

---

HOUSE BILL 2484

---

State of Washington

64th Legislature

2016 Regular Session

By Representatives Walkinshaw, Moscoso, Ortiz-Self, Sells, Reykdal, Robinson, Pollet, Kilduff, Ryu, Frame, Ormsby, Fitzgibbon, Kuderer, Sawyer, Bergquist, Gregerson, and Stanford

Read first time 01/14/16. Referred to Committee on Labor & Workplace Standards.

1 AN ACT Relating to requiring inspections, specialized training,  
2 and other enhanced workplace standards on dairy farms; amending RCW  
3 49.17.160 and 49.17.180; adding new sections to chapter 49.17 RCW;  
4 and prescribing penalties.

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

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 49.17  
7 RCW to read as follows:

8 (1) The department shall adopt permanent rules that take effect  
9 no later than June 30, 2018, establishing training requirements for  
10 dairy farm employees. At a minimum, the rules must:

11 (a) Require that dairy farm employers ensure that their employees  
12 complete agriculture safety training, at no cost to the employee. The  
13 rules must include reasonable time frames in which all employees  
14 working on a dairy farm must complete training. Time frames for  
15 completing training may be different depending on whether an employee  
16 will be working directly with animals or operating heavy equipment  
17 and whether an employee was employed before or after the effective  
18 date of the rule;

19 (b) Provide that a certificate of completion must be issued to  
20 participants who successfully complete the training. A certificate of  
21 completion is sufficient proof that the employee has received the

1 training required under this section. An employer may rely on the  
2 certificate as proof that the employee has received the training  
3 required by this section. A certificate of completion must be renewed  
4 every three years; and

5 (c) Provide that the employer must have at least one supervisor  
6 present on site who has completed the agriculture safety training,  
7 and that for every ten dairy farm employees working on site, there  
8 must be at least one supervisor who has completed the agriculture  
9 safety training.

10 (2) The agriculture safety training required under this section  
11 must be developed by the department specifically for the agricultural  
12 industry and must include segments to address common dairy issues and  
13 hazards.

14 (3)(a) To meet the needs of employers and employees, the training  
15 may be provided by the department, community-based nonprofit  
16 organizations throughout the state, and dairy employers, in  
17 coordination with dairy farm employer and employee organizations and  
18 associations.

19 (b) The department shall regularly audit training provided by  
20 organizations and employers to ensure that the department's  
21 curriculum, standards, and certification guidelines are followed.

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

24 (1) The department shall adopt permanent rules that take effect  
25 no later than June 30, 2018, establishing a dairy safety emphasis  
26 unit within the department.

27 (2) Among other duties and responsibilities, the dairy safety  
28 emphasis unit must:

29 (a) Ensure that every dairy farm in the state is inspected at  
30 least once every three years for compliance with safety and health  
31 standards governing dairy farms;

32 (b) Ensure that inspections of dairy farms are made without  
33 advanced notice;

34 (c) Ensure compliance by dairy farm employers of agricultural  
35 training requirements established in section 1 of this act;

36 (d) Provide consultation and advisory services, under RCW  
37 49.17.250, to dairy farm employers to improve compliance; and

38 (e) Create easily accessible educational materials for dairy farm  
39 employers and employees focusing on safety and health.

1        NEW SECTION.    **Sec. 3.**    A new section is added to chapter 49.17  
2    RCW to read as follows:

3        (1) The department shall adopt permanent rules that take effect  
4    no later than June 30, 2018, establishing safety and health standards  
5    for dairy farms to ensure safe dairy workplaces.

6        (2) The rules must address dairy specific safety and health  
7    issues and hazards, including such issues and hazards as:

8        (a) Unmarked, unlit, and unfenced manure pits;

9        (b) Air quality due to chemicals and animal waste particulates;

10       (c) Crushing and stomping hazards due to working in close  
11    proximity with animals;

12       (d) Heavy equipment operation hazards;

13       (e) Slipping, tripping, and falling hazards;

14       (f) Crushing hazards due to the built environment; and

15       (g) Standards for drinking water, bathrooms, and washing  
16    facilities for dairy farm employees.

