 2412

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State of Washington

62nd Legislature

2012 Regular Session

By Representatives Kenney, Sells, Reykdal, Moscoso, Miloscia, Green, Ormsby, Hasegawa, Roberts, Hudgins, Cody, and Moeller

Read first time 01/13/12. Referred to Committee on Labor & Workforce Development.

1 AN ACT Relating to increasing protections for employees under the  
2 Washington industrial safety and health act of 1973; amending RCW  
3 49.17.160, 49.17.180, and 49.17.190; adding a new section to chapter  
4 49.17 RCW; creating a new section; and prescribing penalties.

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

6 **Sec. 1.** RCW 49.17.160 and 2010 c 8 s 12013 are each amended to  
7 read as follows:

8 (1) No person shall discharge or in any manner discriminate against  
9 any employee because such employee has filed any complaint or  
10 instituted or caused to be instituted any proceeding under or related  
11 to this chapter, or has testified or is about to testify in any such  
12 proceeding or because of the exercise by such employee on behalf of  
13 himself or herself or others of any right afforded by this chapter,  
14 including reporting any injury, illness, or unsafe condition to the  
15 employer, agent of the employer, safety and health committee involved,  
16 or employee safety and health representative involved.

17 (2) Any employee who believes that he or she has been discharged or  
18 otherwise discriminated against by any person in violation of this  
19 section may, within (~~thirty~~) one hundred eighty days after such

1 violation occurs, file a complaint with the director alleging such  
2 discrimination. Upon receipt of such complaint, the director shall  
3 cause such investigation to be made as he or she deems appropriate. If  
4 upon such investigation, the director determines that the provisions of  
5 this section have been violated, he (~~(of [or])~~) or she shall bring an  
6 action in the superior court of the county wherein the violation is  
7 alleged to have occurred against the person or persons who is alleged  
8 to have violated the provisions of this section. If the director  
9 determines that the provisions of this section have not been violated,  
10 the employee may institute the action on his or her own behalf within  
11 thirty days of such determination. In any such action the superior  
12 court shall have jurisdiction, for cause shown, to restrain violations  
13 of subsection (1) of this section and order all appropriate relief  
14 including rehiring or reinstatement of the employee to his or her  
15 former position with back pay.

16 (3) Within ninety days of the receipt of the complaint filed under  
17 this section, the director shall notify the complainant of his or her  
18 determination under subsection (2) of this section.

19 NEW SECTION. **Sec. 2.** A new section is added to chapter 49.17 RCW  
20 to read as follows:

21 (1) Upon request of a victim or victim's representative, the  
22 director must:

23 (a) Meet with the victim or victim's representative regarding the  
24 inspection or investigation conducted under this chapter concerning the  
25 employee's injury or illness, including death. The meeting must take  
26 place before the director decides whether to issue a citation.

27 (b) Provide to the victim or victim's representative:

28 (i) A copy of any citation or report issued as a result of the  
29 inspection or investigation. The citation or report must be provided  
30 at no cost and provided on the later of the date the citation or report  
31 is received by the employer and the date of the request;

32 (ii) Notification of any appeal filed under RCW 49.17.140 regarding  
33 a citation issued as a result of the inspection or investigation; and

34 (iii) An explanation of the rights of employees and employee  
35 representatives to participate in the proceedings conducted under RCW  
36 49.17.140.

1 (c) Provide to the victim or victim's representative an opportunity  
2 to appear and make a statement before the parties conducting any  
3 settlement negotiations during reassumption of jurisdiction by the  
4 director or appeal before the board of industrial insurance appeals  
5 regarding a citation issued as a result of an incident resulting in  
6 death or serious injury. This opportunity must be provided before the  
7 director enters an agreement to withdraw or modify a citation. For  
8 purposes of this subsection, a "serious injury" is an injury or illness  
9 requiring hospitalization or resulting in a loss of one or more days of  
10 work.

11 (2) The director shall establish procedures to inform victims and  
12 their representatives of their rights under this section and for the  
13 informal review of any claim of a denial of such a right.

14 (3) For purposes of this section, "victim" means:

15 (a) An employee who has sustained a work-related injury or illness  
16 that is the subject of an inspection or investigation conducted under  
17 this chapter; or

18 (b) A family member of an employee, if as a result of a  
19 work-related injury or illness that is the subject of an inspection or  
20 investigation conducted under this chapter the employee is killed or  
21 cannot reasonably exercise the employee's rights under this section.

