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**SUBSTITUTE SENATE BILL 5217**

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**State of Washington**

**68th Legislature**

**2023 Regular Session**

**By** Senate Labor & Commerce (originally sponsored by Senators Dhingra, Kauffman, Keiser, Kuderer, Lovelett, Nguyen, Nobles, Pedersen, Valdez, and C. Wilson)

READ FIRST TIME 02/08/23.

1 AN ACT Relating to the state's ability to regulate certain  
2 industries and risk classifications to prevent musculoskeletal  
3 injuries and disorders; amending RCW 49.17.020; adding new sections  
4 to chapter 49.17 RCW; creating a new section; and repealing RCW  
5 49.17.360 and 49.17.370.

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

7 NEW SECTION. **Sec. 1.** (1) The legislature finds that the absence  
8 of the department of labor and industries' authority to regulate  
9 working practices to prevent musculoskeletal injuries and disorders  
10 has contributed to excess and avoidable claims and costs across the  
11 workers' compensation system for all employers in Washington,  
12 including those employers who maintain safer workplaces without high  
13 incidents of musculoskeletal injuries and disorders.

14 (2) The legislature finds that work-related musculoskeletal  
15 injuries and disorders account for at least one-third of all workers'  
16 compensation claims that result in time loss and wage replacement;  
17 are more severe than the average nonfatal injury or illness; and are  
18 a common cause of long-term disability in Washington state.

19 (3) The legislature finds that many of Washington state's  
20 critical industries, including health care, are described by the  
21 federal bureau of labor statistics as high-risk industries for

1 musculoskeletal injuries. These are also industries that are  
2 currently experiencing significant staffing shortages. Further, these  
3 injuries lead to high employer costs including absenteeism, decreased  
4 productivity, and increased costs for health care, disability, and  
5 workers' compensation, among other costs.

6 (4) The legislature therefore intends to repeal the prohibition  
7 on regulating working practices related to musculoskeletal injuries  
8 and disorders, thereby allowing targeted safety efforts to more  
9 effectively and efficiently prevent these workplace injuries. By  
10 removing this barrier, the legislature will restore the state's  
11 ability to more strategically address important workplace safety  
12 issues and reduce costs for all employers and workers.

13 NEW SECTION. **Sec. 2.** The following acts or parts of acts are  
14 each repealed:

15 (1) RCW 49.17.360 (Ergonomics Initiative—Intent) and 2004 c 1 s  
16 1; and

17 (2) RCW 49.17.370 (Ergonomics Initiative—Definition—Rule repeal)  
18 and 2004 c 1 s 2.

19 **Sec. 3.** RCW 49.17.020 and 2010 c 8 s 12005 are each amended to  
20 read as follows:

21 ~~((For the purposes of this chapter:))~~ The definitions in this  
22 section apply throughout this chapter unless the context clearly  
23 requires otherwise.

24 (1) ~~((The term "agriculture"))~~ (a) "Agriculture" means farming  
25 and includes, but is not limited to:

26 ~~((a))~~ (i) The cultivation and tillage of the soil;

27 ~~((b))~~ (ii) Dairying;

28 ~~((c))~~ (iii) The production, cultivation, growing, and  
29 harvesting of any agricultural or horticultural commodity;

30 ~~((d))~~ (iv) The raising of livestock, bees, fur-bearing animals,  
31 or poultry; and

32 ~~((e))~~ (v) Any practices performed by a farmer or on a farm,  
33 incident to or in connection with such farming operations, including  
34 but not limited to preparation for market and delivery to:

35 ~~((i))~~ (A) Storage;

36 ~~((ii))~~ (B) Market; or

37 ~~((iii))~~ (C) Carriers for transportation to market.

1       (~~The term "agriculture"~~) (b) "Agriculture" does not mean a  
2 farmer's processing for sale or handling for sale a commodity or  
3 product grown or produced by a person other than the farmer or the  
4 farmer's employees.

5       (2) (~~The term "director"~~) "Director" means the director of the  
6 department of labor and industries, or his or her designated  
7 representative.

8       (3) (~~The term "department"~~) "Department" means the department  
9 of labor and industries.

10       (4) (~~The term "employer"~~) "Employer" means any person, firm,  
11 corporation, partnership, business trust, legal representative, or  
12 other business entity which engages in any business, industry,  
13 profession, or activity in this state and employs one or more  
14 employees or who contracts with one or more persons, the essence of  
15 which is the personal labor of such person or persons and includes  
16 the state, counties, cities, and all municipal corporations, public  
17 corporations, political subdivisions of the state, and charitable  
18 organizations: PROVIDED, That any person, partnership, or business  
19 entity not having employees, and who is covered by the industrial  
20 insurance act shall be considered both an employer and an employee.

21       (5) (~~The term "employee"~~) "Employee" means an employee of an  
22 employer who is employed in the business of his or her employer  
23 whether by way of manual labor or otherwise and every person in this  
24 state who is engaged in the employment of or who is working under an  
25 independent contract the essence of which is his or her personal  
26 labor for an employer under this chapter whether by way of manual  
27 labor or otherwise.

28       (6) (~~The term "person"~~) "Person" means one or more individuals,  
29 partnerships, associations, corporations, business trusts, legal  
30 representatives, or any organized group of persons.

31       (7) (~~The term "safety and health standard"~~) "Risk  
32 classification" means any classification defined in chapter 296-17A  
33 WAC classifications for Washington workers' compensation insurance.

34       (8) "Safety and health standard" means a standard which requires  
35 the adoption or use of one or more practices, means, methods,  
36 operations, or processes reasonably necessary or appropriate to  
37 provide safe or healthful employment and places of employment.