17       (3) If there are exemptions from the agricultural safety  
18    standards that would apply to dairy farm employers as a result of the  
19    creation of dairy specific rules, the dairy farm rules must  
20    specifically reference those exemptions.

21       **Sec. 4.**    RCW 49.17.160 and 2010 c 8 s 12013 are each amended to  
22    read as follows:

23       (1) No person shall discharge or in any manner discriminate  
24    against any employee because such employee has filed any complaint or  
25    instituted or caused to be instituted any proceeding under or related  
26    to this chapter, or has testified or is about to testify in any such  
27    proceeding or because of the exercise by such employee on behalf of  
28    himself or herself or others of any right afforded by this chapter.

29       (2) Any employee who believes that he or she has been discharged  
30    or otherwise discriminated against by any person in violation of this  
31    section may, within thirty days after such violation occurs, file a  
32    complaint with the director alleging such discrimination. For  
33    employees of dairy farms, the employee may, within ninety days after  
34    such violation occurs, file a complaint with the director. Upon  
35    receipt of such complaint, the director shall cause such  
36    investigation to be made as he or she deems appropriate. If upon such  
37    investigation, the director determines that the provisions of this  
38    section have been violated, he (~~of~~~~or~~) or she shall bring an  
39    action in the superior court of the county wherein the violation is

1 alleged to have occurred against the person or persons who is alleged  
2 to have violated the provisions of this section. If the director  
3 determines that the provisions of this section have not been  
4 violated, the employee may institute the action on his or her own  
5 behalf within thirty days of such determination. In any such action  
6 the superior court shall have jurisdiction, for cause shown, to  
7 restrain violations of subsection (1) of this section and order all  
8 appropriate relief including rehiring or reinstatement of the  
9 employee to his or her former position with back pay. For actions  
10 regarding an employee of a dairy farm, additional remedies include  
11 both damages in an amount equal to three times the amount of back  
12 wages owed to the employee, regardless of whether the employee is  
13 rehired or reinstated to his or her former position, and a civil  
14 penalty of one thousand dollars, to be paid to the director for  
15 deposit in the supplemental pension fund established by RCW  
16 51.44.033.

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

20 (4)(a) For actions regarding an employee of a dairy farm, there  
21 is a rebuttable presumption that the employer violated this section  
22 if the discriminatory act or discharge occurred within ninety days of  
23 the employee filing a complaint or instituting any proceeding or  
24 causing any proceeding to be instituted under this chapter or within  
25 ninety days of testifying in any proceeding under this chapter or  
26 exercising his or her rights under this chapter.

27 (b) The employer may rebut the presumption with clear and  
28 convincing evidence that the discharge or act alleged to be  
29 discrimination was taken for a permissible purpose.

30 (c) Discriminatory acts may include denying a promotion,  
31 demoting, failing to rehire after seasonal interruption of work,  
32 threatening, penalizing, engaging in unfair immigration-related  
33 practices, filing a false report with a government agency, or other  
34 act of retaliation against the employee.

35 **Sec. 5.** RCW 49.17.180 and 2010 c 8 s 12015 are each amended to  
36 read as follows:

37 (1)(a) Except as provided in RCW 43.05.090, any employer who  
38 willfully or repeatedly violates the requirements of RCW 49.17.060,  
39 of any safety or health standard promulgated under the authority of

1 this chapter, of any existing rule or regulation governing the  
2 conditions of employment promulgated by the department, or of any  
3 order issued granting a variance under RCW 49.17.080 or 49.17.090 may  
4 be assessed a civil penalty not to exceed seventy thousand dollars  
5 for each violation. Except as provided in (b) of this subsection, a  
6 minimum penalty of five thousand dollars shall be assessed for a  
7 willful violation.

8 (b) For a willful violation by a dairy farm of any dairy specific  
9 safety or health rules under this chapter, a minimum penalty of seven  
10 thousand dollars shall be assessed. In addition, if a willful  
11 violation of any dairy specific safety or health rule resulted in the  
12 death of a dairy farm employee, the employer shall pay an additional  
13 payment of ten thousand dollars. The ten thousand dollar payment  
14 passes from the department to the employee's survivors in the same  
15 manner as death benefits under RCW 51.32.050.

