

HOUSE BILL REPORT

ESSB 5217

As Passed House:

April 7, 2023

Title: An act relating to the state's ability to regulate certain industries and risk classifications to prevent musculoskeletal injuries and disorders.

Brief Description: Concerning the state's ability to regulate certain industries and risk classifications to prevent musculoskeletal injuries and disorders.

Sponsors: Senate Committee on Labor & Commerce (originally sponsored by Senators Dhingra, Kauffman, Keiser, Kuderer, Lovelett, Nguyen, Nobles, Pedersen, Valdez and Wilson, C.).

Brief History:

Committee Activity:

Labor & Workplace Standards: 3/14/23, 3/17/23 [DP];

Appropriations: 3/30/23, 3/31/23 [DP].

Floor Activity:

Passed House: 4/7/23, 51-46.

Brief Summary of Engrossed Substitute Bill

- Repeals the law prohibiting the Department of Labor and Industries (Department) from adopting rules related to ergonomics or musculoskeletal disorders.
- Provides limitations on the adoption of new rules, including allowing rules only for industries or risk classifications where compensable claims involved musculoskeletal injuries and disorders that are at a rate greater than two times the overall state claim rate for these types of injuries and disorders over a recent five-year period.
- Requires the Department to: (1) identify industries and risk classifications most likely to be selected for rulemaking; (2) review and report certain claims data; and (3) consider certain factors during

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- Allows the Department to provide funding to certain employers to purchase additional equipment and requires up to three additional ergonomists to provide consultation to certain employers.

HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

Majority Report: Do pass. Signed by 6 members: Representatives Berry, Chair; Fosse, Vice Chair; Bronoske, Doglio, Ormsby and Ortiz-Self.

Minority Report: Do not pass. Signed by 3 members: Representatives Robertson, Ranking Minority Member; Schmidt, Assistant Ranking Minority Member; Connors.

Staff: Trudes Tango (786-7384).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass. Signed by 18 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Berg, Chopp, Davis, Fitzgibbon, Hansen, Lekanoff, Pollet, Riccelli, Ryu, Senn, Simmons, Slatter, Stonier and Tharinger.

Minority Report: Do not pass. Signed by 12 members: Representatives Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; Chandler, Connors, Couture, Dye, Harris, Rude, Sandlin, Schmick and Steele.

Staff: Emily Stephens (786-7157).

Background:

In 2000 the Department of Labor and Industries (Department) adopted specific workplace ergonomics regulations requiring employers to reduce worker exposure to hazards that cause or contribute to work-related musculoskeletal disorders. Initiative Measure No. 841, passed by the voters in 2003, repealed the existing ergonomics regulations and prohibited the Department from adopting similar regulations or otherwise regulating working practices to prevent musculoskeletal disorders.

The Department retains general authority to enforce against ergonomic-related workplace hazards under the general duty clause of the Washington Industrial Safety and Health Act.

Summary of Bill:

The statutes prohibiting the Department from adopting new or amended rules dealing with musculoskeletal disorders are repealed. The Department may adopt rules related to preventing musculoskeletal injuries and disorders that provide standards for an industry or risk classification, subject to certain limitations and exceptions.

The Department may not adopt:

- more than one set of rules within a 12-month period for an industry or risk classification that did not previously have rules related to preventing musculoskeletal injuries and disorders;
- emergency rules related to preventing musculoskeletal injuries and disorders for an industry or risk classification that did not previously have rules related to such injuries or disorders; and
- any new or amended rules dealing with musculoskeletal injuries and disorders for home offices, until and to the extent comparable rules applicable to employee home offices are required by Congress or the federal safety and health regulations.

Rules may only be adopted for industries or risk classifications where compensable claims involved musculoskeletal injuries and disorders at a rate greater than two times the overall state compensable claim rate for musculoskeletal injuries and disorders over a recent five-year period.

When adopting rules, the Department must exclude certain industry subsectors, industry groups, and risk classifications, specified by digit level of the North American Industry Classification System code or risk classifications, that have a musculoskeletal injuries and disorders rate less than two times the overall state compensable claim rate for such injuries and disorders over a recent five-year period.

By November of every year, the Department must publish a list of industries and risk classifications that are eligible for rulemaking based on the criteria. The list must identify low-priority industries and risk classifications that, based on the statistical trend, will have a rate lower than two times the state average in the next three years. The list must include compensable claims over the five calendar year period that ended two calendar years before the report is published. The Department must review the claims data to ensure that the data only reflects injuries or disorders consistent with work-related musculoskeletal injuries or disorders and publish the results of the review.

Every year the Department must identify a list of industries or risk classifications most likely to be selected for future rulemaking. The Department must prioritize efforts to provide technical assistance to those employers.

When selecting an industry or risk classification from the list for potential rulemaking, the Department must consider if the industry is demonstrating a statistical downward trend in the claims rate that is greater than the statewide average. The Department must provide up to three additional ergonomists, funded from the Accident and Medical Aid Funds, to

provide consultation to employers in industries and risk classifications on the list.

