
SUBSTITUTE HOUSE BILL 1076

State of Washington

67th Legislature

2021 Regular Session

By House Labor & Workplace Standards (originally sponsored by Representatives Hansen, Fitzgibbon, Berry, Dolan, J. Johnson, Ramos, Simmons, Ramel, Ortiz-Self, Gregerson, Ryu, Bronoske, Valdez, Callan, Kloba, Hackney, Chopp, Ormsby, Stonier, Frame, Santos, Macri, Pollet, and Harris-Talley)

READ FIRST TIME 02/10/21.

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.

4 (2) "Aggrieved person" means a person against whom one or more
5 violations of the provisions of this act was committed, and includes
6 an individual who is asserting a claim that he or she is or was
7 misclassified as an independent contractor in violation of the
8 provisions of law under section 4 of this act.

9 (3) "Person" means any natural person, partnership, corporation,
10 association, or other legal entity, including any local or political
11 subdivision of a state.

12 (4) "Qui tam relator" or "relator" means an aggrieved person,
13 whistleblower, or representative organization or local or political
14 subdivision of a state designated under section 3(9) of this act,
15 that brings a public enforcement action under section 3 of this act.

16 (5) "Qui tam action" means an action brought by a relator under
17 section 3 of this act.

18 (6) "Whistleblower" means a current or former employee,
19 contractor, subcontractor, or employee of a contractor or
20 subcontractor with knowledge of facts that the individual reasonably
21 believes constitute a violation of the provisions of this act.

22 NEW SECTION. **Sec. 3.** (1) A relator, on behalf of an agency and
23 in the name of the agency, may bring a qui tam action in court for
24 any relief the agency may pursue under the laws specified in section
25 4 of this act, including equitable relief, penalties, and any relief
26 specified in rule or regulation. The granting of relief shall be
27 subject to the same conditions and limitations that apply to the
28 agency, including any requirements for conference and conciliation
29 and any conditions and limitations specified in rule, including
30 penalty amounts; provided that a relator may simultaneously pursue
31 the relief available to an agency under the agency's administrative
32 enforcement authority and under the agency's authority to bring a
33 civil action, where applicable. The action may allege multiple
34 violations that have affected different employees aggrieved by the
35 same employer. The relator must follow the procedures specified in
36 section 5 of this act.

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

1 (3) No qui tam action may be brought for a violation alleged in
2 the notice required by section 5 of this act if the employer
3 demonstrates that the agency already resolved the merits of that
4 violation, including through settlement, in relation to the same
5 facts and aggrieved employees.

6 (4) A qui tam action must be commenced within 60 days of the date
7 on which the relator receives notice that the agency will not
8 investigate any of the alleged violations; otherwise, a qui tam
9 action must be commenced within 240 days of the date the relator
10 submitted the written notice of the claim. If the agency notifies the
11 relator that it intends to investigate some but not all of the
12 alleged violations, the relator may commence a qui tam action as to
13 the uninvestigated violations at any time but must do so no later
14 than 240 days from the date the relator submitted the written notice
15 of the claim. Any other actionable violations may then be added to
16 the lawsuit within 240 days of the date the relator submitted the
17 written notice. A statute of limitations applicable to a claim in the
18 qui tam action shall be tolled as of the date the relator submits the
19 written notice of the claim to the agency or the date the agency
20 commenced an investigation regarding the same facts and violations
21 alleged in the notice, whichever is earlier.

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

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

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

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

37 (8) A qui tam action is a public action and does not preclude a
38 cause of action by an individual or individuals or operate as an
39 estoppel for relief based on the same set of alleged facts, except
40 that a court shall offset any award of restitution or damages to an

1 aggrieved employee in one action by the amount of restitution or
2 damages awarded or paid in settlement to the same aggrieved employee
3 in another action.

4 (9) An aggrieved person or whistleblower of the entity alleged to
5 have violated a law enumerated in section 4 of this act may designate
6 in writing a representative organization or local or political
7 subdivision of a state to initiate a qui tam action on the person's
8 behalf.