22 **Sec. 3.** RCW 49.17.180 and 2010 c 8 s 12015 are each amended to  
23 read as follows:

24 (1) Except as provided in RCW 43.05.090, any employer who willfully  
25 or repeatedly violates the requirements of RCW 49.17.060, of any safety  
26 or health standard promulgated under the authority of this chapter, of  
27 any existing rule or regulation governing the conditions of employment  
28 promulgated by the department, or of any order issued granting a  
29 variance under RCW 49.17.080 or 49.17.090 may be assessed a civil  
30 penalty not to exceed (~~seventy~~) one hundred twenty thousand dollars  
31 for each violation. A minimum penalty of (~~five~~) eight thousand  
32 dollars shall be assessed for a willful violation. If the violation  
33 caused the death of an employee, the penalty may not exceed two hundred  
34 fifty thousand dollars but may not be less than fifty thousand dollars.

35 (2) Any employer who has received a citation for a serious  
36 violation of the requirements of RCW 49.17.060, of any safety or health  
37 standard promulgated under the authority of this chapter, of any

1 existing rule or regulation governing the conditions of employment  
2 promulgated by the department, or of any order issued granting a  
3 variance under RCW 49.17.080 or 49.17.090 as determined in accordance  
4 with subsection (6) of this section, shall be assessed a civil penalty  
5 not to exceed (~~seven~~) twelve thousand dollars for each such  
6 violation. If the violation caused the death of an employee, the  
7 penalty may not exceed fifty thousand dollars but may not be less than  
8 twenty thousand dollars, except that for an employer with twenty-five  
9 or fewer employees the penalty may not be less than ten thousand  
10 dollars.

11 (3) Any employer who has received a citation for a violation of the  
12 requirements of RCW 49.17.060, of any safety or health standard  
13 promulgated under this chapter, of any existing rule or regulation  
14 governing the conditions of employment promulgated by the department,  
15 or of any order issued granting a variance under RCW 49.17.080 or  
16 49.17.090, where such violation is specifically determined not to be of  
17 a serious nature as provided in subsection (6) of this section, may be  
18 assessed a civil penalty not to exceed (~~seven~~) twelve thousand  
19 dollars for each such violation, unless such violation is determined to  
20 be de minimis. If the violation caused the death of an employee, the  
21 penalty may not exceed fifty thousand dollars but may not be less than  
22 twenty thousand dollars, except that for an employer with twenty-five  
23 or fewer employees the penalty may not be less than ten thousand  
24 dollars.

25 (4) Any employer who fails to correct a violation for which a  
26 citation has been issued under RCW 49.17.120 or 49.17.130 within the  
27 period permitted for its correction, which period shall not begin to  
28 run until the date of the final order of the board of industrial  
29 insurance appeals in the case of any review proceedings under this  
30 chapter initiated by the employer in good faith and not solely for  
31 delay or avoidance of penalties, may be assessed a civil penalty of not  
32 more than (~~seven~~) twelve thousand dollars for each day during which  
33 such failure or violation continues.

34 (5) Any employer who violates any of the posting requirements of  
35 this chapter, or any of the posting requirements of rules promulgated  
36 by the department pursuant to this chapter related to employee or  
37 employee representative's rights to notice, including but not limited  
38 to those employee rights to notice set forth in RCW 49.17.080,

1 49.17.090, 49.17.120, 49.17.130, 49.17.220(1), and 49.17.240(2), shall  
2 be assessed a penalty not to exceed (~~seven~~) twelve thousand dollars  
3 for each such violation. Any employer who violates any of the posting  
4 requirements for the posting of informational, educational, or training  
5 materials under the authority of RCW 49.17.050(7), may be assessed a  
6 penalty not to exceed (~~seven~~) twelve thousand dollars for each such  
7 violation.

8 (6) For the purposes of this section, a serious violation shall be  
9 deemed to exist in a work place if there is a substantial probability  
10 that death or serious physical harm could result from a condition which  
11 exists, or from one or more practices, means, methods, operations, or  
12 processes which have been adopted or are in use in such work place,  
13 unless the employer did not, and could not with the exercise of  
14 reasonable diligence, know of the presence of the violation.

15 (7) The director, or his or her authorized representatives, shall  
16 have authority to assess all civil penalties provided in this section,  
17 giving due consideration to the appropriateness of the penalty with  
18 respect to the number of affected employees of the employer being  
19 charged, the gravity of the violation, the size of the employer's  
20 business, the good faith of the employer, and the history of previous  
21 violations.

22 (8) Civil penalties imposed under this chapter shall be paid to the  
23 director for deposit in the supplemental pension fund established by  
24 RCW 51.44.033. Civil penalties may be recovered in a civil action in  
25 the name of the department brought in the superior court of the county  
26 where the violation is alleged to have occurred, or the department may  
27 utilize the procedures for collection of civil penalties as set forth  
28 in RCW 51.48.120 through 51.48.150.

29 (9) The director shall adjust the civil penalty amounts in this  
30 section at least once every four years beginning on the effective date  
31 of this section to account for the percentage increase or decrease in  
32 the consumer price index for all urban wage earners compiled by the  
33 bureau of labor statistics, United States department of labor during  
34 such period.

