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**Labor & Workplace Standards  
Committee**

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**HB 1076**

**Brief Description:** Allowing whistleblowers to bring actions on behalf of the state for violations of workplace protections.

**Sponsors:** Representatives Hansen, Fitzgibbon, Berry, Dolan, Johnson, J., Ramos, Simmons, Ramel, Ortiz-Self, Gregerson, Ryu, Bronoske, Valdez, Callan, Kloba, Hackney, Chopp, Ormsby, Stonier, Frame, Santos, Macri, Pollet and Harris-Talley.

**Brief Summary of Bill**

- Authorizes a qui tam action for enforcement of various employment laws under which a relator on behalf of an agency may pursue relief the agency may pursue.
- Specifies the distribution of any penalties or damages awarded.

**Hearing Date:** 1/22/21

**Staff:** Lily Smith (786-7175).

**Background:**

Multiple state laws provide protections for employees and contain various mechanisms to enforce the protections. Administrative remedies include civil penalties, recovery of back wages, and other remedies.

Wages.

Wage laws include the Minimum Wage Act and the laws relating to prevailing wage. The Wage Payment Act (WPA) authorizes an employee to file a wage complaint with the Department of

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Labor and Industries (Department) regarding a failure to pay minimum wage or overtime, a failure to pay contracted-for wages, and other wage claims. The Department may obtain wages and interest for an employee and may order the employer to pay a civil penalty if the violation was willful. Under prevailing wage laws, the Department may also obtain wages and assess a civil penalty for a failure to pay prevailing wages.

Other wage laws include provisions on health care facility employee overtime and seasonal labor provisions.

#### Safety.

The Washington Industrial Safety and Health Act (WISHA) authorizes, and in some cases requires, a civil penalty be imposed on an employer for violation of safety and health standards.

Under WISHA, an employer may request a consultation, during which time no penalties may be imposed. Other laws specific to certain industries, such as late-night retail establishments and health care settings, are enforced under the WISHA.

#### Leave.

Leave laws include paid sick leave and military family leave. The Department may assess penalties for violations of these laws and may also order a reinstatement of hours or compensation under paid sick leave.

#### Discrimination.

If an employer discriminates against an employee based on a protected-class status, the Washington State Human Rights Commission (Commission) may order back pay, hiring, reinstatement, and other remedies.

#### Other.

The Industrial Welfare Act contains a number of standards, such as the Family Care Act and child labor laws. It is also the authority for the Department's rules on meals and rest breaks.

Other employment laws include regulation of farm labor contractors and laws protecting health care employee whistleblowers.

#### Medicaid Fraud False Claims Act.

The Medicaid Fraud False Claims Act (MFFCA) authorizes a person, the relator, to bring an action, known as a qui tam action, to seek a civil penalty for Medicaid fraud. The relator must serve a copy of the complaint on the Attorney General (AG), who may intervene in the action.

The relator receives a percentage of any penalty, with the percentage depending on whether the AG intervened and other factors, and attorneys' fees and costs.

#### **Summary of Bill:**

The Worker Protection Act is established, under which a qui tam action is authorized for violations of employment laws.

### Qui Tam Action Authorized.

Aggrieved persons, whistleblowers, or their designated representative entity may bring a qui tam action as a relator for any relief the specified state agency (agency) may seek, including penalties and damages, subject to the same conditions and limitations that apply to the agency.

A qui tam action may be brought to enforce the following laws enforced by the Department:

- the Minimum Wage Act;
- laws relating to the payment of wages, including the WPA, and wage rebate laws;
- prevailing wage;
- health care facility employee overtime;
- the WISHA, and other safety laws enforced under the WISHA, including standards for late night retail establishments and underground workers;
- leave laws, including military family leave and paid sick leave;
- laws relating to gender equal pay and advancement opportunities;
- laws relating to agricultural labor and farm labor contractors; and
- laws granting the authority to the Department for meal and rest break rules and which contain other labor standards.

Also included are the Washington Law Against Discrimination and the health care employee whistleblower retaliation protection law, enforced by the Commission.

No qui tam action may be brought:

- if the agency issued an order or otherwise resolved the complaint;
- in general, with respect to a license, variance or permit, or for specified violations, such as violations of posting or reporting requirements; or
- with respect to WISHA, for any violation that is included within the scope of a consultative visit by the Department.

The right to bring an action may not be impaired by a private agreement. A qui tam action is a public action and does not preclude an action by an individual, but no double recovery is permitted.

### Qui Tam Process.

#### *General.*

A relator must first give the agency and employer notice of the claim. The agency is subject to timeframes for its decisions regarding its role, any investigation, and notice to the relator. The relator may commence the qui tam action if the agency does not investigate or make a determination within those timeframes.

Once a qui tam action has commenced, the agency may intervene under certain conditions and assume primary responsibility. The agency and the AG may take certain actions to prevent representation by a particular attorney in a qui tam action.

*Settlements.*

As part of its investigation, the agency may attempt to settle the violation. If the settlement provides not less than 100 percent of any wrongfully withheld wages or benefits, including interest, the settlement precludes further claims for the same wages or benefits.

The relator and AG receive various notice and opportunities to be heard if the agency proposes to settle or dismiss the action after intervening. If the relator proposes to settle a qui tam action, the settlement must be submitted to the agency and to the AG.

A standard is provided for court approval of settlements or dismissals.

Distribution of Awards.

Any penalty amounts recovered are distributed as follows: (1) if the agency does not intervene, 40 percent to the relator and 60 percent to the agency; and (2) if the agency intervenes, 20 percent to the relator and 80 percent to the agency. Penalties received by the relator must be equitably distributed to the aggrieved parties, subject to review by the agency, except that the relator is entitled to a proportionate service award.

A relator that prevails is entitled to reasonable attorneys' fees and costs.

Any damages recovered must be distributed to the aggrieved employees.

Retaliation.

Retaliation against an employee for involvement in a qui tam action is prohibited. Remedies for retaliation are specified, including a qui tam action.

Other.

Accounts are created for receipt of penalties for the Department and the Commission. Expenditures from the accounts are for education and enforcement regarding specified laws.

**Appropriation:** None.

**Fiscal Note:** Requested on 01/15/2021.

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