

---

**Labor & Workplace Standards  
Committee**

---

**HB 1965**

**Brief Description:** Allowing whistleblowers to bring actions on behalf of the state for violations of workplace protections.

**Sponsors:** Representatives Hansen, Stonier, Sullivan, Riccelli, Lekanoff, Cody, Macri, Ormsby, Appleton, Fitzgibbon, Ortiz-Self and Pollet.

**Brief Summary of Bill**

- Authorizes a qui tam action for enforcement of various employment laws under which a relator on behalf of an agency may pursue relief the agency may pursue.
- Specifies the division of any penalties awarded between the agency and the relator.

**Hearing Date:** 2/18/19

**Staff:** Joan Elgee (786-7106).

**Background:**

Multiple state laws provide protections for employees and contain various mechanisms to enforce the protections. Administrative remedies include civil penalties, recovery of back wages, and other remedies.

Wages.

Wage laws include the Minimum Wage Act and the laws relating to prevailing wage. The Wage Payment Act authorizes an employee to file a wage complaint with the Department of Labor and Industries (L&I) regarding a failure to pay minimum wage or overtime, failure to pay contracted for wages, and for other wage claims. The L&I may obtain wages and interest for an employee and may order the employer to pay a civil penalty if the violation was willful. Under prevailing wage laws, the L&I may also obtain wages and assess a civil penalty. Other wage laws include provisions on health care facility employee overtime, and seasonal labor provisions.

---

*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.*

### Safety.

The Washington Industrial Safety and Health Act (WISHA) authorizes and in some cases requires a civil penalty be imposed against an employer for violation of safety and health standards. Other laws specific to certain industries, such as for late night retail establishments and in health care settings, are enforced under the WISHA. Child labor laws allow minors to perform only certain duties and a business hiring minors must have a minor work permit. The L&I may impose a penalty and revoke the work permit for a violation.

### Leave.

Leave laws include paid sick leave and military family leave. The L&I may assess penalties for violations of these laws and may also order a reinstatement of hours or compensation under paid sick leave.

### Discrimination.

If an employer discriminates against an employee based on a protected class status, the Washington State Human Rights Commission may order back pay, hiring, reinstatement, and other remedies.

### Other.

The Industrial Welfare Act contains a number of standards, such as the Family Care Act, and is also the authority for L&I's rules on meals and rest breaks. Other employment laws include regulation of farm labor contractors and laws protecting health care employee whistleblowers.

### Medicaid Fraud False Claims Act.

The Medicaid Fraud False Claims Act (MFFCA) authorizes a person, the relator, to bring an action, known as a qui tam action, to seek a civil penalty for medical fraud. The relator files a complaint in superior court in camera and serves a copy of the complaint on the Attorney General (AG). The AG has 60 days, or longer if it requests, to decide whether to intervene. The relator receives a percentage of the penalty, with the percentage depending on whether the AG intervened and other factors, and attorney's fees and costs.

### **Summary of Bill:**

The Worker Protect Act is established, under which a qui tam action is authorized for violations of employment laws.

### Qui Tam Action Authorized.

Any natural person, corporation, association, or other legal entity, or a local government of the state (the relator) may bring a qui tam action in court for any relief the specified state agency may seek, including penalties, equitable relief, and any relief specified in rule. The action may allege multiple violations affecting multiple employees. The granting of relief is subject to the same conditions and limitations that apply to the agency, and the qui tam action must be commenced within the same statute of limitations applicable to the agency.

A qui tam action may be brought to enforce the following laws enforced by the L&I;

- the Minimum Wage Act;

- laws relating to the payment of wages, including the Wage Payment Act, and wage rebate laws;
- prevailing wage;
- health care facility employee overtime;
- the Washington Industrial Safety and Health Act (WISHA), and other safety laws enforced under the WISHA, including standards for late night retail establishments and underground workers;
- leave laws including military family leave and paid sick leave;
- laws relating to gender equal pay and advancement opportunities;
- laws relating to agricultural labor, seasonal labor, and farm labor contractors; and
- laws granting the authority to the L&I for meal and rest break rules and which contain other labor standards, known as the Industrial Welfare Act.

