

SENATE BILL REPORT

SB 5719

As Reported by Senate Committee On:
Commerce, Labor & Sports, February 15, 2017

Title: An act relating to creating a labor and industries ombuds within the department of commerce.

Brief Description: Creating a labor and industries ombuds within the department of commerce.

Sponsors: Senators Baumgartner and Rolfes.

Brief History:

Committee Activity: Commerce, Labor & Sports: 2/15/17, 2/15/17 [DP-WM, DNP].

Brief Summary of Bill

- Creates the Ombuds for Employers in the Department of Commerce.
- Provides that the Ombuds for Employers (1) advocates for employers with the Department of Labor and Industries (L&I), (2) provides information on L&I programs, and (3) facilitates resolution of employer complaints.

SENATE COMMITTEE ON COMMERCE, LABOR & SPORTS

Majority Report: Do pass and be referred to Committee on Ways & Means.

Signed by Senators Baumgartner, Chair; Braun, Vice Chair; King, Rossi and Wilson.

Minority Report: Do not pass.

Signed by Senators Keiser, Ranking Minority Member; Conway, Hasegawa and Saldaña.

Staff: Susan Jones (786-7404)

Background: Industrial Insurance. Under the state's industrial insurance laws—workers' compensation—employers must insure through the state fund administered by the Department of Labor and Industries (L&I) or, if qualified, may self-insure.

Ombuds for Workers of Self-Insured Employers. The Office of the Ombuds for Workers of Industrial Insurance Self-Insured Employers was created in 2007. The ombuds is appointed by the Governor and reports directly to the Director of L&I. The ombuds holds office for a

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six-year term. The Governor may remove the ombuds only for neglect of duty, misconduct, or inability to perform duties.

Training and Experience. Any ombuds appointed must have training or experience, or both, in:

- Washington State industrial insurance, including self-insurance programs;
- the Washington State legal system; and
- dispute or problem resolution techniques.

Powers and Duties. The ombuds has the following powers and duties to:

- act as an advocate for injured workers of self-insured employers;
- offer and provide information on industrial insurance as appropriate to workers of self-insured employers;
- identify, investigate, and facilitate resolution of industrial insurance complaints from workers of self-insured employers;
- maintain a statewide toll-free telephone number for the receipt of complaints and inquiries; and
- refer complaints to L&I when appropriate.

Liability, Discriminatory, Disciplinary, or Retaliatory Actions. No ombuds is liable for good faith performance of responsibilities. No discriminatory, disciplinary, or retaliatory action may be taken against any employee for any information given to assist the ombuds in carrying out the ombuds' duties and responsibilities, unless done maliciously. The ombuds must develop referral procedures for complaints by the workers, and L&I must act as quickly as possible on any referred complaint.

Communications, Records, Confidentiality, and Disclosures. All communications by the ombuds, if reasonably related to the ombuds' responsibilities and done in good faith, are privileged and confidential, and serve as a defense to any action in libel or slander. Representatives of the office are generally exempt from being required to testify as to any privileged or confidential matters. All records and files of the ombuds relating to any complaint or investigation and the identities of complainants, witnesses, or injured workers are confidential unless disclosure is authorized by the complainant or injured worker. No disclosures may be made outside the Office of the Ombuds without the consent of a witness or complainant unless the disclosure is made without the identity of the person.

Reporting. The ombuds must provide to the Governor an annual report with:

- a description of the issues addressed during the past year and a description of case scenarios;
- an accounting of its monitoring activities; and
- an identification of the deficiencies in the industrial insurance system related to self-insurers, and recommendations for remedial action.

Summary of Bill: Ombuds for Employers. The Ombuds for Employers is created in the Department of Commerce (Commerce). The employer ombuds is appointed by the Governor, reports directly to the Director of Commerce, and must not be physically located within L&I. The employer ombuds holds office for a six-year term and continues until

reappointed or until the successor is appointed and can be removed only for neglect of duty, misconduct, or inability to perform duties.

Training and Experience. Any employer ombuds must have training or experience, or both, in L&I programs, the legal system, and dispute resolution techniques.

The employer ombuds must integrate information explaining the employer ombuds program and contact information into existing L&I brochures and materials to employers.

Powers and Duties. The employer ombuds has the following powers and duties to:

- act as an advocate for employers with L&I;
- offer and provide information on L&I programs to employers;
- identify, investigate, and facilitate resolution of employer complaints; and
- maintain a statewide toll-free telephone number for complaints and inquiries.

Liability, Discriminatory, Disciplinary, or Retaliatory Actions. The employer ombuds is not liable for good faith performance of its responsibilities. No discriminatory or retaliatory action may be taken against any employer for any information given to assist the employer ombuds in carrying out employer ombuds' duties and responsibilities.

Communications, Records, Confidentiality and Disclosures. All communications by the employer ombuds done in good faith are privileged and confidential. The employer ombuds is generally exempt from being required to testify as to any privileged or confidential matters. All records and files of the employer ombuds relating to any complaint or investigation and the identities of complainants, witnesses, or workers are confidential unless disclosure is authorized by the employer. No disclosures may be made outside the Office of the Ombuds for Employers without the consent of the employer.

Reporting. The employer ombuds shall provide an annual report to the Governor with:

- a description of the issues addressed during the past year and of case scenarios;
- an accounting of the monitoring activities; and
- an identification of the deficiencies in L&I programs related to L&I and employer interactions, and remedial recommendations.

The first annual report is due on or before October 1, 2017.

State Spending Performance Statement. The Legislature intends to:

- improve the customer service aspects for employers doing business with L&I;
- resolve employer complaints and disputes with L&I in a more timely fashion;
- improve the knowledge employers have of industrial insurance, workplace safety, standards laws, and regulations; and
- improve the identification of employer issues and deficiencies with L&I programs, and provide recommendations for change.

No later than January 1, 2027, the Joint Legislative Audit and Review Committee (JLARC) must review the program, determine its effectiveness, and provide a recommendation for continuation, modification, sunset review, or termination. JLARC may require L&I and the employer ombuds to collect data for the review and conduct employer surveys.

The act expires July 1, 2027.

Appropriation: None.

Fiscal Note: Requested on February 9, 2017.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: Employers feel like they are under attack and they have no one on their side. They may need help looking into issues, tracking data, and dealing with an overly aggressive L&I investigator. This is a customer service bill.

CON: There are concerns that the employer ombuds could delay the process. This would not be a good addition to the workers' compensation system. Any ombuds should help injured workers, not just workers of a self-insured employer. Having the employer ombuds at the Department of Commerce is a problem. Having the SI ombuds in the L&I building allows easy access to L&I to resolve matters. L&I's small business department could be a resource.

Persons Testifying: PRO: Senator Michael Baumgartner, Prime Sponsor.

CON: Joe Kendo, Washington State Labor Council, AFL-CIO.

Persons Signed In To Testify But Not Testifying: No one.