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HOUSE BILL 1891

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State of Washington

63rd Legislature

2013 Regular Session

By Representatives Reykdal, Ormsby, Sells, Moeller, Ryu, Green, and Freeman

Read first time 02/14/13. Referred to Committee on Labor & Workforce Development.

1 AN ACT Relating to increasing protections for employees under the  
2 Washington industrial safety and health act of 1973; amending RCW  
3 49.17.160, 49.17.180, and 49.17.190; adding new sections to chapter  
4 49.17 RCW; and creating a new section.

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

6 **Sec. 1.** RCW 49.17.160 and 2010 c 8 s 12013 are each amended to  
7 read as follows:

8 (1) (~~NO~~) A person shall not discharge or in any manner  
9 discriminate against any employee because such employee has filed any  
10 complaint or instituted or caused to be instituted any proceeding under  
11 or related to this chapter, or has testified or is about to testify in  
12 any such proceeding or because of the exercise by such employee on  
13 behalf of himself or herself or others of any right afforded by this  
14 chapter.

15 (2) Any employee who believes that he or she has been discharged or  
16 otherwise discriminated against by any person in violation of this  
17 section may, within (~~thirty~~) one hundred eighty days after such  
18 violation occurs, file a complaint with the director alleging such  
19 discrimination. Upon receipt of such complaint, the director shall

1 cause such investigation to be made as he or she deems appropriate. If  
2 upon such investigation, the director determines that the provisions of  
3 this section have been violated, he (~~(of [or])~~) or she shall bring an  
4 action in the superior court of the county wherein the violation is  
5 alleged to have occurred against the person or persons who is alleged  
6 to have violated the provisions of this section. If the director  
7 determines that the provisions of this section have not been violated,  
8 the employee may institute the action on his or her own behalf within  
9 thirty days of such determination. In any such action the superior  
10 court shall have jurisdiction, for cause shown, to restrain violations  
11 of subsection (1) of this section and order all appropriate relief  
12 including rehiring or reinstatement of the employee to his or her  
13 former position with back pay.

14 (3) Within ninety days of the receipt of the complaint filed under  
15 this section, the director shall notify the complainant of his or her  
16 determination under subsection (2) of this section.

17 NEW SECTION. **Sec. 2.** A new section is added to chapter 49.17 RCW  
18 to read as follows:

19 (1) Upon request of a victim or victim's representative, the  
20 director must:

21 (a) Meet with the victim or victim's representative regarding the  
22 inspection or investigation conducted under this chapter concerning an  
23 employee's serious physical harm, including death. The meeting must  
24 take place before the director decides whether to issue a citation.

25 (b) Provide to the victim or victim's representative:

26 (i) A copy of any citation or report issued as a result of the  
27 inspection or investigation. The citation or report must be provided  
28 at no cost and provided on the later of the date the citation or report  
29 is received by the employer and the date of the request;

30 (ii) Notification of any appeal filed under RCW 49.17.140 regarding  
31 a citation issued as a result of the inspection or investigation; and

32 (iii) An explanation of the rights of employees and employee  
33 representatives to participate in the proceedings conducted under RCW  
34 49.17.140.

35 (c) Provide to the victim or victim's representative an opportunity  
36 to appear and make a statement before the parties conducting any  
37 settlement negotiations during reassumption of jurisdiction by the

1 director or appeal before the board of industrial insurance appeals  
2 regarding a citation issued as a result of an incident resulting in  
3 death or serious physical harm. This opportunity must be provided  
4 before the director enters an agreement to withdraw or modify a  
5 citation.

6 (2) The director shall establish procedures to inform victims and  
7 their representatives of their rights under this section and for the  
8 informal review of any claim of a denial of such a right.

9 (3) For purposes of this section, "victim" means:

10 (a) An employee who has sustained serious physical harm that is the  
11 subject of an inspection or investigation conducted under this chapter;  
12 or

13 (b) A family member of an employee, if as a result of serious  
14 physical harm that is the subject of an inspection or investigation  
15 conducted under this chapter the employee is killed or cannot  
16 reasonably exercise the employee's rights under this section.