9 NEW SECTION. **Sec. 4.** A qui tam action may be brought to enforce
10 the following laws and all associated rules and regulations:

- 11 (1) Chapter 49.46 RCW, known as the minimum wage act;
- 12 (2) Chapter 49.48 RCW, relating to the payment of wages;
- 13 (3) Chapter 49.52 RCW, relating to wage rebates;
- 14 (4) RCW 49.28.130 through 49.28.150, relating to health care
15 facility employee overtime;
- 16 (5) Chapter 39.12 RCW, relating to prevailing wage;
- 17 (6) Chapter 49.40 RCW, relating to seasonal labor;
- 18 (7) Chapter 49.17 RCW, the Washington industrial safety and
19 health act of 1973;
- 20 (8) Chapter 49.19 RCW, relating to safety in health care
21 settings; chapter 49.22 RCW, relating to safety in late night retail
22 establishments; and chapter 49.26 RCW, relating to asbestos safety;
- 23 (9) Chapter 49.77 RCW, known as military family leave;
- 24 (10) Chapter 49.58 RCW, known as gender equal pay and advancement
25 opportunities;
- 26 (11) Chapter 49.60 RCW, known as the Washington law against
27 discrimination;
- 28 (12) Chapter 19.30 RCW, relating to farm labor contractors;
- 29 (13) Chapter 49.30 RCW, relating to agricultural labor;
- 30 (14) RCW 43.70.075, relating to health care employee
31 whistleblower retaliation protection;
- 32 (15) Chapter 49.12 RCW, known as the industrial welfare act; and
33 (16) Section 9 of this act.

34 NEW SECTION. **Sec. 5.** (1) No action under section 3 of this act
35 may be commenced before written notice of the claim has been
36 submitted by the relator to the agency, via online submission, and
37 the relator has notified the employer by certified mail. The relator
38 must submit written notice of the claim to the agency within the time

1 frame required by law for filing a complaint with the agency based on
2 the same set of facts or, if there is no such deadline, for the
3 filing of a private right of action. The written notice of the claim
4 must be construed in the light most favorable to the relator, and
5 must include the name, address, and contact information of the
6 alleged violator; the name and contact information of the relator or
7 the relator's legal counsel, should one exist; and a brief statement
8 of each alleged violation.

9 (2) If the agency intends to investigate an alleged violation,
10 any resolution by the agency of the merits of that violation must
11 occur within 180 days of receiving the notice under subsection (1) of
12 this section. If the agency decides not to investigate an alleged
13 violation, it must notify the relator within 60 business days of the
14 date it receives the notification submitted by the relator. While
15 investigating an alleged violation, the agency may simultaneously
16 pursue all relief available to it under the agency's administrative
17 enforcement authority and under the agency's authority to bring a
18 civil action, where applicable.

19 (3) As part of its investigation, the agency may attempt to
20 remedy an alleged violation through settlement. If the settlement
21 obtained by the agency provides the aggrieved employee or employees
22 with not less than 100 percent of any wrongfully withheld wages or
23 benefits, including 12 percent interest per annum, and the aggrieved
24 employees receive payment in full before the end of the 180-day
25 investigation period, the agency shall notify the relator that the
26 agency will not commence an action in relation to that violation, and
27 the settlement shall preclude further claims for the same wages or
28 benefits paid in the settlement.

29 (4) If the agency objects to the state being represented by a
30 particular attorney proposed by the relator, the agency may file an
31 objection to the attorney general. Upon finding, after notice and
32 hearing, that, based on the attorney's past conduct while
33 representing a client or clients, the attorney does not meet the
34 required professional standards of representatives, or,
35 alternatively, if the attorney fails to zealously pursue the remedies
36 available under this chapter, the attorney general may, within 30
37 days of receiving the objection, order that the qui tam action may
38 not be filed or maintained by the particular attorney on behalf of
39 the relator.

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

3 (a) As of right within 30 days after the filing of the qui tam
4 action;

5 (b) For good cause shown, as determined by the court, after the
6 expiration of the 30-day period.

