Chapter 49.17 RCW
WASHINGTON INDUSTRIAL SAFETY AND HEALTH ACT

Sections

RCW 49.17.010 Purpose. The legislature finds that personal injuries and illnesses arising out of conditions of employment impose a substantial burden upon employers and employees in terms of lost production, wage loss, medical expenses, and payment of benefits under the industrial insurance act. Therefore, in the public interest for the welfare of the people of the state of Washington and in order to assure, insofar as may reasonably be possible, safe and healthful working conditions for every man and woman working in the state of Washington, the legislature in the exercise of its police power, and in keeping with the mandates of Article II, section 35 of the state Constitution, declares its purpose by the provisions of this chapter

to create, maintain, continue, and enhance the industrial safety and health program of the state, which program shall equal or exceed the standards prescribed by the Occupational Safety and Health Act of 1970 (Public Law 91-596, 84 Stat. 1590). [1973 c 80 § 1.]

Industrial insurance: Title 51 RCW.

RCW 49.17.020 Definitions. For the purposes of this chapter:

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

(a) The cultivation and tillage of the soil;

(b) Dairying;

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

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

(e) 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) Storage;

(ii) Market; or

(iii) Carriers for transportation to market.

The term "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" means the director of the department of labor and industries, or his or her designated representative.

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

(4) The term "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 be considered both an employer and an employee.

(5) The term "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" 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" 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" 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" 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 be computed by excluding the first working day and including the last working day. [2010 c 8 § 12005; 1997 c 362 § 2; 1973 c 80 § 2.]

Department of labor and industries: Chapter 43.22 RCW.

RCW 49.17.022 Legislative findings and intent—Definition of agriculture. The legislature finds that the state's farms are diverse in their nature and the owners, managers, and their employees continually find new ways to plant, raise, harvest, process, store, market, and distribute their products. The legislature further finds that the department of labor and industries needs guidance in determining when activities related to agricultural products are to be regulated as agricultural activities and when they should be regulated as other activities. It is the intent of the legislature that activities performed by a farmer as incident to or in conjunction with his or her farming activities be regulated as agricultural activities. For this purpose, an agricultural activity is to be interpreted broadly, based on the definition of "agriculture" in RCW 49.17.020. [1997 c 362 § 1.]

RCW 49.17.030 Application of chapter—Fees and charges. This chapter shall apply with respect to employment performed in any workplace within the state. The department of labor and industries shall provide by rule for a schedule of fees and charges to be paid by each employer subject to this chapter who is not subject to or obtaining coverage under the industrial insurance laws and who is not a self-insurer. The fees and charges collected shall be for the purpose of defraying such employer's pro rata share of the expenses of enforcing and administering this chapter. [1973 c 80 § 3.]

RCW 49.17.040 Rules and regulations—Authority—Procedure. The director shall make, adopt, modify, and repeal rules and regulations governing safety and health standards for conditions of employment as authorized by this chapter after a public hearing in conformance with the administrative procedure act and the provisions of this chapter. At least thirty days prior to such public hearing, the director shall cause public notice of such hearing to be made in newspapers of general circulation in this state, of the date, time, and place of such public hearing, along with a general description of the subject matter of the proposed rules and information as to where copies of any rules and regulations proposed for adoption may be obtained and with a solicitation for recommendations in writing or suggestions for inclusion or changes in such rules to be submitted not later than five days prior to such public hearing. Any preexisting rules adopted by

the department of labor and industries relating to health and safety standards in workplaces subject to the jurisdiction of the department shall remain effective insofar as such rules are not inconsistent with the provisions of this chapter. [1973 c 80 § 4.]

RCW 49.17.041 Agricultural safety standards—Limitation on adopting or establishing between January 1, 1995, through January 15, 1996—Requirements. (1)(a) Except as provided in (b) of this subsection, no rules adopted under this chapter amending or establishing agricultural safety standards shall take effect during the period beginning January 1, 1995, and ending January 15, 1996. This subsection applies, but is not limited to applying, to a rule adopted before January 1, 1995, but with an effective date which is during the period beginning January 1, 1995, and ending January 15, 1996, and to provisions of rules adopted prior to January 1, 1995, which provisions are to become effective during the period beginning January 1, 1995, and ending January 15, 1996.