17 **Sec. 3.** RCW 49.17.180 and 2010 c 8 s 12015 are each amended to  
18 read as follows:

19 (1) Except as provided in RCW 43.05.090, any employer who willfully  
20 or repeatedly violates the requirements of RCW 49.17.060, of any safety  
21 or health standard promulgated under the authority of this chapter, of  
22 any existing rule or regulation governing the conditions of employment  
23 promulgated by the department, or of any order issued granting a  
24 variance under RCW 49.17.080 or 49.17.090 may be assessed a civil  
25 penalty not to exceed (~~seventy~~) one hundred twenty thousand dollars  
26 for each violation. A minimum penalty of (~~five~~) eight thousand  
27 dollars shall be assessed for a willful or repeat serious violation.  
28 If the violation caused the death of an employee, the penalty may not  
29 exceed two hundred fifty thousand dollars but may not be less than  
30 fifty thousand dollars.

31 (2) Any employer who has received a citation for a serious  
32 violation of the requirements of RCW 49.17.060, of any safety or health  
33 standard promulgated under the authority of this chapter, of any  
34 existing rule or regulation governing the conditions of employment  
35 promulgated by the department, or of any order issued granting a  
36 variance under RCW 49.17.080 or 49.17.090 as determined in accordance  
37 with subsection (6) of this section, shall be assessed a civil penalty

1 not to exceed (~~seven~~) twelve thousand dollars for each such  
2 violation. If the violation caused the death of an employee, the  
3 penalty may not exceed fifty thousand dollars but may not be less than  
4 twenty thousand dollars, except that for an employer with twenty-five  
5 or fewer employees the penalty may not be less than ten thousand  
6 dollars.

7 (3) Any employer who has received a citation for a violation of the  
8 requirements of RCW 49.17.060, of any safety or health standard  
9 promulgated under this chapter, of any existing rule or regulation  
10 governing the conditions of employment promulgated by the department,  
11 or of any order issued granting a variance under RCW 49.17.080 or  
12 49.17.090, where such violation is specifically determined not to be of  
13 a serious nature as provided in subsection (6) of this section, may be  
14 assessed a civil penalty not to exceed (~~seven~~) twelve thousand  
15 dollars for each such violation, unless such violation is determined to  
16 be de minimis.

17 (4) Any employer who fails to correct a violation for which a  
18 citation has been issued under RCW 49.17.120 or 49.17.130 within the  
19 period permitted for its correction, which period shall not begin to  
20 run until the date of the final order of the board of industrial  
21 insurance appeals in the case of any review proceedings under this  
22 chapter initiated by the employer in good faith and not solely for  
23 delay or avoidance of penalties, may be assessed a civil penalty of not  
24 more than (~~seven~~) twelve thousand dollars for each day during which  
25 such failure or violation continues.

26 (5) Any employer who violates any of the posting requirements of  
27 this chapter, or any of the posting requirements of rules promulgated  
28 by the department pursuant to this chapter related to employee or  
29 employee representative's rights to notice, including but not limited  
30 to those employee rights to notice set forth in RCW 49.17.080,  
31 49.17.090, 49.17.120, 49.17.130, 49.17.220(1), and 49.17.240(2), shall  
32 be assessed a penalty not to exceed (~~seven~~) twelve thousand dollars  
33 for each such violation. Any employer who violates any of the posting  
34 requirements for the posting of informational, educational, or training  
35 materials under the authority of RCW 49.17.050(7), may be assessed a  
36 penalty not to exceed (~~seven~~) twelve thousand dollars for each such  
37 violation.

1 (6) For the purposes of this section, a serious violation shall be  
2 deemed to exist in a workplace if there is a substantial probability  
3 that death or serious physical harm could result from a condition which  
4 exists, or from one or more practices, means, methods, operations, or  
5 processes which have been adopted or are in use in such workplace,  
6 unless the employer did not, and could not with the exercise of  
7 reasonable diligence, know of the presence of the violation.

