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**HOUSE BILL 1609**

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**State of Washington**

**67th Legislature**

**2022 Regular Session**

**By** Representatives Hoff, Vick, Caldier, Graham, Corry, and Dufault

Prefiled 12/07/21. Read first time 01/10/22. Referred to Committee on Labor & Workplace Standards.

1 AN ACT Relating to limiting agency authority to align with  
2 federal standards during public health emergencies; amending RCW  
3 49.17.180; adding a new section to chapter 49.17 RCW; creating a new  
4 section; and declaring an emergency.

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

6 NEW SECTION. **Sec. 1.** (1) The legislature finds that the  
7 COVID-19 pandemic has required businesses that are permitted to  
8 continue operating to make drastic, costly changes to their  
9 operations to protect employees and customers. Some of the changes  
10 businesses were required to adopt are consistent with federal  
11 occupational safety and health administration requirements; however,  
12 the department of labor and industries has adopted rules and the  
13 governor has issued changing proclamations and guidance during the  
14 pandemic that go beyond the federal occupational safety and health  
15 administration requirements. The legislature further finds Washington  
16 is a "state-plan state" for purposes of the federal occupational  
17 safety and health administration. To maintain its state-plan status,  
18 Washington's safety and health standards must be at least as  
19 effective as those standards adopted or recognized by the  
20 occupational safety and health administration.

1 (2) The legislature therefore intends to limit the ability of the  
2 department of labor and industries to adopt rules regulating health  
3 or safety standards for employers in response to a public health  
4 emergency when:

5 (a) The occupational safety and health administration has not  
6 first adopted rules or issued guidance applicable to employers  
7 related to the public health emergency; and

8 (b) The department of labor and industries' rules are more  
9 restrictive or exceed the scope of the rules or guidance issued by  
10 the occupational safety and health administration.

11 (3) The legislature further intends to prohibit the department of  
12 labor and industries from issuing civil penalties for alleged  
13 violations of any health or safety standard adopted by the department  
14 in response to the emergency proclamation if:

15 (a) The occupational safety and health administration has not  
16 first adopted rules, guidance, or policies related to the public  
17 health emergency that require the imposition of civil penalties for  
18 violation of those rules, guidance, or policies; or

19 (b) The civil penalty is for an alleged violation of a health or  
20 safety standard that is more restrictive or exceeds the scope of the  
21 rules, guidance, or policy issued by the occupational safety and  
22 health administration.

23 NEW SECTION. **Sec. 2.** A new section is added to chapter 49.17  
24 RCW to read as follows:

25 (1)(a) In the event of a public health emergency for which an  
26 emergency proclamation has been issued under RCW 43.06.010, the  
27 department may not adopt rules regulating specific health or safety  
28 standards for employers in response to the public health emergency or  
29 under the emergency proclamation, if the occupational safety and  
30 health administration has not first adopted rules or issued guidance  
31 on specific health or safety standards applicable to employers  
32 related to the public health emergency.

33 (b) If the occupational safety and health administration has  
34 adopted rules, guidance, or policies, regulating specific health or  
35 safety standards for employers in response to the public health  
36 emergency, the department may adopt rules, guidance, or policies  
37 equivalent to the occupational safety and health administration's  
38 specific rule, guidance, or policy. The department's rules, guidance,  
39 or policies adopted under this section may not be more restrictive or

1 exceed the scope of the specific rules, guidance, or policies that  
2 have been adopted or issued by the occupational safety and health  
3 administration.

4 (2) To be in compliance with this section, the department shall  
5 repeal or revise any department rules, guidance, or policies that are  
6 more restrictive or exceed the scope of the specific rules, guidance,  
7 or policies adopted or issued by the occupational safety and health  
8 administration.

9 (3) Nothing in this section precludes the department from  
10 providing advice to employers related to health and safety in  
11 response to the public health emergency.

12 **Sec. 3.** RCW 49.17.180 and 2021 c 253 s 4 are each amended to  
13 read as follows:

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

30 (2) (~~Any~~) Except as provided in subsection (10) of this  
31 section, any employer who has received a citation for a serious  
32 violation of the requirements of RCW 49.17.060, of any safety or  
33 health standard adopted under the authority of this chapter, of any  
34 existing rule or regulation governing the conditions of employment  
35 adopted by the department, or of any order issued granting a variance  
36 under RCW 49.17.080 or 49.17.090 as determined in accordance with  
37 subsection (7) of this section, shall be assessed a civil penalty not  
38 to exceed seven thousand dollars for each such violation. However, if  
39 the state is required to have a higher maximum penalty to qualify a

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

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

19 (4) Any employer who fails to correct a violation for which a  
20 citation has been issued under RCW 49.17.120 or 49.17.130 within the  
21 period permitted for its correction, which period shall not begin to  
22 run until the date of the final order of the board of industrial  
23 insurance appeals in the case of any review proceedings under this  
24 chapter initiated by the employer in good faith and not solely for  
25 delay or avoidance of penalties, may be assessed a civil penalty of  
26 not more than seven thousand dollars for each day during which such  
27 failure or violation continues. However, if the state is required to  
28 have a higher maximum penalty to qualify a state plan under the  
29 occupational safety and health administration, then the maximum civil  
30 penalty is the higher maximum penalty required under the occupational  
31 safety and health administration.

32 (5) Any employer who has been issued an order immediately  
33 restraining a condition, practice, method, process, or means in the  
34 workplace, pursuant to RCW 49.17.130 or 49.17.170, and who  
35 nevertheless continues such condition, practice, method, process, or  
36 means, or who continues to use a machine or equipment or part thereof  
37 to which a notice prohibiting such use has been attached, may be  
38 assessed a civil penalty of not more than the maximum penalty for a  
39 serious violation under this section for each day the employer  
40 continues such condition, practice, method, process, or means, or

1 continues to use a machine or equipment or part thereof to which a  
2 notice prohibiting such use has been attached.

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

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

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

38 (9) Civil penalties imposed under this chapter shall be paid to  
39 the director for deposit in the supplemental pension fund established  
40 by RCW 51.44.033. Civil penalties may be recovered in a civil action

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

5 (10)(a) In the event of a public health emergency for which an  
6 emergency proclamation has been issued under RCW 43.06.010, the  
7 department may not impose any civil penalty upon an employer for  
8 alleged violations of any health or safety standard adopted by the  
9 department in response to the emergency proclamation, if:

10 (i) The occupational safety and health administration has not  
11 first adopted rules, guidance, or policies on a specific health or  
12 safety standard during the public health emergency that require the  
13 imposition of civil penalties for violation of those specific rules,  
14 guidance, or policies; or

15 (ii) The civil penalty is for an alleged violation of a specific  
16 health or safety standard that is more restrictive or exceeds the  
17 scope of the specific rule, guidance, or policy issued by the  
18 occupational safety and health administration.

19 (b) This subsection (10) applies to citations for alleged  
20 violations issued on or after November 1, 2021.

21 NEW SECTION. Sec. 4. This act is necessary for the immediate  
22 preservation of the public peace, health, or safety, or support of  
23 the state government and its existing public institutions, and takes  
24 effect immediately.

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