

SENATE BILL REPORT

ESSB 5217

As Passed Senate, March 1, 2023

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

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 History:

Committee Activity: Labor & Commerce: 1/24/23, 2/07/23 [DPS, DNP].

Floor Activity: Passed Senate: 3/1/23, 27-21.

Brief Summary of Engrossed First Substitute 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 classification within a 12-month period and only for industries or risk classification 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. Other limitations and exclusions are provided.
- Requires certain reporting related to the potential rules and claims review by L&I.
- Requires L&I, during rule making, to consider including options for an employer to demonstrate alternative control methods and to convene an

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advisory committee with employer and worker representatives in the impacted industry or rate classification.

- Allows L&I to provide certain funding to employers to purchase additional equipment needed to comply with newly adopted rules and up to three additional ergonomists to provide consultation to certain employers.

SENATE COMMITTEE ON LABOR & COMMERCE

Majority Report: That Substitute Senate Bill No. 5217 be substituted therefor, and the substitute bill do pass.

Signed by Senators Keiser, Chair; Conway, Vice Chair; Saldaña, Vice Chair; Robinson and Stanford.

Minority Report: Do not pass.

Signed by Senators King, Ranking Member; Braun, MacEwen and Schoesler.

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 Engrossed First Substitute 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 classification, subject to the following:

- within a 12-month period, 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 classification that previously did not have rules related to preventing musculoskeletal injuries and disorders;
- rules providing standards may only be adopted for industries or risk classifications 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;
- exclusions from rules are provided when rules are adopted at certain industry subsectors, industry groups, and risk classifications;
- L&I must consider if the industry is demonstrating a statistical downward trend in the claims rates that is greater than the statewide average;
- L&I may not adopt emergency rules for an industry or risk classification that previously did not have rules related to preventing musculoskeletal injuries and disorders; and
- L&I must, during rule making, consider including options for an employer to demonstrate alternative control methods and to convene an advisory committee with employer and worker representatives in the impacted industry or rate classification with input, including for the effective date, which may not be less than 120 days after adoption and not before July 1, 2026.

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 classification 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 classification eligible for this rule-making. The list must include compensable claims over the five-calendar year period that ended two calendar years before the report is published, and must identify low priority industries and risk classifications;
- annually conduct a review of the related compensable workers' compensation claims data and publish the result of the review; and
- annually identify a list of industries or risk classes most likely to be selected for future rule making and prioritize efforts to provide technical assistance. Provide up to three additional ergonomists to provide consultation to employers in the list.

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 musculoskeletal injuries and disorders, 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 on Original Bill: *The committee recommended a different version of the bill than what was heard.* 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.