

SSB 5217 - S AMD 90
By Senator Dhingra

ADOPTED AS AMENDED 03/01/2023

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** (1) The legislature finds that the
4 absence of the department of labor and industries' authority to
5 regulate working practices to prevent musculoskeletal injuries and
6 disorders has contributed to excess and avoidable claims and costs
7 across the workers' compensation system for all employers in
8 Washington, including those employers who maintain safer workplaces
9 without high incidents of musculoskeletal injuries and disorders.

10 (2) The legislature finds that work-related musculoskeletal
11 injuries and disorders account for at least one-third of all workers'
12 compensation claims that result in time loss and wage replacement;
13 are more severe than the average nonfatal injury or illness; and are
14 a common cause of long-term disability in Washington state.

15 (3) The legislature finds that many of Washington state's
16 critical industries, including health care, are described by the
17 federal bureau of labor statistics as high-risk industries for
18 musculoskeletal injuries. These are also industries that are
19 currently experiencing significant staffing shortages. Further, these
20 injuries lead to high employer costs including absenteeism, decreased
21 productivity, and increased costs for health care, disability, and
22 workers' compensation, among other costs.

23 (4) The legislature therefore intends to repeal the prohibition
24 on regulating working practices related to musculoskeletal injuries
25 and disorders, thereby allowing targeted safety efforts to more
26 effectively and efficiently prevent these workplace injuries. By
27 removing this barrier, the legislature will restore the state's
28 ability to more strategically address important workplace safety
29 issues and reduce costs for all employers and workers.

30 NEW SECTION. **Sec. 2.** The following acts or parts of acts are
31 each repealed:

1 (1) RCW 49.17.360 (Ergonomics Initiative—Intent) and 2004 c 1 s
2 1; and

3 (2) RCW 49.17.370 (Ergonomics Initiative—Definition—Rule repeal)
4 and 2004 c 1 s 2.

5 **Sec. 3.** RCW 49.17.020 and 2010 c 8 s 12005 are each amended to
6 read as follows:

7 ~~((For the purposes of this chapter:))~~ The definitions in this
8 section apply throughout this chapter unless the context clearly
9 requires otherwise.

10 (1) ~~((The term "agriculture"))~~ (a) "Agriculture" means farming
11 and includes, but is not limited to:

12 ~~((a))~~ (i) The cultivation and tillage of the soil;

13 ~~((b))~~ (ii) Dairying;

14 ~~((c))~~ (iii) The production, cultivation, growing, and
15 harvesting of any agricultural or horticultural commodity;

16 ~~((d))~~ (iv) The raising of livestock, bees, fur-bearing animals,
17 or poultry; and

18 ~~((e))~~ (v) Any practices performed by a farmer or on a farm,
19 incident to or in connection with such farming operations, including
20 but not limited to preparation for market and delivery to:

21 ~~((i))~~ (A) Storage;

22 ~~((ii))~~ (B) Market; or

23 ~~((iii))~~ (C) Carriers for transportation to market.

24 ~~((The term "agriculture"))~~ (b) "Agriculture" does not mean a
25 farmer's processing for sale or handling for sale a commodity or
26 product grown or produced by a person other than the farmer or the
27 farmer's employees.

28 (2) ~~((The term "director"))~~ "Director" means the director of the
29 department of labor and industries, or his or her designated
30 representative.

31 (3) ~~((The term "department"))~~ "Department" means the department
32 of labor and industries.

33 (4) ~~((The term "employer"))~~ "Employer" means any person, firm,
34 corporation, partnership, business trust, legal representative, or
35 other business entity which engages in any business, industry,
36 profession, or activity in this state and employs one or more
37 employees or who contracts with one or more persons, the essence of
38 which is the personal labor of such person or persons and includes
39 the state, counties, cities, and all municipal corporations, public

1 corporations, political subdivisions of the state, and charitable
2 organizations: PROVIDED, That any person, partnership, or business
3 entity not having employees, and who is covered by the industrial
4 insurance act (~~shall~~) must be considered both an employer and an
5 employee.

6 (5) (~~The term "employee"~~) "Employee" means an employee of an
7 employer who is employed in the business of his or her employer
8 whether by way of manual labor or otherwise and every person in this
9 state who is engaged in the employment of or who is working under an
10 independent contract the essence of which is his or her personal
11 labor for an employer under this chapter whether by way of manual
12 labor or otherwise.

13 (6) (~~The term "person"~~) "Person" means one or more individuals,
14 partnerships, associations, corporations, business trusts, legal
15 representatives, or any organized group of persons.

