

HOUSE BILL REPORT

HB 1369

As Reported By House Committee On:

Commerce & Labor

Title: An act relating to restricting Washington industrial safety and health act citations as a result of employee misconduct.

Brief Description: Concerning the issuance of citations under the Washington industrial safety and health act.

Sponsors: Representatives Clements, Conway, Lisk, Grant, McMorris and Wood.

Brief History:

Committee Activity:

Commerce & Labor: 2/8/99, 2/23/99 [DP].

Brief Summary of Bill

- Directs the Department of Labor and Industries not to cite employers for serious Washington Industrial Safety and Health Act (WISHA) violations that are the result of unpreventable employee misconduct.
- Establishes the elements for proving unpreventable employee misconduct.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: Do pass. Signed by 8 members: Representatives Clements, Republican Co-Chair; Conway, Democratic Co-Chair; B. Chandler, Republican Vice Chair; Wood, Democratic Vice Chair; Hurst; Lisk; McIntire and McMorris.

Staff: Douglas Ruth (786-7134).

Background:

The health and safety of Washington workplaces are protected by the Washington Industrial Safety and Health Act (WISHA). The act establishes a general duty for employers covered by the act to provide work places that are free from recognized hazards. It also requires employers to comply with specific safety and health

standards adopted by the Department of Labor and Industries. As part of these duties, employers have a responsibility to eradicate preventable hazards, including preventing conduct by employees that violate safety and health standards.

To insure compliance with WISHA, department representatives inspect workplaces and cite employers for violations of WISHA, a rule adopted under WISHA, or the conditions of a variance granted the employer. Employers receiving citations are subject to civil penalties. A violation is "serious" if it presents a substantial probability that death or serious physical harm would result. The department may immediately require the employer to correct or remove the cause of serious violations. Citations may be appealed to the Board of Industrial Insurance Appeals.

Various federal courts and the Board of Industrial Insurance Appeals have recognized an "unpreventable employee misconduct" defense to WISHA citations. If an employer can prove that a hazardous situation was caused by unpreventable employee misconduct, the department must excuse the violation. To prove that an accident was the result of unpreventable employee misconduct, an employer must show: (1) it established work rules to prevent the violation; (2) the rules were adequately communicated to employees; (3) it took steps to discover violations; and (4) it effectively enforced the rules when infractions were 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 has a thorough written safety program, including work rules, training, and equipment designed to prevent the violation.
- (2) The employer's program and rules were adequately communicated to employees.
- (3) The employer takes reasonable measures to discover violations of the safety rules and takes reasonable corrective action when the violations are discovered.
- (4) The employer enforces its safety program in practice, not just in theory.

This limitation on issuing citations does not apply to violations which have a substantial probability of resulting in death or serious physical harm.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: Courts already recognize the defense of "employee misconduct." The bill neither expands current law, nor eliminates citations that would otherwise be enforced against an employer. The bill places in statute the current elements of the employee misconduct defense. Placing the elements of this defense in statute gives notice to the public and employers of which violations are punishable. It also will reduce the number of citations issued by the department. Instead of a court voiding a citation after an administrative and court process, inspectors will not issue the citation in the first place if it meets the elements of the employee misconduct exemption. This saves time and money for all involved.

Testimony Against: The criteria for establishing employee misconduct are subjective. It will not be easy to prove that an employer's safety rules were adequately communicated to employees.

Testified: Steve Cant, Department of Labor and Industries; Amber Balch, Association of Washington Business; and Chris Cheney, Washington Growers League and Hop Growers.