

HOUSE BILL REPORT

ESSB 6122

As Reported by House Committee On:
Labor & Workplace Standards

Title: An act relating to protecting temporary workers.

Brief Description: Protecting temporary workers.

Sponsors: Senate Committee on Labor & Commerce (originally sponsored by Senators Keiser, Kuderer and Wilson, C.).

Brief History:

Committee Activity:

Labor & Workplace Standards: 2/20/20, 2/27/20 [DPA].

Brief Summary of Engrossed Substitute Bill
(As Amended by Committee)

- Establishes specific standards under the Washington Industrial Safety and Health Act for staffing agencies and worksite employers.
- Requires the Department of Labor and Industries to review staffing agency industrial injury claims and report to the Legislature with findings and a recommendation.

HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

Majority Report: Do pass as amended. Signed by 4 members: Representatives Sells, Chair; Chapman, Vice Chair; Gregerson and Ormsby.

Minority Report: Do not pass. Signed by 2 members: Representatives Mosbrucker, Ranking Minority Member; Hoff.

Staff: Lily Smith (786-7175).

Background:

Safety and Health.

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.

Washington is a "state plan state" for purposes of the federal Occupational Safety and Health Administration. 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.

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 worksite employer provides the training and the personal protective equipment. The worksite 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.

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.

Summary of Amended Bill:

Provisions specific to temporary workers are adopted. A "staffing agency" (agency) is an entity who procures or provides temporary employment to a person who works under the supervision or direction of a worksite employer. Farm labor contractors are not included. A "worksite employer" is an entity with which an agency agrees to furnish persons for temporary employment in the construction and manufacturing industries.

Agency Responsibilities.

Before the assignment of an employee to a worksite employer, an agency must:

- inquire about the worksite employer's safety and health practices and hazards;
- where five or more employees will be assigned to one worksite, make reasonable efforts to visit the actual workplace to observe workers and assess the safety conditions and program;
- provide annual general industry hazards training in the employee's preferred language at no expense to the employee;
- transmit training documentation to the worksite employer;
- provide the Department's number for reporting safety hazards and concerns; and
- inform the employee to whom they should report safety concerns at the workplace.

Training dates and content must be maintained by the agency and provided to the employee upon request.

Worksite Employer Responsibilities.

Before the employee engages in work, the worksite employer must:

- document and inform the agency about anticipated job hazards;
- review industry training provided by the agency for appropriateness, and if not appropriate, provide training;
- document training adequacy; and
- document and maintain records of supplemental training and provide the records to the agency and the employee within 48 hours.

A worksite employer that changes the job tasks with resulting new potential hazards must:

- inform both the agency and the employee, including information on the new job hazards before the employee undertakes the new tasks; and
- if necessary, update personal protective equipment and training.

A worksite employer must also:

- allow an agency to visit any worksite to observe and confirm the information related to job tasks and hazards;
- provide worksite specific training to an employee when supervised by the worksite employer; and
- allow an agency to visit any worksite to observe and confirm the worksite employer's training and information related to the worksite's safety and health practices and hazards.

Other.

An agency and employee may refuse a new job task when the task has not been reviewed, or for lack of appropriate training.

An agency or worksite employer may not retaliate against an employee who reports a safety concern.

Amended Bill Compared to Engrossed Substitute Bill:

The amended bill:

- requires staffing agencies to inquire about all worksite employers' practices and hazards, instead of only those worksite employers with five or more employees to which a visit was not feasible;
- changes the requirement that staffing agencies make every reasonable effort to visit certain worksites to a requirement that staffing agencies make reasonable efforts to visit; and
- changes the purpose of the worksite visit to include observation of workers engaged in their tasks.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) Agencies find jobs for people who have been left behind in the economy. Protecting rights and safety is in an agency's interest; employees are valued, and agencies support efforts to keep workers safe. At the same time, overregulation may lead to lost job opportunities when there is too much complexity or added expense. There is a need for an amendment regarding the responsibility for worksite visits. This legislation should be more flexible to allow for workers to not lose opportunities, while also not putting agency clients in the positions of using illegal means of employment.

(Opposed) None.

(Other) Staffing agencies share the goal of worker safety and have worked collaboratively with the Department. There is concern regarding a mandate for an agency to make every reasonable effort to visit a worksite, as that is an unclear and undefined standard. It would be difficult for small agencies with limited resources to comply, and would impose a duty that presupposes the agency can understand the worksite and the worksite hazards. General contractors and worksite employers, not agencies, are not in the best position to ensure safety. The bill could result in the agency not having encouragement to visit a worksite. Where there are five or fewer workers sent to a worksite, there is no responsibility to at least inquire about the types of activities conducted there. Everyone has an interest in worker safety. It should be clear that the agency provides general industry training, and the worksite employer fulfills its responsibilities for job-specific training, so that workers have the benefit of both.

Persons Testifying: (In support) Natalie McNair and Heidi Shape, TrueBlue.

(Other) Melissa Gombosky, American Staffing Association; and Tammy Fellin, Department of Labor and Industries.

Persons Signed In To Testify But Not Testifying: None.