38       (~~(8) The term "workplace"~~) (9) "Workplace" means any plant,  
39 yard, premises, room, or other place where an employee or employees  
40 are employed for the performance of labor or service over which the

1 employer has the right of access or control, and includes, but is not  
2 limited to, all workplaces covered by industrial insurance under  
3 Title 51 RCW, as now or hereafter amended.

4 (~~(9) The term "working day"~~) (10) "Working day" means a  
5 calendar day, except Saturdays, Sundays, and all legal holidays as  
6 set forth in RCW 1.16.050, as now or hereafter amended, and for the  
7 purposes of the computation of time within which an act is to be done  
8 under the provisions of this chapter, shall be computed by excluding  
9 the first working day and including the last working day.

10 NEW SECTION. **Sec. 4.** A new section is added to chapter 49.17  
11 RCW to read as follows:

12 (1) The department may adopt rules related to preventing  
13 musculoskeletal injuries and disorders that provide standards for an  
14 industry or risk classification, subject to the limits in this  
15 section.

16 (2)(a) Within a 12-month period, the department may not adopt  
17 more than one set of rules related to preventing musculoskeletal  
18 injuries and disorders for an industry or risk classification that  
19 previously did not have rules related to preventing musculoskeletal  
20 injuries and disorders.

21 (b) Subject to subsection (10) of this section, the department  
22 may not adopt emergency rules under chapter 34.05 RCW related to  
23 preventing musculoskeletal injuries and disorders for an industry or  
24 risk classification that previously did not have rules related to  
25 preventing musculoskeletal injuries and disorders.

26 (3) Rules providing standards may only be adopted for industries  
27 or risk classification where compensable workers' compensation claims  
28 involved musculoskeletal injuries and disorders at a rate greater  
29 than two times the overall state workers' compensation compensable  
30 claim rate for musculoskeletal injuries and disorders over a recent  
31 five-year period.

32 (4) Within 90 days of the department filing a preproposal  
33 statement of inquiry (CR-101) for industry or risk classifications  
34 specific rules related to preventing musculoskeletal injuries and  
35 disorders, the department must provide a report to the appropriate  
36 committees of the legislature. The report must include the criteria  
37 the department used to select the industry or rate risk  
38 classification that will be subject to the rules and a description of

1 the rule-making procedures under chapter 34.05 RCW which the  
2 department will follow for the specific rules.

3 (5) During rule making, the department must consider including  
4 options for an employer to demonstrate alternative control methods  
5 where:

6 (a) The alternative methods are at least as effective as the rule  
7 requirements;

8 (b) Affected employees are trained and monitored for compliance;  
9 and

10 (c) The employer has documented all efforts.

11 (6) When filing a preproposal statement of inquiry (CR-101) for  
12 industry or risk classification specific rules related to preventing  
13 musculoskeletal injuries and disorders, the department must include  
14 the convening of an advisory committee comprised of equal  
15 representatives of employers and workers from the industry or rate  
16 risk classification that will be subject to the rules.

17 (7) During rule making under this section, the department must  
18 solicit input on the effective date to specify in the order of  
19 adoption under RCW 34.05.380. The effective date may not be less than  
20 120 days after adoption.

21 (8) Annually by November, the department must:

22 (a) Publish a list of industries and risk classifications  
23 eligible for rule making under this section. The list must include  
24 claims over the five-calendar year period that ended two calendar  
25 years before the report is published; and

26 (b) Conduct a review of the compensable workers' compensation  
27 claims data for the risk classifications identified in (a) of this  
28 subsection to ensure that the data only reflects injuries or  
29 syndromes caused by exposure to adverse ergonomic risk factors such  
30 as repetitive strain, prolonged exposure to abnormal temperatures or  
31 vibration, prolonged awkward posture, or repeated forceful exertion  
32 or pressure upon a particular body part and does not include sudden  
33 onset injuries or illnesses unrelated to adverse ergonomic risk  
34 factors, and publish the results of that review.

35 (9) For employee home offices, the director shall not have the  
36 authority to adopt any new or amended rules dealing with  
37 musculoskeletal injuries and disorders, or that deal with the same or  
38 similar activities as the rules which were repealed in former RCW  
39 49.17.370 for employee home offices, until and to the extent  
40 comparable rules applying to employee home offices are required by

1 congress or the federal occupational safety and health  
2 administration.

3 (10) Limits on rule making in this section do not apply to rules  
4 adopted or amended where required by the federal occupational safety  
5 and health administration.

6 (11) For the purposes of this section, "industry" means any  
7 classification in the North American industry classification system  
8 that defines an industry subsector at the three-digit level, industry  
9 group at the four-digit level, industry at the five-digit level, or  
10 United States detailed industry at the six-digit level, only to the  
11 extent that such classification includes only risk classifications  
12 satisfying the requirement set forth in subsection (3) of this  
13 section.

14 NEW SECTION. **Sec. 5.** A new section is added to chapter 49.17  
15 RCW to read as follows:

16 (1) The director is authorized, in the director's discretion, to  
17 provide funding to employers to purchase additional equipment that  
18 may be needed to comply with a rule adopted under section 4 of this  
19 act. The maximum amount of funding each year is two percent of the  
20 premiums paid into the accident fund in the prior year from employers  
21 subject to a rule adopted under section 4 of this act.

22 (2) Only employers who pay premiums to the state fund as defined  
23 in RCW 51.08.175 and are subject to a rule adopted under section 4 of  
24 this act are eligible for funding under this section.

25 (3) An appropriation is not required for these expenditures.

26 (4) The department may adopt rules to implement this section.

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