When filing a preproposal statement of inquiry, which is the initial notification of potential rulemaking, the Department must convene an advisory committee comprised of equal representatives of employers and workers from the industry or risk classification that will be subject to the rules. In addition, within 90 days of filing the preproposal statement of inquiry, the Department must provide a report to the appropriate committees of the Legislature that includes the criteria used to select the industry or risk classification and a description of the rulemaking procedures that the Department will follow.

During the rulemaking process, the Department must consider including options for an employer to demonstrate alternative control methods where: (1) such methods are at least as effective as the rule requirements; (2) affected employees are trained and monitored for compliance; and (3) the employer has documented all efforts. The Department must also solicit input on the effective date of rules, but an effective date may not be less than 120 days after adoption of the rule, and no rule may take effect prior to July 1, 2026.

The Director may provide funding to employers to purchase additional equipment that may be needed to comply with adopted rules. The maximum amount of funding each year is 2 percent of the premiums paid into the Accident Fund in the prior year from employers subject to the rule. Only employers who pay premiums to the State Fund and are subject to an adopted rule are eligible for funding.

"Work-related musculoskeletal injuries and disorders" means injuries or disorders of the muscles, nerves, tendons, joints, cartilage, and spinal discs associated with exposure to risk factors in the workplace. It includes sprains, strains, tears, back pain, soreness, pain, carpal tunnel syndrome, musculoskeletal system or connective tissue diseases and disorders when the event or exposure leading to the injury or illness is bodily reaction from bending, climbing, crawling, reaching, twisting, sitting, or standing; being rubbed or abraded by kneeling on a surface; being rubbed, abraded, or jarred by vibration; overexertion; or repetition. The Department may update this definition in accordance with changes to the federal Department of Labor's definition or updates to the Bureau of Labor Statistics' occupational injury and illness classification system.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony (Labor & Workplace Standards):

(In support) Workers and employers have a shared value of safety at work. Stakeholders

wanted transparency and data-driven rulemaking, which this bill provides. The bill requires the Department to publish a list of businesses and to provide resource and assistance to those businesses. The Department would only be able to do one set of rulemaking per year and would be required to inform the Legislature about why the Department is doing rulemaking. Repetitive motion injuries are preventable, and in some industries it is just assumed that a worker will develop an injury such as carpal tunnel syndrome. These types of injuries cost workers and employers money and this bill could prevent those injuries and help save on medical claims and time loss payments. The bill focuses on the highest risk industries that are driving a third of the claims. The Department would have to exempt certain industries from rulemaking and must provide ample statewide notice. An advisory committee would be created and there would be ample engagement from stakeholders.

(Opposed) Statistics show there has been a steady downward trend in these types of claims from all industries. This bill will not solve the problems. The bill should not allow rulemaking if an industry has demonstrated a downward trend in these types of claims. Rulemaking will be lengthy, controversial, and complicated. It would be better to invest in technical assistance and monitoring performance. Employers are doing everything they can to keep workers healthy and safe. Employers will need financial help to implement new processes. The bill allows the Department to target all businesses in a risk class rather than just the bad actors. Rules will result in an increase cost of groceries and other goods. In the agricultural industry, the most effective solutions are engineering controls and machinery, but these are costly for most small farms. The bill is unnecessary because the Department already has the ability to regulate industries for these hazards under the general clause requiring safe workplaces. This bill is repealing what the voters wanted. The lack of medical consensus on what causes musculoskeletal injuries should not be ignored.

Staff Summary of Public Testimony (Appropriations):

(In support) This bill originated from union negotiations. The largest financial burden of worker injuries are borne by workers and their families. Costs of worker injuries also show up elsewhere, like unemployment insurance.

(Opposed) The best path forward on this policy is for the Department of Labor and Industries to provide technical assistance and funding to assist employers. Voters rejected ergonomic rules 20 years ago because they are job-killing rules. Ergonomic rules are unnecessary and overburdensome. Employers face workforce shortages and it is a struggle to retain qualified workers. Every industry has reduced ergonomic claims over the past 15 years, so industries are already making improvements to reduce these kinds of ergonomic injuries.

Persons Testifying (Labor & Workplace Standards): (In support) Senator Manka Dhingra, prime sponsor; Debby Chandler, Washington Education Association; Trudi Hobbs, Public School Employees of Washington; Joe Kendo, Washington State Labor Council; Christina Bayaniyan; and Andrew Vander Stoep, International Brotherhood of

Electrical Workers 191.

(Opposed) Bruce Beckett, Washington Retail Association; Tom Kwieciak, Building Industry Association of Washington; Amber Carter, Identity Clark County; Katie Beeson, Washington Food Industry Association; Dominique Damian, Washington Farm Bureau; Bob Battles, Association of Washington Business; and Jerry VanderWood, Washington Construction Industry Council and Associated General Contractors.

Persons Testifying (Appropriations): (In support) Joe Kendo; and Dane Austreng, SEIU Healthcare 1199NW.

(Opposed) Katie Beeson, Washington Food Industry Association; Tom Kwieciak, Building Industry Association of Washington; and Bob Battles, Association of Washington Business.

Persons Signed In To Testify But Not Testifying (Labor & Workplace Standards):
None.

Persons Signed In To Testify But Not Testifying (Appropriations): None.