16 (2)(a) Except as provided in (b) of this subsection, any employer  
17 who has received a citation for a serious violation of the  
18 requirements of RCW 49.17.060, of any safety or health standard  
19 promulgated under the authority of this chapter, of any existing rule  
20 or regulation governing the conditions of employment promulgated by  
21 the department, or of any order issued granting a variance under RCW  
22 49.17.080 or 49.17.090 as determined in accordance with subsection  
23 (6) of this section, shall be assessed a civil penalty not to exceed  
24 seven thousand dollars for each such violation.

25 (b) In addition to the civil penalty under (a) of this  
26 subsection, if a serious violation of a dairy specific safety or  
27 health rule resulted in the death of a dairy farm employee, the  
28 employer shall pay an additional payment of ten thousand dollars. The  
29 ten thousand dollar payment passes from the department to the  
30 employee's survivors in the same manner as death benefits under RCW  
31 51.32.050.

32 (3) Any employer who has received a citation for a violation of  
33 the requirements of RCW 49.17.060, of any safety or health standard  
34 promulgated under this chapter, of any existing rule or regulation  
35 governing the conditions of employment promulgated by the department,  
36 or of any order issued granting a variance under RCW 49.17.080 or  
37 49.17.090, where such violation is specifically determined not to be  
38 of a serious nature as provided in subsection (6) of this section,  
39 may be assessed a civil penalty not to exceed seven thousand dollars

1 for each such violation, unless such violation is determined to be de  
2 minimis.

3 (4) Any employer who fails to correct a violation for which a  
4 citation has been issued under RCW 49.17.120 or 49.17.130 within the  
5 period permitted for its correction, which period shall not begin to  
6 run until the date of the final order of the board of industrial  
7 insurance appeals in the case of any review proceedings under this  
8 chapter initiated by the employer in good faith and not solely for  
9 delay or avoidance of penalties, may be assessed a civil penalty of  
10 not more than seven thousand dollars for each day during which such  
11 failure or violation continues.

12 (5) Any employer who violates any of the posting requirements of  
13 this chapter, or any of the posting requirements of rules promulgated  
14 by the department pursuant to this chapter related to employee or  
15 employee representative's rights to notice, including but not limited  
16 to those employee rights to notice set forth in RCW 49.17.080,  
17 49.17.090, 49.17.120, 49.17.130, 49.17.220(1), and 49.17.240(2),  
18 shall be assessed a penalty not to exceed seven thousand dollars for  
19 each such violation. Any employer who violates any of the posting  
20 requirements for the posting of informational, educational, or  
21 training materials under the authority of RCW 49.17.050(7), may be  
22 assessed a penalty not to exceed seven thousand dollars for each such  
23 violation.

24 (6) For the purposes of this section, a serious violation shall  
25 be deemed to exist in a workplace if there is a substantial  
26 probability that death or serious physical harm could result from a  
27 condition which exists, or from one or more practices, means,  
28 methods, operations, or processes which have been adopted or are in  
29 use in such workplace, unless the employer did not, and could not  
30 with the exercise of reasonable diligence, know of the presence of  
31 the violation.

32 (7) The director, or his or her authorized representatives, shall  
33 have authority to assess all civil penalties provided in this  
34 section, giving due consideration to the appropriateness of the  
35 penalty with respect to the number of affected employees of the  
36 employer being charged, the gravity of the violation, the size of the  
37 employer's business, the good faith of the employer, and the history  
38 of previous violations.

39 (8) Civil penalties imposed under this chapter shall be paid to  
40 the director for deposit in the supplemental pension fund established

1 by RCW 51.44.033. Civil penalties may be recovered in a civil action  
2 in the name of the department brought in the superior court of the  
3 county where the violation is alleged to have occurred, or the  
4 department may utilize the procedures for collection of civil  
5 penalties as set forth in RCW 51.48.120 through 51.48.150.

--- END ---