

# FINAL BILL REPORT

## ESSB 5217

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#### Synopsis as Enacted

**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.).

**Senate Committee on Labor & Commerce**

**House Committee on Labor & Workplace Standards**

**House Committee on Appropriations**

**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Initiative 841, passed by the voters in 2003, repealed the existing ergonomics regulations.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:** 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of new or amended rules dealing with musculoskeletal disorders, or that deal with the same or similar activities as the repealed state ergonomics regulations under WISHA are repealed.

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*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.*

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, and 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.

**Votes on Final Passage:**

Senate 27 21

House 51 46

**Effective:** July 23, 2023