16 (7) (~~The term "safety and health standard"~~) "Risk
17 classification" means any classification defined in chapter 296-17A
18 WAC classifications for Washington workers' compensation insurance.

19 (8) "Safety and health standard" means a standard which requires
20 the adoption or use of one or more practices, means, methods,
21 operations, or processes reasonably necessary or appropriate to
22 provide safe or healthful employment and places of employment.

23 (~~(8) The term "workplace"~~) (9) "Workplace" means any plant,
24 yard, premises, room, or other place where an employee or employees
25 are employed for the performance of labor or service over which the
26 employer has the right of access or control, and includes, but is not
27 limited to, all workplaces covered by industrial insurance under
28 Title 51 RCW, as now or hereafter amended.

29 (~~(9) The term "working day"~~) (10) "Working day" means a
30 calendar day, except Saturdays, Sundays, and all legal holidays as
31 set forth in RCW 1.16.050, as now or hereafter amended, and for the
32 purposes of the computation of time within which an act is to be done
33 under the provisions of this chapter, (~~shall~~) must be computed by
34 excluding the first working day and including the last working day.

35 (11) "Work-related musculoskeletal injuries and disorders" means
36 injuries or disorders of the muscles, nerves, tendons, joints,
37 cartilage, and spinal discs associated with exposure to risk factors
38 in the workplace. Musculoskeletal injuries and disorders include
39 sprains, strains, tears, back pain, soreness, pain, carpal tunnel
40 syndrome, musculoskeletal system or connective tissue diseases and

1 disorders when the event or exposure leading to the injury or illness
2 is bodily reaction from bending, climbing, crawling, reaching,
3 twisting, sitting, or standing; being rubbed or abraded by kneeling
4 on a surface; being rubbed, abraded, or jarred by vibration;
5 overexertion; or repetition. The department may update this
6 definition in accordance with changes to the United States department
7 of labor's definition or updates to the United States bureau of labor
8 statistics' occupational injury and illness classification system.

9 NEW SECTION. **Sec. 4.** A new section is added to chapter 49.17
10 RCW to read as follows:

11 (1) The department may adopt rules related to preventing
12 musculoskeletal injuries and disorders that provide standards for an
13 industry or risk classification, subject to the limits in this
14 section.

15 (2) (a) Within a 12-month period, the department may not adopt
16 more than one set of rules related to preventing musculoskeletal
17 injuries and disorders for an industry or risk classification that
18 previously did not have rules related to preventing musculoskeletal
19 injuries and disorders. The rules would apply to an establishment
20 engaged in activities as defined by the industry or risk
21 classification.

22 (b) Subject to subsection (10) of this section, the department
23 may not adopt emergency rules under chapter 34.05 RCW related to
24 preventing musculoskeletal injuries and disorders for an industry or
25 risk classification that previously did not have rules related to
26 preventing musculoskeletal injuries and disorders.

27 (3) (a) Rules providing standards may only be adopted for
28 industries or risk classifications where compensable workers'
29 compensation claims involved musculoskeletal injuries and disorders
30 at a rate greater than two times the overall state workers'
31 compensation compensable claim rate for musculoskeletal injuries and
32 disorders over a recent five-year period.

33 (b) When adopting rules by industry subsector at the three-digit
34 level, the department must exclude from regulation North American
35 industry classification system industry group at the four-digit level
36 and industry classification at the five-digit level within the
37 industry subsector that have a musculoskeletal injuries and disorders
38 rate less than two times the overall state workers' compensation

1 compensable claim rate for musculoskeletal injuries and disorders
2 over a recent five-year period.

3 (c) When adopting rules by industry group at the four-digit
4 level, the department must exclude from regulation North American
5 industry classification system industry classifications at the five-
6 digit level within the industry group that have a musculoskeletal
7 injuries and disorders rate less than two times the overall state
8 workers' compensation compensable claim rate for musculoskeletal
9 injuries and disorders over a recent five-year period.

10 (d) When adopting rules by risk classification at the four-digit
11 level, the department must exclude six-digit risk classifications
12 within the four-digit risk classification if they have a
13 musculoskeletal injuries and disorders rate less than two times the
14 overall state workers' compensation compensable claim rate for
15 musculoskeletal injuries and disorders over a recent five-year
16 period.

17 (4) Within 90 days of the department filing a preproposal
18 statement of inquiry (CR-101) for industry or risk classifications
19 specific rules related to preventing musculoskeletal injuries and
20 disorders, the department must provide a report to the appropriate
21 committees of the legislature. The report must include the criteria
22 the department used to select the industry or rate risk
23 classification that will be subject to the rules and a description of
24 the rule-making procedures under chapter 34.05 RCW which the
25 department will follow for the specific rules.

