
HOUSE BILL 1076

State of Washington

67th Legislature

2021 Regular Session

By Representatives Hansen, Fitzgibbon, Berry, Dolan, J. Johnson, Ramos, Simmons, Ramel, Ortiz-Self, Gregerson, Ryu, Bronoske, Valdez, Callan, Kloba, Hackney, Chopp, Ormsby, Stonier, Frame, Santos, Macri, Pollet, and Harris-Talley

Prefiled 01/05/21. Read first time 01/11/21. Referred to Committee on Labor & Workplace Standards.

1 AN ACT Relating to allowing whistleblowers to bring actions on
2 behalf of the state for violations of workplace protections; and
3 adding a new chapter to Title 49 RCW.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that while most
6 employers pay their workers wages owed, provide safe working
7 conditions, provide a workplace free from discrimination, and
8 otherwise follow the law, violations of workplace protections
9 persist. The legislature further finds that state resources available
10 to rectify workplace violations are limited, which allows abuses to
11 go unpunished. Lack of enforcement means workers work for less than
12 minimum wage, sustain serious injuries, and suffer other violations.
13 In addition, it is unfair to law-abiding employers to have to compete
14 with employers that disregard the law. Therefore, the legislature
15 intends to permit qui tam actions, allowing private persons, acting
16 as relators, to bring public enforcement actions of worker protection
17 laws on behalf of the state.

18 NEW SECTION. **Sec. 2.** The definitions in this section apply
19 throughout this chapter unless the context clearly requires
20 otherwise.

1 (1) "Agency" means the department of labor and industries, except
2 that for purposes of chapter 49.60 RCW "agency" means the Washington
3 state human rights commission.

4 (2) "Aggrieved person" means a person against whom one or more
5 violations of the provisions of this act was committed, and includes
6 an individual who is asserting a claim that he or she is or was
7 misclassified as an independent contractor in violation of the
8 provisions of law under section 4 of this act.

9 (3) "Person" means any natural person, partnership, corporation,
10 association, or other legal entity, including any local or political
11 subdivision of a state.

12 (4) "Qui tam relator" or "relator" means an aggrieved person,
13 whistleblower, or representative organization or local or political
14 subdivision of a state designated under section 3(9) of this act,
15 that brings a public enforcement action under section 3 of this act.

16 (5) "Qui tam action" means an action brought by a relator under
17 section 3 of this act.

18 (6) "Whistleblower" means a current or former employee,
19 contractor, subcontractor, or employee of a contractor or
20 subcontractor with knowledge of facts that the individual reasonably
21 believes constitute a violation of the provisions of this act.

22 NEW SECTION. **Sec. 3.** (1) A relator, on behalf of an agency and
23 in the name of the agency, may bring a qui tam action in court for
24 any relief the agency may pursue under the laws specified in section
25 4 of this act, including equitable relief, penalties, and any relief
26 specified in rule. The granting of relief shall be subject to the
27 same conditions and limitations that apply to the agency, including
28 any requirements for conference and conciliation and any conditions
29 and limitations specified in rule, including penalty amounts. The
30 action may allege multiple violations that have affected different
31 employees aggrieved by the same employer. The relator must follow the
32 procedures specified in section 5 of this act.

33 (2) A relator that prevails in a qui tam action is entitled to an
34 award of reasonable attorneys' fees and costs.

35 (3) No qui tam action may be brought if the agency, regarding the
36 same facts as alleged in the qui tam action, issued a notice of
37 assessment, determination of compliance, or order, or otherwise
38 resolved the complaint.

1 (4) A qui tam action must be commenced within the same period of
2 time that the agency would have to take action based on the same set
3 of alleged facts. The statute of limitations for bringing a qui tam
4 action is tolled from the date a relator files a notice with the
5 agency or the date the agency commences an investigation.

6 (5)(a) No qui tam action may be brought with respect to
7 modifying, revoking, or suspending a license, variance, or permit; or
8 for any violation of a posting, notice, agency reporting, or filing
9 requirement, except where the filing or reporting requirement
10 involves injury reporting or a safety or health violation.

11 (b) Where an employer has voluntarily entered into consultation
12 under RCW 49.17.250, no qui tam action may be brought with respect to
13 any alleged violation included in the scope of the consultation. An
14 employer who has been notified pursuant to section 5 of this act may
15 not then enter into consultation under RCW 49.17.250 to avoid a qui
16 tam action.

17 (6) The requirements of Rule 23 of the superior court rules of
18 civil procedure do not apply to a qui tam action.

19 (7) The right to bring a qui tam action under this section may
20 not be impaired by any private agreement.

21 (8) A qui tam action is a public action and does not preclude a
22 cause of action by an individual or individuals or operate as an
23 estoppel for relief based on the same set of alleged facts, except
24 that a court may not permit a double recovery.

25 (9) An aggrieved person or whistleblower of the entity alleged to
26 have violated a law enumerated in section 4 of this act may designate
27 in writing a representative organization or local or political
28 subdivision of a state to initiate a qui tam action on the person's
29 behalf.

