
SUBSTITUTE HOUSE BILL 1965

State of Washington

66th Legislature

2019 Regular Session

By House Labor & Workplace Standards (originally sponsored by Representatives Hansen, Stonier, Sullivan, Riccelli, Lekanoff, Cody, Macri, Ormsby, Appleton, Fitzgibbon, Ortiz-Self, and Pollet)

READ FIRST TIME 02/22/19.

1 AN ACT Relating to allowing whistleblowers to bring actions on
2 behalf of the state for violations of workplace protections; and
3 adding a new chapter to Title 49 RCW.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that while most
6 employers pay their workers wages owed, provide safe working
7 conditions, provide a workplace free from discrimination, and
8 otherwise follow the law, violations of workplace protections
9 persist. The legislature further finds that state resources available
10 to rectify workplace violations are limited, which allows abuses to
11 go unpunished. Lack of enforcement means workers work for less than
12 minimum wage, sustain serious injuries, and suffer other violations.
13 In addition, it is unfair to law-abiding employers to have to compete
14 with employers that disregard the law. Therefore, the legislature
15 intends to permit qui tam actions, allowing private persons, acting
16 as relators, to bring public enforcement actions of worker protection
17 laws on behalf of the state.

18 NEW SECTION. **Sec. 2.** The definitions in this section apply
19 throughout this chapter unless the context clearly requires
20 otherwise.

1 (1) "Agency" means the department of labor and industries, except
2 that for purposes of chapter 49.60 RCW "agency" means the Washington
3 state human rights commission, and for purposes of RCW 43.70.075
4 "agency" means the department of health.

5 (2) "Person" means any natural person, partnership, corporation,
6 association, or other legal entity, including any local or political
7 subdivision of a state.

8 (3) "Qui tam relator" or "relator" means a person who brings or
9 seeks to bring an action under section 3 of this act.

10 (4) "Qui tam action" means an action brought by a person under
11 section 3 of this act.

12 NEW SECTION. **Sec. 3.** (1) A person, on behalf of an agency and
13 in the name of the agency, may bring a qui tam action in court for
14 any relief the agency may pursue under the laws specified in section
15 4 of this act, including equitable relief, penalties, and any relief
16 specified in rule. The granting of relief shall be subject to the
17 same conditions and limitations that apply to the agency, including
18 any requirements for conference and conciliation and any conditions
19 and limitations specified in rule, including penalty amounts. The
20 action may allege multiple violations that have affected different
21 employees aggrieved by the same employer. The relator must follow the
22 procedures specified in section 5 of this act.

23 (2) A relator that prevails in a qui tam action is entitled to an
24 award of reasonable attorneys' fees and costs.

25 (3) No qui tam action may be brought if the agency, regarding the
26 same facts as alleged in the qui tam action, issued a notice of
27 assessment, determination of compliance, or order, or otherwise
28 resolved the complaint.

29 (4) A qui tam action must be commenced within the same period of
30 time that the agency would have to take action based on the same set
31 of alleged facts. The statute of limitations for bringing a qui tam
32 action is tolled from the date a relator files a notice with the
33 agency or the date the agency commences an investigation.

34 (5)(a) No qui tam action may be brought with respect to
35 modifying, revoking, or suspending a license, variance, or permit; or
36 for any violation of a posting, notice, agency reporting, or filing
37 requirement, except where the filing or reporting requirement
38 involves injury reporting or a safety or health violation.

1 (b) Where an employer has voluntarily entered into consultation
2 under RCW 49.17.250, no qui tam action may be brought with respect to
3 any alleged violation included in the scope of the consultation. An
4 employer who has been notified pursuant to section 5 of this act may
5 not then enter into consultation under RCW 49.17.250 to avoid a qui
6 tam action.

7 (6) The requirements of Rule 23 of the superior court rules of
8 civil procedure do not apply to a qui tam action.

9 (7) The right to bring a qui tam action under this section may
10 not be impaired by any private agreement.

11 (8) A qui tam action is a public action and does not preclude a
12 cause of action by an individual or individuals or operate as an
13 estoppel for relief based on the same set of alleged facts, except
14 that a court may not permit a double recovery.

15 NEW SECTION. **Sec. 4.** (1) A qui tam action may be brought to
16 enforce the following laws:

17 (a) Chapter 49.46 RCW, known as the minimum wage act;

18 (b) Chapter 49.48 RCW, relating to the payment of wages;

19 (c) Chapter 49.52 RCW, relating to wage rebates;

20 (d) RCW 49.28.130 through 49.28.150, relating to health care
21 facility employee overtime;

22 (e) Chapter 39.12 RCW, relating to prevailing wage;

23 (f) Chapter 49.40 RCW, relating to seasonal labor;

24 (g) Chapter 49.17 RCW, the Washington industrial safety and
25 health act of 1973;

26 (h) Chapter 49.19 RCW, relating to safety in health care
27 settings; chapter 49.22 RCW, relating to safety in late night retail
28 establishments; chapter 49.24 RCW, relating to safety for underground
29 workers, and chapter 49.26 RCW, relating to asbestos safety;

30 (i) Chapter 49.77 RCW, known as military family leave;

31 (j) Chapter 49.58 RCW, known as gender equal pay and advancement
32 opportunities;

33 (k) Chapter 49.60 RCW, known as the Washington law against
34 discrimination;

35 (l) Chapter 19.30 RCW, relating to farm labor contractors;

36 (m) Chapter 49.30 RCW, relating to agricultural labor;

37 (n) RCW 43.70.075, relating to health care employee whistleblower
38 retaliation protection;

39 (o) Chapter 49.12 RCW, known as the industrial welfare act; and

1 (p) Section 8 of this act.