7 (2) If the agency intervenes in a qui tam action, the agency
8 shall have primary responsibility for litigating the action and shall
9 not be bound by an act of the relator in bringing the action. If the
10 agency proposes to settle a qui tam action, the agency must give
11 notice to the relator and the attorney general. The court may allow
12 the attorney general to intervene and object to the settlement. If
13 the agency proposes to dismiss a qui tam action, the agency must give
14 notice to the relator and the relator must have an opportunity to be
15 heard. The agency may dismiss or settle the action if court
16 determines that the dismissal or settlement is fair, adequate,
17 reasonable, and in the public interest.

18 (3) If the agency does not intervene, the relator shall have the
19 right to litigate the action. The court must review and approve any
20 settlement. The proposed settlement must be submitted to the agency
21 and to the attorney general at the same time that it is submitted to
22 the court, and the agency may present to the court its position on
23 the proposed settlement or intervene as provided in subsection (1) of
24 this section. The court may also allow the attorney general to
25 intervene and object to the dismissal. The court shall approve a
26 settlement only upon a determination that it is fair, adequate,
27 reasonable, and in the public interest.

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

29 NEW SECTION. **Sec. 7.** (1)(a) Civil penalty amounts recovered in
30 a qui tam action must be distributed as follows:

31 (i) If the agency has not intervened, forty percent to the
32 relator and sixty percent to the agency;

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

35 (b) The relator shall equitably distribute the share of penalties
36 due the relator among the parties aggrieved by the practices
37 complained of in the qui tam action. The relator shall submit a
38 distribution summary to the agency, which may order a different
39 distribution within sixty days after receipt of the distribution

1 summary, provided that the relator shall receive a service award that
2 reflects the burdens and risks assumed by the relator in prosecuting
3 the action.

4 (c) Amounts distributed to the agency shall be used for
5 enforcement of this title and education about the rights and
6 obligations enforceable through this title by the agency.

7 (2) Damages recovered in a qui tam action shall be awarded for
8 distribution to the aggrieved employees, whether directly or through
9 the agency. The agency may request the appointment of an
10 administrative law judge or special master to assist in the
11 distribution of the amounts.

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

15 NEW SECTION. **Sec. 8.** A qui tam action shall not be stayed
16 during concurrent adjudication of private claims.

17 NEW SECTION. **Sec. 9.** (1) A person may not discharge or in any
18 manner discriminate against any employee because such employee has
19 filed any written notice or instituted or caused to be instituted any
20 proceeding under or related to this chapter or has testified or is
21 about to testify in any such proceeding or because of the exercise by
22 such employee on behalf of himself or herself or others of any right
23 afforded by this chapter. The commencement of a peer review process,
24 or an action by a duly constituted quality improvement committee
25 under RCW 70.41.200, shall not be construed to be retaliation under
26 this section if sufficient cause to initiate the peer review process
27 or action under RCW 70.41.200 exists independently of the action
28 being brought under this chapter.

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

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

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

1 (i) Upon receipt of such notification, the agency shall commence
2 an expedited investigation within 10 days to be completed within 90
3 days.

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

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

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

16 NEW SECTION. **Sec. 10.** An agency has rule-making authority to
17 implement sections 1 through 9 of this act.

18 NEW SECTION. **Sec. 11.** All receipts from the civil penalties
19 distributed to the department of labor and industries or the human
20 rights commission under section 7 of this act must be deposited in
21 accordance with the laws under which the penalties were assessed.

22 NEW SECTION. **Sec. 12.** Sections 1 through 11 and 14 of this act
23 constitute a new chapter in Title 49 RCW.

24 NEW SECTION. **Sec. 13.** If any provision of this act or its
25 application to any person or circumstance is held invalid, the
26 remainder of the act or the application of the provision to other
27 persons or circumstances is not affected.

28 NEW SECTION. **Sec. 14.** This chapter shall be known and cited as
29 the worker protection act.

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