
HOUSE BILL 1965

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2019 Regular Session

By Representatives Hansen, Stonier, Sullivan, Riccelli, Lekanoff, Cody, Macri, Ormsby, Appleton, Fitzgibbon, Ortiz-Self, and Pollet

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1 AN ACT Relating to allowing whistleblowers to bring actions on
2 behalf of the state for violations of workplace protections; and
3 adding a new chapter to Title 49 RCW.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that while most
6 employers pay their workers wages owed, provide safe working
7 conditions, provide a workplace free from discrimination, and
8 otherwise follow the law, violations of workplace protections
9 persist. The legislature further finds that state resources available
10 to rectify workplace violations are limited, which allows abuses to
11 go unpunished. Lack of enforcement means workers work for less than
12 minimum wage, sustain serious injuries, and suffer other violations.
13 In addition, it is unfair to law-abiding employers to have to compete
14 with employers that disregard the law. Therefore, the legislature
15 intends to permit qui tam actions, allowing and incentivizing
16 private persons, acting as relators, to bring public enforcement
17 actions of worker protection laws on behalf of the state.

18 NEW SECTION. **Sec. 2.** The definitions in this section apply
19 throughout this chapter unless the context clearly requires
20 otherwise.

1 (1) "Agency" means the department of labor and industries, except
2 that for purposes of chapter 49.60 RCW "agency" means the Washington
3 state human rights commission, and for purposes of RCW 43.70.075
4 "agency" means the department of health.

5 (2) "Person" means any natural person, partnership, corporation,
6 association, or other legal entity, including any local or political
7 subdivision of a state.

8 (3) "Qui tam relator" or "relator" means a person who brings or
9 seeks to bring an action under section 3 of this act.

10 (4) "Qui tam action" means an action brought by a person under
11 section 3 of this act.

12 NEW SECTION. **Sec. 3.** (1) A person, on behalf of an agency and
13 in the name of the agency, may bring a qui tam action in court for
14 any relief the agency may pursue under the laws specified in section
15 4 of this act, including equitable relief, penalties, and any relief
16 specified in rule. The granting of relief shall be subject to the
17 same conditions and limitations that apply to the agency, including
18 any requirements for conference and conciliation and any conditions
19 and limitations specified in rule. The action may allege multiple
20 violations that have affected different employees aggrieved by the
21 same employer. The relator must follow the procedures specified in
22 section 5 of this act.

23 (2) A relator that prevails in a qui tam action is entitled to an
24 award of reasonable attorneys' fees and costs.

25 (3) No qui tam action may be brought if the agency, regarding the
26 same facts as alleged in the qui tam action, issued a notice of
27 assessment, determination of compliance, or order, or otherwise
28 resolved the complaint.

29 (4) A qui tam action must be commenced within the same period of
30 time that the agency would have to take action based on the same set
31 of alleged facts. The statute of limitations for bringing a qui tam
32 action is tolled from the date a relator files a notice with the
33 agency or the date the agency commences an investigation.

34 (5) No qui tam action may be brought with respect to modifying,
35 revoking, or suspending a license, variance, or permit; or for any
36 violation of a posting, notice, agency reporting, or filing
37 requirement, except where the filing or reporting requirement
38 involves payroll, injury reporting, or a safety or health violation.

1 (6) The requirements of Rule 23 of the superior court rules of
2 civil procedure do not apply to a qui tam action.

3 (7) The right to bring a qui tam action under this section may
4 not be impaired by any private agreement.

5 (8) A qui tam action is a public action and does not preclude a
6 cause of action by an individual or individuals or operate as an
7 estoppel for relief based on the same set of alleged facts, except
8 that a court may not permit a double recovery.

9 NEW SECTION. **Sec. 4.** (1) A qui tam action may be brought to
10 enforce the following laws:

11 (a) Chapter 49.46 RCW, known as the minimum wage act;

12 (b) Chapter 49.48 RCW, relating to the payment of wages;

13 (c) Chapter 49.52 RCW, relating to wage rebates;

14 (d) RCW 49.28.130 through 49.28.150, relating to health care
15 facility employee overtime;

16 (e) Chapter 39.12 RCW, relating to prevailing wage;

17 (f) Chapter 49.40 RCW, relating to seasonal labor;

18 (g) Chapter 49.17 RCW, the Washington industrial safety and
19 health act of 1973;

20 (h) Chapter 49.19 RCW, relating to safety in health care
21 settings; chapter 49.22 RCW, relating to safety in late night retail
22 establishments; chapter 49.24 RCW, relating to safety for underground
23 workers, and chapter 49.26 RCW, relating to asbestos safety;

24 (i) Chapter 49.77 RCW, known as military family leave;

25 (j) Chapter 49.58 RCW, known as gender equal pay and advancement
26 opportunities;

27 (k) Chapter 49.60 RCW, known as the Washington law against
28 discrimination;

29 (l) Chapter 19.30 RCW, relating to farm labor contractors;

30 (m) Chapter 49.30 RCW, relating to agricultural labor;

31 (n) RCW 43.70.075, relating to health care employee whistleblower
32 retaliation protection;

33 (o) Chapter 49.12 RCW, known as the industrial welfare act; and

34 (p) Section 8 of this act.

