

# SENATE BILL REPORT

## ESHB 1097

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As of March 10, 2021

**Title:** An act relating to increasing worker protections.

**Brief Description:** Increasing worker protections.

**Sponsors:** House Committee on Labor & Workplace Standards (originally sponsored by Representatives Sells, Bateman, Ortiz-Self, Kloba, Chopp, Ormsby, Stonier and Macri; by request of Office of the Governor).

**Brief History:** Passed House: 3/4/21, 53-44.

**Committee Activity:** Labor, Commerce & Tribal Affairs: 3/10/21.

### Brief Summary of Bill

- Establishes statutory procedures for an employer to contest an order of immediate restraint (OIR) and appeal alleged violations of the OIR, and authorizes the imposition of civil penalties for violations of an OIR.
- Makes changes to the Washington Industrial Safety and Health Act's anti-retaliation provisions, including prohibiting acts that would deter a reasonable employee from exercising their rights, expanding the time for filing a complaint, and authorizing civil penalties.
- Creates a grant program to assist small businesses in equipment purchases or capital costs during a state of emergency proclamation.

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### SENATE COMMITTEE ON LABOR, COMMERCE & TRIBAL AFFAIRS

**Staff:** Jarrett Sacks (786-7448)

**Background:** Washington Industrial Safety and Health Act. The Washington Industrial Safety and Health Act (WISHA) requires employers to provide a workplace free from recognized hazards and authorizes the Department of Labor and Industries (L&I) to inspect

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and investigate workplaces for compliance with safety and health standards.

If L&I believes an employer has committed a violation, L&I issues a citation and, depending on the violation, may assess civil penalties. Civil penalties may be adjusted based on the employer's inspection history, the size of the workforce, and other factors. Civil penalties are mandatory for serious or willful violations. The minimum civil penalty for a serious violation is \$100. Maximum penalties are \$7,000, or \$70,000 for willful or repeated violations. The maximum penalties will be adjusted annually in accordance with federal penalty levels. L&I must notify the employer of the citation and assessment of penalties, and the employer has 15 working days to notify the director that the employer intends to appeal the citation and assessment. If the employer appeals, L&I may either reassume jurisdiction of the matter and issue any corrective notices of assessment or citation, or may decline to reassume jurisdiction and send the appeal to the Board of Industrial Insurance Appeals (BIIA). If the employer fails to timely notify L&I of the intent to appeal, the citation and assessment is deemed a final order and not subject to review by any court or agency.

Orders of Immediate Restraint. If, after an inspection or investigation, L&I believes an employer has violated a safety or health standard to the extent the violation creates a substantial probability that death or serious physical harm could result, L&I must issue a citation and assess penalties. L&I may also issue an order immediately restraining (OIR) the condition, practice, method, process, or means in the workplace and to require steps to be taken to avoid, correct or remove the danger. An OIR may also be issued related to the use of machinery or equipment.

Anti-Retaliation. No person may discriminate against any employee because the employee has filed a complaint or instituted a proceeding under WISHA, or has testified or is about to testify in a WISHA proceeding, or because the employee exercised any right granted under WISHA. Employees who believe they have been discriminated against may file a complaint with L&I within 30 days after the alleged violation occurs. If L&I determines a violation has occurred, it must bring an action in superior court. If L&I determines no violation has occurred, the employee may institute a court action. The superior court may restrain violations and order appropriate relief, including rehiring or reinstatement with back pay.

**Summary of Bill:** Orders of Immediate Restraint. A statutory procedure is established for an employer contesting an OIR. An employer may contest an OIR within ten working days by making an application to superior court for appropriate relief.

If L&I has reason to believe an employer has violated an OIR, L&I must notify the employer of the violation and the penalty assessed. The employer has 15 working days to notify L&I that the employer will appeal the notice of violation. If the employer does not notify L&I within 15 working days, the notice and assessment of penalty is deemed a final order of L&I and not subject to review by any court or agency.

A civil penalty may be imposed for each day the employer continues operation in violation of the OIR. The daily civil penalty may be up to the maximum daily penalty for a serious violation.

Anti-Retaliation. Prohibited discrimination under WISHA includes an action that would deter a reasonable employee from exercising their rights under WISHA.

Employees have 90 days, rather than 30, to file a complaint with L&I and L&I may extend that time based on equitable principles or due to extenuating circumstances.

If L&I determines a violation has occurred, it will notify the employer and complainant and issue a citation and notice of assessment, rather than having to bring an action in court. L&I may order appropriate relief, such as restoring the employee to the employee's position or ordering the employer to pay back wages, including interest of 1 percent per month on earnings owed. The employer has 15 working days, from the communication of the notice, to notify L&I of the employer's intent to appeal the citation or notice of assessment. The complainant also has 15 working days to appeal the order of appropriate relief. If there is an appeal, L&I may either reassume jurisdiction of the matter and issue a corrective notice of redetermination, which is final unless appealed to the BIIA, or L&I may decline to reassume jurisdiction and send the appeal directly to the BIIA. Both the employer and complainant may participate in hearings appealed to the BIIA. L&I may also impose a civil penalty not to exceed the maximum penalty for a serious violation for the first occurrence and higher penalties for repeat violations. Civil penalties are deposited in the Supplemental Pension Fund.

Grant Program. A safety grant program is created to provide one-time grants to state-fund employers that have 25 or fewer full-time equivalent employees. During a state of emergency, L&I may expend up to 2 percent per year of the net premiums earned in the Accident Fund in the prior fiscal year for the grant program, as long as assets of the Accident Fund and Pension Reserve Fund were at least 10 percent in excess of their funded liabilities in the fiscal quarter immediately preceding the state of emergency proclamation.

Employers must use the safety grants for purchases of equipment, gear, or capital costs to meet any new safety and health requirements related to the emergency. Grants may not be used on purchases or improvements already covered by another grant, government program, or insurance contract. L&I may require matching funds from employers. L&I must consult with stakeholders when adopting rules for the program, and the rules must include guidance for grants based on the type, scope, and time frame of a specific declared emergency, and criteria for prioritizing grants.

**Appropriation:** None.

**Fiscal Note:** Available. New fiscal note requested on March 8, 2021.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** The bill contains several effective dates. Please refer to the bill.

**Staff Summary of Public Testimony:** PRO: This bill is in response to issues that emerged during the pandemic, which revealed gaps in the system. If workers are fearful to raise complaints, the consequences can be dire. The bill establishes a clear process for resolving disputes over a stop-work order and makes the process a civil penalty rather than a criminal one. Fifteen percent of retaliation complaints in 2020 were untimely, so the bill extends the timeline to file a complaint. The bill eliminates deterrents in workers exercising their rights.

CON: The anti-retaliation provisions shift the burden to the employer by removing it from the superior court process and making it a civil penalty. The grant program should use a different source of funding. Discrimination is not the same as a WISHA violation, but the bill uses the same processes. Discrimination complaints should be handled by the courts. The grant program is very limited, uses the wrong funding source, and may not help employers that actually need more help.

**Persons Testifying:** PRO: Erin Allison, Washington State Nurses Association; Caitlyn Jekel, Office of Governor Jay Inslee; Tammy Fellin, Labor & Industries; Elizabeth Strater, United Farm Workers.

CON: Robert Battles, Association of Washington Business; Carolyn Logue, Washington Food Industry Association; Rose Gundersen, Washington Retail Association.

**Persons Signed In To Testify But Not Testifying:** No one.