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**ENGROSSED SUBSTITUTE SENATE BILL 5217**

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**State of Washington 68th Legislature 2023 Regular Session**

**By** Senate Labor & Commerce (originally sponsored by Senators Dhingra, Kauffman, Keiser, Kuderer, Lovelett, Nguyen, Nobles, Pedersen, Valdez, and C. Wilson)

AN ACT Relating to the state's ability to regulate certain industries and risk classifications to prevent musculoskeletal injuries and disorders; amending RCW 49.17.020; adding new sections to chapter 49.17 RCW; creating a new section; and repealing RCW 49.17.360 and 49.17.370.

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

NEW SECTION. **Sec.**  (1) The legislature finds that the absence of the department of labor and industries' authority to regulate working practices to prevent musculoskeletal injuries and disorders has contributed to excess and avoidable claims and costs across the workers' compensation system for all employers in Washington, including those employers who maintain safer workplaces without high incidents of musculoskeletal injuries and disorders.

(2) The legislature finds that work-related musculoskeletal injuries and disorders account for at least one-third of all workers' compensation claims that result in time loss and wage replacement; are more severe than the average nonfatal injury or illness; and are a common cause of long-term disability in Washington state.

(3) The legislature finds that many of Washington state's critical industries, including health care, are described by the federal bureau of labor statistics as high-risk industries for musculoskeletal injuries. These are also industries that are currently experiencing significant staffing shortages. Further, these injuries lead to high employer costs including absenteeism, decreased productivity, and increased costs for health care, disability, and workers' compensation, among other costs.

(4) The legislature therefore intends to repeal the prohibition on regulating working practices related to musculoskeletal injuries and disorders, thereby allowing targeted safety efforts to more effectively and efficiently prevent these workplace injuries. By removing this barrier, the legislature will restore the state's ability to more strategically address important workplace safety issues and reduce costs for all employers and workers.

NEW SECTION. **Sec.**  The following acts or parts of acts are each repealed:

(1) RCW 49.17.360 (Ergonomics Initiative—Intent) and 2004 c 1 s 1; and

(2) RCW 49.17.370 (Ergonomics Initiative—Definition—Rule repeal) and 2004 c 1 s 2.

**Sec.**  RCW 49.17.020 and 2010 c 8 s 12005 are each amended to read as follows:

((~~For the purposes of this chapter:~~)) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) ((~~The term "agriculture"~~)) (a) "Agriculture" means farming and includes, but is not limited to:

((~~(a)~~)) (i) The cultivation and tillage of the soil;

((~~(b)~~)) (ii) Dairying;

((~~(c)~~)) (iii) The production, cultivation, growing, and harvesting of any agricultural or horticultural commodity;

((~~(d)~~)) (iv) The raising of livestock, bees, fur-bearing animals, or poultry; and

((~~(e)~~)) (v) Any practices performed by a farmer or on a farm, incident to or in connection with such farming operations, including but not limited to preparation for market and delivery to:

((~~(i)~~)) (A) Storage;

((~~(ii)~~)) (B) Market; or

((~~(iii)~~)) (C) Carriers for transportation to market.

((~~The term "agriculture"~~)) (b) "Agriculture" does not mean a farmer's processing for sale or handling for sale a commodity or product grown or produced by a person other than the farmer or the farmer's employees.

(2) ((~~The term "director"~~)) "Director" means the director of the department of labor and industries, or his or her designated representative.

(3) ((~~The term "department"~~)) "Department" means the department of labor and industries.

(4) ((~~The term "employer"~~)) "Employer" means any person, firm, corporation, partnership, business trust, legal representative, or other business entity which engages in any business, industry, profession, or activity in this state and employs one or more employees or who contracts with one or more persons, the essence of which is the personal labor of such person or persons and includes the state, counties, cities, and all municipal corporations, public corporations, political subdivisions of the state, and charitable organizations: PROVIDED, That any person, partnership, or business entity not having employees, and who is covered by the industrial insurance act ((~~shall~~)) must be considered both an employer and an employee.

