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SENATE BILL 6310

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State of Washington

53rd Legislature

1994 Regular Session

By Senators Snyder and Fraser; by request of Department of Labor & Industries

Read first time 01/19/94. Referred to Committee on Labor & Commerce.

1 AN ACT Relating to penalties for violation of industrial welfare  
2 laws; amending RCW 49.46.100, 49.48.040, and 49.48.060; adding new  
3 sections to chapter 49.12 RCW; creating a new section; repealing RCW  
4 49.12.161 and 49.12.170; and prescribing penalties.

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

6 NEW SECTION. **Sec. 1.** (1) If, after an inspection under RCW  
7 49.12.041, the director, or the director's authorized representative,  
8 finds that an employer has violated a rule or order adopted under this  
9 chapter, a citation stating the violations shall immediately be issued  
10 to the employer. The citation shall be in writing, describing the  
11 nature of the violation including reference to the standards, rules, or  
12 orders alleged to have been violated, and shall fix a specific time for  
13 abatement of the violation. The citation, notice, and proposed penalty  
14 assessment shall be given to the highest management official available  
15 at the workplace or be mailed to the employer. Citations issued under  
16 this section shall be posted at or near the place where the violation  
17 occurred, and shall contain an abatement date by which the employer  
18 must correct the violation.

1 (2) The director shall give the employer the opportunity to resolve  
2 the citation. If, after the date stated in the citation for abatement  
3 of the violation, the employer has not corrected the violation, he or  
4 she shall be assessed a civil penalty of not more than five hundred  
5 dollars. An employer who receives a citation under this section shall  
6 pay the amount assessed within thirty days of receipt of the assessment  
7 or notify the director of his or her intent to appeal the citation or  
8 assessment penalty as provided in section 2 of this act.

9 (3) An employer who repeatedly violates the same provision of the  
10 requirements of this chapter, a rule adopted under this chapter, or an  
11 order granting a variance under this chapter, may be assessed a civil  
12 penalty of not more than one thousand dollars for each day the  
13 violation continues.

14 (4) An employer who violates any of the posting requirements of  
15 this chapter or rules adopted under this chapter shall be assessed a  
16 civil penalty of not more than one hundred dollars for each violation.

17 (5) A person who gives advance notice of an inspection to be  
18 conducted under this chapter without the authority of the director  
19 shall be assessed a civil penalty of not more than one thousand  
20 dollars.

21 (6) Penalties assessed under this section shall be paid to the  
22 director and deposited into the general fund.

23 (7) This section shall not apply to violations of RCW 49.12.270  
24 through 49.12.295.

25 NEW SECTION. **Sec. 2.** A person, firm, or corporation aggrieved by  
26 an action taken or decision made by the department under section 1 of  
27 this act may appeal the action or decision to the director by filing  
28 notice of the appeal with the director within thirty days of the  
29 department's action or decision. Upon receipt of an appeal, a hearing  
30 shall be held in accordance with chapter 34.05 RCW. The director shall  
31 issue all final orders after the hearing. The final orders are subject  
32 to appeal in accordance with chapter 34.05 RCW. Orders not appealed  
33 within the time period specified in chapter 34.05 RCW are final and  
34 binding.

35 NEW SECTION. **Sec. 3.** Sections 1 and 2 of this act are each added  
36 to chapter 49.12 RCW.

1        NEW SECTION.        **Sec. 4.**        For the purposes of RCW 49.46.100,  
2 49.48.040, and 49.48.060:

3        (1) The legislature finds that over twenty-five thousand state  
4 residents per year file cases and complaints with the department of  
5 labor and industries alleging they have been denied payment for work  
6 they performed. Each month an average of over one million dollars in  
7 back wages is sought by workers; and

8        (2) The legislature further finds that the Washington state minimum  
9 wage law and wage claim laws do not require payment of interest on back  
10 wages owed and do not authorize adequate penalties against violators.  
11 To improve compliance, the department of labor and industries should be  
12 allowed to assess interest on back wages and impose civil penalties  
13 against employers who are found to be not in compliance with chapters  
14 49.46 and 49.48 RCW.