(b) Subsection (1)(a) of this section does not apply to: Provisions of rules that were in effect before January 1, 1995; emergency rules adopted under RCW 34.05.350; or revisions to chapter 296-306 WAC regarding rollover protective structures that were adopted in 1994 and effective March 1, 1995, and that are additionally revised to refer to the variance process available under this chapter.

(2) The rules for agricultural safety adopted under this chapter must:

(a) Establish, for agricultural employers, an agriculture safety standard that includes agriculture-specific rules and specific references to the general industry safety standard adopted under chapter 49.17 RCW; and

(b) Exempt agricultural employers from the general industry safety standard adopted under chapter 49.17 RCW for all rules not specifically referenced in the agriculture safety standard.

(3) The department shall publish in one volume all of the occupational safety rules that apply to agricultural employers and shall make this volume available to all agricultural employers before January 15, 1996. This volume must be available in both English and Spanish.

(4) The department shall provide training, education, and enhanced consultation services concerning its agricultural safety rules to agricultural employers before the rules' effective dates. The training, education, and consultation must continue throughout the winter of 1995-1996. Training and education programs must be provided throughout the state and must be coordinated with agricultural associations in order to meet their members' needs.

(5) The department shall provide, for informational purposes, a list of commercially available rollover protective structures for tractors used in agricultural operations manufactured before October 25, 1976. The list must include the name and address of the manufacturer and the approximate price of the structure. Included with the list shall be a statement indicating that an employer may apply for a variance from the rules requiring rollover protective structures under this chapter and that variances may be granted in appropriate circumstances on a case-by-case basis. The statement shall also provide examples of circumstances under which a variance may be granted. The list and statement shall be generally available to the

agricultural community before the department may take any action to enforce rules requiring rollover protective structures for tractors used in agricultural operations manufactured before October 25, 1976. [1995 c 371 § 2.]

Finding—1995 c 371: "The legislature finds that:

(1) The state's highly productive and efficient agricultural sector is composed predominately of family-owned and managed farms and an industrious and efficient workforce;

(2) A reasonable level of safety regulations is needed to protect workers;

(3) The smaller but highly efficient farming operations would benefit from safety rules that are easily referenced and agriculture-specific to the extent possible; and

(4) There should be lead time between the adoption of agriculture safety rules and their effective date in order to allow the department of labor and industries to provide training, education, and enhanced consultation services to family-owned and managed farms." [1995 c 371 § 1.]

Application—1995 c 371 § 2: "Section 2(1) of this act is remedial in nature and applies to rules and provisions of rules regarding agricultural safety that would take effect after December 31, 1994." [1995 c 371 § 4.]

RCW 49.17.050 Rules and regulations—Guidelines—Standards. In the adoption of rules and regulations under the authority of this chapter, the director shall:

(1) Provide for the preparation, adoption, amendment, or repeal of rules and regulations of safety and health standards governing the conditions of employment of general and special application in all workplaces;

(2) Provide for the adoption of occupational health and safety standards which are at least as effective as those adopted or recognized by the United States secretary of labor under the authority of the Occupational Safety and Health Act of 1970 (Public Law 91-596; 84 Stat. 1590);

(3) Provide a method of encouraging employers and employees in their efforts to reduce the number of safety and health hazards at their workplaces and to stimulate employers and employees to institute new and to perfect existing programs for providing safe and healthful working conditions;

(4) Provide for the promulgation of health and safety standards and the control of conditions in all workplaces concerning gases, vapors, dust, or other airborne particles, toxic materials, or harmful physical agents which shall set a standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of his or her working life; any such standards shall require where appropriate the use of protective devices or equipment and for monitoring or measuring any such gases, vapors, dust, or other airborne particles, toxic materials, or harmful physical agents;

(5) Provide for appropriate reporting procedures by employers with respect to such information relating to conditions of employment which will assist in achieving the objectives of this chapter;

