

HB 1891 - H AMD 223

By Representative Reykdal

ADOPTED 03/08/2013

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 49.17.160 and 2010 c 8 s 12013 are each amended to
4 read as follows:

5 (1) (~~No~~) A person shall not discharge or in any manner
6 discriminate against any employee because such employee has filed any
7 complaint or instituted or caused to be instituted any proceeding under
8 or related to this chapter, or has testified or is about to testify in
9 any such proceeding or because of the exercise by such employee on
10 behalf of himself or herself or others of any right afforded by this
11 chapter.

12 (2) Any employee who believes that he or she has been discharged or
13 otherwise discriminated against by any person in violation of this
14 section may, within (~~thirty~~) one hundred eighty days after such
15 violation occurs, file a complaint with the director alleging such
16 discrimination. Upon receipt of such complaint, the director shall
17 cause such investigation to be made as he or she deems appropriate. If
18 upon such investigation, the director determines that the provisions of
19 this section have been violated, he (~~of~~~~or~~) or she shall bring an
20 action in the superior court of the county wherein the violation is
21 alleged to have occurred against the person or persons who is alleged
22 to have violated the provisions of this section. If the director
23 determines that the provisions of this section have not been violated,
24 the employee may institute the action on his or her own behalf within
25 thirty days of such determination. In any such action the superior
26 court shall have jurisdiction, for cause shown, to restrain violations
27 of subsection (1) of this section and order all appropriate relief
28 including rehiring or reinstatement of the employee to his or her
29 former position with back pay.

1 (3) Within ninety days of the receipt of the complaint filed under
2 this section, the director shall notify the complainant of his or her
3 determination under subsection (2) of this section.

4 NEW SECTION. **Sec. 2.** A new section is added to chapter 49.17 RCW
5 to read as follows:

6 (1) Upon request of a victim or victim's representative, the
7 director must:

8 (a) Meet with the victim or victim's representative regarding the
9 inspection or investigation conducted under this chapter concerning an
10 employee's serious physical harm that resulted in in-patient
11 hospitalization or death. Alternatives to live meetings may be used.
12 Reasonable efforts must be made to arrange for the meeting to take
13 place before the director decides whether to issue a citation;

14 (b) Provide to the victim or victim's representative:

15 (i) A copy of any citation or report issued as a result of the
16 inspection or investigation. The citation or report must be provided
17 at no cost and provided on the later of the date the citation or report
18 is received by the employer and the date of the request;

19 (ii) Notification of any appeal filed under RCW 49.17.140 regarding
20 a citation issued as a result of the inspection or investigation; and

21 (iii) An explanation of the rights of employees and employee
22 representatives to participate in the proceedings conducted under RCW
23 49.17.140;

24 (c) Provide to the victim or victim's representative an opportunity
25 to appear and make a statement before the parties at proceedings during
26 reassumption of jurisdiction by the director or appeal before the board
27 of industrial insurance appeals regarding any violations associated
28 with the fatality or hospitalization. This opportunity must be
29 provided before the director enters an agreement to withdraw or modify
30 a violation associated with the fatality or hospitalization or reduce
31 an associated penalty. Alternatives to live appearances may be used.

32 (2) The director shall adopt rules regarding the rights of victims
33 and their representatives under this section and for the informal
34 review of any claim of a denial of such a right. These rules shall
35 ensure insofar as possible that the issuance of a citation following a
36 workplace fatality or hospitalization is not unduly delayed in order
37 for the director to meet with the victim or victim's representative.

1 (3) For purposes of this section, "victim" means:

2 (a) An employee who has sustained serious physical harm resulting
3 in death or in-patient hospitalization that is the subject of an
4 inspection or investigation conducted under this chapter; or

5 (b) A family member of an employee described in (a) of this
6 subsection, if the employee is killed or cannot reasonably exercise the
7 employee's rights under this section.

8 NEW SECTION. **Sec. 3.** A new section is added to chapter 49.17 RCW
9 to read as follows:

10 (1) The requirements of this section apply to an employer that is
11 required by law or chooses to establish a safety committee to
12 communicate and evaluate safety and health issues in the workplace.