Also included are the Washington Law Against Discrimination, enforced by the Washington State Human Rights Commission, and the health care employee whistleblower retaliation protection law, enforced by the Department of Health.

If no civil penalty is provided for a particular violation, a civil penalty of \$500 is established, and a penalty must be awarded for each aggrieved employee for each two-week time period. A court may award a lesser penalty if based on the particular facts, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.

No qui tam action may be brought if the agency issued an order or otherwise resolved the complaint. Also, no qui tam action may be brought with respect to a license, variance or permit, or for specified violations, such as violations of filing requirements, unless the requirement involves payroll, injury reporting, or a safety or health violation.

Civil Rule 23 regarding class actions does not apply to a qui tam action. The right to bring an action may not be impaired by a private agreement. A qui tam action does not preclude an action by an individual, but no double recovery is permitted.

#### Qui Tam Process.

A relator must first give the appropriate agency written notice of the claim and pay a filing fee of \$75. If the agency decides to investigate the claim, it must notify the relator and make a determination within 60 days. If the agency decides not to investigate, it must notify the relator within five days. The relator may commence the qui tam action if it receives notice that the agency does not intend to investigate or the agency does not make a determination within 60 days.

The statute of limitations is tolled from the date a relator files a notice or the date the agency commences an investigation. The agency may object to the state being represented by an attorney proposed by the relator by filing an objection with the AG. Under specified standards, the AG may order that the qui tam action may not be filed or maintained by the particular attorney.

As part of its investigation, the agency may attempt to settle the violation. If the aggrieved employee receives not less than 100 percent of any wrongfully withheld wages or benefits,

including 12 percent interest per year, within the 60-day investigation period, the settlement precludes further claims for the same wages or benefits.

Once the lawsuit has commenced, the agency may intervene as of right within 30 days of the filing and for good cause after the 30-day period. If the agency intervenes, the agency has primary litigation responsibility. If the agency proposes to settle or dismiss the action, it must give notice to the relator and the AG and the court may allow the AG to intervene and object. The relator has the opportunity to be heard regarding any dismissal. The agency may dismiss or settle the action if the court determines that the dismissal or settlement is fair, adequate, reasonable, and in the public interest.

If the agency does not intervene and the relator proposes to settle, the settlement must be submitted to the agency and to the AG and the agency may present its position or intervene. The court may also allow the AG to intervene and object. The settlement must be approved under the same standard as a settlement proposed by the agency.

#### Distribution of Awards.

Penalty amounts are distributed as follows: (1) if the agency intervenes, 20 percent to the relator and 80 percent to the agency; and (2) if the agency does not intervene, 40 percent to the relator and 60 percent to the agency.

Any damages must be awarded to the agency for distribution to aggrieved employees. The agency may request the appointment of an administrative law judge or special master to assist in the distribution.

A relator who prevails is entitled to reasonable attorneys' fees and costs.

#### Retaliation.

Retaliation against an employee for filing a notice or testifying or exercising the employee's rights under the provisions is prohibited. A rebuttable presumption is established that the discharge of any employee engaged in conduct allowed under the provisions within 90 days of the conduct is retaliatory. The employer may rebut the presumption by clear and convincing evidence that it had a legitimate nondiscriminatory reason to discharge the employee, which was not motivated in any part by allowed conduct. Remedies for retaliation are specified, including a qui tam action.

#### Database.

The L&I must publish online a database of qui tam notices, which must include the names of the parties, the disposition, and other information the L&I determines by rule. The other agencies must provide information for the database to the L&I.

#### Other.

Accounts are created for receipt of penalties for the L&I, the Washington State Human Rights Commission, and the Department of Health. Expenditures from the accounts are for education and enforcement about specified laws.

**Appropriation:** None.

**Fiscal Note:** Requested on February 7, 2019.

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