15        **Sec. 5.** RCW 49.46.100 and 1959 c 294 s 10 are each amended to read  
16 as follows:

17        (1) Any employer who hinders or delays the director or ~~((his))~~ the  
18 director's authorized representatives in the performance of ~~((his))~~ the  
19 director's duties in the enforcement of this chapter, or refuses to  
20 admit the director or ~~((his))~~ the director's authorized representatives  
21 to any place of employment, or fails to make, keep, and preserve any  
22 records as required under the provisions of this chapter, or falsifies  
23 any such record, or refuses to make any record accessible to the  
24 director or ~~((his))~~ the director's authorized representatives upon  
25 demand, or refuses to furnish a sworn statement of such record or any  
26 other information required for the proper enforcement of this chapter  
27 to the director or ~~((his))~~ the director's authorized representatives  
28 upon demand ~~((, or pays or agrees to pay wages at a rate less than the~~  
29 ~~rate applicable under this chapter, or otherwise violates any provision~~  
30 ~~of this chapter or of any regulation issued under this chapter))~~ shall  
31 be deemed in violation of this chapter and shall ~~((, upon conviction~~  
32 ~~therefor, be guilty of a gross misdemeanor))~~ be assessed a civil  
33 penalty of not more than one thousand dollars depending on the size of  
34 the business and the gravity of the violation.

35        (2) ~~((Any))~~ (a) An employer who pays or agrees to pay wages at a  
36 rate less than the rate applicable under this chapter or any rule or  
37 order adopted under this chapter may be assessed civil penalties of an  
38 amount equal to twenty percent of the wage violation.

1 (b) An employer who willfully or repeatedly pays or agrees to pay  
2 wages at a rate less than the rate applicable under this chapter or a  
3 rule or order adopted under this chapter is in violation of this  
4 chapter, and shall, upon conviction, be guilty of a gross misdemeanor.

5 (3) Upon a finding by the director that an employer who discharges  
6 or in any other manner discriminates against any employee because such  
7 employee has made any complaint to his or her employer, to the  
8 director, or his or her authorized representatives that he or she has  
9 not been paid wages in accordance with the provisions of this chapter,  
10 or that the employer has violated any provision of this chapter, or  
11 because such employee has caused to be instituted or is about to cause  
12 to be instituted any proceeding under or related to this chapter, or  
13 because such employee has testified or is about to testify in any such  
14 proceeding ((shall be deemed in violation of this chapter and shall,  
15 upon conviction therefor, be guilty of a gross misdemeanor)), the  
16 director may require an employer who has discharged or discriminated  
17 against an employee in violation of this chapter to reinstate the  
18 employee to the same position with back pay and interest up to one  
19 percent per month.

20 (4) Civil penalties imposed under this chapter shall be paid to the  
21 director for deposit in the general fund. Civil penalties may be  
22 recovered and other civil remedies authorized by this chapter may be  
23 enforced in a civil action in the name of the department brought in the  
24 superior court of the county where the violation is alleged to have  
25 occurred, or the department may use the procedures for collection of  
26 wages set forth in chapter 49.48 RCW.

27 **Sec. 6.** RCW 49.48.040 and 1987 c 172 s 1 are each amended to read  
28 as follows:

29 (1) The department of labor and industries may:

30 (a) Conduct investigations to ensure compliance with chapters  
31 39.12, 49.46, and 49.48 RCW, upon obtaining information indicating an  
32 employer may be committing a violation under chapters 39.12, 49.46, and  
33 49.48 RCW((, conduct investigations to ensure compliance with chapters  
34 39.12, 49.46, and 49.48 RCW));

35 (b) Order the payment of all wages owed the workers, including  
36 interest of up to one percent per month on back wages owed, and  
37 institute actions necessary for the collection of the sums determined  
38 owed; and

1 (c) Take assignments of wage claims and prosecute actions for the  
2 collection of wages and interest of up to one percent per month on back  
3 wages owed of persons who are financially unable to employ counsel when  
4 in the judgment of the director of the department the claims are valid  
5 and enforceable in the courts.

6 (2) Upon being informed of a wage claim against an employer or  
7 former employer, the director shall, if such claim appears to be just,  
8 immediately notify the employer or former employer, of such claim by  
9 mail. If the employer or former employer fails to pay the claim or  
10 make satisfactory explanation to the director of the failure to do so,  
11 within thirty days thereafter, the employer or former employer shall be  
12 liable to a penalty of twenty percent of that portion of the claim  
13 found to be justly due. The director shall have a cause of action  
14 against the employer or former employer for the recovery of such  
15 penalty, and the same may be included in any subsequent action by the  
16 director on said wage claim, or may be exercised separately after  
17 adjustment of such wage claim without court action.

