

HOUSE BILL REPORT

HB 1097

As Reported by House Committee On:
Labor & Workplace Standards

Title: An act relating to increasing worker protections.

Brief Description: Increasing worker protections.

Sponsors: Representatives Sells, Bateman, Ortiz-Self, Kloba, Chopp, Ormsby, Stonier and Macri; by request of Office of the Governor.

Brief History:

Committee Activity:

Labor & Workplace Standards: 1/20/21, 2/3/21 [DPS].

Brief Summary of Substitute Bill

- Establishes procedures for an employer to contest an order of immediate restraint (OIR) and appeal alleged violations of the OIR, and authorizes the imposition of daily civil penalties.
- Amends the antiretaliation provision under the Washington Industrial Safety and Health Act by prohibiting "materially adverse actions," expanding the time for filing a complaint, authorizing civil penalties, and making other changes.
- Creates a grant program to assist small businesses in equipment purchases or capital costs during a state of emergency proclamation.

HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 4 members: Representatives Sells, Chair; Berry, Vice Chair; Bronoske and Ortiz-Self.

Minority Report: Do not pass. Signed by 3 members: Representatives Hoff, Ranking

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Minority Member; Mosbrucker, Assistant Ranking Minority Member; Harris.

Staff: Trudes Tango (786-7384).

Background:

Washington Industrial Safety and Health Act.

The Washington Industrial Safety and Health Act (WISHA) requires employers to provide a workplace free from recognized hazards and authorizes the Department of Labor and Industries (Department) to inspect and investigate workplaces for compliance with safety and health standards.

If the Director of the Department believes that an employer has committed a violation, the Director issues a citation and, depending on the violation, may impose civil penalties. Civil penalties may be adjusted based on the employer's inspection history, the size of the workforce, and other factors. Civil penalties are mandatory for violations that are serious or willful. The minimum civil penalty for a serious violation is \$100. Maximum penalties are \$7,000 (or \$70,000 for willful or repeated violations). The maximum penalties will be adjusted annually in accordance with federal penalty levels.

Orders of Immediate Restraint.

If, after an inspection or investigation, the Director believes an employer has violated a safety or health standard to the extent the violation creates a substantial probability that death or serious physical harm could result, the Director must issue a citation and penalties. The employer may appeal the citation through the Department and eventually the Board of Industrial Insurance Appeals (BIIA).

Distinct from a citation, the Director may also issue an order immediately restraining (OIR) the condition, practice, method, process, or means in the workplace and to require steps to be taken to avoid, correct or remove the danger. An OIR may also be issued related to the use of machinery or equipment. In addition to this administrative OIR, the Director may seek a court-issued temporary restraining order.

Antiretaliation.

No person may discriminate against any employee because the employee has filed a complaint or instituted a proceeding under the WISHA, or has testified or is about to testify in a WISHA proceeding, or because the employee exercised any right granted under the WISHA.

Employees who believe they have been discriminated against may file a complaint with the Director within 30 days after the alleged violation occurs. If the Director determines a violation has occurred, the Director must bring an action in superior court. If the Director determines that no violation has occurred, the employee may institute a court action. The superior court may restrain violations and order appropriate relief, including rehiring or

reinstatement with back pay.

Summary of Substitute Bill:

Contesting an Order of Immediate Restraint.

Statutory procedures are established for an employer contesting an OIR. The employer may contest an OIR by applying to the superior court for appropriate relief within 10 working days of the effective date of the OIR.

Violations of an Order of Immediate Restraint.

If the Director has reason to believe an employer violated an OIR, the Director must notify the employer of the violation and the penalty to be assessed. The employer has 15 working days to notify the Director that the employer will appeal the notice of violation.

A civil penalty may be imposed for each day the employer continues operation in violation of the OIR. The daily civil penalty may be up to the maximum daily penalty for a serious violation.

Antiretaliation.

The antiretaliation provision under the WISHA is expanded to prohibit "materially adverse action," which is action that would: (1) deter a reasonable employee from exercising their rights under the WISHA; or (2) have a chilling effect on a reasonable employee's engagement in protected activities.

Employees have 90 days, rather than 30, to file a complaint with the Director. The Department may extend that time based on equitable principles or due to extenuating circumstances.

If the Director determines a violation has occurred, the Director will issue a citation and notice of assessment, rather than having to bring an action in court. The Director may order appropriate relief, such as restoring the employee to the employee's position or ordering the employer to pay back wages, including interest of 1 percent per month on earnings owed. The complainant may appeal the Department's order of appropriate relief, and both the employer and complainant may participate in hearings appealed to the BIIA.

