

SENATE BILL REPORT

SB 5217

As of January 24, 2023

Title: An act relating to the state's ability to regulate certain industries and risk classes to prevent musculoskeletal injuries and disorders.

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

Sponsors: Senators Dhingra, Kauffman, Keiser, Kuderer, Lovelett, Nguyen, Nobles, Pedersen, Valdez and Wilson, C..

Brief History:

Committee Activity: Labor & Commerce: 1/24/23.

Brief Summary of Bill

- Repeals the law prohibiting the Department of Labor and Industries (L&I) from adopting rules related to ergonomics or musculoskeletal disorders.
- Limits the adoption of new rules to no more than one set of rules for an industry or risk class within a 12-month period and only for industries or risk classes where workers' compensation claims involved musculoskeletal injuries and disorders which 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 certain reporting regarding these rules by L&I.
- Allows L&I to provide certain funding to employers to purchase additional equipment needed to comply with these newly adopted rules.

SENATE COMMITTEE ON LABOR & COMMERCE

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: Susan Jones (786-7404)

Background: In 2000, the Department of Labor and Industries (L&I) adopted specific workplace ergonomics regulations requiring employers to reduce worker exposure to specific workplace hazards that cause or contribute to work-related musculoskeletal disorders.

Initiative 841, passed by the voters in 2003, repealed the existing ergonomics regulations. The initiative also prohibited L&I from adopting similar regulations or otherwise regulating working practices to prevent musculoskeletal disorders, until and to the extent required by the federal government.

L&I retains general authority to enforce against ergonomic-related workplace hazards under the general duty clause of the Washington Industrial Safety and Health Act (WISHA), which requires employers to furnish employees with a place of employment free from recognized hazards that are causing or likely to cause serious injury or death to the employees.

Summary of Bill: The law repealing the ergonomics regulations and the restrictions on the adoption of new or amended rules dealing with musculoskeletal disorders, or that deal with the same or similar activities as the repealed state ergonomics regulations under WISHA are repealed.

L&I may adopt rules related to preventing musculoskeletal injuries and disorders that provide standards for an industry or risk class, subject to the following:

- L&I is limited to adopting no more than one set of rules related to preventing musculoskeletal injuries and disorders for an industry or risk class that previously did not have rules related to preventing musculoskeletal injuries and disorders within a 12-month period;
- rules providing standards may only be adopted for industries or risk classes where compensable workers' compensation claims involved musculoskeletal injuries and disorders with a rate greater than two times the overall state claim rate for these types of injuries and disorders over a recent five-year period; and
- L&I may not adopt any new or amended rules dealing with musculoskeletal injuries and disorders for employee home offices, until comparable rules are required by Congress or the federal Occupational Safety and Health Administration.

L&I must:

- within 90 days of filing a preproposal statement of inquiry for specific rules, provide a report to the Legislature, which includes the criteria used to select the specific industry or rate risk class subject to the rules and a description of the rule-making procedures to be followed;
- at least annually, publish a list of industries and risk classes eligible for this rule-making.

L&I may provide funding to employers to purchase additional equipment that may be needed to comply with these newly 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 the risk classes that include employers subject to an adopted rule. Only employers who pay premiums to the state fund and are subject to a rule adopted under this act are eligible for funding.

Definitions of industry and risk classification are included. Legislative findings are made.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This bill ensures the common value of employers and employees of ensuring safety. Employees across the state are being injured on the job by preventable, repetitive motion injuries. These injuries account for one third of workers compensation claims today. This bill is transparent, data driven, and provides funds to businesses to make necessary changes. Prevention works. In this bill, L&I can only adopt rules for industries or risk classes where worker compensation claims are more than two times the overall state claim rate over a five-year period. The bill requires a list that will be public, so businesses will know whether they are on the list and can make changes to address the issue without regulatory action being taken. L&I will be able to make incremental rules, focusing only in areas where injuries are high. Restoring L&I's regulatory authority is crucial for protecting worker's ability to continue working and live pain-free lives, and will lower employer and taxpayer costs.

This prevention needs to focus on two things: changing workplace conditions to make them less hazardous, and getting people into early diagnosis and treatment. By preventing injury and making the workplace safer, this bill may be able to lessen opioid use and addiction. The bill will allow workers to stay at their jobs longer. Jobs that have repetitive motions take tolls on workers' bodies. This can be devastating to workers' lives, even after surgeries. It impacts their sense of self. Workers have suffered from a lack of rules in this area.

CON: There is a lack of medical and scientific consensus on the causes of musculoskeletal disorders, and it is unclear what interventions will prevent them. There are currently 35 groups that would fall on the list for being two times over the state claim rate, and if L&I is only allowed to implement one rule per year, it will be 2058 before each of these groups has seen an intervention. This is too long. Workers shouldn't be on a list waiting, they should

be helped now.

There is a better way to solve this issue. More technical assistance is a better approach. Partnerships with safety consultation groups have been effective for some businesses, and increasing access to this resource will be faster and better tailored to each group's type of work and injury. Education can immediately start changing behavior and helping people. This bill may divert employers' attention from other types of injuries and impede workplace safety, rather than improve it. Additionally, this bill has ambiguous language with inconsistent terminology.

You shouldn't go after an entire risk class for a few bad actors. One of the solutions in the old rules was job rotation. For construction workers, you can't just change your profession for the second half of the day.

OTHER: Since the initiative, there is a lot more information about causes of musculoskeletal injuries and changes that can be made to prevent these injuries. L&I has information on which industries or risk classifications that may meet the qualification for the rule. The musculoskeletal rate is 4.7 per thousand per FTE. There would be advance notice of a rule and L&I discretion.

Persons Testifying: PRO: Senator Manka Dhingra, Prime Sponsor; Trudi Hobbs, Public School Employees of Washington; Karen Heister, UFCW 3000; Michael Lax, Medical Director of Occupational Health Clinical Center, Upstate University Hospital; Joe Ruth, IAM 751 Health & Benefits Department; Christina Bayaniyan, Sheetmetal Workers Local 66; AJ Johnson, Washington State Council of Fire Fighters; Debby Chandler, Spokane office professional; Carmencita Smith, EVS professional, Swedish Medical Center First Hill.

CON: TAMMIE HETRICK, Washington Food Industry Association; JOHN MEIER, EMPLOYER RESOURCES NORTHWEST; Bruce Beckett, Wa. Retail Association; Tim O'Connell, Previously lead counsel, WE CARE; Tom Kwieciak, Building Industry Association of WA; Carolyn Logue, Associated Builders & Contractors - Washington State; Amber Carter, Identity Clark County.

OTHER: David Bonauto, Labor & Industries; Tammy Fellin, Labor & Industries.

Persons Signed In To Testify But Not Testifying: No one.