8 (7) The director, or his or her authorized representatives, shall  
9 have authority to assess all civil penalties provided in this section,  
10 giving due consideration to the appropriateness of the penalty with  
11 respect to the number of affected employees of the employer being  
12 charged, the gravity of the violation, the size of the employer's  
13 business, the good faith of the employer, and the history of previous  
14 violations.

15 (8) Civil penalties imposed under this chapter shall be paid to the  
16 director for deposit in the supplemental pension fund established by  
17 RCW 51.44.033. Civil penalties may be recovered in a civil action in  
18 the name of the department brought in the superior court of the county  
19 where the violation is alleged to have occurred, or the department may  
20 utilize the procedures for collection of civil penalties as set forth  
21 in RCW 51.48.120 through 51.48.150.

22 (9) The director shall adjust the civil penalty amounts in this  
23 section at least once every four years beginning on the effective date  
24 of this section to account for the percentage increase or decrease in  
25 the consumer price index for all urban wage earners and clerical  
26 workers compiled by the bureau of labor statistics, United States  
27 department of labor during such period.

28 **Sec. 4.** RCW 49.17.190 and 2011 c 96 s 40 are each amended to read  
29 as follows:

30 (1) Any person who gives advance notice of any inspection to be  
31 conducted under the authority of this chapter, without the consent of  
32 the director or his or her authorized representative, shall, upon  
33 conviction be guilty of a (~~gross misdemeanor~~) class C felony and be  
34 punished by a fine of not more than (~~one~~) two hundred fifty thousand  
35 dollars or by imprisonment for not more than (~~six months~~) two years,  
36 or by both.

1 (2) Whoever knowingly makes any false statement, representation, or  
2 certification in any application, record, report, plan, or other  
3 document filed or required to be maintained pursuant to this chapter  
4 shall, upon conviction be guilty of a (~~gross misdemeanor~~) class C  
5 felony and be punished by a fine of not more than (~~ten~~) two hundred  
6 fifty thousand dollars, or by imprisonment for not more than (~~six~~  
7 ~~months~~) five years or by both.

8 (3) Any employer who (~~wilfully~~) willfully and knowingly violates  
9 the requirements of RCW 49.17.060, any safety or health standard  
10 promulgated under this chapter, any existing rule or regulation  
11 governing the safety or health conditions of employment and adopted by  
12 the director, or any order issued granting a variance under RCW  
13 49.17.080 or 49.17.090 and that violation caused death to any employee  
14 shall, upon conviction be guilty of a (~~gross misdemeanor~~) class B  
15 felony and be punished by a fine of not more than (~~one~~) two hundred  
16 fifty thousand dollars or by imprisonment for not more than (~~six~~  
17 ~~months~~) ten years or by both; except, that if the conviction is for a  
18 violation committed after a first conviction of such person,  
19 (~~punishment shall be~~) such person upon conviction shall be guilty of  
20 a class A felony punishable by a fine of not more than two hundred  
21 fifty thousand dollars or by imprisonment for not more than (~~three~~  
22 ~~hundred sixty four days~~) twenty years, or by both.

23 (4) Any employer who willfully and knowingly violates the  
24 requirements of RCW 49.17.060, any safety or health standard  
25 promulgated under this chapter, any existing rule or regulation  
26 governing the safety or health conditions of employment and adopted by  
27 the director, or any order issued granting a variance under RCW  
28 49.17.080 or 49.17.090 and that violation caused serious physical harm  
29 to any employee but did not cause death to any employee shall, upon  
30 conviction, be guilty of a class C felony and be punished by a fine of  
31 not more than two hundred fifty thousand dollars or by imprisonment for  
32 not more than five years or by both; except, that if the conviction is  
33 for a violation committed after a first conviction of such person, such  
34 person upon conviction shall be guilty of a class B felony punishable  
35 by a fine of not more than two hundred fifty thousand dollars or by  
36 imprisonment for not more than ten years, or by both.

