
SUBSTITUTE HOUSE BILL 1989

State of Washington

54th Legislature

1996 Regular Session

By House Committee on Commerce & Labor (originally sponsored by Representatives Lisk, Ebersole and Patterson)

Read first time 03/01/95. Referred to Committee on.

1 AN ACT Relating to employment in the construction industry;
2 amending RCW 51.24.035, and 51.32.073; adding a new section to chapter
3 49.17 RCW; creating a new section; providing an effective date; and
4 declaring an emergency.

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

6 **Sec. 1.** RCW 51.24.035 and 1987 c 212 s 1801 are each amended to
7 read as follows:

8 (1) Notwithstanding RCW 51.24.030(1), the injured worker or
9 beneficiary may not seek damages (~~((against a design professional who is
10 a third person and who has been retained to perform professional
11 services on a construction project, or any employee of a design
12 professional who is assisting or representing the design professional
13 in the performance of professional services on the site of the
14 construction project, unless responsibility for safety practices is
15 specifically assumed by contract, the provisions of which were mutually
16 negotiated, or the design professional actually exercised control over
17 the portion of the premises where the worker was injured))~~ for an
18 injury or occupational disease occurring in the course of employment at
19 the site of a construction project, whether accomplished by a single

1 contract or by multiple contracts, against the owner or developer of
2 the project or against any person or entity performing work, furnishing
3 materials, or providing services to or for the construction project
4 including, but not limited to, design professionals, construction
5 managers, general or prime contractors, suppliers, subcontractors of
6 any tier, and any employee of a design professional, construction
7 manager, general or prime contractor, supplier, or subcontractor of any
8 tier.

9 (2) The immunity provided by this section does not extend to any
10 person or entity who injures a worker by deliberate intention as
11 defined in RCW 51.24.020, and it is against public policy to seek
12 indemnification in construction contracts against such liability. Such
13 contractual clauses are void and unenforceable.

14 (3) The immunity provided by this section does not extend to
15 manufacturers and product sellers for product liability actions as
16 defined in chapter 7.72 RCW.

17 (4) The immunity provided by this section does not apply to the
18 negligent preparation of design plans and specifications by a design
19 professional.

20 (~~(3)~~) (5) For the purposes of this section, "design professional"
21 means an architect, professional engineer, land surveyor, or landscape
22 architect, who is licensed or authorized by law to practice such
23 profession, or any corporation organized under chapter 18.100 RCW or
24 authorized under RCW 18.08.420 or 18.43.130 to render design services
25 through the practice of one or more of such professions.

26 **Sec. 2.** RCW 51.32.073 and 1989 c 385 s 4 are each amended to read
27 as follows:

28 (1) Except as provided in subsection (2) of this section, each
29 employer shall retain from the earnings of each worker, except for
30 workers in the construction industry, that amount as shall be fixed
31 from time to time by the director, the basis for measuring said amount
32 to be determined by the director. The money so retained shall be
33 matched in an equal amount by each employer, and all such moneys shall
34 be remitted to the department in such manner and at such intervals as
35 the department directs and shall be placed in the supplemental pension
36 fund: PROVIDED, That the state apprenticeship council shall pay the
37 entire amount into the supplemental pension fund for registered
38 apprentices or trainees during their participation in supplemental and

1 related instruction classes. The moneys so collected shall be used
2 exclusively for the additional payments from the supplemental pension
3 fund prescribed in this title and for the amount of any increase
4 payable under the provisions of RCW 51.32.075, as now or hereafter
5 amended, and shall be no more than necessary to make such payments on
6 a current basis. Employers in the construction industry shall pay the
7 entire amount into the supplemental pension fund for employees engaged
8 in construction work, as reported in construction industry industrial
9 insurance classifications adopted by the department. The department
10 may require a self-insurer to make any additional payments which are
11 payable from the supplemental pension fund and thereafter such self-
12 insurer shall be reimbursed therefrom.

13 (2) None of the amount assessed for the supplemental pension fund
14 under RCW 51.16.210 may be retained from the earnings of workers
15 covered under RCW 51.16.210.

16 NEW SECTION. Sec. 3. A new section is added to chapter 49.17 RCW
17 to read as follows:

18 Each prime contractor or general contractor has a duty to provide
19 a safe place to work for its own employees and the employees of a
20 subcontractor of any tier working at the site of a construction
21 project. This duty shall be considered within the context of standard
22 construction industry practices and shall establish that the general
23 contractor or prime contractor has the primary responsibility for
24 compliance with safety regulations. Such duty includes implementation
25 of a safety program specific to the site of a construction project that
26 is effective in practice and that includes contractual requirements for
27 compliance for all lower-tier construction employers engaged in work at
28 the site of a construction project.

29 Each prime contractor or general contractor shall take reasonable
30 steps to ensure that its safety program is designed to comply with
31 Title 51 RCW and chapter 49.17 RCW, including the development,
32 implementation, and periodic evaluation of a written accident
33 prevention program for each construction project. This plan shall be
34 communicated to the prime contractor's or general contractor's
35 employees and to all subcontractors of any tier on the site of the
36 construction project. All construction employers, whether prime
37 contractor, general contractor, or subcontractor of any tier, shall
38 designate an individual with responsibility for construction jobsite

1 safety. The prime contractor or general contractor shall post the name
2 and telephone number of its designated individual at the site of a
3 construction project. All subcontractors shall inform the prime
4 contractor or general contractor and each of that subcontractor's own
5 employees of the name and telephone number of the subcontractor's
6 designated individual.

7 Suggestions for safety improvements and identification of potential
8 hazards at the site of a construction project are to be encouraged.
9 Permissible disciplinary actions for violation of these or other
10 appropriately communicated requirements include, but are not limited
11 to: Verbal or written reprimand, suspension from work, and termination
12 for cause. Such disciplinary actions for violations shall be subject
13 to the disciplinary provisions set forth in an employer's written
14 policy statement or in a written agreement between an employer and
15 employees, if such a written agreement exists.

16 Neither violation of the provisions of this section nor the
17 issuance of a citation under chapter 49.17 RCW shall eliminate or
18 effect any change to the immunity conferred in RCW 51.24.035.

19 NEW SECTION. **Sec. 4.** The department of labor and industries shall
20 adopt rules in consultation with the affected parties, that are
21 consistent with the legislative intent of this act to implement this
22 act.

23 NEW SECTION. **Sec. 5.** (1) Sections 1, 3, and 4 of this act are
24 necessary for the immediate preservation of the public peace, health,
25 or safety, or support of the state government and its existing public
26 institutions, and shall take effect immediately.

27 (2) Section 2 of this act shall take effect July 1, 1996.

--- END ---