

FINAL BILL REPORT

ESHB 1097

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Synopsis as Enacted

Brief Description: Increasing worker protections.

Sponsors: House Committee on Labor & Workplace Standards (originally sponsored by Representatives Sells, Bateman, Ortiz-Self, Kloba, Chopp, Ormsby, Stonier and Macri; by request of Office of the Governor).

House Committee on Labor & Workplace Standards

House Committee on Appropriations

Senate Committee on Labor, Commerce & Tribal Affairs

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 violated the WISHA, the Director must issue a citation and, depending on the violation, may assess civil penalties. 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 are adjusted annually in accordance with federal penalty levels.

The Department must notify the employer of the citation and assessment of penalties. The employer has 15 working days to notify the Director that the employer intends to appeal the citation and assessment. If the employer appeals, the Department may either reassume jurisdiction of the matter and issue any corrective notices of assessment or citation, or the Department may decline to reassume jurisdiction and send the appeal to the Board of Industrial Insurance Appeals (BIIA). If the employer fails to timely notify the Director of

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the intent to appeal, the citation and assessment is deemed a final order and not subject to review by any court or agency.

Orders of Immediate Restraint.

If 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 assess penalties. The employer may appeal the citation and assessment of penalties through the Department and eventually to the BIIA.

Distinct from the citation, the Director may also issue an order immediately restraining (OIR) the condition, practice, method, process, or means in the workplace and require steps to be taken to avoid, correct or remove the danger. An OIR may also be issued to restrain or cease the use of machinery or equipment. Although there is no procedure in statute addressing contesting an OIR, the Department's policy provides that an employer seeking to contest the issuance of an OIR must file an action in court. An employer who violates an OIR may be guilty of a gross misdemeanor and subject to criminal penalties.

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 bring their own court action. The superior court may restrain violations and order appropriate relief, including rehiring or reinstatement with back pay.

Summary:

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 intends to appeal the notice of violation. If the employer does not notify the Director within 15 days, the notice and assessment of penalty is deemed a final order of the Department and not subject to review by any court or agency.

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 amended to explicitly prohibit action that would deter a reasonable employee from exercising their rights under the WISHA.

Employees have 90 days, rather than 30 days, 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 must notify the employer and complainant and issue a citation and notice of assessment, rather than bringing 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 employer has 30 days to notify the Department of the employer's intent to appeal the citation or notice of assessment. The complainant has 15 working days to appeal the order of appropriate relief. If there is an appeal, the Department may either reassume jurisdiction of the matter and issue a corrective notice of redetermination, which is final unless appealed to the BIIA, or the Department may decline to reassume jurisdiction and send the appeal directly to the BIIA. 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. Funds expended from the Accident Fund must be reimbursed to the Accident Fund from the State General Fund in the subsequent biennium.

Employers must apply the safety grants to purchase equipment and gear or towards 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. 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.

Votes on Final Passage:

House	53	44	
Senate	30	19	(Senate amended)
House	53	45	(House concurred)

Effective: July 25, 2021
July 1, 2022 (Section 3)