35 (2) For any provision of law referenced in this section where no
36 civil penalty is specifically provided by law, a civil penalty of
37 five hundred dollars is established. A penalty shall be awarded for
38 each employee aggrieved by the violation during each two-week time
39 period. A court may award a lesser amount of civil penalties than

1 those specified in this subsection if, based on the fact and
2 circumstances of the particular case, to do otherwise would result in
3 an award that is unjust, arbitrary and oppressive or confiscatory.

4 NEW SECTION. **Sec. 5.** (1) No action under section 3 of this act
5 may be commenced before sixty days after written notice of the claim
6 has been submitted by the relator to the agency, via online
7 submission. The notice must be construed in the light most favorable
8 to the relator, and must include the name, address, and contact
9 information of the alleged violator; the name and contact information
10 of the relator or the relator's legal counsel, should one exist; and
11 a brief statement of the underlying claim. Where possible, the
12 relator must also search the database established under section 9 of
13 this act for any notices alleging the same facts and legal theories,
14 and shall reference these notices or attest that no such notices
15 exist. The relator must submit to the agency, with the notice of the
16 claim, a filing fee of seventy-five dollars. The agency may adopt
17 rules permitting the agency to waive the filing fee.

18 (2) If the agency intends to investigate the alleged violation,
19 the agency must notify the relator and make a determination within
20 sixty days of receiving the notice under subsection (1) of this
21 section. If the agency decides not to investigate the alleged
22 violation, it must notify the relator within five business days of
23 the date it receives the notification submitted by the relator. Upon
24 receiving notice that the agency does not intend to investigate or if
25 the agency does not make a determination within sixty days, the
26 relator may commence a qui tam action.

27 (3) As part of its investigation, the agency may attempt to
28 remedy the alleged violation through settlement. If the settlement
29 obtained by the agency provides the aggrieved employee or employees
30 with a full remedy of not less than one hundred percent of any
31 wrongfully withheld wages or benefits, including twelve percent
32 interest per annum, and the aggrieved employees receive payment in
33 full prior to the end of the sixty-day investigation period, the
34 agency shall notify the relator that the agency will not commence an
35 action and the settlement shall preclude further claims for the same
36 wages or benefits paid in the settlement.

37 (4) If the agency objects to the state being represented by a
38 particular attorney proposed by the relator, the agency may file an
39 objection to the attorney general. Upon finding, after notice and

1 hearing, that, based on the attorney's past conduct while
2 representing a client or clients, the attorney does not meet the
3 required professional standards of representatives, or,
4 alternatively, if the attorney fails to zealously pursue the remedies
5 available under this chapter, the attorney general may, within thirty
6 days of receiving the objection, order that the qui tam action may
7 not be filed or maintained by the particular attorney on behalf of
8 the relator.

9 NEW SECTION. **Sec. 6.** (1) The agency may intervene in a qui tam
10 action and proceed with any and all claims in the action:

11 (a) As of right within thirty days after the filing of the qui
12 tam action;

13 (b) For good cause shown, as determined by the court, after the
14 expiration of the thirty-day period.

15 (2) If the agency intervenes in a qui tam action, the agency
16 shall have primary responsibility for litigating the action and shall
17 not be bound by an act of the relator in bringing the action. If the
18 agency proposes to settle a qui tam action, the agency must give
19 notice to the relator and the attorney general. The court may allow
20 the attorney general to intervene and object to the settlement. If
21 the agency proposes to dismiss a qui tam action, the agency must give
22 notice to the relator and the relator must have an opportunity to be
23 heard. The agency may dismiss or settle the action if court
24 determines that the dismissal or settlement is fair, adequate,
25 reasonable, and in the public interest.

26 (3) If the agency does not intervene, the relator shall have the
27 right to litigate the action. The court must review and approve any
28 settlement. The proposed settlement must be submitted to the agency
29 and to the attorney general at the same time that it is submitted to
30 the court, and the agency may present to the court its position on
31 the proposed settlement or intervene as provided in subsection (1) of
32 this section. The court may also allow the attorney general to
33 intervene and object to the dismissal. The court shall approve a
34 settlement only upon a determination that it is fair, adequate,
35 reasonable, and in the public interest.

36 (4) Any settlement of a qui tam action may not be confidential.

37 NEW SECTION. **Sec. 7.** (1)(a) Penalty amounts recovered in a qui
38 tam action must be distributed as follows:

1 (i) If the agency has not intervened, forty percent to the
2 relator and sixty percent to the agency.