(5) ((~~The term "employee"~~)) "Employee" means an employee of an employer who is employed in the business of his or her employer whether by way of manual labor or otherwise and every person in this state who is engaged in the employment of or who is working under an independent contract the essence of which is his or her personal labor for an employer under this chapter whether by way of manual labor or otherwise.

(6) ((~~The term "person"~~)) "Person" means one or more individuals, partnerships, associations, corporations, business trusts, legal representatives, or any organized group of persons.

(7) ((~~The term "safety and health standard"~~)) "Risk classification" means any classification defined in chapter 296-17A WAC classifications for Washington workers' compensation insurance.

(8) "Safety and health standard" means a standard which requires the adoption or use of one or more practices, means, methods, operations, or processes reasonably necessary or appropriate to provide safe or healthful employment and places of employment.

((~~(8) The term "workplace"~~)) (9) "Workplace" means any plant, yard, premises, room, or other place where an employee or employees are employed for the performance of labor or service over which the employer has the right of access or control, and includes, but is not limited to, all workplaces covered by industrial insurance under Title 51 RCW, as now or hereafter amended.

((~~(9) The term "working day"~~)) (10) "Working day" means a calendar day, except Saturdays, Sundays, and all legal holidays as set forth in RCW 1.16.050, as now or hereafter amended, and for the purposes of the computation of time within which an act is to be done under the provisions of this chapter, ((~~shall~~)) must be computed by excluding the first working day and including the last working day.

(11) "Work-related musculoskeletal injuries and disorders" means injuries or disorders of the muscles, nerves, tendons, joints, cartilage, and spinal discs associated with exposure to risk factors in the workplace. Musculoskeletal injuries and disorders include sprains, strains, tears, back pain, soreness, pain, carpal tunnel syndrome, musculoskeletal system or connective tissue diseases and disorders when the event or exposure leading to the injury or illness is bodily reaction from bending, climbing, crawling, reaching, twisting, sitting, or standing; being rubbed or abraded by kneeling on a surface; being rubbed, abraded, or jarred by vibration; overexertion; or repetition. The department may update this definition in accordance with changes to the United States department of labor's definition or updates to the United States bureau of labor statistics' occupational injury and illness classification system.

NEW SECTION. **Sec.**  A new section is added to chapter 49.17 RCW to read as follows:

(1) The department may adopt rules related to preventing musculoskeletal injuries and disorders that provide standards for an industry or risk classification, subject to the limits in this section.

(2)(a) Within a 12-month period, the department may not adopt more than one set of rules related to preventing musculoskeletal injuries and disorders for an industry or risk classification that previously did not have rules related to preventing musculoskeletal injuries and disorders. The rules would apply to an establishment engaged in activities as defined by the industry or risk classification.

(b) Subject to subsection (10) of this section, the department may not adopt emergency rules under chapter 34.05 RCW related to preventing musculoskeletal injuries and disorders for an industry or risk classification that previously did not have rules related to preventing musculoskeletal injuries and disorders.

(3)(a) Rules providing standards may only be adopted for industries or risk classifications where compensable workers' compensation claims involved musculoskeletal injuries and disorders at a rate greater than two times the overall state workers' compensation compensable claim rate for musculoskeletal injuries and disorders over a recent five-year period.

(b) When adopting rules by industry subsector at the three-digit level, the department must exclude from regulation North American industry classification system industry group at the four-digit level and industry classification at the five-digit level within the industry subsector that have a musculoskeletal injuries and disorders rate less than two times the overall state workers' compensation compensable claim rate for musculoskeletal injuries and disorders over a recent five-year period.

(c) When adopting rules by industry group at the four-digit level, the department must exclude from regulation North American industry classification system industry classifications at the five-digit level within the industry group that have a musculoskeletal injuries and disorders rate less than two times the overall state workers' compensation compensable claim rate for musculoskeletal injuries and disorders over a recent five-year period.

