
**Labor & Workplace Standards
Committee**

HB 2849

Brief Description: Protecting temporary workers.

Sponsors: Representatives Doglio, Sells, Frame, Gregerson, Appleton, Valdez, Kloba, Pollet and Goodman.

Brief Summary of Bill

- Establishes specific standards under the Washington Industrial Safety and Health Act for staffing agencies and work site employers.
- Establishes requirements related to payment of wages, fees, notice of rights, and other matters for staffing agencies and work site employers.

Hearing Date: 1/23/18

Staff: Joan Elgee (786-7106).

Background:

Various laws protect workers, including workers who obtain work through a staffing agency.

Safety and health. Washington is a "state plan state" for purposes of the federal Occupational Safety and Health Administration (OSHA). As a state plan state, Washington assumes responsibility for occupational safety and health in the state under the Washington Industrial Safety and Health Act (WISHA). The Department of Labor and Industries (Department) administers the WISHA. The WISHA directs the Department to adopt rules governing safety and health standards that require the adoption of practices or processes reasonably necessary or appropriate to provide safe or healthful employment. The Department has adopted general standards that apply to most industries, as well as standards that apply only to specific industries. State law directs that the agricultural industry have agricultural-specific standards. .

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

If the Director of the Department determines that an employer has violated a safety or health standard, the Director must in most cases issue a citation and impose a penalty. If two or more employers may share liability for violations, (such as in the case of staffing agencies providing temporary workers), the Department applies policies outlined in a directive. In general, the staffing agency must ensure employees receive all required training and personal protective equipment, but may fulfill its obligation by taking reasonable steps to ensure the work site employer provides the training and the personal protective equipment. The work site employer may be cited for violations when it is responsible for supervising or controlling the staffing agency's employees. In some cases, both employers may be cited.

Wage and hour. A number of laws apply to worker pay. These include:

- Payment of minimum wage is required for hours worked. Training time is generally considered hours worked. The Department interprets the hours worked standard to mean no pay is required if an employee shows up for a shift but is told they are not needed.
- There is no requirement that an employer provide or pay for an employee's meals or transportation to and from work or for the time spent commuting to and from work. If an employer directs the employee to report to one location, and then directs the employee to another location, generally the employer must compensate the employee for the time spent travelling to the second location.
- During an on-going employment relationship, an employer may deduct amounts from wages when the employee expressly authorizes the deduction in writing and in advance for a lawful purpose for the benefit of the employee. Neither the employer nor any person acting in the interest of the employer may derive any financial profit or benefit from any of the deductions.

Various remedies and penalties apply to violations.

Workers' compensation. For purposes of payment of workers' compensation premiums, a temporary help company that provides workers on a temporary basis to its customers is considered the employer. The customer employer is liable if the temporary help company fails to pay the premiums.

Farm labor contractors. The state Farm Labor Contractor Act (Act) provides for licensing and regulation of farm labor contractors. A "farm labor contractor" is a person who, for a fee, recruits, solicits, employs, supplies, transports, or hires agricultural workers. Among other requirements, the Act requires the contractor to give each worker a written statement in English and any other language common to workers that describes the compensation to be paid, the approximate length of the period of employment, the terms and conditions under which the worker is furnished clothing or equipment, and the conditions of any transportation and housing to be provided. A contractor must deposit a surety bond or other security with the Department to insure compliance with the Act.

Summary of Bill:

Provisions specific to temporary workers are adopted. A "staffing agency" (agency) is an entity who procures or provides temporary or part time employment to a person who works under the supervision or direction of a work site employer. Farm labor contractors are not included. A

"work site employer" is an entity with which a staffing agency agrees to furnish persons for temporary employment.

Safety and health.

Staffing agency. Before an agency assigns an employee to a work site employer, it must provide training to the employee for industry specific hazards at the work site employer. Training must be completed annually in the preferred language of the workers. The date and content of the training must be maintained by the agency and provided to the employee. The agency must also transmit training documentation to the work site employer.

Work site employer. Before the employee engages in work for the work site employer, the employer must document anticipated job hazards and review the industry specific training provided by the agency. If the work site employer determines the training is not appropriate for the hazards, the work site employer must provide all necessary supplemental training. The work site employer must document the determination that the training is appropriate and document and maintain records of any supplemental training. The work site employer must also provide the training records to the staffing agency and the employee.

If the work site employer changes the job tasks, the employer must inform the agency and the employee. The work site employer must also provide a written job hazard analysis to the agency and the employee and update personal protective equipment and training for the new job, if necessary.

A staffing agency and an employee may refuse a new job task. A work site employer must allow a staffing agency to visit any work site where the staffing agency's employees are working to observe and confirm information related to job tasks and hazards.

Wage and hour.

Notice. An agency must provide employees notice of:

- the name, address, and telephone number of the staffing agency or agent facilitating the placement, the work site employer, and the Department of Labor and Industries;
- a description of the position and whether any special clothing, equipment, training, or licenses are required and whether any costs are charged to the employee for supplies or training;
- the designated pay day, hourly rate of pay, and whether overtime pay may occur;
- the daily starting and anticipated end time and, when known, the expected duration of employment;
- whether any meals will be provided and the charge, if any, to the employee; and
- details of the means of transportation to the work site and any fees charged to the employee.

The notice must be provided before or at the same time the staffing agency directs the employee to a new assignment or employment. If the information is provided by telephone, it must also be sent in writing to the employee, using a method designated by the employee, before the end of the first pay period. Any change must be immediately provided to the employee and the employee must acknowledge the change in terms.

In a conspicuous place in each of its business locations, an agency must post notice of the employer's rights and the name and telephone number of the Department. The agency must also provide the notice to the employee in the language the employee prefers. The Department must post on its website sample notices in at least the five languages most likely to be understood.

Fees. An agency or a worksite employer may not charge or accept a fee for:

- the cost of registration with the agency or the cost of procuring employment;
- any good or service unless under a written contract that meets certain conditions;
- the provision of a bank card, debit card, or similar form of payment, or any drug screen, a criminal history background check; and
- any good or service the payment of which would cause the employee to earn less than the applicable minimum wage.

If an agency or work site employer offers transportation services and charges a fee, the fee may not be more than the lesser of the actual cost or 3 percent of the total daily wages. If the employee is required to use the transportation services, no fee may be charged.

Prohibited Acts. Certain actions by an agency are prohibited. These include:

- knowingly providing false or misleading information to an applicant or employee;
- placing an employee in employment by force or fraud or where the employment is in violation of state or federal laws regarding minimum wage, child labor, or required licensure or certification;
- placing an employee at any location that is on strike or lockout, without notifying the employee;
- refusing to return any personal property of an employee; and
- deducting any fees or costs from wages in violation of law, or unless expressly authorized in writing.

Other. An agency that sends an employee to a work site employer when no employment exists must refund to the employee the cost of transportation and compensate the employee for time spent travelling to the work site employer's location.

If a work site employer changes the location of a job site, the staffing agency and the employee may refuse the new location, and a work site employer and staffing agency may not discriminate against an employee for the refusal.

An "employee" specifically includes workers performing in an executive, administrative, professional or outside sales capacity, and domestic or casual labor in or about private residences

Enforcement. An employee or an interested party may complain to the Department and the Department may investigate. If a violation is found, the Director of the Department may order a civil penalty of not more than \$200 per employee for a first violation and not more than \$1,000 for a repeat violation and payment to the Department of the costs of the investigation and enforcement and reasonable attorneys' fees and costs.

Rule making authority is granted.

Appropriation: None.

Fiscal Note: Requested on

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.