

HOUSE BILL ANALYSIS

HB 2840

Brief Description: Issuing citations under the Washington industrial safety and health act.

Sponsors: Clements, McMorris, Schoesler, Honeyford, Boldt and D. Schmidt.

Hearing: February 2, 1998

BACKGROUND:

The Department of Labor and Industries administers and enforces the Washington Industrial Safety and Health Act (WISHA). The act directs the department to adopt rules governing safety and health standards for workplaces covered by the act.

Washington is a "state plan" state under the federal Occupational Safety and Health Act (OSHA). As a state plan state, Washington is authorized to assume responsibility for occupational safety and health in the state. To maintain its status, Washington's safety and health standards must be at least as effective as those standards adopted or recognized under OSHA.

Department representatives are authorized to inspect and investigate workplaces at reasonable times and in a reasonable manner. If the department representative believes, after an investigation, that a requirement of WISHA, the rules adopted under WISHA, or the conditions of an order granting a variance have been violated, the department will issue a citation to the employer. Employers receiving citations are subject to the civil penalties provided in WISHA. Citations may be appealed to the Board of Industrial Insurance Appeals.

The federal courts under OSHA and the Board of Industrial Insurance Appeals under WISHA permit employers to raise "un preventable employee misconduct" as an affirmative defense to a citation when the action or practice of an employee has led to the safety or health violation. The elements of the defense are: (1) the employer has work rules designed to prevent the violation; (2) the work rules are adequately communicated to its employees; (3) the employer has taken steps to discover violations; and (4) the employer has, in practice, effectively enforced the rules when violations are discovered.

SUMMARY OF BILL:

The Department of Labor and Industries may not issue a citation to an employer for a violation of a safety or health standard under the Washington Industrial Safety and Health Act if:

- (1) the employer demonstrates employees were provided with safety training and equipment complying with WISHA standards.
- (2) the employer has a written accident prevention program and safety rules designed to prevent safety and health violations, and the program and rules were adequately communicated to employees, including conducting safety meetings.
- (3) the employer takes reasonable measures to discover violations of the safety rules and to discipline employees for violations.
- (4) the failure of employees to observe the safety rules led to the violation.

This limitation on issuing a citation has no application to a dangerous situation where there is a substantial probability that death or serious physical harm could result to an employee.

RULES AUTHORITY: The bill does not contain provisions addressing the rule making powers of an agency.

FISCAL NOTE: Not requested.

EFFECTIVE DATE: Ninety days after adjournment of session in which bill is passed.