2 (2) For any provision of law referenced in this section where no
3 civil penalty is specifically provided by law, a civil penalty of
4 five hundred dollars is established. A penalty shall be awarded for
5 each employee aggrieved by the violation during each two-week time
6 period. A court may award a lesser amount of civil penalties than
7 those specified in this subsection if, based on the fact and
8 circumstances of the particular case, to do otherwise would result in
9 an award that is unjust, arbitrary and oppressive or confiscatory.

10 NEW SECTION. **Sec. 5.** (1) No action under section 3 of this act
11 may be commenced before written notice of the claim has been
12 submitted by the relator to the agency, via online submission, and
13 the relator has notified the employer by certified mail. The notice
14 must be construed in the light most favorable to the relator, and
15 must include the name, address, and contact information of the
16 alleged violator; the name and contact information of the relator or
17 the relator's legal counsel, should one exist; and a brief statement
18 of the underlying claim. Where possible, the relator must also search
19 the database established under section 9 of this act for any notices
20 alleging the same facts and legal theories, and shall reference these
21 notices or attest that no such notices exist.

22 (2) If the agency intends to investigate the alleged violation,
23 the agency must notify the relator and make a determination within
24 one hundred eighty days of receiving the notice under subsection (1)
25 of this section. If the agency decides not to investigate the alleged
26 violation, it must notify the relator within sixty business days of
27 the date it receives the notification submitted by the relator. Upon
28 receiving notice that the agency does not intend to investigate or if
29 the agency does not make a determination within one hundred eighty
30 days, the relator may commence a qui tam action.

31 (3) As part of its investigation, the agency may attempt to
32 remedy the alleged violation through settlement. If the settlement
33 obtained by the agency provides the aggrieved employee or employees
34 with a full remedy of not less than one hundred percent of any
35 wrongfully withheld wages or benefits, including twelve percent
36 interest per annum, and the aggrieved employees receive payment in
37 full prior to the end of the one hundred eighty-day investigation
38 period, the agency shall notify the relator that the agency will not

1 commence an action and the settlement shall preclude further claims
2 for the same wages or benefits paid in the settlement.

3 (4) If the agency objects to the state being represented by a
4 particular attorney proposed by the relator, the agency may file an
5 objection to the attorney general. Upon finding, after notice and
6 hearing, that, based on the attorney's past conduct while
7 representing a client or clients, the attorney does not meet the
8 required professional standards of representatives, or,
9 alternatively, if the attorney fails to zealously pursue the remedies
10 available under this chapter, the attorney general may, within thirty
11 days of receiving the objection, order that the qui tam action may
12 not be filed or maintained by the particular attorney on behalf of
13 the relator.

14 NEW SECTION. **Sec. 6.** (1) The agency may intervene in a qui tam
15 action and proceed with any and all claims in the action:

16 (a) As of right within thirty days after the filing of the qui
17 tam action;

18 (b) For good cause shown, as determined by the court, after the
19 expiration of the thirty-day period.

20 (2) If the agency intervenes in a qui tam action, the agency
21 shall have primary responsibility for litigating the action and shall
22 not be bound by an act of the relator in bringing the action. If the
23 agency proposes to settle a qui tam action, the agency must give
24 notice to the relator and the attorney general. The court may allow
25 the attorney general to intervene and object to the settlement. If
26 the agency proposes to dismiss a qui tam action, the agency must give
27 notice to the relator and the relator must have an opportunity to be
28 heard. The agency may dismiss or settle the action if court
29 determines that the dismissal or settlement is fair, adequate,
30 reasonable, and in the public interest.

31 (3) If the agency does not intervene, the relator shall have the
32 right to litigate the action. The court must review and approve any
33 settlement. The proposed settlement must be submitted to the agency
34 and to the attorney general at the same time that it is submitted to
35 the court, and the agency may present to the court its position on
36 the proposed settlement or intervene as provided in subsection (1) of
37 this section. The court may also allow the attorney general to
38 intervene and object to the dismissal. The court shall approve a

1 settlement only upon a determination that it is fair, adequate,
2 reasonable, and in the public interest.

3 (4) Any settlement of a qui tam action may not be confidential.

4 NEW SECTION. **Sec. 7.** (1) (a) Penalty amounts recovered in a qui
5 tam action must be distributed as follows:

6 (i) If the agency has not intervened, forty percent to the
7 relator and sixty percent to the agency.