37 (5) Any employer who has been issued an order immediately  
38 restraining a condition, practice, method, process, or means in the

1 work place, pursuant to RCW 49.17.130 or 49.17.170, and who  
2 nevertheless continues such condition, practice, method, process, or  
3 means, or who continues to use a machine or equipment or part thereof  
4 to which a notice prohibiting such use has been attached, shall be  
5 guilty of a (~~gross misdemeanor~~) class C felony, and upon conviction  
6 shall be punished by a fine of not more than (~~ten~~) two hundred fifty  
7 thousand dollars or by imprisonment for not more than (~~six months~~)  
8 five years, or by both.

9 ((+5)) (6) Any employer who shall knowingly remove, displace,  
10 damage, or destroy, or cause to be removed, displaced, damaged, or  
11 destroyed any safety device or safeguard required to be present and  
12 maintained by any safety or health standard, rule, or order promulgated  
13 pursuant to this chapter, or pursuant to the authority vested in the  
14 director under RCW 43.22.050 shall, upon conviction, be guilty of a  
15 (~~misdemeanor~~) class C felony and be punished by a fine of not more  
16 than (~~one~~) two hundred fifty thousand dollars or by imprisonment for  
17 not more than (~~ninety days~~) two years, or by both.

18 ((+6)) (7) Whenever the director has reasonable cause to believe  
19 that any provision of this section defining a crime has been violated  
20 by an employer, the director shall cause a record of such alleged  
21 violation to be prepared, a copy of which shall be referred to the  
22 prosecuting attorney of the county wherein such alleged violation  
23 occurred, and the prosecuting attorney of such county shall in writing  
24 advise the director of the disposition he or she shall make of the  
25 alleged violation.

26 NEW SECTION. Sec. 5. A new section is added to chapter 49.17 RCW  
27 to read as follows:

28 (1) The requirements of this section apply to an employer that is  
29 required by law or chooses to establish a safety committee to  
30 communicate and evaluate safety and health issues in the workplace.

31 (2) The employer must provide at least eight hours of safety and  
32 health training to members of the safety committee within three months  
33 of appointment to the committee and annually thereafter. This training  
34 must include training on hazard identification and control. Trainers  
35 and class content must meet requirements established by the department.  
36 The training shall be in addition to and may be combined with training

1 programs provided to all employees pursuant to the rules for accident  
2 prevention programs.

3 (3) The safety committee shall:

4 (a) Identify situations that may be a source of danger or hazard to  
5 workers;

6 (b) Make recommendations to the employer and the workers for the  
7 improvement of the safety and health of workers; and

8 (c) Recommend to the employer and the workers the establishment,  
9 maintenance, and monitoring of programs, measures, and procedures  
10 respecting the safety and health of workers.

11 (4) If the employer receives written recommendations from the  
12 safety committee pursuant to subsection (3) of this section, the  
13 employer shall respond to the safety committee in writing no later than  
14 twenty-one calendar days after receiving the recommendations.

15 (5) At least one employer and one employee member of the safety  
16 committee shall conduct regular inspections of the physical condition  
17 of the workplace, as well as equipment, work methods, and work  
18 practices, to ensure that prompt action is taken to correct any  
19 hazardous condition found. Such an inspection must be performed no  
20 less than once every three months. Written reports of such inspections  
21 must be provided to and reviewed by the full safety committee within  
22 forty-five days of the inspection's completion.

23 NEW SECTION. **Sec. 6.** A new section is added to chapter 49.17 RCW  
24 to read as follows:

25 (1) The employer shall provide to each new employee at the time of  
26 hiring and prior to beginning work written information about all  
27 employee rights provided pursuant to this chapter, including at least  
28 the following:

29 (a) The right to request a workplace inspection;

30 (b) The right to receive information and training about workplace  
31 hazards;

32 (c) The right to receive copies of test results done to find  
33 hazards in the workplace;

34 (d) The right to review records of work-related injuries and  
35 illnesses;

36 (e) The right to get copies of medical records; and

1 (f) The right to exercise these rights without fear of retaliation  
2 or discrimination.

3 (2) The department shall develop and make available materials to  
4 assist employers with implementing this section.

5 NEW SECTION. **Sec. 7.** Sections 3 and 4 of this act apply to  
6 violations committed after the effective date of this section.

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