30 NEW SECTION. **Sec. 4.** A qui tam action may be brought to enforce
31 the following laws:

32 (1) Chapter 49.46 RCW, known as the minimum wage act;

33 (2) Chapter 49.48 RCW, relating to the payment of wages;

34 (3) Chapter 49.52 RCW, relating to wage rebates;

35 (4) RCW 49.28.130 through 49.28.150, relating to health care
36 facility employee overtime;

37 (5) Chapter 39.12 RCW, relating to prevailing wage;

38 (6) Chapter 49.40 RCW, relating to seasonal labor;

1 (7) Chapter 49.17 RCW, the Washington industrial safety and
2 health act of 1973;

3 (8) Chapter 49.19 RCW, relating to safety in health care
4 settings; chapter 49.22 RCW, relating to safety in late night retail
5 establishments; chapter 49.24 RCW, relating to safety for underground
6 workers, and chapter 49.26 RCW, relating to asbestos safety;

7 (9) Chapter 49.77 RCW, known as military family leave;

8 (10) Chapter 49.58 RCW, known as gender equal pay and advancement
9 opportunities;

10 (11) Chapter 49.60 RCW, known as the Washington law against
11 discrimination;

12 (12) Chapter 19.30 RCW, relating to farm labor contractors;

13 (13) Chapter 49.30 RCW, relating to agricultural labor;

14 (14) RCW 43.70.075, relating to health care employee
15 whistleblower retaliation protection;

16 (15) Chapter 49.12 RCW, known as the industrial welfare act; and

17 (16) Section 9 of this act.

18 NEW SECTION. **Sec. 5.** (1) No action under section 3 of this act
19 may be commenced before written notice of the claim has been
20 submitted by the relator to the agency, via online submission, and
21 the relator has notified the employer by certified mail. The notice
22 must be construed in the light most favorable to the relator, and
23 must include the name, address, and contact information of the
24 alleged violator; the name and contact information of the relator or
25 the relator's legal counsel, should one exist; and a brief statement
26 of the underlying claim.

27 (2) If the agency intends to investigate the alleged violation,
28 the agency must notify the relator and make a determination within
29 one hundred eighty days of receiving the notice under subsection (1)
30 of this section. If the agency decides not to investigate the alleged
31 violation, it must notify the relator within sixty business days of
32 the date it receives the notification submitted by the relator. Upon
33 receiving notice that the agency does not intend to investigate or if
34 the agency does not make a determination within one hundred eighty
35 days, the relator may commence a qui tam action.

36 (3) As part of its investigation, the agency may attempt to
37 remedy the alleged violation through settlement. If the settlement
38 obtained by the agency provides the aggrieved employee or employees
39 with a full remedy of not less than one hundred percent of any

1 wrongfully withheld wages or benefits, including twelve percent
2 interest per annum, and the aggrieved employees receive payment in
3 full prior to the end of the one hundred eighty-day investigation
4 period, the agency shall notify the relator that the agency will not
5 commence an action and the settlement shall preclude further claims
6 for the same wages or benefits paid in the settlement.

7 (4) If the agency objects to the state being represented by a
8 particular attorney proposed by the relator, the agency may file an
9 objection to the attorney general. Upon finding, after notice and
10 hearing, that, based on the attorney's past conduct while
11 representing a client or clients, the attorney does not meet the
12 required professional standards of representatives, or,
13 alternatively, if the attorney fails to zealously pursue the remedies
14 available under this chapter, the attorney general may, within thirty
15 days of receiving the objection, order that the qui tam action may
16 not be filed or maintained by the particular attorney on behalf of
17 the relator.

18 NEW SECTION. **Sec. 6.** (1) The agency may intervene in a qui tam
19 action and proceed with any and all claims in the action:

20 (a) As of right within thirty days after the filing of the qui
21 tam action;

22 (b) For good cause shown, as determined by the court, after the
23 expiration of the thirty-day period.

24 (2) If the agency intervenes in a qui tam action, the agency
25 shall have primary responsibility for litigating the action and shall
26 not be bound by an act of the relator in bringing the action. If the
27 agency proposes to settle a qui tam action, the agency must give
28 notice to the relator and the attorney general. The court may allow
29 the attorney general to intervene and object to the settlement. If
30 the agency proposes to dismiss a qui tam action, the agency must give
31 notice to the relator and the relator must have an opportunity to be
32 heard. The agency may dismiss or settle the action if court
33 determines that the dismissal or settlement is fair, adequate,
34 reasonable, and in the public interest.

35 (3) If the agency does not intervene, the relator shall have the
36 right to litigate the action. The court must review and approve any
37 settlement. The proposed settlement must be submitted to the agency
38 and to the attorney general at the same time that it is submitted to
39 the court, and the agency may present to the court its position on

1 the proposed settlement or intervene as provided in subsection (1) of
2 this section. The court may also allow the attorney general to
3 intervene and object to the dismissal. The court shall approve a
4 settlement only upon a determination that it is fair, adequate,
5 reasonable, and in the public interest.

