
HOUSE BILL 1244

State of Washington

67th Legislature

2021 Regular Session

By Representatives Mosbrucker, Springer, Dent, Hoff, Kirby, Chapman, Jacobsen, Ybarra, Caldier, Goehner, Eslick, Callan, Walsh, Dufault, Chase, Robertson, Klippert, and Goodman

Read first time 01/18/21. Referred to Committee on Labor & Workplace Standards.

1 AN ACT Relating to prohibiting civil penalties for first-time
2 violations of standards regulated under emergency proclamations; and
3 amending RCW 49.17.180.

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

5 **Sec. 1.** RCW 49.17.180 and 2018 c 128 s 1 are each amended to
6 read as follows:

7 (1) Except as provided in RCW 43.05.090 and subsection (9) of
8 this section, any employer who willfully or repeatedly violates the
9 requirements of RCW 49.17.060, of any safety or health standard
10 adopted under the authority of this chapter, of any existing rule or
11 regulation governing the conditions of employment adopted by the
12 department, or of any order issued granting a variance under RCW
13 49.17.080 or 49.17.090 may be assessed a civil penalty not to exceed
14 seventy thousand dollars for each violation. However, if the state is
15 required to have a higher maximum penalty to qualify a state plan
16 under the occupational safety and health administration, then the
17 maximum civil penalty is the higher maximum penalty required under
18 the occupational safety and health administration. A minimum penalty
19 of five thousand dollars shall be assessed for a willful violation;
20 unless set to a specific higher amount by the federal occupational

1 safety and health administration and this state is required to equal
2 the higher penalty amount to qualify a state plan.

3 (2) (~~Any~~) Except as provided in subsection (9) of this section,
4 any employer who has received a citation for a serious violation of
5 the requirements of RCW 49.17.060, of any safety or health standard
6 adopted under the authority of this chapter, of any existing rule or
7 regulation governing the conditions of employment adopted by the
8 department, or of any order issued granting a variance under RCW
9 49.17.080 or 49.17.090 as determined in accordance with subsection
10 (6) of this section, shall be assessed a civil penalty not to exceed
11 seven thousand dollars for each such violation. However, if the state
12 is required to have a higher maximum penalty to qualify a state plan
13 under the occupational safety and health administration, then the
14 maximum civil penalty is the higher maximum penalty required under
15 the occupational safety and health administration.

16 (3) (~~Any~~) Except as provided in subsection (9) of this section,
17 any employer who has received a citation for a violation of the
18 requirements of RCW 49.17.060, of any safety or health standard
19 adopted under this chapter, of any existing rule or regulation
20 governing the conditions of employment adopted by the department, or
21 of any order issued granting a variance under RCW 49.17.080 or
22 49.17.090, where such violation is specifically determined not to be
23 of a serious nature as provided in subsection (6) of this section,
24 may be assessed a civil penalty not to exceed seven thousand dollars
25 for each such violation, unless such violation is determined to be de
26 minimis or, if the state is required to have a higher maximum penalty
27 to qualify a state plan under the occupational safety and health
28 administration, then the maximum civil penalty is the higher maximum
29 penalty required under the occupational safety and health
30 administration.

31 (4) Any employer who fails to correct a violation for which a
32 citation has been issued under RCW 49.17.120 or 49.17.130 within the
33 period permitted for its correction, which period shall not begin to
34 run until the date of the final order of the board of industrial
35 insurance appeals in the case of any review proceedings under this
36 chapter initiated by the employer in good faith and not solely for
37 delay or avoidance of penalties, may be assessed a civil penalty of
38 not more than seven thousand dollars for each day during which such
39 failure or violation continues. However, if the state is required to
40 have a higher maximum penalty to qualify a state plan under the

1 occupational safety and health administration, then the maximum civil
2 penalty is the higher maximum penalty required under the occupational
3 safety and health administration.

4 (5) Any employer who violates any of the posting requirements of
5 this chapter, or any of the posting requirements of rules adopted by
6 the department pursuant to this chapter related to employee or
7 employee representative's rights to notice, including but not limited
8 to those employee rights to notice set forth in RCW 49.17.080,
9 49.17.090, 49.17.120, 49.17.130, 49.17.220(1), and 49.17.240(2),
10 shall be assessed a penalty not to exceed seven thousand dollars for
11 each such violation. However, if the state is required to have a
12 higher maximum penalty to qualify a state plan under the occupational
13 safety and health administration, then the maximum civil penalty is
14 the higher maximum penalty required under the occupational safety and
15 health administration. Any employer who violates any of the posting
16 requirements for the posting of informational, educational, or
17 training materials under the authority of RCW 49.17.050(7), may be
18 assessed a penalty not to exceed seven thousand dollars for each such
19 violation. However, if the state is required to have a higher maximum
20 penalty to qualify a state plan under the occupational safety and
21 health administration, then the maximum civil penalty is the higher
22 maximum penalty required under the occupational safety and health
23 administration.

24 (6) For the purposes of this section, a serious violation shall
25 be deemed to exist in a workplace if there is a substantial
26 probability that death or serious physical harm could result from a
27 condition which exists, or from one or more practices, means,
28 methods, operations, or processes which have been adopted or are in
29 use in such workplace, unless the employer did not, and could not
30 with the exercise of reasonable diligence, know of the presence of
31 the violation.

32 (7) The director, or his or her authorized representatives, shall
33 have authority to assess all civil penalties provided in this
34 section, giving due consideration to the appropriateness of the
35 penalty with respect to the number of affected employees of the
36 employer being charged, the gravity of the violation, the size of the
37 employer's business, the good faith of the employer, and the history
38 of previous violations.

39 (8) Civil penalties imposed under this chapter shall be paid to
40 the director for deposit in the supplemental pension fund established

1 by RCW 51.44.033. Civil penalties may be recovered in a civil action
2 in the name of the department brought in the superior court of the
3 county where the violation is alleged to have occurred, or the
4 department may utilize the procedures for collection of civil
5 penalties as set forth in RCW 51.48.120 through 51.48.150.

6 (9) (a) Unless otherwise required to qualify as a state plan under
7 the occupational safety and health administration, the department may
8 not impose a civil penalty for a violation when:

9 (i) There is an emergency proclamation in effect, including
10 proclamation amendments and conditions, issued under RCW 43.06.220,
11 related to a public health emergency;

12 (ii) The violation is for a business activity or condition of
13 operation regulated under the emergency proclamation or any
14 amendments or conditions in effect at the time of the violation; and

15 (iii) It is the employer's first violation of a business activity
16 or condition of operation regulated under the emergency proclamation
17 or any amendments or conditions in effect at the time of the
18 violation.

19 (b) If the department finds a violation subject to the provisions
20 of this subsection (9), the department shall provide the employer
21 with a written warning and educational materials on the current
22 guidelines and restrictions under the emergency proclamation.

--- END ---