
Labor & Workplace Standards Committee

HB 1097

Brief Description: Increasing worker protections.

Sponsors: Representatives Sells, Bateman, Ortiz-Self, Kloba, Chopp, Ormsby, Stonier and Macri; by request of Office of the Governor.

Brief Summary of Bill

- Establishes procedures for an employer to contest an order of immediate restraint (OIR) and appeal alleged violations of the OIR, and authorizes the imposition of daily civil penalties.
- Amends the antiretaliation provision under the Washington Industrial Safety and Health Act by prohibiting "materially adverse actions," expanding the time for filing a complaint, authorizing civil penalties, and making other changes.
- Creates a grant program to assist small businesses in equipment purchases or capital costs during a state of emergency proclamation.

Hearing Date: 1/20/21

Staff: Trudes Tango (786-7384).

Background:

Washington Industrial Safety and Health Act

The Washington Industrial Safety and Health Act (WISHA) requires employers to provide a workplace free from recognized hazards and authorizes the Department of Labor and Industries (Department) to inspect and investigate workplaces for compliance with 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 part of the legislation nor does it constitute a statement of legislative intent.

standards.

If the Director of the Department believes that an employer has committed a violation, the Director issues a citation and, depending on the violation, may impose civil penalties. Civil penalties may be adjusted based on the employer's inspection history, the size of the workforce, and other factors. The Director must impose penalties for violations that are serious or willful. The minimum civil penalty for a serious violation is \$100. Maximum penalties are \$7,000 (or \$70,000 for willful or repeated violations). The maximum penalties will be adjusted annually in accordance with federal penalty levels.

Orders of Immediate Restraint

If, after an inspection or investigation, the Director believes an employer has violated a safety or health standard to the extent the violation creates a substantial probability that death or serious physical harm could result, the Director must issue a citation and penalties.

In addition, the Director may issue an order immediately restraining (OIR) the condition, practice, method, process, or means in the workplace and require corrective measures. An OIR may also be issued related to the use of machinery or equipment.

Antiretaliation

No person may discriminate against any employee because the employee has filed a complaint or instituted a proceeding under WISHA, or has testified or is about to testify in a WISHA proceeding, or because the employee exercised any right granted under WISHA.

Employees who believe they have been discriminated against may file a complaint with the Director within 30 days after the alleged violation occurs. If the Director determines a violation has occurred, the Director must bring an action in superior court. If the Director determines that no violation has occurred, the employee may institute a court action. The superior court may restrain violations and order appropriate relief, including rehiring or reinstatement with back pay.

Summary of Bill:

Contesting an Order of Immediate Restraint

Statutory procedures are established for an employer contesting an OIR. The employer may contest an OIR by applying to the superior court for injunctive relief or a temporary restraining order within five working days of the effective date of the OIR.

Violations of an Order of Immediate Restraint

If the Director has reason to believe an employer violated an OIR, the Director must notify the employer of the violation and the penalty to be assessed. The employer has 15 working days to notify the Director that the employer will appeal the Director's notice of violation.

The employer may be assessed a civil penalty for each day the employer continues the condition, practice, method, process, or means, or continues to use the machine or equipment, in violation

of the OIR. The daily civil penalty may be up to the maximum daily penalty for failure to abate a violation.

Antiretaliation

The antiretaliation provision under WISHA is expanded to include prohibiting "materially adverse action." Materially adverse action means action that would: (1) deter a reasonable employee from exercising their rights under the WISHA; or (2) have a chilling effect on a reasonable employee's engagement in protected activities.

Employees have 90 days, rather than 30, to file a complaint with the Director, and the Department may extend that time based on equitable principles or due to extenuating circumstances.

If the Director determines a violation has occurred, the Director will issue a citation and notice of assessment, rather than having to bring an action in court. The Director may order appropriate relief, such as restoring the employee to the employee's position or ordering the employer to pay back wages, including interest of one percent per month on earnings owed. The Director may also impose a civil penalty not to exceed the maximum penalty for a serious violation for the first occurrence and higher penalties for repeat violations. Civil penalties are deposited in the Supplemental Pension Fund.

Grant Program

A safety grant program is created to provide one-time grants to state-fund employers that have 25 or fewer full-time equivalent employees.

In the event of a state of emergency, the Director may expend up to two percent per year of the net premiums earned in the Accident Fund in the prior fiscal year for the grant program, as long as assets of the Accident Fund and Pension Reserve Fund were at least 10 percent in excess of their funded liabilities in the fiscal quarter immediately preceding the state of emergency proclamation.

Employers must use the grants for equipment purchases or capital costs to meet any new safety and health requirements related to the emergency that are required before they are permitted to continue or resume business operations. Grants may not be used on purchases or improvements already covered by another grant, government program, or insurance contract.

The Department may require matching funds from employers.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed, except section 3, relating to antiretaliation, which takes effect July 1, 2022.