

---

**Labor & Workplace Standards  
Committee**

---

**ESSB 5217**

**Brief Description:** Concerning the state's ability to regulate certain industries and risk classifications to prevent musculoskeletal injuries and disorders.

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

**Brief Summary of Engrossed Substitute Bill**

- Repeals the law prohibiting the Department of Labor and Industries (Department) from adopting rules related to ergonomics or musculoskeletal disorders.
- Provides limitations on the adoption of new rules, including allowing rules only for industries or risk classifications where compensable claims involved musculoskeletal injuries and disorders that are at a rate greater than two times the overall state claim rate for these types of injuries and disorders over a recent five-year period.
- Requires the Department to: (1) identify industries and risk classifications most likely to be selected for rulemaking; (2) review and report certain claims data; and (3) consider certain factors during rulemaking.
- Allows the Department to provide funding to certain employers to purchase additional equipment and requires up to three additional ergonomists to provide consultation to certain employers.

**Hearing Date:** 3/14/23

---

*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.*

**Staff:** Trudes Tango (786-7384).

**Background:**

In 2000 the Department of Labor and Industries (Department) adopted specific workplace ergonomics regulations requiring employers to reduce worker exposure to hazards that cause or contribute to work-related musculoskeletal disorders. Initiative Measure No. 841, passed by the voters in 2003, repealed the existing ergonomics regulations and prohibited the Department from adopting similar regulations or otherwise regulating working practices to prevent musculoskeletal disorders.

The Department retains general authority to enforce against ergonomic-related workplace hazards under the general duty clause of the Washington Industrial Safety and Health Act.

**Summary of Bill:**

The statutes prohibiting the Department from adopting new or amended rules dealing with musculoskeletal disorders are repealed. The Department may adopt rules related to preventing musculoskeletal injuries and disorders that provide standards for an industry or risk classification, subject to certain limitations and exceptions.

The Department may not adopt:

- more than one set of rules within a 12-month period for an industry or risk classification that did not previously have rules related to preventing musculoskeletal injuries and disorders;
- emergency rules related to preventing musculoskeletal injuries and disorders for an industry or risk classification that did not previously have rules related to such injuries or disorders; and
- any new or amended rules dealing with musculoskeletal injuries and disorders for home offices, until and to the extent comparable rules applicable to employee home offices are required by Congress or the federal safety and health regulations.

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

When adopting rules, the Department must exclude certain industry subsectors, industry groups, and risk classifications, specified by digit level of the North American Industry Classification System code or risk classifications, that have a musculoskeletal injuries and disorders rate less than two times the overall state compensable claim rate for such injuries and disorders over a recent five-year period.

By November of every year, the Department must publish a list of industries and risk classifications that are eligible for rule making based on the criteria. The list must identify low

priority industries and risk classifications that, based on the statistical trend, 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. The Department must review the claims data to ensure that the data only reflects injuries or disorders consistent with work-related musculoskeletal injuries or disorders and publish the results of the review.

Every year the Department must identify a list of industries or risk classifications most likely to be selected for future rule making. The Department must prioritize efforts to provide technical assistance to those employers.

When selecting an industry or risk classification from the list for potential rule making, the Department must consider if the industry is demonstrating a statistical downward trend in the claims rate that is greater than the statewide average. The Department must provide up to three additional ergonomists, funded from the Accident and Medical Aid Funds, to provide consultation to employers in industries and risk classifications on the list.

When filing a preproposal statement of inquiry, which is the initial notification of potential rulemaking, the Department must convene an advisory committee comprised of equal representatives of employers and workers from the industry or risk classification that will be subject to the rules. In addition, within 90 days of filing the preproposal statement of inquiry, the Department must provide a report to the appropriate committees of the Legislature that includes the criteria used to select the industry or risk classification and a description of the rulemaking procedures that the Department will follow.

During the rulemaking process, the Department must consider including options for an employer to demonstrate alternative control methods where: (1) such methods are at least as effective as the rule requirements; (2) affected employees are trained and monitored for compliance; and (3) the employer has documented all efforts. The Department must also solicit input on the effective date of rules, but an effective date may not be less than 120 days after adoption of the rule, and no rule may take effect prior to July 1, 2026.

The Director may provide funding to employers to purchase additional equipment that may be needed to comply with adopted rules. The maximum amount of funding each year is 2 percent of the premiums paid into the Accident Fund in the prior year from employers subject to the rule. Only employers who pay premiums to the State Fund and are subject to an adopted rule are eligible for funding.

"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. It includes 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 federal Department of Labor's definition or updates to the Bureau of Labor Statistics' occupational injury and illness classification system.

**Appropriation:** None.

**Fiscal Note:** Requested on March 8, 2023.

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