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**HOUSE BILL 1609**

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**State of Washington 67th Legislature 2022 Regular Session**

**By** Representatives Hoff, Vick, Caldier, Graham, Corry, and Dufault

AN ACT Relating to limiting agency authority to align with federal standards during public health emergencies; amending RCW 49.17.180; adding a new section to chapter 49.17 RCW; creating a new section; and declaring an emergency.

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

NEW SECTION. **Sec.**  (1) The legislature finds that the COVID-19 pandemic has required businesses that are permitted to continue operating to make drastic, costly changes to their operations to protect employees and customers. Some of the changes businesses were required to adopt are consistent with federal occupational safety and health administration requirements; however, the department of labor and industries has adopted rules and the governor has issued changing proclamations and guidance during the pandemic that go beyond the federal occupational safety and health administration requirements. The legislature further finds Washington is a "state-plan state" for purposes of the federal occupational safety and health administration. To maintain its state-plan status, Washington's safety and health standards must be at least as effective as those standards adopted or recognized by the occupational safety and health administration.

(2) The legislature therefore intends to limit the ability of the department of labor and industries to adopt rules regulating health or safety standards for employers in response to a public health emergency when:

(a) The occupational safety and health administration has not first adopted rules or issued guidance applicable to employers related to the public health emergency; and

(b) The department of labor and industries' rules are more restrictive or exceed the scope of the rules or guidance issued by the occupational safety and health administration.

(3) The legislature further intends to prohibit the department of labor and industries from issuing civil penalties for alleged violations of any health or safety standard adopted by the department in response to the emergency proclamation if:

(a) The occupational safety and health administration has not first adopted rules, guidance, or policies related to the public health emergency that require the imposition of civil penalties for violation of those rules, guidance, or policies; or

(b) The civil penalty is for an alleged violation of a health or safety standard that is more restrictive or exceeds the scope of the rules, guidance, or policy issued by the occupational safety and health administration.

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

(1)(a) In the event of a public health emergency for which an emergency proclamation has been issued under RCW 43.06.010, the department may not adopt rules regulating specific health or safety standards for employers in response to the public health emergency or under the emergency proclamation, if the occupational safety and health administration has not first adopted rules or issued guidance on specific health or safety standards applicable to employers related to the public health emergency.

(b) If the occupational safety and health administration has adopted rules, guidance, or policies, regulating specific health or safety standards for employers in response to the public health emergency, the department may adopt rules, guidance, or policies equivalent to the occupational safety and health administration's specific rule, guidance, or policy. The department's rules, guidance, or policies adopted under this section may not be more restrictive or exceed the scope of the specific rules, guidance, or policies that have been adopted or issued by the occupational safety and health administration.

(2) To be in compliance with this section, the department shall repeal or revise any department rules, guidance, or policies that are more restrictive or exceed the scope of the specific rules, guidance, or policies adopted or issued by the occupational safety and health administration.

(3) Nothing in this section precludes the department from providing advice to employers related to health and safety in response to the public health emergency.

**Sec.**  RCW 49.17.180 and 2021 c 253 s 4 are each amended to read as follows:

(1) Except as provided in RCW 43.05.090 and subsection (10) of this section, any employer who willfully or repeatedly violates the requirements of RCW 49.17.060, of any safety or health standard adopted under the authority of this chapter, of any existing rule or regulation governing the conditions of employment adopted by the department, or of any order issued granting a variance under RCW 49.17.080 or 49.17.090 may be assessed a civil penalty not to exceed seventy thousand dollars for each violation. However, if the state is required to have a higher maximum penalty to qualify a state plan under the occupational safety and health administration, then the maximum civil penalty is the higher maximum penalty required under the occupational safety and health administration. A minimum penalty of five thousand dollars shall be assessed for a willful violation; unless set to a specific higher amount by the federal occupational safety and health administration and this state is required to equal the higher penalty amount to qualify a state plan.

