

SENATE BILL REPORT

ESSB 6122

As Passed Senate, February 13, 2020

Title: An act relating to protecting temporary workers.

Brief Description: Protecting temporary workers.

Sponsors: Senate Committee on Labor & Commerce (originally sponsored by Senators Keiser, Kuderer and Wilson, C.).

Brief History:

Committee Activity: Labor & Commerce: 1/27/20, 2/06/20 [DPS, DNP].

Floor Activity:

Passed Senate: 2/13/20, 47-0.

Brief Summary of Engrossed First Substitute Bill

- Requires a staffing agency to visit the worksite, if five or more employees will be assigned there, to review the safety and health practices and hazards unless it is not feasible; to provide annual general industry hazards training; and to provide the employee with information about reporting safety concerns.
- Requires the worksite employer to document and inform the agency about job hazards; review industry training provided by the agency; and document and maintain records of supplemental training and provide the records to the agency and the employee within 48 hours of the training.
- Requires a worksite employer, that supervises a staffing agency employee, to provide worksite specific training to the employee and to allow an agency to visit any worksite.
- Allows an agency and employee to refuse a new job task when the task has not been reviewed or for lack of appropriate training.
- Prohibits retaliation against an employee who reports safety concerns.
- Requires the Department of Labor and Industries to review three years of industrial injury claims related to staffing agencies' employees and report to the Legislature with a recommendation for a financial assessment charged to the worksite employers.

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.

SENATE COMMITTEE ON LABOR & COMMERCE

Majority Report: That Substitute Senate Bill No. 6122 be substituted therefor, and the substitute bill do pass.

Signed by Senators Keiser, Chair; Conway, Vice Chair; Saldaña, Stanford and Wellman.

Minority Report: Do not pass.

Signed by Senators King, Ranking Member; Braun, Schoesler and Walsh.

Staff: Susan Jones (786-7404)

Background: Safety and Health. Washington is a "state plan state" for purposes of the federal Occupational Safety and Health Administration (OSHA). As a state plan state, Washington assumes responsibility for occupational safety and health in the state under the Washington Industrial Safety and Health Act (WISHA). The Department of Labor and Industries (L&I) administers the WISHA. The WISHA directs L&I to adopt rules governing safety and health standards that require the adoption of practices or processes reasonably necessary or appropriate to provide safe or healthful employment. L&I has adopted general standards that apply to most industries, as well as standards that apply only to specific industries.

If L&I determines that an employer has violated a safety or health standard, the director must in most cases issue a citation and impose a penalty. If two or more employers may share liability for violations—such as in the case of staffing agencies providing temporary workers—L&I applies policies outlined in a directive. In general, the staffing agency must ensure employees receive all required training and personal protective equipment, but may fulfill its obligation by taking reasonable steps to ensure the work site employer provides the training and the personal protective equipment. The work site employer may be cited for violations when it is responsible for supervising or controlling the staffing agency's employees. In some cases, both employers may be cited.

Workers' Compensation. For purposes of payment of workers' compensation premiums, a temporary help company that provides workers on a temporary basis to its customers is considered the employer. The customer employer is liable if the temporary help company fails to pay the premiums.

Summary of Engrossed First Substitute Bill: Staffing Agency Responsibilities. Before the assignment of an employee to a worksite employer, a staffing agency must:

- make every reasonable effort, when five or more employees will be assigned to a single worksite, to visit the worksite employer's actual workplace where the employee will be working to review the safety and health practices and hazards; when a visit to the workplace is not feasible, the agency must inquire about the safety and health practices and hazards;
- provide annual general industry hazards training in the employee's preferred language and at no expense to the employee;
- transmit training documentation to the worksite employer; and

- inform the employee who the employee should report safety concerns to at the workplace and provide L&I's hotline number to report safety hazards and concerns as part of the employment materials provided to the employee.

The training date and training content must be maintained by the staffing agency. It must be provided to the employee upon request.

The worksite employer, before the employee engages in work, must: document and inform the agency about anticipated job hazards; review industry training provided by the staffing agency for appropriateness and if not, provide training; document training adequacy; and document and maintain records of supplemental training and provide the records to the agency and the employee within 48 hours of the training. The worksite employer must provide information if it changes the job tasks and new hazards may be encountered. An agency and employee may refuse a new job task when the task has not been reviewed or for lack of appropriate training.

A worksite employer must to allow an agency to visit any worksite to observe and confirm the information related to job tasks and hazards.

A worksite employer, that supervises an employee of a staffing agency, must provide worksite specific training to the employee. The worksite employer must allow a staffing agency to visit any worksite to observe and confirm the worksite employer's training and information related to the worksite's safety and health practices and hazards.

A staffing agency or worksite employer may not retaliate against a staffing agency employee who reports safety concerns.

L&I Report. L&I must review three years of industrial injury claims related to staffing agencies' employees. By December 1, 2023, L&I must provide a report to the appropriate committees of the Legislature with its findings regarding the claims and a recommendation for a financial assessment charged to the worksite employers so that worksite employers also impacted financially from claims related to their worksites by staffing agencies' employees. The financial assessment is separate from industrial insurance premiums and experience rating calculations.

Definitions. Staffing agency means an individual or entity that procures or provides temporary employment to a person who then works under the supervision or direction of a worksite employer. It does not include a farm labor contractor.

Worksite employer means an individual or entity with which a staffing agency contracts or otherwise agrees to furnish persons for temporary employment in the industries described in the North American industry classification system sections 23, 31-33.

Appropriation: None.

Fiscal Note: Available.

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 on Proposed Substitute: *The committee recommended a different version of the bill than what was heard.* CON: We share the goal of the bill. We have worked collaboratively with L&I to work towards that goal. We submitted a letter to the Committee. There are three outstanding concerns. The requirement that the staffing agency visit the workplace is not in the best interests to ensure worker safety because it is the host company that knows the hazards of the worksite. It is unclear whether the required training is a general worksite training or a safety training. The staffing agency could do general safety training. The host could provide specific training and provide certification to the staffing agency. The problem is that you are asking the temp agency to go to the worksite and ensure the safety issues. It is the site specific folks that need to make sure the safety issues are taken care of.

We try to take care of our employees and make sure they have all their wage and hour rights and worker protections. A staffing company got started because the owner realized that he could do better for the workers and the customers. We should table this and work on it over the interim.

We share the goal of worker safety but the bill will lose opportunities for the workforce. We are a second chance employer. We partner with a lot of nonprofits and agencies to help people with criminal backgrounds or little to no experience get back to work. Having these requirements will prevent the ability to provide on demand workforce. We are a gig economy and they rely on the on demand workforce. We are concerned that it will revert to the underground economy.

OTHER: We are confused about the roles and responsibilities of the staffing agency and the worksite employer.

Persons Testifying: CON: Melissa Gombosky, America Staffing Association; Natalie McNair, TrueBlue; Heidi Sharpe, PeopleReady Trueblue; Robert Battles, Association of Washington Business.

OTHER: Bruce Beckett, Washington Retail Association.

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