(6) Provide for the frequency, method, and manner of the making of inspections of workplaces without advance notice;

(7) Provide for the publication and dissemination to employers, employees, and labor organizations and the posting where appropriate by employers of informational, education, or training materials calculated to aid and assist in achieving the objectives of this chapter;

(8) Provide for the establishment of new and the perfection and expansion of existing programs for occupational safety and health education for employers and employees, and, in addition institute methods and procedures for the establishment of a program for voluntary compliance solely through the use of advice and consultation with employers and employees with recommendations including recommendations of methods to abate violations relating to the requirements of this chapter and all applicable safety and health standards and rules and regulations promulgated pursuant to the authority of this chapter;

(9) Provide for the adoption of safety and health standards requiring the use of safeguards in trenches and excavations and around openings of hoistways, hatchways, elevators, stairways, and similar openings;

(10) Provide for the promulgation of health and safety standards requiring the use of safeguards for all vats, pans, trimmers, cut off, gang edger, and other saws, planers, presses, formers, cogs, gearing, belting, shafting, coupling, set screws, live rollers, conveyors, mangles in laundries, and machinery of similar description, which can be effectively guarded with due regard to the ordinary use of such machinery and appliances and the danger to employees therefrom, and with which the employees of any such workplace may come in contact while in the performance of their duties and prescribe methods, practices, or processes to be followed by employers which will enhance the health and safety of employees in the performance of their duties when in proximity to machinery or appliances mentioned in this subsection;

(11) Certify that no later than twenty business days prior to the effective date of any significant legislative rule, as defined by RCW 34.05.328, a meeting of impacted parties is convened to: (a) Identify ambiguities and problem areas in the rule; (b) coordinate education and public relations efforts by all parties; (c) provide comments regarding internal department training and enforcement plans; and (d) provide comments regarding appropriate evaluation mechanisms to determine the effectiveness of the new rule. The meeting shall include a balanced representation of both business and labor from impacted industries, department personnel responsible for the above subject areas, and other agencies or key stakeholder groups as determined by the department. An existing advisory committee may be utilized if appropriate. [2010 c 8 § 12006; 1998 c 224 § 1; 1973 c 80 § 5.]

RCW 49.17.055 WISHA advisory committee—Appointment of members—Duties—Terms, compensation, and expenses. The director shall appoint a WISHA advisory committee composed of ten members: Four members representing subject workers, each of whom shall be appointed from a

list of at least three names submitted by a recognized statewide organization of employees, representing a majority of employees; four members representing subject employers, each of whom shall be appointed from a list of at least three names submitted by a recognized statewide organization of employers, representing a majority of employers; and two ex officio members, without a vote, one of whom shall be the chairperson of the board of industrial insurance appeals, and the other representing the department. The member representing the department shall be chairperson. The committee shall provide comment on department rule making, policies, and other initiatives. The committee shall also conduct a continuing study of any aspect of safety and health the committee determines to require their consideration. The committee shall report its findings to the department or the board of industrial insurance appeals for action as deemed appropriate. The members of the committee shall be appointed for a term of three years commencing on July 1, 1997, and the terms of the members representing the workers and employers shall be staggered so that the director shall designate one member from each group initially appointed whose term shall expire on June 30, 1998, and one member from each group whose term shall expire on June 30, 1999. The members shall serve without compensation, but are entitled to travel expenses as provided in RCW 43.03.050 and 43.03.060. The committee may hire such experts, if any, as it requires to discharge its duties and may utilize such personnel and facilities of the department and board of industrial insurance appeals as it needs, without charge. All expenses of the committee must be paid by the department. [1997 c 107 § 1.]

RCW 49.17.060 Employer—General safety standard—Compliance. Each employer:

(1) Shall furnish to each of his or her employees a place of employment free from recognized hazards that are causing or likely to cause serious injury or death to his or her employees: PROVIDED, That no citation or order assessing a penalty shall be issued to any employer solely under the authority of this subsection except where no applicable rule or regulation has been adopted by the department covering the unsafe or unhealthful condition of employment at the workplace; and

(2) Shall comply with the rules, regulations, and orders promulgated under this chapter. [2010 c 8 § 12007; 1973 c 80 § 6.]

