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**HOUSE BILL 2484**

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**State of Washington 64th Legislature 2016 Regular Session**

**By** Representatives Walkinshaw, Moscoso, Ortiz-Self, Sells, Reykdal, Robinson, Pollet, Kilduff, Ryu, Frame, Ormsby, Fitzgibbon, Kuderer, Sawyer, Bergquist, Gregerson, and Stanford

AN ACT Relating to requiring inspections, specialized training, and other enhanced workplace standards on dairy farms; amending RCW 49.17.160 and 49.17.180; adding new sections to chapter 49.17 RCW; and prescribing penalties.

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

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

(1) The department shall adopt permanent rules that take effect no later than June 30, 2018, establishing training requirements for dairy farm employees. At a minimum, the rules must:

(a) Require that dairy farm employers ensure that their employees complete agriculture safety training, at no cost to the employee. The rules must include reasonable time frames in which all employees working on a dairy farm must complete training. Time frames for completing training may be different depending on whether an employee will be working directly with animals or operating heavy equipment and whether an employee was employed before or after the effective date of the rule;

(b) Provide that a certificate of completion must be issued to participants who successfully complete the training. A certificate of completion is sufficient proof that the employee has received the training required under this section. An employer may rely on the certificate as proof that the employee has received the training required by this section. A certificate of completion must be renewed every three years; and

(c) Provide that the employer must have at least one supervisor present on site who has completed the agriculture safety training, and that for every ten dairy farm employees working on site, there must be at least one supervisor who has completed the agriculture safety training.

(2) The agriculture safety training required under this section must be developed by the department specifically for the agricultural industry and must include segments to address common dairy issues and hazards.

(3)(a) To meet the needs of employers and employees, the training may be provided by the department, community-based nonprofit organizations throughout the state, and dairy employers, in coordination with dairy farm employer and employee organizations and associations.

(b) The department shall regularly audit training provided by organizations and employers to ensure that the department's curriculum, standards, and certification guidelines are followed.

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

(1) The department shall adopt permanent rules that take effect no later than June 30, 2018, establishing a dairy safety emphasis unit within the department.

(2) Among other duties and responsibilities, the dairy safety emphasis unit must:

(a) Ensure that every dairy farm in the state is inspected at least once every three years for compliance with safety and health standards governing dairy farms;

(b) Ensure that inspections of dairy farms are made without advanced notice;

(c) Ensure compliance by dairy farm employers of agricultural training requirements established in section 1 of this act;

(d) Provide consultation and advisory services, under RCW 49.17.250, to dairy farm employers to improve compliance; and

(e) Create easily accessible educational materials for dairy farm employers and employees focusing on safety and health.

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

(1) The department shall adopt permanent rules that take effect no later than June 30, 2018, establishing safety and health standards for dairy farms to ensure safe dairy workplaces.

(2) The rules must address dairy specific safety and health issues and hazards, including such issues and hazards as:

(a) Unmarked, unlit, and unfenced manure pits;

(b) Air quality due to chemicals and animal waste particulates;

(c) Crushing and stomping hazards due to working in close proximity with animals;

(d) Heavy equipment operation hazards;

(e) Slipping, tripping, and falling hazards;

(f) Crushing hazards due to the built environment; and

(g) Standards for drinking water, bathrooms, and washing facilities for dairy farm employees.

(3) If there are exemptions from the agricultural safety standards that would apply to dairy farm employers as a result of the creation of dairy specific rules, the dairy farm rules must specifically reference those exemptions.

**Sec.**  RCW 49.17.160 and 2010 c 8 s 12013 are each amended to read as follows:

(1) No person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this chapter, or has testified or is about to testify in any such proceeding or because of the exercise by such employee on behalf of himself or herself or others of any right afforded by this chapter.

(2) Any employee who believes that he or she has been discharged or otherwise discriminated against by any person in violation of this section may, within thirty days after such violation occurs, file a complaint with the director alleging such discrimination. For employees of dairy farms, the employee may, within ninety days after such violation occurs, file a complaint with the director. Upon receipt of such complaint, the director shall cause such investigation to be made as he or she deems appropriate. If upon such investigation, the director determines that the provisions of this section have been violated, he ((~~of [or]~~)) or she shall bring an action in the superior court of the county wherein the violation is alleged to have occurred against the person or persons who is alleged to have violated the provisions of this section. If the director determines that the provisions of this section have not been violated, the employee may institute the action on his or her own behalf within thirty days of such determination. In any such action the superior court shall have jurisdiction, for cause shown, to restrain violations of subsection (1) of this section and order all appropriate relief including rehiring or reinstatement of the employee to his or her former position with back pay. For actions regarding an employee of a dairy farm, additional remedies include both damages in an amount equal to three times the amount of back wages owed to the employee, regardless of whether the employee is rehired or reinstated to his or her former position, and a civil penalty of one thousand dollars, to be paid to the director for deposit in the supplemental pension fund established by RCW 51.44.033.

