

---

**SENATE BILL 5217**

---

**State of Washington**

**68th Legislature**

**2023 Regular Session**

**By** Senators Dhingra, Kauffman, Keiser, Kuderer, Lovelett, Nguyen, Nobles, Pedersen, Valdez, and C. Wilson

Read first time 01/10/23. Referred to Committee on Labor & Commerce.

1 AN ACT Relating to the state's ability to regulate certain  
2 industries and risk classes to prevent musculoskeletal injuries and  
3 disorders; amending RCW 49.17.020; adding new sections to chapter  
4 49.17 RCW; creating a new section; and repealing RCW 49.17.360 and  
5 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"~~) "Industry" means any classification in  
29 the North American industry classification system structure.

30       (7) "Person" means one or more individuals, partnerships,  
31 associations, corporations, business trusts, legal representatives,  
32 or any organized group of persons.

33       (~~(7) The term "safety and health standard"~~) (8) "Risk  
34 classification" means any classification defined in chapter 296-17A  
35 WAC classifications for Washington workers' compensation insurance.

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

1        ~~((8) The term "workplace"))~~ (10) "Workplace" means any plant,  
2 yard, premises, room, or other place where an employee or employees  
3 are employed for the performance of labor or service over which the  
4 employer has the right of access or control, and includes, but is not  
5 limited to, all workplaces covered by industrial insurance under  
6 Title 51 RCW, as now or hereafter amended.

7        ~~((9) The term "working day"))~~ (11) "Working day" means a  
8 calendar day, except Saturdays, Sundays, and all legal holidays as  
9 set forth in RCW 1.16.050, as now or hereafter amended, and for the  
10 purposes of the computation of time within which an act is to be done  
11 under the provisions of this chapter, shall be computed by excluding  
12 the first working day and including the last working day.

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

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

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

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

29        (4) (a) Within 90 days of the department filing a preproposal  
30 statement of inquiry (CR-101) for industry or risk class specific  
31 rules related to preventing musculoskeletal injuries and disorders,  
32 the department must provide a report to the appropriate committees of  
33 the legislature. The report must include the criteria the department  
34 used to select the industry or rate risk class that will be subject  
35 to the rules and a description of the rule-making procedures under  
36 chapter 34.05 RCW which the department will follow for the specific  
37 rules.

1 (b) At least annually, the department must publish a list of  
2 industries and risk classes eligible for rule making under this  
3 section.

4 (5) For employee home offices, the director shall not have the  
5 authority to adopt any new or amended rules dealing with  
6 musculoskeletal injuries and disorders, or that deal with the same or  
7 similar activities as the rules which were repealed in former RCW  
8 49.17.370 for employee home offices, until and to the extent  
9 comparable rules applying to employee home offices are required by  
10 congress or the federal occupational safety and health  
11 administration.

12 (6) The limit on rule making in this section does not apply to  
13 rules adopted or amended where required by the federal occupational  
14 safety and health administration.

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

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

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

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

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

--- END ---