26 (5) During rule making, the department must consider including
27 options for an employer to demonstrate alternative control methods
28 where:

29 (a) The alternative methods are at least as effective as the rule
30 requirements;

31 (b) Affected employees are trained and monitored for compliance;
32 and

33 (c) The employer has documented all efforts.

34 (6) When filing a preproposal statement of inquiry (CR-101) for
35 industry or risk classification specific rules related to preventing
36 musculoskeletal injuries and disorders, the department must include
37 the convening of an advisory committee comprised of equal
38 representatives of employers and workers from the industry or risk
39 classification that will be subject to the rules.

1 (7) During rule making under this section, the department must
2 solicit input on the effective date to specify in the order of
3 adoption under RCW 34.05.380. The effective date may not be less than
4 120 days after adoption and no rule may be effective prior to July 1,
5 2026.

6 (8) Annually by November, the department must:

7 (a) Publish a list of industries and risk classifications
8 eligible for rule making under this section. The list must include
9 compensable claims over the five calendar year period that ended two
10 calendar years before the report is published; and

11 (b) Conduct a review of the compensable workers' compensation
12 claims data identified in (a) of this subsection to ensure that the
13 data only reflects injuries or disorders consistent with work-related
14 musculoskeletal injuries or disorders as defined by this act, and
15 publish the results of that review.

16 (9) For employee home offices, the director does not have the
17 authority to adopt any new or amended rules dealing with
18 musculoskeletal injuries and disorders, or that deal with the same or
19 similar activities as the rules which were repealed in former RCW
20 49.17.370 for employee home offices, until and to the extent
21 comparable rules applying to employee home offices are required by
22 congress or the federal occupational safety and health
23 administration.

24 (10) Limits on rule making in this section do not apply to rules
25 adopted or amended where required by the federal occupational safety
26 and health administration.

27 (11) For the purposes of this section, "industry" means any
28 classification in the North American industry classification system
29 that defines an industry subsector at the three-digit level, industry
30 group at the four-digit level, and industry at the five-digit level.

31 (12) The department must provide up to three additional
32 ergonomists to provide consultation to employers in the industries
33 and risk classifications in the list published under subsection
34 (8)(a) of this section. Funding for the additional ergonomists must
35 be paid from the accident and medical aid funds.

36 NEW SECTION. **Sec. 5.** A new section is added to chapter 49.17
37 RCW to read as follows:

38 (1) The director is authorized, in the director's discretion, to
39 provide funding to employers to purchase additional equipment that

1 may be needed to comply with a rule adopted under section 4 of this
2 act. The maximum amount of funding each year is two percent of the
3 premiums paid into the accident fund in the prior year from employers
4 subject to a rule adopted under section 4 of this act.

5 (2) Only employers who pay premiums to the state fund as defined
6 in RCW 51.08.175 and are subject to a rule adopted under section 4 of
7 this act are eligible for funding under this section.

8 (3) An appropriation is not required for these expenditures.

9 (4) The department may adopt rules to implement this section."

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10 On page 1, line 3 of the title, after "disorders;" strike the
11 remainder of the title and insert "amending RCW 49.17.020; adding new
12 sections to chapter 49.17 RCW; creating a new section; and repealing
13 RCW 49.17.360 and 49.17.370."

EFFECT: (1) Provides a definition for work-related musculoskeletal injuries and disorders.

(2) Provides that the rules apply to an establishment engaged in activities as defined by the industry or risk classification.

(3) Requires the department of labor and industries (L&I), when adopting rules at certain digit levels, to exclude certain industry groups and classifications with musculoskeletal injuries and disorders rates less than two times the state rate over a recent five-year period.

(4) Provides that when adopting rules by risk classification at the four-digit level, L&I must exclude six-digit risk classifications within the four-digit risk classification if they have a musculoskeletal injuries and disorders rate less than two times the overall state rate for musculoskeletal injuries and disorders over a recent five-year period.

(5) Provides that no rule may be effective prior to July 1, 2026.

(6) Modifies the review of claims data to data identified as compensable claims over the five calendar year period that ended two calendar years before the report is published.

(7) Modifies the definition of industry to remove the six-digit level and the limitation on risk classifications that meets the two times requirement.

(8) Requires L&I to provide up to three additional ergonomists, funded from the accident and medical aid funds, to provide consultation to employers in the industries and risk classifications in the published list.

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