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

(4)(a) For actions regarding an employee of a dairy farm, there is a rebuttable presumption that the employer violated this section if the discriminatory act or discharge occurred within ninety days of the employee filing a complaint or instituting any proceeding or causing any proceeding to be instituted under this chapter or within ninety days of testifying in any proceeding under this chapter or exercising his or her rights under this chapter.

(b) The employer may rebut the presumption with clear and convincing evidence that the discharge or act alleged to be discrimination was taken for a permissible purpose.

(c) Discriminatory acts may include denying a promotion, demoting, failing to rehire after seasonal interruption of work, threatening, penalizing, engaging in unfair immigration-related practices, filing a false report with a government agency, or other act of retaliation against the employee.

**Sec.**  RCW 49.17.180 and 2010 c 8 s 12015 are each amended to read as follows:

(1)(a) Except as provided in RCW 43.05.090, any employer who willfully or repeatedly violates the requirements of RCW 49.17.060, of any safety or health standard promulgated under the authority of this chapter, of any existing rule or regulation governing the conditions of employment promulgated by the department, or of any order issued granting a variance under RCW 49.17.080 or 49.17.090 may be assessed a civil penalty not to exceed seventy thousand dollars for each violation. Except as provided in (b) of this subsection, a minimum penalty of five thousand dollars shall be assessed for a willful violation.

(b) For a willful violation by a dairy farm of any dairy specific safety or health rules under this chapter, a minimum penalty of seven thousand dollars shall be assessed. In addition, if a willful violation of any dairy specific safety or health rule resulted in the death of a dairy farm employee, the employer shall pay an additional payment of ten thousand dollars. The ten thousand dollar payment passes from the department to the employee's survivors in the same manner as death benefits under RCW 51.32.050.

(2)(a) Except as provided in (b) of this subsection, any employer who has received a citation for a serious violation of the requirements of RCW 49.17.060, of any safety or health standard promulgated under the authority of this chapter, of any existing rule or regulation governing the conditions of employment promulgated by the department, or of any order issued granting a variance under RCW 49.17.080 or 49.17.090 as determined in accordance with subsection (6) of this section, shall be assessed a civil penalty not to exceed seven thousand dollars for each such violation.

(b) In addition to the civil penalty under (a) of this subsection, if a serious violation of a dairy specific safety or health rule resulted in the death of a dairy farm employee, the employer shall pay an additional payment of ten thousand dollars. The ten thousand dollar payment passes from the department to the employee's survivors in the same manner as death benefits under RCW 51.32.050.

(3) Any employer who has received a citation for a violation of the requirements of RCW 49.17.060, of any safety or health standard promulgated under this chapter, of any existing rule or regulation governing the conditions of employment promulgated by the department, or of any order issued granting a variance under RCW 49.17.080 or 49.17.090, where such violation is specifically determined not to be of a serious nature as provided in subsection (6) of this section, may be assessed a civil penalty not to exceed seven thousand dollars for each such violation, unless such violation is determined to be de minimis.

(4) Any employer who fails to correct a violation for which a citation has been issued under RCW 49.17.120 or 49.17.130 within the period permitted for its correction, which period shall not begin to run until the date of the final order of the board of industrial insurance appeals in the case of any review proceedings under this chapter initiated by the employer in good faith and not solely for delay or avoidance of penalties, may be assessed a civil penalty of not more than seven thousand dollars for each day during which such failure or violation continues.

(5) Any employer who violates any of the posting requirements of this chapter, or any of the posting requirements of rules promulgated by the department pursuant to this chapter related to employee or employee representative's rights to notice, including but not limited to those employee rights to notice set forth in RCW 49.17.080, 49.17.090, 49.17.120, 49.17.130, 49.17.220(1), and 49.17.240(2), shall be assessed a penalty not to exceed seven thousand dollars for each such violation. Any employer who violates any of the posting requirements for the posting of informational, educational, or training materials under the authority of RCW 49.17.050(7), may be assessed a penalty not to exceed seven thousand dollars for each such violation.

(6) For the purposes of this section, a serious violation shall be deemed to exist in a workplace if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use in such workplace, unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation.

(7) The director, or his or her authorized representatives, shall have authority to assess all civil penalties provided in this section, giving due consideration to the appropriateness of the penalty with respect to the number of affected employees of the employer being charged, the gravity of the violation, the size of the employer's business, the good faith of the employer, and the history of previous violations.

(8) Civil penalties imposed under this chapter shall be paid to the director for deposit in the supplemental pension fund established by RCW 51.44.033. Civil penalties may be recovered in a civil action in the name of the department brought in the superior court of the county where the violation is alleged to have occurred, or the department may utilize the procedures for collection of civil penalties as set forth in RCW 51.48.120 through 51.48.150.

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