RCW 49.17.062 Employer—Public health emergency—Infectious or contagious diseases—Positive tests—Reporting, duty, and procedure. (1) During a public health emergency:

(a) An employer with more than 50 employees at a workplace or worksite, within 24 hours of confirming that 10 or more of their employees at the workplace or worksite in this state have tested positive for the infectious or contagious disease that is the subject of the public health emergency, must report the positive tests to the department in a form prescribed by the department.

(b) The department must consult with the department of health on the infectious or contagious disease that is the subject of the public health emergency:

(i) Before issuing regulatory guidance, rules, directives, or orders for health care facilities under this section; and

(ii) When investigating health care entities and issuing citations under this section.

(c) The report required in (a) of this subsection may not include any employee names or personal identifying information.

(2) The department may use the reports in subsection (1) of this section to identify potential clusters of infections at specific workplaces or industries and investigate workplaces for violations of this chapter.

(3) During a public health emergency, the name, email and residential addresses, license plate number, and other personally identifiable information regarding employees of the department are exempt from disclosure under chapter 42.56 RCW to the extent that the disclosure would violate their right to privacy or pose a risk to their personal safety or security.

(4) This section does not require an employee to disclose any medical condition or diagnosis to their employer.

(5) This section does not alter or eliminate any other reporting obligations an employer has under state or federal law.

(6)(a) During a public health emergency, no employer may discharge, permanently replace, or in any manner discriminate against an employee who is high risk as a result of the employee:

(i) Seeking accommodation that protects them from the risk of exposure to the infectious or contagious disease; or

(ii) If no accommodation is reasonable, utilizing all available leave options, including but not limited to leave without pay and unemployment insurance, until completion of the public health emergency or accommodation is made available.

(b) This subsection (6) does not alter or diminish any existing remedy available to the worker under current state or federal law.

(c) For the purposes of this subsection (6), "an employee who is high risk" means an employee who:

(i) Due to age or an underlying health condition, is at a high risk of severe illness from the disease that is the subject of the public health emergency, as defined by the centers for disease control and prevention; and

(ii) A medical provider has recommended the employee's removal from the workforce because of their high risk of severe illness.

(7) For the purposes of this section, "public health emergency" means a declaration or order concerning any infectious or contagious diseases, including a pandemic and is issued as follows:

(a) The president of the United States has declared a national or regional emergency that covers every county in the state of Washington; or

(b) The governor of Washington has declared a state of emergency under RCW 43.06.010(12) in every county in the state. [2021 c 252 § 2.]

Short title—Effective date—2021 c 252: See notes following RCW 51.32.181.

RCW 49.17.064 Employer—Public health emergency—Infectious or contagious diseases—Notice of potential exposure. (1) During a public health emergency, if an employer receives a notice of potential

exposure to the infectious or contagious disease that is the subject of the public health emergency, the employer must, within one business day of potential exposure:

(a) Provide written notice to all employees, and the employers of subcontracted employees, who were on the premises at the same worksite as the qualifying individual that they may have been exposed to the infectious or contagious disease. The written notice must be made in a manner the employer normally uses to communicate employment-related information. Written notice may include, but is not limited to, personal service, email, or text message if it can reasonably be anticipated to be received by the employee within one business day of sending and must be in both English and the language understood by the majority of the employees; and

(b) Provide a written notice to the exclusive representative, if any, of employees under this subsection (1).

(2) The written notice under subsection (1) of this section may not include any employee names or personal identifying information.

(3) This section does not alter or eliminate any other reporting obligations an employer has under state or federal law.

(4) This section does not require an employee to disclose any medical condition or diagnosis to their employer.

(5) This section does not apply to employers who are health care facilities as defined in RCW 9A.50.010. For employees of health care facilities with known or suspected high-risk exposure, notification to the employee, and with the employee's authorization, to their union representative, if any, by the facility must occur within 24 hours of confirmed exposure.

