
HOUSE BILL 1745

State of Washington

67th Legislature

2022 Regular Session

By Representatives Schmick, Dufault, and Graham

Prefiled 01/04/22. Read first time 01/10/22. Referred to Committee on Labor & Workplace Standards.

1 AN ACT Relating to providing discretion to the director of the
2 department of labor and industries to waive or modify penalties and
3 violations when action is taken to avoid imminent danger of loss of
4 life or serious injury; amending RCW 49.17.180; and creating a new
5 section.

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

7 NEW SECTION. **Sec. 1.** The legislature has adopted various laws
8 regarding employee health and safety standards and employers'
9 responsibilities to provide a safe and healthy workplace. These laws
10 include provisions for what constitutes a safety or health violation
11 and under what circumstances an employer may or must be assessed a
12 civil penalty due to a safety or health violation. The legislature
13 further finds that there are rare, unanticipated circumstances which
14 require immediate action due to imminent danger of loss of life or
15 serious injury that require employees or employers to take actions
16 they would otherwise not take due to specific requirements in laws or
17 rules. The legislature therefore intends to provide the director of
18 the department of labor and industries with the authority to waive a
19 penalty or violation in limited circumstances that required immediate
20 action due to imminent danger of loss of life or serious injury and
21 no other practical option was immediately available.

1 **Sec. 2.** RCW 49.17.180 and 2021 c 253 s 4 are each amended to
2 read as follows:

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

19 (2) Any employer who has received a citation for a serious
20 violation of the requirements of RCW 49.17.060, of any safety or
21 health standard adopted under the authority of this chapter, of any
22 existing rule or regulation governing the conditions of employment
23 adopted by the department, or of any order issued granting a variance
24 under RCW 49.17.080 or 49.17.090 as determined in accordance with
25 subsection (7) of this section, shall be assessed a civil penalty not
26 to exceed seven thousand dollars for each such violation. However, if
27 the state is required to have a higher maximum penalty to qualify a
28 state plan under the occupational safety and health administration,
29 then the maximum civil penalty is the higher maximum penalty required
30 under the occupational safety and health administration.

31 (3) Any employer who has received a citation for a violation of
32 the requirements of RCW 49.17.060, of any safety or health standard
33 adopted under this chapter, of any existing rule or regulation
34 governing the conditions of employment adopted by the department, or
35 of any order issued granting a variance under RCW 49.17.080 or
36 49.17.090, where such violation is specifically determined not to be
37 of a serious nature as provided in subsection (7) of this section,
38 may be assessed a civil penalty not to exceed seven thousand dollars
39 for each such violation, unless such violation is determined to be de
40 minimis or, if the state is required to have a higher maximum penalty

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

5 (4) Any employer who fails to correct a violation for which a
6 citation has been issued under RCW 49.17.120 or 49.17.130 within the
7 period permitted for its correction, which period shall not begin to
8 run until the date of the final order of the board of industrial
9 insurance appeals in the case of any review proceedings under this
10 chapter initiated by the employer in good faith and not solely for
11 delay or avoidance of penalties, may be assessed a civil penalty of
12 not more than seven thousand dollars for each day during which such
13 failure or violation continues. However, if the state is required to
14 have a higher maximum penalty to qualify a state plan under the
15 occupational safety and health administration, then the maximum civil
16 penalty is the higher maximum penalty required under the occupational
17 safety and health administration.

18 (5) Any employer who has been issued an order immediately
19 restraining a condition, practice, method, process, or means in the
20 workplace, pursuant to RCW 49.17.130 or 49.17.170, and who
21 nevertheless continues such condition, practice, method, process, or
22 means, or who continues to use a machine or equipment or part thereof
23 to which a notice prohibiting such use has been attached, may be
24 assessed a civil penalty of not more than the maximum penalty for a
25 serious violation under this section for each day the employer
26 continues such condition, practice, method, process, or means, or
27 continues to use a machine or equipment or part thereof to which a
28 notice prohibiting such use has been attached.

29 (6) Any employer who violates any of the posting requirements of
30 this chapter, or any of the posting requirements of rules adopted by
31 the department pursuant to this chapter related to employee or
32 employee representative's rights to notice, including but not limited
33 to those employee rights to notice set forth in RCW 49.17.080,
34 49.17.090, 49.17.120, 49.17.130, 49.17.220(1), and 49.17.240(2),
35 shall be assessed a penalty not to exceed seven thousand dollars for
36 each such violation. However, if the state is required to have a
37 higher maximum penalty to qualify a state plan under the occupational
38 safety and health administration, then the maximum civil penalty is
39 the higher maximum penalty required under the occupational safety and
40 health administration. Any employer who violates any of the posting

1 requirements for the posting of informational, educational, or
2 training materials under the authority of RCW 49.17.050(7), may be
3 assessed a penalty not to exceed seven thousand dollars for each such
4 violation. However, if the state is required to have a higher maximum
5 penalty to qualify a state plan under the occupational safety and
6 health administration, then the maximum civil penalty is the higher
7 maximum penalty required under the occupational safety and health
8 administration.

9 (7) For the purposes of this section, a serious violation shall
10 be deemed to exist in a workplace if there is a substantial
11 probability that death or serious physical harm could result from a
12 condition which exists, or from one or more practices, means,
13 methods, operations, or processes which have been adopted or are in
14 use in such workplace, unless the employer did not, and could not
15 with the exercise of reasonable diligence, know of the presence of
16 the violation.

17 (8) (a) The director, or his or her authorized representatives,
18 shall have authority to assess all civil penalties provided in this
19 section, giving due consideration to the appropriateness of the
20 penalty with respect to the number of affected employees of the
21 employer being charged, the gravity of the violation, the size of the
22 employer's business, the good faith of the employer, and the history
23 of previous violations.

24 (b) The director, or his or her authorized representatives, may,
25 in a manner that the United States department of labor would find
26 consistent with the approval terms of state plan status, waive or
27 modify the finding of any violation for an action that would
28 otherwise constitute a violation of this chapter and may waive all or
29 part of any civil penalty provided in this section for an action that
30 constitutes a violation of this chapter. The director may reassume
31 jurisdiction in order to exercise this discretion under the following
32 limited circumstances:

33 (i) Immediate action was required to be taken due to imminent
34 danger of loss of life or serious injury;

35 (ii) The action was taken after assessment of the situation, in
36 reliance on training, and determining the best possible course of
37 action or where no other practical option was immediately available;

38 (iii) Appropriate safety equipment immediately available was
39 used;

1 (iv) Responding employees were trained as first responders and
2 acting within the scope of their official duties as first responders;
3 and

4 (v) In circumstances where the director exercises discretion to
5 waive the violation under this section, timely abatement is still
6 required.

7 (9) Civil penalties imposed under this chapter shall be paid to
8 the director for deposit in the supplemental pension fund established
9 by RCW 51.44.033. Civil penalties may be recovered in a civil action
10 in the name of the department brought in the superior court of the
11 county where the violation is alleged to have occurred, or the
12 department may utilize the procedures for collection of civil
13 penalties as set forth in RCW 51.48.120 through 51.48.150.

--- END ---