18 (3) The director of the department or any authorized representative  
19 may, for the purpose of carrying out RCW 49.48.040 through 49.48.080:  
20 (a) Issue subpoenas to compel the attendance of witnesses or parties  
21 and the production of books, papers, or records; (b) administer oaths  
22 and examine witnesses under oath; (c) take the verification of proof of  
23 instruments of writing; and (d) take depositions and affidavits. If  
24 assignments for wage claims are taken, court costs shall not be payable  
25 by the department for prosecuting such suits.

26 ((+3+)) (4) The director shall have a seal inscribed "Department of  
27 Labor and Industries--State of Washington" and all courts shall take  
28 judicial notice of such seal. Obedience to subpoenas issued by the  
29 director or authorized representative shall be enforced by the courts  
30 in any county.

31 ((+4+)) (5) The director or authorized representative shall have  
32 free access to all places and works of labor. Any employer or any  
33 agent or employee of such employer who refuses the director or  
34 authorized representative admission therein, or who, when requested by  
35 the director or authorized representative, willfully neglects or  
36 refuses to furnish the director or authorized representative any  
37 statistics or information pertaining to his or her lawful duties, which  
38 statistics or information may be in his or her possession or under the  
39 control of the employer or agent, shall be guilty of a misdemeanor.

1       (6) An action for relief under this section shall be commenced  
2 within three years after the cause of action accrues, unless a longer  
3 period of time applies under law.

4       **Sec. 7.** RCW 49.48.060 and 1971 ex.s. c 55 s 4 are each amended to  
5 read as follows:

6       (1) If upon investigation by the director, after taking assignments  
7 of any wage claim under RCW 49.48.040, it appears to the director that  
8 the employer is representing to ((his)) employees that ((he)) the  
9 employer is able to pay wages for their services and that the employees  
10 are not being paid for their services or if the director determines an  
11 employer has repeatedly violated the provisions of chapter 39.12,  
12 49.46, or 49.48 RCW requiring payment of wages, the director may  
13 require the employer to give a bond in such sum as the director deems  
14 reasonable and adequate in the circumstances, with sufficient surety,  
15 conditioned that the employer will for a definite future period not  
16 exceeding six months conduct ((his)) business and pay ((his)) employees  
17 in accordance with the laws of the state of Washington.

18       (2) If within ten days after demand for such bond the employer  
19 fails to provide the same, the director may commence a suit against the  
20 employer in the superior court of appropriate jurisdiction to compel  
21 ((him)) the employer to furnish such bond or cease doing business until  
22 ((he)) the employer has done so. The employer shall have the burden of  
23 proving the amount thereof to be excessive.

24       (3) If the court finds that there is just cause for requiring such  
25 bond and that the same is reasonable, necessary or appropriate to  
26 secure the prompt payment of the wages of the employees of such  
27 employer and his compliance with RCW 49.48.010 through 49.48.080, the  
28 court shall enjoin such employer from doing business in this state  
29 until the requirement is met, or shall make other, and may make  
30 further, orders appropriate to compel compliance with the requirement.

31       ~~((Upon being informed of a wage claim against an employer or former~~  
32 ~~employer, the director shall, if such claim appears to be just,~~  
33 ~~immediately notify the employer or former employer, of such claim by~~  
34 ~~mail. If the employer or former employer fails to pay the claim or~~  
35 ~~make satisfactory explanation to the director of his failure to do so,~~  
36 ~~within thirty days thereafter, the employer or former employer shall be~~  
37 ~~liable to a penalty of ten percent of that portion of the claim found~~  
38 ~~to be justly due. The director shall have a cause of action against~~

1 ~~the employer or former employer for the recovery of such penalty, and~~  
2 ~~the same may be included in any subsequent action by the director on~~  
3 ~~said wage claim, or may be exercised separately after adjustment of~~  
4 ~~such wage claim without court action.))~~

5 NEW SECTION. **Sec. 8.** The following acts or parts of acts are each  
6 repealed:

7 (1) RCW 49.12.161 and 1973 2nd ex.s. c 16 s 9; and

8 (2) RCW 49.12.170 and 1991 c 303 s 6, 1973 2nd ex.s. c 16 s 16, &  
9 1913 c 174 s 17.

10 NEW SECTION. **Sec. 9.** If any provision of this act or its  
11 application to any person or circumstance is held invalid, the  
12 remainder of the act or the application of the provision to other  
13 persons or circumstances is not affected.

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