(6) For the purposes of this section:

(a) "Notice of potential exposure" means any of the following:

(i) Notification to the employer from a public health official or licensed medical provider that an employee was exposed to a qualifying individual at the worksite;

(ii) Notification to the employer from an employee, or their emergency contact, that the employee is a qualifying individual;

(iii) Notification through a testing protocol of the employer that the employee is a qualifying individual.

(b) "Public health emergency" means a declaration or order concerning any infectious or contagious diseases, including a pandemic and is issued as follows:

(i) The president of the United States has declared a national or regional emergency that covers every county in the state of Washington; or

(ii) The governor of Washington has declared a state of emergency under RCW 43.06.010(12) in every county in the state.

(c) "Qualifying individual" means any person who has:

(i) A positive laboratory test for the infectious or contagious disease that is the subject of the public health emergency;

(ii) A positive diagnosis of the infectious or contagious disease that is the subject of the public health emergency by a licensed health care provider;

(iii) An order to isolate by a public health official related to the infectious or contagious disease that is the subject of the public health emergency; or

(iv) Died due to the infectious or contagious disease that is the subject of the public health emergency, in the determination of a local health department.

(d) "Worksite" means the building, store, facility, agricultural field, or other location where the qualifying individual worked. "Worksite" does not include any buildings, floors, or other locations of the employer that the qualifying individual did not enter. [2021 c 252 § 3.]

Short title—Effective date—2021 c 252: See notes following RCW 51.32.181.

RCW 49.17.070 Right of entry—Inspections and investigations—Subpoenas—Contempt. (1) Subject to subsections (2) through (5) of this section, the director, or his or her authorized representative, in carrying out his or her duties under this chapter, upon the presentation of appropriate credentials to the owner, manager, operator, or on-site person in charge of the worksite, is authorized:

(a) To enter without delay and at all reasonable times the factory, plant, establishment, construction site, or other area, workplace, or environment where work is performed by an employee of an employer; and

(b) To inspect, survey, and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such workplace and all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein, and to question privately any such employer, owner, operator, agent, or employee.

(2) In making inspections and making investigations under this chapter the director may require the attendance and testimony of witnesses and the production of evidence under oath. Witnesses shall be paid the same fees and mileage that are paid witnesses in the superior courts. In the case of contumacy, failure, or refusal of any person to obey such an order, any superior court within the jurisdiction of which such person is found, or resides, or transacts business, upon the application of the director, shall have jurisdiction to issue to such person an order requiring such person to appear to produce evidence if, as, and when so ordered, and to give testimony relating to the matter under investigation or in question, and any failure to obey such order of the court may be punished by said court as a contempt thereof.

(3) Except as provided in subsection (4) of this section or RCW 49.17.075, the director or his or her authorized representative shall obtain consent from the owner, manager, operator, or his or her on-site person in charge of the worksite when entering any worksite located on private property to carry out his or her duties under this chapter. Solely for the purpose of requesting the consent required by this section, the director or his or her authorized representative shall, in a safe manner, enter a worksite at an entry point designated by the employer or, in the event no entry point has been designated, at a reasonably recognizable entry point.

(4) This section does not prohibit the director or his or her authorized representative from taking action consistent with a recognized exception to the warrant requirements of the federal and state Constitutions.

(5) This section does not require advance notice of an inspection. [2006 c 31 § 2; 1973 c 80 § 7.]

Intent—2006 c 31: "The legislature intends that inspections performed under the Washington industrial safety and health act ensure safe and healthful working conditions for every person working in the state of Washington. Inspections must follow the mandates of Article II, section 35 of the state Constitution, and equal or exceed the requirements prescribed by the occupational safety and health act of 1970 (Public Law 91-596, 84 Stat. 1590). The legislature also intends that the inspections comply with the fourth and fourteenth amendments to the United States Constitution and Article I, section 7 of the state Constitution." [2006 c 31 § 1.]