(d) When adopting rules by risk classification at the four-digit level, the department must exclude six-digit risk classifications within the four-digit risk classification if they have a musculoskeletal injuries and disorders rate less than two times the overall state workers' compensation compensable claim rate for musculoskeletal injuries and disorders over a recent five-year period.

(e) When selecting an industry or risk classification from the list established for potential rule making in section 4(8)(a) of this act, the department shall consider if the industry is demonstrating a statistical downward trend in the claims rates that is greater than the statewide average.

(4) Within 90 days of the department filing a preproposal statement of inquiry (CR-101) for industry or risk classifications specific rules related to preventing musculoskeletal injuries and disorders, the department must provide a report to the appropriate committees of the legislature. The report must include the criteria the department used to select the industry or rate risk classification that will be subject to the rules and a description of the rule-making procedures under chapter 34.05 RCW which the department will follow for the specific rules.

(5) During rule making, the department must consider including options for an employer to demonstrate alternative control methods where:

(a) The alternative methods are at least as effective as the rule requirements;

(b) Affected employees are trained and monitored for compliance; and

(c) The employer has documented all efforts.

(6) When filing a preproposal statement of inquiry (CR-101) for industry or risk classification specific rules related to preventing musculoskeletal injuries and disorders, the department must include the convening of an advisory committee comprised of equal representatives of employers and workers from the industry or risk classification that will be subject to the rules.

(7) During rule making under this section, the department must solicit input on the effective date to specify in the order of adoption under RCW 34.05.380. The effective date may not be less than 120 days after adoption and no rule may be effective prior to July 1, 2026.

(8) Annually by November, the department must:

(a) Publish a list of industries and risk classifications eligible for rule making under this section. The list must identify low priority industries and risk classifications for whom the statistical trend suggests the industry or risk classification will have a rate lower than two times the state average in the next three years. The list must include compensable claims over the five calendar year period that ended two calendar years before the report is published; and

(b) Conduct a review of the compensable workers' compensation claims data identified in (a) of this subsection to ensure that the data only reflects injuries or disorders consistent with work-related musculoskeletal injuries or disorders as defined by this act, and publish the results of that review.

(c) Each year the department shall identify a list of industries or risk classes most likely to be selected for future rule making and prioritize efforts to provide technical assistance to those employers.

(9) For employee home offices, the director does not have the authority to adopt any new or amended rules dealing with musculoskeletal injuries and disorders, or that deal with the same or similar activities as the rules which were repealed in former RCW 49.17.370 for employee home offices, until and to the extent comparable rules applying to employee home offices are required by congress or the federal occupational safety and health administration.

(10) Limits on rule making in this section do not apply to rules adopted or amended where required by the federal occupational safety and health administration.

(11) For the purposes of this section, "industry" means any classification in the North American industry classification system that defines an industry subsector at the three-digit level, industry group at the four-digit level, and industry at the five-digit level.

(12) The department must provide up to three additional ergonomists to provide consultation to employers in the industries and risk classifications in the list published under subsection (8)(a) of this section. Funding for the additional ergonomists must be paid from the accident and medical aid funds.

NEW SECTION. **Sec.**  A new section is added to chapter 49.17 RCW to read as follows:

(1) The director is authorized, in the director's discretion, to provide funding to employers to purchase additional equipment that may be needed to comply with a rule adopted under section 4 of this act. The maximum amount of funding each year is two percent of the premiums paid into the accident fund in the prior year from employers subject to a rule adopted under section 4 of this act.

(2) Only employers who pay premiums to the state fund as defined in RCW 51.08.175 and are subject to a rule adopted under section 4 of this act are eligible for funding under this section.

(3) An appropriation is not required for these expenditures.

(4) The department may adopt rules to implement this section.

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