3 (ii) If the agency has intervened, twenty percent to the relator
4 and eighty percent to the agency.

5 (b) Amounts distributed to the agency shall be used for
6 enforcement of this title and education about the rights and
7 obligations enforceable through this title by the agency.

8 (2) Damages recovered in a qui tam action must be awarded to the
9 agency for distribution to aggrieved employees. The agency may
10 request the appointment of an administrative law judge or special
11 master to assist in the distribution of the amounts.

12 (3) This section does not limit the state's right to seek
13 restitution and damages, where available, for aggrieved employees as
14 part of a qui tam action in which it has intervened.

15 NEW SECTION. **Sec. 8.** (1) A person may not discharge or in any
16 manner discriminate against any employee because such employee has
17 filed any written notice or instituted or caused to be instituted any
18 proceeding under or related to this chapter or has testified or is
19 about to testify in any such proceeding or because of the exercise by
20 such employee on behalf of himself or herself or others of any right
21 afforded by this chapter.

22 (2) Any employee aggrieved by a violation of this section may:

23 (a) Bring an action in court for compensatory damages or
24 equitable relief, including restraint of prohibited actions,
25 restitution of wages or benefits, reinstatement, costs, reasonable
26 attorneys' fees, and any other appropriate relief; and, in addition,

27 (b) If the aggrieved employee has been discharged from employment
28 because of the exercise of the rights afforded by this chapter,
29 provide notice to the agency pursuant to section 5 of this act.

30 (i) Upon receipt of such notification, the agency shall commence
31 an expedited investigation within ten days to be completed within
32 thirty days.

33 (ii) For purposes of this subsection (2)(b), a rebuttable
34 presumption is established that the discharge of any employee who
35 engaged in any conduct allowed by this chapter within ninety days
36 after the employee engaged in the conduct is retaliatory and in
37 violation of section 1 of this act.

38 (iii) The employer may rebut the presumption by showing by clear
39 and convincing evidence that it had a legitimate, nondiscriminatory

1 reason to discharge the employee, which was not motivated in any part
2 by conduct allowed by this chapter.

3 (iv) If the employer fails to rebut the presumption, the agency
4 shall order the immediate reinstatement of the employee. The employer
5 may appeal the order of reinstatement pursuant to chapter 34.05 RCW.

6 NEW SECTION. **Sec. 9.** The department of labor and industries
7 must establish and publish online a database of notices filed under
8 section 3 of this act, which shall include the names of the parties,
9 the disposition, and any other information that the department of
10 labor and industries shall by rule prescribe. The Washington state
11 human rights commission and the department of health shall provide
12 appropriate information for the database to the department of labor
13 and industries.

14 NEW SECTION. **Sec. 10.** An agency has rule-making authority to
15 implement sections 1 through 8 of this act.

16 NEW SECTION. **Sec. 11.** The labor and industries worker
17 protection act account is created in the custody of the state
18 treasurer. All receipts from the penalties distributed to the
19 department of labor and industries under section 7 of this act must
20 be deposited into the account. Expenditures from the account may be
21 used only for enforcement of this title and education about the
22 rights and obligations enforceable through this title by the agency.
23 The account is subject to allotment procedures under chapter 43.88
24 RCW, but an appropriation is not required for expenditures.

25 NEW SECTION. **Sec. 12.** The Washington state human rights
26 commission worker protection act account is created in the custody of
27 the state treasurer. All receipts from the penalties distributed to
28 the Washington state human rights commission under section 7 of this
29 act must be deposited into the account. Expenditures from the account
30 may be used only for enforcement of chapter 49.60 RCW and education
31 about the rights and obligations enforceable through chapter 49.60
32 RCW by the agency. The account is subject to allotment procedures
33 under chapter 43.88 RCW, but an appropriation is not required for
34 expenditures.

1 NEW SECTION. **Sec. 13.** The department of health worker
2 protection act account is created in the custody of the state
3 treasurer. All receipts from the penalties distributed to the
4 department of health under section 7 of this act must be deposited
5 into the account. Expenditures from the account may be used only for
6 enforcement of this title and education about the rights and
7 obligations enforceable through this title by the agency. The account
8 is subject to allotment procedures under chapter 43.88 RCW, but an
9 appropriation is not required for expenditures.

10 NEW SECTION. **Sec. 14.** Sections 1 through 13 and 16 of this act
11 constitute a new chapter in Title 49 RCW.

12 NEW SECTION. **Sec. 15.** If any provision of this act or its
13 application to any person or circumstance is held invalid, the
14 remainder of the act or the application of the provision to other
15 persons or circumstances is not affected.

16 NEW SECTION. **Sec. 16.** This chapter shall be known and cited as
17 the "Worker Protection Act."

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