6 (4) Any settlement of a qui tam action may not be confidential.

7 NEW SECTION. **Sec. 7.** (1)(a) Civil penalty amounts recovered in
8 a qui tam action must be distributed as follows:

9 (i) If the agency has not intervened, forty percent to the
10 relator and sixty percent to the agency;

11 (ii) If the agency has intervened, twenty percent to the relator
12 and eighty percent to the agency.

13 (b) The relator shall equitably distribute the share of penalties
14 due the relator among the parties aggrieved by the practices
15 complained of in the qui tam action. The relator shall submit a
16 distribution summary to the agency, which may order a different
17 distribution within sixty days after receipt of the distribution
18 summary, provided that the relator shall receive a service award that
19 reflects the burdens and risks assumed by the relator in prosecuting
20 the action.

21 (c) Amounts distributed to the agency shall be used for
22 enforcement of this title and education about the rights and
23 obligations enforceable through this title by the agency.

24 (2) Damages recovered in a qui tam action shall be awarded for
25 distribution to the aggrieved employees, whether directly or through
26 the agency. The agency may request the appointment of an
27 administrative law judge or special master to assist in the
28 distribution of the amounts.

29 (3) This section does not limit the state's right to seek
30 restitution and damages, where available, for aggrieved employees as
31 part of a qui tam action in which it has intervened.

32 NEW SECTION. **Sec. 8.** A qui tam action shall not be stayed
33 during concurrent adjudication of private claims.

34 NEW SECTION. **Sec. 9.** (1) A person may not discharge or in any
35 manner discriminate against any employee because such employee has
36 filed any written notice or instituted or caused to be instituted any
37 proceeding under or related to this chapter or has testified or is

1 about to testify in any such proceeding or because of the exercise by
2 such employee on behalf of himself or herself or others of any right
3 afforded by this chapter. The commencement of a peer review process,
4 or an action by a duly constituted quality improvement committee
5 under RCW 70.41.200, shall not be construed to be retaliation under
6 this section if sufficient cause to initiate the peer review process
7 or action under RCW 70.41.200 exists independently of the action
8 being brought under this chapter.

9 (2) Any employee aggrieved by a violation of this section may:

10 (a) Bring an action in court for compensatory damages or
11 equitable relief, including restraint of prohibited actions,
12 restitution of wages or benefits, reinstatement, costs, reasonable
13 attorneys' fees, and any other appropriate relief; and, in addition,

14 (b) If the aggrieved employee has been discharged from employment
15 because of the exercise of the rights afforded by this chapter,
16 provide notice to the agency pursuant to section 5 of this act.

17 (i) Upon receipt of such notification, the agency shall commence
18 an expedited investigation within ten days to be completed within
19 thirty days.

20 (ii) For purposes of this subsection (2)(b), a rebuttable
21 presumption is established that the discharge of any employee who
22 engaged in any conduct allowed by this chapter within ninety days
23 after the employee engaged in the conduct is retaliatory and in
24 violation of section 1 of this act.

25 (iii) The employer may rebut the presumption by showing by clear
26 and convincing evidence that it had a legitimate, nondiscriminatory
27 reason to discharge the employee, which was not motivated in any part
28 by conduct allowed by this chapter.

29 (iv) If the employer fails to rebut the presumption, the agency
30 shall order the immediate reinstatement of the employee. The employer
31 may appeal the order of reinstatement pursuant to chapter 34.05 RCW.

32 NEW SECTION. **Sec. 10.** An agency has rule-making authority to
33 implement sections 1 through 9 of this act.

34 NEW SECTION. **Sec. 11.** The labor and industries worker
35 protection act account is created in the custody of the state
36 treasurer. All receipts from the penalties distributed to the
37 department of labor and industries under section 7 of this act must
38 be deposited into the account. Expenditures from the account may be

1 used only for enforcement of this title and education about the
2 rights and obligations enforceable through this title by the agency.
3 The account is subject to allotment procedures under chapter 43.88
4 RCW, but an appropriation is not required for expenditures.

5 NEW SECTION. **Sec. 12.** The Washington state human rights
6 commission worker protection act account is created in the custody of
7 the state treasurer. All receipts from the penalties distributed to
8 the Washington state human rights commission under section 7 of this
9 act must be deposited into the account. Expenditures from the account
10 may be used only for enforcement of chapter 49.60 RCW and education
11 about the rights and obligations enforceable through chapter 49.60
12 RCW by the agency. The account is subject to allotment procedures
13 under chapter 43.88 RCW, but an appropriation is not required for
14 expenditures.

15 NEW SECTION. **Sec. 13.** Sections 1 through 12 and 15 of this act
16 constitute a new chapter in Title 49 RCW.

17 NEW SECTION. **Sec. 14.** If any provision of this act or its
18 application to any person or circumstance is held invalid, the
19 remainder of the act or the application of the provision to other
20 persons or circumstances is not affected.

21 NEW SECTION. **Sec. 15.** This chapter shall be known and cited as
22 the worker protection act.

--- END ---