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**SECOND SUBSTITUTE HOUSE BILL 1491**

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**State of Washington 68th Legislature 2023 Regular Session**

**By** House Appropriations (originally sponsored by Representatives Orcutt, Chapman, Berry, Bronoske, Tharinger, and Pollet)

AN ACT Relating to prohibiting unjustified employer searches of employee personal vehicles; adding new sections to chapter 49.12 RCW; prescribing penalties; and providing an effective date.

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

NEW SECTION. **Sec.**  A new section is added to chapter 49.12 RCW to read as follows:

(1) Except as provided in subsection (2) of this section:

(a) An employer or an employer's agent may not search the privately owned vehicles of employees located on the employer's parking lots or garages or located on the access road to the employer's parking lots or garages.

(b) An employee may possess any of the employee's private property within the employee's vehicle, unless possession of such property is otherwise prohibited by law.

(c) An employer must not require, as a condition of employment, that an employee or prospective employee waive the protections of (a) or (b) of this subsection.

(2) This section does not apply:

(a) To vehicles owned or leased by an employer;

(b) To lawful searches by law enforcement officers;

(c) When the employer requires or authorizes the employee to use the employee's personal vehicle for work-related activities and the employer needs to inspect the vehicle to ensure the vehicle is suited to conduct the work-related activities;

(d) When a reasonable person would believe that accessing vehicles of an employee is necessary to prevent an immediate threat to human health, life, or safety;

(e) When an employee consents to a search of his or her privately owned vehicle by the business owner, owner's agent, or a licensed private security guard based on probable cause that the employee unlawfully possesses: (i) Employer property; or (ii) a controlled substance in violation of both federal law and the employer's written policy prohibiting drug use. The employee's consent must be given immediately prior to the search, and the employer may not require that the employee waive consent as a condition of employment. Upon consent, the employee has the right to select a witness to be present for the search;

(f) To security inspections of vehicles on state and federal military installations and facilities;

(g) To vehicles located on the premises of a state correctional institution, as defined in RCW 9.94.049; or

(h) To specific employer areas subject to searches under state or federal law.

(3) For purposes of this section, the terms "probable cause" and "private property" have their usual meaning under state and federal law. The department may adopt rules to further define these terms.

(4) An employer may not take any adverse action against an employee for exercising any right under this section. An adverse action means any action taken or threatened by an employer against an employee for exercising the employee's rights under this section, and may include, but are not limited to:

(a) Denying the use of, or delaying, wages or other amounts owed to the employee;

(b) Terminating, suspending, demoting, or denying a promotion;

(c) Reducing the number of work hours for which the employee is scheduled;

(d) Altering the employee's preexisting work schedule;

(e) Reducing the employee's rate of pay; and

(f) Threatening to take, or taking, action based upon the immigration status of an employee or an employee's family member.

NEW SECTION. **Sec.**  A new section is added to chapter 49.12 RCW to read as follows:

(1) Upon complaint by an employee, the director must investigate to determine whether an employer has violated section 1 of this act. The director may require the testimony of witnesses and the production of documents as part of the director's investigation.

(2) If the director determines that an employer has violated section 1 of this act, the director may order payment to the department of a civil penalty of not more than $1,000 for an employer's first violation and not more than $5,000 for any subsequent violation; and payment to the department of costs of investigation and enforcement. For the purposes of this subsection (2), each employee affected by a violation constitutes a separate violation.

(3) For any violation of section 1(4) of this act, the director may also order appropriate relief that includes any earnings the employee did not receive due to the employer's adverse action, including interest of one percent per month on all earnings owed. The earnings and interest owed will be calculated from the first date earnings were owed to the employee. The director may also order the employer to restore the employee to the position of employment held by the employee when the retaliation occurred, or restore the employee to an equivalent position with equivalent employment hours, work schedule, benefits, pay, and other terms and conditions of employment.

(4) An appeal from the director's determination may be taken in accordance with chapter 34.05 RCW.

(5) The department must deposit civil penalties paid under this section in the supplemental pension fund created in RCW 51.44.033.

(6) The department shall collect civil penalties and costs due under this section using the procedures in RCW 49.48.086.

NEW SECTION. **Sec.**  This act takes effect July 1, 2024.

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