The Director may also impose a civil penalty not to exceed the maximum penalty for a serious violation for the first occurrence and higher penalties for repeat violations. Civil penalties are deposited in the Supplemental Pension Fund.

Grant Program.

A safety grant program is created to provide one-time grants to state-fund employers that have 25 or fewer full-time equivalent employees. In the event of a state of emergency, the Director may expend up to 2 percent per year of the net premiums earned in the Accident

Fund in the prior fiscal year for the grant program, as long as assets of the Accident Fund and Pension Reserve Fund were at least 10 percent in excess of their funded liabilities in the fiscal quarter immediately preceding the state-of-emergency proclamation.

Employers must apply the safety grants to purchases of equipment, gear, or capital costs to meet any new safety and health requirements related to the emergency. Grants may not be used on purchases or improvements already covered by another grant, government program, or insurance contract. The Department must consult with stakeholders when adopting rules for the program, and the rules must include guidance for grants based on the type, scope and time frame of a specific declared emergency and criteria for prioritizing grants. The Department may require matching funds from employers.

Substitute Bill Compared to Original Bill:

The substitute bill: (1) extends the timeframe under which an employer may bring an action in court to contest the issuance of an OIR; (2) specifies that in an action to contest an OIR, the court may grant "appropriate relief"; (3) provides that the civil penalty for violating an OIR is the same as the maximum penalty for a serious violation; (4) adds provisions to allow a complainant in an antiretaliation complaint to appeal the Department's order of appropriate relief and to allow both the employer and complainant to participate in hearings appealed to the BIIA; (5) makes civil penalties for antiretaliation violations discretionary; (6) directs the Department to consult with stakeholders when adopting rules for the grant program; and (7) requires that the rules include certain guidance and criteria.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 3, 2021.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed, except section 3, relating to antiretaliation, which takes effect July 1, 2022.

Staff Summary of Public Testimony:

(In support) The pandemic has presented an unprecedented challenge for the Department. There are more instances of intentional noncompliance with orders under the proclamations. Issuing a stop work order is the last resort. The Department would be able to impose a civil penalty for violating a stop work order, which would be preferable to criminal sanctions against an employer. There is no explicit provision for employers to challenge these stop orders, but the Department assumes that the employer needs to go to court to contest the order. Currently, there is no real incentive deterring an employer from retaliating against an employee, and there is no protection for workers threatened with future actions. The Department has seen an increase in worker complaints alleging

discrimination. Workers must go to superior court to enforce their rights and the employer does not have to pay a penalty or interest. When employees see a coworker being retaliated against, they are afraid to speak up. Employees with limited resources rely on the Department to actively enforce safety and health standards. This bill creates more pathways for employee security and safety. It is appropriate to use workers' compensation funds to enhance safety and health. It has been shown that investments in safety and health reduce workers' compensation costs.

(Opposed) The Department has disregarded the concerns brought by small businesses, including that it could bankrupt small businesses. Employers have been diligent in trying to keep up with the constantly changing demands and orders of the different agencies during the pandemic. This bill would impose thousands of dollars in fines on businesses that are trying to provide essential goods and services. It doubles penalties on employers. Employers that want to contest a stop work order need more time than five days. The grant program in the bill is not an effective use of workers' compensation dollars and will put undue pressure on the fund, which can lead to potential rate increases in the future. It is not clear whether the Department would equitably administer the grant program. This bill has vague standards and would create uncertainty for businesses in a time when businesses are already weary, stressed, and confused. Businesses need time to have better discussions on this bill. There are statutes already in place to protect against retaliation. The bill bypasses the ability for an employer to appeal administratively and requires the employer to hire an attorney and go to court. The model should be education before enforcement.

Persons Testifying: (In support) Representative Sells, prime sponsor; Erin Allison, Washington State Nurses Association; Tammy Fellin and Maggie Leland, Department of Labor and Industries; Caitlyn Jekel, Office of the Governor; Zaira Sanchez, United Farm Workers Foundation; Joe Kendo, Washington State Labor Council, American Federation of Labor and Congress of Industrial Organizations; and Samantha Grad, United Food and Commercial Workers 21.

(Opposed) Patrick Connor, National Federation of Independent Businesses; Rose Gundersen, Washington Retail Association; Carolyn Logue, Washington Food Industry Association; Robert Battles, Association of Washington Business; and Corwyn Fischer, Washington Farm Bureau.

Persons Signed In To Testify But Not Testifying: None.