13 (2) The employer must provide at least eight hours of safety and
14 health training to members of the safety committee within three months
15 of appointment to the committee and annually thereafter. This training
16 must include training on hazard identification and control. Trainers
17 and class content must meet requirements established by the department.
18 The training shall be in addition to and may be combined with training
19 programs provided to all employees pursuant to the rules for accident
20 prevention programs.

21 (3) The safety committee shall:

22 (a) Identify situations that may be a source of danger or hazard to
23 workers;

24 (b) Make recommendations to the employer and the workers for the
25 improvement of the safety and health of workers; and

26 (c) Recommend to the employer and the workers the establishment,
27 maintenance, and monitoring of programs, measures, and procedures
28 respecting the safety and health of workers.

29 (4) If the employer receives written recommendations from the
30 safety committee pursuant to subsection (3) of this section, the
31 employer shall respond to the safety committee in writing no later than
32 twenty-one calendar days after receiving the recommendations.

33 (5) At least one employer and one employee member of the safety
34 committee shall conduct regular inspections of the physical condition
35 of the workplace, as well as equipment, work methods, and work
36 practices, to ensure that prompt action is taken to correct any
37 hazardous condition found. Such an inspection must be performed no

1 less than once every three months. Written reports of such inspections
2 must be provided to and reviewed by the full safety committee within
3 forty-five days of the inspection's completion.

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

6 (1) The employer shall provide to each new employee at the time of
7 hiring and prior to beginning work written information about all
8 employee rights provided pursuant to this chapter, including at least
9 the following:

10 (a) The right to request a workplace inspection;

11 (b) The right to receive information and training about workplace
12 hazards;

13 (c) The right to receive copies of test results done to find
14 hazards in the workplace;

15 (d) The right to review records of work-related injuries and
16 illnesses;

17 (e) The right to get copies of medical records; and

18 (f) The right to exercise these rights without fear of retaliation
19 or discrimination.

20 (2) The department shall develop and make available materials to
21 assist employers with implementing this section.

22 NEW SECTION. **Sec. 5.** The WISHA advisory committee shall continue
23 its work of reviewing and making recommendations regarding civil
24 penalties under the Washington industrial safety and health act to
25 ensure that the assessment of civil penalties meets the requirements
26 under the occupational safety and health act of 1970 (84 Stat. 1590; 29
27 U.S.C. Sec. 651 et seq.). The WISHA advisory committee shall also
28 review statutory civil penalties and make recommendations regarding any
29 changes to the civil penalties. The department of labor and industries
30 shall report to the appropriate committees of the legislature by
31 December 1, 2013, regarding: (1) Recommendations by the WISHA advisory
32 committee and department steps with respect to ensuring the assessment
33 of civil penalties meets federal requirements; and (2) recommendations
34 of the WISHA advisory committee regarding any changes to the statutory
35 civil penalties."

EFFECT: The striking amendment makes the following changes to the House Bill:

- (1) Strikes changes to civil and criminal penalties.
- (2) Modifies the victim rights provision to provide that:
 - (a) To be a "victim," the serious physical harm must have resulted in death or in-patient hospitalization.
 - (b) Alternatives to live meetings may be used.
 - (c) Reasonable efforts must be made to arrange for (rather than requires) a requested meeting to take place before the Director of the Department of Labor and Industries (director) decides whether to issue a citation.
 - (d) The opportunity to make a statement is at proceedings rather than settlement negotiations. Clarification is added to state that the opportunity is with respect to violations associated with the fatality or hospitalization and must be provided before a reduction in penalty, as well as before a withdrawal or modification of a penalty.
 - (e) The director must adopt rules regarding rights of victims and the informal review of denials. The rules must ensure as far as possible that the issuance of a citation following a death or hospitalization is not unduly delayed for a meeting with a victim.
- (3) Adds requirement that the WISHA advisory committee (committee) continue its work of reviewing and making recommendations regarding civil penalties to assure that the assessment of civil penalties meets federal requirements. Also directs the committee to review statutory civil penalties and make recommendations regarding any changes to civil penalties. Requires the Department of Labor and Industries (department) to report to the Legislature by December 1, 2013, regarding:
 - (a) Committee recommendations and department steps with respect to assuring the assessment of civil penalties meets federal requirements; and
 - (b) committee recommendations regarding any changes to the statutory civil penalties.(The striking amendment retains the provisions regarding safety committees, new employees, and the time to file a discrimination complaint.)

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