
SUBSTITUTE SENATE BILL 5416

State of Washington

53rd Legislature

1993 Regular Session

By Senate Committee on Labor & Commerce (originally sponsored by Senator Prentice)

Read first time 03/03/93.

1 AN ACT Relating to industrial insurance; and amending RCW
2 51.48.025.

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

4 **Sec. 1.** RCW 51.48.025 and 1985 c 347 s 8 are each amended to read
5 as follows:

6 (1) No employer may discharge or in any manner discriminate against
7 ~~((any))~~ an employee because ~~((such))~~ the employee has filed or
8 communicated to the employer an intent to file a claim for compensation
9 or exercises any rights provided under this title. However, nothing in
10 this section prevents an employer from taking any action against a
11 worker for other reasons including, but not limited to, the worker's
12 failure to observe health or safety standards adopted by the
13 employer~~((, or the frequency or nature of the worker's job-related~~
14 ~~accidents))~~.

15 (2) ~~((Any))~~ (a) Termination or other adverse action taken against
16 an employee within the one hundred twenty-day period immediately after
17 any of the following, whichever occurs later, is presumed to be
18 retaliatory in violation of subsection (1) of this section:

19 (i) The filing of a claim;

1 (ii) The first communication to the employer of an intent to file
2 a claim;

3 (iii) The exercise of any other right under this title; or

4 (iv) An injured worker returns to work following recovery from a
5 covered injury or illness.

6 (b) The presumption under (a) of this subsection may be rebutted by
7 competent evidence that the termination or other adverse action was not
8 retaliatory, including the following:

9 (i) The termination or other adverse action was in furtherance of
10 a valid business purpose; or

11 (ii) The termination or other adverse action was based on
12 documented poor performance by the employee which the employee was made
13 aware of before filing a claim, giving notification of intent to file
14 a claim, or exercising any other right under this title, and the
15 employee was notified that failure to cure the poor performance could
16 be cause for termination or other adverse action.

17 (c) For the purposes of (b) of this subsection, "valid business
18 purpose" includes, but is not limited to (i) a nonarbitrary written
19 reduction in force procedure, and (ii) the impracticality of
20 maintaining an opening for the employee during the injured employee's
21 recovery period and the absence of any other suitable job for the
22 employee.

23 In demonstrating the impracticality of maintaining an opening for
24 the injured worker during the employee's recovery period, the employer
25 must show that it was not reasonable to obtain the services normally
26 provided by the injured employee through the use of a temporary
27 substitute employee or by the temporary assumption of the injured
28 employee's duties by other members of the employer's work force.

29 (d) For the purposes of (b) of this subsection, "valid business
30 purpose" does not include (i) the fact that the employee has filed one
31 or more previous claims under this title, (ii) a determination by the
32 employer that the employee is accident-prone or careless, unless the
33 determination is based on the employee's failure to observe health or
34 safety standards adopted by the employer, and (iii) the fact that the
35 employee has sought to exercise his or her rights under a collective
36 bargaining agreement or any law which has as its purpose the protection
37 of employee's employment rights, health, or safety.

38 (3) An employee who believes that he or she has been discharged or
39 otherwise discriminated against by an employer in violation of this

1 section may file a complaint with the director alleging discrimination
2 within ninety days of the date of the alleged violation. Upon receipt
3 of ~~((such))~~ the complaint, the director shall cause an investigation to
4 be made as the director deems appropriate. Within ninety days of the
5 receipt of a complaint filed under this section, the director shall
6 notify the complainant of his or her determination. If upon ~~((such))~~
7 investigation, it is determined that this section has been violated,
8 the director shall bring an action in the superior court of the county
9 in which the violation is alleged to have occurred.

10 ~~((+3))~~ (4) If the director determines that this section has not
11 been violated, the employee may institute the action on his or her own
12 behalf.

13 ~~((+4))~~ (5) In any action brought under this section, the superior
14 court shall have jurisdiction, for cause shown, to restrain violations
15 of subsection (1) of this section and to order all appropriate relief
16 including rehiring or reinstatement of the employee with back pay.

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