(2) ((~~Any~~)) Except as provided in subsection (10) of this section, any employer who has received a citation for a serious violation of the requirements of RCW 49.17.060, of any safety or health standard adopted under the authority of this chapter, of any existing rule or regulation governing the conditions of employment adopted by the department, or of any order issued granting a variance under RCW 49.17.080 or 49.17.090 as determined in accordance with subsection (7) of this section, shall be assessed a civil penalty not to exceed seven thousand dollars for each such violation. However, if the state is required to have a higher maximum penalty to qualify a state plan under the occupational safety and health administration, then the maximum civil penalty is the higher maximum penalty required under the occupational safety and health administration.

(3) ((~~Any~~)) Except as provided in subsection (10) of this section, any employer who has received a citation for a violation of the requirements of RCW 49.17.060, of any safety or health standard adopted under this chapter, of any existing rule or regulation governing the conditions of employment adopted by the department, or of any order issued granting a variance under RCW 49.17.080 or 49.17.090, where such violation is specifically determined not to be of a serious nature as provided in subsection (7) of this section, may be assessed a civil penalty not to exceed seven thousand dollars for each such violation, unless such violation is determined to be de minimis or, if the state is required to have a higher maximum penalty to qualify a state plan under the occupational safety and health administration, then the maximum civil penalty is the higher maximum penalty required under the occupational safety and health administration.

(4) Any employer who fails to correct a violation for which a citation has been issued under RCW 49.17.120 or 49.17.130 within the period permitted for its correction, which period shall not begin to run until the date of the final order of the board of industrial insurance appeals in the case of any review proceedings under this chapter initiated by the employer in good faith and not solely for delay or avoidance of penalties, may be assessed a civil penalty of not more than seven thousand dollars for each day during which such failure or violation continues. However, if the state is required to have a higher maximum penalty to qualify a state plan under the occupational safety and health administration, then the maximum civil penalty is the higher maximum penalty required under the occupational safety and health administration.

(5) Any employer who has been issued an order immediately restraining a condition, practice, method, process, or means in the workplace, pursuant to RCW 49.17.130 or 49.17.170, and who nevertheless continues such condition, practice, method, process, or means, or who continues to use a machine or equipment or part thereof to which a notice prohibiting such use has been attached, may be assessed a civil penalty of not more than the maximum penalty for a serious violation under this section for each day the employer continues such condition, practice, method, process, or means, or continues to use a machine or equipment or part thereof to which a notice prohibiting such use has been attached.

(6) Any employer who violates any of the posting requirements of this chapter, or any of the posting requirements of rules adopted by the department pursuant to this chapter related to employee or employee representative's rights to notice, including but not limited to those employee rights to notice set forth in RCW 49.17.080, 49.17.090, 49.17.120, 49.17.130, 49.17.220(1), and 49.17.240(2), shall be assessed a penalty not to exceed seven thousand dollars for each such violation. However, if the state is required to have a higher maximum penalty to qualify a state plan under the occupational safety and health administration, then the maximum civil penalty is the higher maximum penalty required under the occupational safety and health administration. Any employer who violates any of the posting requirements for the posting of informational, educational, or training materials under the authority of RCW 49.17.050(7), may be assessed a penalty not to exceed seven thousand dollars for each such violation. However, if the state is required to have a higher maximum penalty to qualify a state plan under the occupational safety and health administration, then the maximum civil penalty is the higher maximum penalty required under the occupational safety and health administration.

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

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

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

(10)(a) In the event of a public health emergency for which an emergency proclamation has been issued under RCW 43.06.010, the department may not impose any civil penalty upon an employer for alleged violations of any health or safety standard adopted by the department in response to the emergency proclamation, if:

(i) The occupational safety and health administration has not first adopted rules, guidance, or policies on a specific health or safety standard during the public health emergency that require the imposition of civil penalties for violation of those specific rules, guidance, or policies; or

(ii) The civil penalty is for an alleged violation of a specific health or safety standard that is more restrictive or exceeds the scope of the specific rule, guidance, or policy issued by the occupational safety and health administration.

(b) This subsection (10) applies to citations for alleged violations issued on or after November 1, 2021.

NEW SECTION. **Sec.**  This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

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