

# HOUSE BILL REPORT

## HB 2332

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**As Passed House:**  
February 11, 2014

**Title:** An act relating to damages for wage violations.

**Brief Description:** Providing damages for wage violations.

**Sponsors:** Representatives Sawyer, Sells, Moscoso, Seaquist, S. Hunt, Green, Stanford, Hansen, Appleton, Reykdal, Ryu, Fitzgibbon, Bergquist, Goodman, Farrell, Ormsby, Pollet and Walkinshaw.

**Brief History:**

**Committee Activity:**

Labor & Workforce Development: 1/21/14, 1/24/14 [DP].

**Floor Activity:**

Passed House: 2/11/14, 53-45.

**Brief Summary of Bill**

- Provides that an employer that unlawfully collects a rebate from an employee's wages or willfully pays an employee lower wages than required is liable for triple damages, rather than double, in a civil action.
- Removes the provision in the damages statute that bars an employee from obtaining higher damages if the employee knowingly submitted to the wage violation.

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### HOUSE COMMITTEE ON LABOR & WORKFORCE DEVELOPMENT

**Majority Report:** Do pass. Signed by 5 members: Representatives Sells, Chair; Reykdal, Vice Chair; Green, Moeller and Ormsby.

**Minority Report:** Do not pass. Signed by 4 members: Representatives Manweller, Ranking Minority Member; Condotta, Assistant Ranking Minority Member; Christian and G. Hunt.

**Staff:** Trudes Tango (786-7384).

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*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.*

**Background:**

The state Minimum Wage Act, Wage Payment Act, and other laws establish standards for the payment of wages. It is unlawful for an employer to withhold an employee's wages, except under certain circumstances, or to willfully pay an employee less than the employer is obligated to pay. If the employer fails to pay an employee, the employee may file a wage complaint with the Department of Labor and Industries (Department) or bring a private cause of action in court.

If the employee files a wage complaint with the Department, the Department must investigate and will generally issue a citation and notice of assessment or a determination of compliance within 60 days after the complaint is filed. If the Department has determined that an employer has violated a wage payment requirement, the Department may order the employer to pay any unpaid wages due plus interest. If the Department determines the nonpayment was willful, the Department may order the employer to pay a civil penalty of the greater of \$1,000 or 10 percent of the unpaid wages, up to \$20,000. "Willful" means a knowing and intentional action that is neither accidental nor the result of a bona fide dispute. The Department has discretion to waive the civil penalty, and under certain circumstances the Department may not assess a penalty. The Department must waive any civil penalty if the employer is not a repeat willful violator and the employer has paid the employee within 10 days of receiving the citation and notice of assessment.

If the employer pays the employee and the employee accepts payment of the unpaid wages and interest, the employee may not bring a civil action in court.

If the employee files a civil action instead of a wage complaint, the employee may recover double the amount of the unpaid wages, plus attorneys' fees and costs, if the employer unlawfully collected a rebate of any part of the employee's wages or willfully and with intent to deprive the employee of wages paid the employee a lower wage than required. The double damages provision is not available if the employee knowingly submitted to the wage violation.

**Summary of Bill:**

Changes are made to the statute applicable to an employee bringing a civil suit. An employer is liable for triple the amount of unpaid wages, rather than double, if the employer made an unlawful rebate or willfully and with intent to deprive the employee of wages paid a lower wage than required. The provision barring an employee from obtaining higher damages if the employee knowingly submitted to the wage violation is removed.

**Appropriation:** None.

**Fiscal Note:** Not requested.

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

**Staff Summary of Public Testimony:**

(In support) When a worker is not paid wages or is misclassified, that is theft and that is fraud. This package of bills is a comprehensive approach to address the underground economy, wage theft, and workplace fraud. We need more teeth in the law to address wage theft. This bill enhances penalties to deter the fraud that is commonplace. Workers need protection from employers who steal from them. All workers in the country have a right to be fairly paid. Some companies are rigging the system, which hurts the middle class and businesses. In this country, there is a social contract that people will get paid for their work and that competition should be fair.

(Opposed) This bill unlevels the playing field by increasing the damages. Striking the provision about employees who knowingly submit to the wages, raises questions about what kind of intentionality is required. This change will create a new area of uncertainty and will increase the costs to all employers, not just the scofflaws. These bills do not work for small businesses. The complexity of these laws is overwhelming. Wage issues are complicated matters about which people can disagree. Even judges can reach different conclusions. The bills purport to be aimed at scofflaws but affect all employers. It will increase costs to all employers. Meritless cases will be more difficult to fight.

**Persons Testifying:** (In support) Representative Sawyer, prime sponsor; Teresa Mosqueda, Washington State Labor Council; Diego Rondón Ichikawa, National Employment Law Project; Andrea Schmitt, Columbia Legal Services; Joel Coronado and Cariño Barragan, Casa Latina; Robert Bruner, Teamsters Local 117; Larry Boyd, Teamsters Local 174; Neil Hartman, Washington State Building and Construction Trades Council; Nicole Grant, Certified Electricians of Western Washington; Miguel Perez Gibson, Progreso Latino; Emily Murphy, One America; Billy Wallace, Washington and Northern Idaho District Council of Laborers; and Simon Gorbaty.

(Opposed) Tim O'Connell, Association of Washington Business; Philip Talmadge, Washington Trucking Association; Van Collins, Associated General Contractors; Mark Johnson, Washington Retail Association; Jeff Hansrom, Direct Sellers Association; Susan Eerdmans, Avon; and Gary Smith, Independent Business Association.

**Persons Signed In To Testify But Not Testifying:** None.