8 (ii) If the agency has intervened, twenty percent to the relator
9 and eighty percent to the agency.

10 (b) Amounts distributed to the agency shall be used for
11 enforcement of this title and education about the rights and
12 obligations enforceable through this title by the agency.

13 (2) Damages recovered in a qui tam action must be awarded to the
14 agency for distribution to aggrieved employees. The agency may
15 request the appointment of an administrative law judge or special
16 master to assist in the distribution of the amounts.

17 (3) This section does not limit the state's right to seek
18 restitution and damages, where available, for aggrieved employees as
19 part of a qui tam action in which it has intervened.

20 NEW SECTION. **Sec. 8.** (1) A person may not discharge or in any
21 manner discriminate against any employee because such employee has
22 filed any written notice or instituted or caused to be instituted any
23 proceeding under or related to this chapter or has testified or is
24 about to testify in any such proceeding or because of the exercise by
25 such employee on behalf of himself or herself or others of any right
26 afforded by this chapter. The commencement of a peer review process,
27 or an action by a duly constituted quality improvement committee
28 under RCW 70.41.200, shall not be construed to be retaliation under
29 this section if sufficient cause to initiate the peer review process
30 or action under RCW 70.41.200 exists independently of the action
31 being brought under this chapter.

32 (2) Any employee aggrieved by a violation of this section may:

33 (a) Bring an action in court for compensatory damages or
34 equitable relief, including restraint of prohibited actions,
35 restitution of wages or benefits, reinstatement, costs, reasonable
36 attorneys' fees, and any other appropriate relief; and, in addition,

1 (b) If the aggrieved employee has been discharged from employment
2 because of the exercise of the rights afforded by this chapter,
3 provide notice to the agency pursuant to section 5 of this act.

4 (i) Upon receipt of such notification, the agency shall commence
5 an expedited investigation within ten days to be completed within
6 thirty days.

7 (ii) For purposes of this subsection (2)(b), a rebuttable
8 presumption is established that the discharge of any employee who
9 engaged in any conduct allowed by this chapter within ninety days
10 after the employee engaged in the conduct is retaliatory and in
11 violation of section 1 of this act.

12 (iii) The employer may rebut the presumption by showing by clear
13 and convincing evidence that it had a legitimate, nondiscriminatory
14 reason to discharge the employee, which was not motivated in any part
15 by conduct allowed by this chapter.

16 (iv) If the employer fails to rebut the presumption, the agency
17 shall order the immediate reinstatement of the employee. The employer
18 may appeal the order of reinstatement pursuant to chapter 34.05 RCW.

19 NEW SECTION. **Sec. 9.** The department of labor and industries
20 must establish and publish online a database of notices filed under
21 section 3 of this act, which shall include the names of the parties,
22 the disposition, and any other information that the department of
23 labor and industries shall by rule prescribe. The Washington state
24 human rights commission and the department of health shall provide
25 appropriate information for the database to the department of labor
26 and industries.

27 NEW SECTION. **Sec. 10.** An agency has rule-making authority to
28 implement sections 1 through 8 of this act.

29 NEW SECTION. **Sec. 11.** The labor and industries worker
30 protection act account is created in the custody of the state
31 treasurer. All receipts from the penalties distributed to the
32 department of labor and industries under section 7 of this act must
33 be deposited into the account. Expenditures from the account may be
34 used only for enforcement of this title and education about the
35 rights and obligations enforceable through this title by the agency.
36 The account is subject to allotment procedures under chapter 43.88
37 RCW, but an appropriation is not required for expenditures.

1 NEW SECTION. **Sec. 12.** The Washington state human rights
2 commission worker protection act account is created in the custody of
3 the state treasurer. All receipts from the penalties distributed to
4 the Washington state human rights commission under section 7 of this
5 act must be deposited into the account. Expenditures from the account
6 may be used only for enforcement of chapter 49.60 RCW and education
7 about the rights and obligations enforceable through chapter 49.60
8 RCW by the agency. The account is subject to allotment procedures
9 under chapter 43.88 RCW, but an appropriation is not required for
10 expenditures.

11 NEW SECTION. **Sec. 13.** The department of health worker
12 protection act account is created in the custody of the state
13 treasurer. All receipts from the penalties distributed to the
14 department of health under section 7 of this act must be deposited
15 into the account. Expenditures from the account may be used only for
16 enforcement of this title and education about the rights and
17 obligations enforceable through this title by the agency. The account
18 is subject to allotment procedures under chapter 43.88 RCW, but an
19 appropriation is not required for expenditures.

20 NEW SECTION. **Sec. 14.** Sections 1 through 13 and 16 of this act
21 constitute a new chapter in Title 49 RCW.

22 NEW SECTION. **Sec. 15.** If any provision of this act or its
23 application to any person or circumstance is held invalid, the
24 remainder of the act or the application of the provision to other
25 persons or circumstances is not affected.

26 NEW SECTION. **Sec. 16.** This chapter shall be known and cited as
27 the "Worker Protection Act."

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