

HOUSE BILL REPORT

HB 1206

As Reported by House Committee On:
Labor & Workplace Standards

Title: An act relating to protecting temporary workers.

Brief Description: Protecting temporary workers.

Sponsors: Representatives Berry, Bronoske, Ramos, Fitzgibbon, Davis, Lovick, Thai, Ortiz-Self, Ormsby, Simmons, Chopp, Callan, Valdez, Macri and Harris-Talley; by request of Department of Labor & Industries.

Brief History:

Committee Activity:

Labor & Workplace Standards: 1/26/21, 2/3/21 [DPS].

Brief Summary of Substitute Bill

- Establishes specific standards under the Washington Industrial Safety and Health Act for staffing agencies and worksite employers regarding training, assessing hazards, sharing information, and other requirements.

HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives Sells, Chair; Berry, Vice Chair; Hoff, Ranking Minority Member; Bronoske and Ortiz-Self.

Minority Report: Do not pass. Signed by 1 member: Representative Harris.

Minority Report: Without recommendation. Signed by 1 member: Representative Mosbrucker, Assistant Ranking Minority Member.

Staff: Trudes Tango (786-7384).

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.

Background:

Washington Industrial Safety and Health Act.

Washington is a "state plan state" for purposes of the federal Occupational Safety and Health Administration, which means 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 (Department) administers the WISHA and must adopt rules to provide safe and healthful employment. The Department has adopted general standards that apply to most industries, as well as standards that apply only to specific industries.

If the Director of the Department determines that an employer has violated a safety or health standard, the Director, in most cases, generally issues a citation and may impose a civil penalty. Where two or more employers may share liability for violations, such as in the case of staffing agencies providing temporary workers, the Department applies policies outlined in a directive.

In general, a staffing agency must ensure its employees receive all required training and personal protective equipment, but may fulfill its obligation by taking reasonable steps to ensure the worksite employer provides the training and the personal protective equipment. The worksite 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.

Summary of Substitute Bill:

Provisions specific to temporary workers in construction and manufacturing industries are adopted. A "staffing agency" is an employer as defined under the WISHA and classified under the North American Industry Classification System as temporary help services, that recruits and hires its own employees and temporarily assigns them to work for another organization under that other organization's supervision to support, supplement, provide assistance or perform special assignments. A "worksite employer" is an entity that contracts with a staffing agency to provide temporary employment in the construction and manufacturing industries.

Staffing Agency Responsibilities.

Before assigning an employee to a worksite employer, a staffing agency must:

- inquire about the worksite employer's safety and health practices and hazards at the actual workplace in order to assess the: safety conditions, worker's tasks, and worksite employer's safety program. The agency may visit the actual worksite.
- provide general awareness safety training to the employee for recognized industry hazards the employee may encounter at the worksite. Training must be in the preferred language of the employee and provided at no cost to the employee.
- transmit a general description of the training program at the start of the contract;

- provide the employee with the Department's hotline number for reporting safety concerns; and
- inform the employee who to report safety concerns to at the workplace.

If the staffing agency becomes aware of existing job hazards that are not mitigated by the worksite employer, the agency must make the employer aware, urge the employer to correct it, and document these efforts, otherwise the agency must remove the worker from the worksite.

Worksite Employer Responsibilities.

Before the employee engages in work for the worksite employer, the worksite employer must:

- document and inform the staffing agency about anticipated job hazards;
- review the staffing agency's training to determine if it addresses recognized hazards for the worksite employer's industry;
- provide specific training tailored to the particular hazards at the workplace; and
- document and maintain records of site-specific training, and within three business days of providing training, provide confirmation to the staffing agency.

If the worksite employer changes the job tasks or work location and new hazards may be encountered, the worksite employer must inform the staffing agency and employee of job hazards not previously covered and update personal protective equipment and training for the new job tasks, if necessary.

A worksite employer that supervises a staffing agency employee must provide worksite specific training to the employee and allow a staffing agency to visit any worksite where the staffing agency's employees are or will be working to observe and confirm the worksite employer's training and information related to the job tasks, safety and health practices, and hazards.

A staffing agency or employee may refuse a new job task when the task has not been reviewed or for inappropriate training.

Other.

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

The provisions do not diminish existing responsibilities of the worksite employer or staffing agency. Both entities are responsible for compliance with the WISHA.

Substitute Bill Compared to Original Bill:

The substitute bill: (1) amends the definition of "staffing agency" to include reference to the North American Industry Classification System code for temporary help services; (2)

requires that the general awareness safety training the staffing agency must provide must be for recognized industry hazards the employee may encounter at the worksite (rather than "at the worksite employer"); and (3) requires a staffing agency to transmit a general description of the training program to the worksite employer at the start of the contract with the worksite employer (rather than transmitting "training documentation" at the start of "any" contract).

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) Temporary workers are twice as likely to have workers' compensation claims than permanent workers. They are less prepared for the jobsite and their claims are higher. The Department has spent more than 15 years of research into the issues of temporary workers and has good data on the injury types and frequency. The bill is tailored to the industries that have higher claims. A survey of over 400 workers revealed inadequate training. Staffing agencies should be training their workers about industry hazards. Lack of communication between staffing agencies and worksite employers is an issue. Both parties are responsible for the workers' safety.

(Opposed) Workers are trained and staffing agencies already do site evaluations. When there are issues, the staffing agency addresses those with the client. Requiring training in the preferred language of the worker could result in job losses for workers if the training cannot be provided. The bill should be amended to be more in line with federal standards regarding general awareness safety training. Staffing agencies already provide documentation of training to their clients. This bill creates an administrative burden for staffing agencies. The bill creates a disincentive for businesses to use staffing agencies. The definition of staffing agency is too broad.

Persons Testifying: (In support) Representative Berry, prime sponsor; Tammy Fellin and Mike Foley, Department of Labor and Industries; Brian Wright, Washington State Association for Justice; Joe Kendo, Washington State Labor Council, American Federation of Labor and Congress of Industrial Organizations.

(Opposed) Ben Justesen; John Swartos, Aerotek; Brittany Sakata, American Staffing Association; Gary Smith, Independent Business Association; Natalie McNair, TrueBlue; and Darlene Seiber, People Ready.

Persons Signed In To Testify But Not Testifying: None.