35 **Sec. 4.** RCW 49.17.190 and 2011 c 96 s 40 are each amended to read  
36 as follows:

37 (1) Any person who gives advance notice of any inspection to be

1 conducted under the authority of this chapter, without the consent of  
2 the director or his or her authorized representative, shall, upon  
3 conviction be guilty of a (~~(gross misdemeanor)~~) class C felony and be  
4 punished by a fine of not more than (~~(one)~~) two hundred fifty thousand  
5 dollars or by imprisonment for not more than (~~(six months)~~) two years,  
6 or by both.

7 (2) Whoever knowingly makes any false statement, representation, or  
8 certification in any application, record, report, plan, or other  
9 document filed or required to be maintained pursuant to this chapter  
10 shall, upon conviction be guilty of a (~~(gross misdemeanor)~~) class C  
11 felony and be punished by a fine of not more than (~~(ten)~~) two hundred  
12 fifty thousand dollars, or by imprisonment for not more than (~~(six~~  
13 ~~months)~~) five years or by both.

14 (3) Any employer who (~~(wilfully)~~) willfully and knowingly violates  
15 the requirements of RCW 49.17.060, any safety or health standard  
16 promulgated under this chapter, any existing rule or regulation  
17 governing the safety or health conditions of employment and adopted by  
18 the director, or any order issued granting a variance under RCW  
19 49.17.080 or 49.17.090 and that violation caused death to any employee  
20 shall, upon conviction be guilty of a (~~(gross misdemeanor)~~) class B  
21 felony and be punished by a fine of not more than (~~(one)~~) two hundred  
22 fifty thousand dollars or by imprisonment for not more than (~~(six~~  
23 ~~months)~~) ten years or by both; except, that if the conviction is for a  
24 violation committed after a first conviction of such person,  
25 (~~(punishment shall be)~~) such person upon conviction shall be guilty of  
26 a class A felony punishable by a fine of not more than two hundred  
27 fifty thousand dollars or by imprisonment for not more than (~~(three~~  
28 ~~hundred sixty four days)~~) twenty years, or by both.

29 (4) Any employer who willfully and knowingly violates the  
30 requirements of RCW 49.17.060, any safety or health standard  
31 promulgated under this chapter, any existing rule or regulation  
32 governing the safety or health conditions of employment and adopted by  
33 the director, or any order issued granting a variance under RCW  
34 49.17.080 or 49.17.090 and that violation caused serious bodily injury  
35 to any employee but did not cause death to any employee shall, upon  
36 conviction, be guilty of a class C felony and be punished by a fine of  
37 not more than two hundred fifty thousand dollars or by imprisonment for  
38 not more than five years or by both; except, that if the conviction is

1 for a violation committed after a first conviction of such person, such  
2 person upon conviction shall be guilty of a class B felony punishable  
3 by a fine of not more than two hundred fifty thousand dollars or by  
4 imprisonment for not more than ten years, or by both.

5 (5) Any employer who has been issued an order immediately  
6 restraining a condition, practice, method, process, or means in the  
7 work place, pursuant to RCW 49.17.130 or 49.17.170, and who  
8 nevertheless continues such condition, practice, method, process, or  
9 means, or who continues to use a machine or equipment or part thereof  
10 to which a notice prohibiting such use has been attached, shall be  
11 guilty of a (~~gross misdemeanor~~) class C felony, and upon conviction  
12 shall be punished by a fine of not more than (~~ten~~) two hundred fifty  
13 thousand dollars or by imprisonment for not more than (~~six months~~)  
14 five years, or by both.

15 ((+5)) (6) Any employer who shall knowingly remove, displace,  
16 damage, or destroy, or cause to be removed, displaced, damaged, or  
17 destroyed any safety device or safeguard required to be present and  
18 maintained by any safety or health standard, rule, or order promulgated  
19 pursuant to this chapter, or pursuant to the authority vested in the  
20 director under RCW 43.22.050 shall, upon conviction, be guilty of a  
21 (~~misdemeanor~~) class C felony and be punished by a fine of not more  
22 than (~~one~~) two hundred fifty thousand dollars or by imprisonment for  
23 not more than (~~ninety days~~) two years, or by both.

24 ((+6)) (7) Whenever the director has reasonable cause to believe  
25 that any provision of this section defining a crime has been violated  
26 by an employer, the director shall cause a record of such alleged  
27 violation to be prepared, a copy of which shall be referred to the  
28 prosecuting attorney of the county wherein such alleged violation  
29 occurred, and the prosecuting attorney of such county shall in writing  
30 advise the director of the disposition he or she shall make of the  
31 alleged violation.

32 NEW SECTION. **Sec. 5.** Sections 3 and 4 of this act apply to  
33 violations committed after the effective date of this section.

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