RCW 49.17.075 Search warrants. The director may apply to a court of competent jurisdiction for a search warrant authorizing access to any factory, plant, establishment, construction site, or other area, workplace, or environment where work is performed by an employee of an employer. The court may upon such application issue a search warrant for the purpose requested. [2006 c 31 § 3.]

Intent—2006 c 31: See note following RCW 49.17.070.

RCW 49.17.080 Variance from safety and health standards—Application—Contents—Procedure. (1) Any employer may apply to the director for a temporary order granting a variance from any safety and health standard promulgated by rule or regulation under the authority of this chapter. Such temporary order shall be granted only if the employer files an application which meets the requirements of subsection (2) of this section and establishes that the employer is unable to comply with a safety or health standard because of the unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the safety and health standard or because necessary construction or alteration of facilities cannot be completed by the effective date of such safety and health standard, that he or she is taking all available steps to safeguard his or her employees against the hazards covered by the safety and health standard, and he or she has an effective program for coming into compliance with such safety and health standard as quickly as practicable. Any temporary order issued under the authority of this subsection shall prescribe the practices, means, methods, operations, and processes which the employer must adopt and use while the order is in effect and state in detail his or her program for coming into compliance with the safety and health standard. Such a temporary order may be granted only after notice to employees and an opportunity for a hearing upon request of the employer or any affected employee. The name of any affected employee requesting a hearing under the provisions of this subsection shall be confidential and shall not be disclosed without the consent of such employee. The director may issue one interim order to be effective until a determination is made or a decision rendered if a hearing is demanded. No temporary order may be in effect for longer than the period needed by the employer to achieve compliance with the standard, or one year, whichever is shorter, except that such an order may be renewed not more than twice, so long as the requirements of this subsection are met and if an application for renewal is filed at least ninety days prior to the expiration date

of the order. No renewal of a temporary order may remain in effect for longer than one hundred eighty days.

(2) An application for a temporary order under this section shall contain:

(a) A specification of the safety and health standard or portion thereof from which the employer seeks a variance;

(b) A representation by the employer, supported by representations from qualified persons having firsthand knowledge of the facts represented, that he or she is unable to comply with the safety and health standard or portion thereof and a detailed statement of the reasons therefor;

(c) A statement of the steps the employer has taken and will take, with specific dates, to protect employees against the hazard covered by the standard;

(d) A statement as to when the employer expects to be able to comply with the standard or portion thereof and what steps he or she has taken and will take, with dates specified, to come into compliance with the standard; and

(e) A certification that the employer, by the date of mailing or delivery of the application to the director, has informed his or her employees of the application by providing a copy thereof to his or her employees or their authorized representative by posting a copy of such application in a place or places reasonably accessible to all employees or by other appropriate means of notification and by mailing a copy to the authorized representative of such employees; the application shall set forth the manner in which the employees have been so informed. The application shall also advise employees and their employee representatives of their right to apply to the director to conduct a hearing upon the application for a variance. [2010 c 8 § 12008; 1973 c 80 § 8.]

RCW 49.17.090 Variance from safety and health standards—Notice—Hearing—Order—Modification or revocation. Any employer may apply to the director for an order for a variance from any rule or regulation establishing a safety and health standard promulgated under this chapter. Affected employees shall be given notice of each such application and in the manner prescribed by RCW 49.17.080 shall be informed of their right to request a hearing on any such application. The director shall issue such order granting a variance, after opportunity for an inspection, if he or she determines or decides after a hearing has been held, if request for hearing has been made, that the applicant for the variance has demonstrated by a preponderance of the evidence that the conditions, practices, means, methods, operations, or processes used or proposed to be used by such applicant employer will provide employment and places of employment to his or her employees which are as safe and healthful as those which would prevail if he or she complied with the safety and health standard or standards from which the variance is sought. The order so issued shall prescribe the conditions the employer must maintain, and the practices, means, methods, operations, and processes which he or she must adopt and utilize to the extent they differ from the standard in question. At any time after six months has elapsed from the date of the issuance of the order granting a variance upon application of an employer, employee, or the director on his or her own motion, after notice has been given in the manner prescribed for the issuance of

such order may modify or revoke the order granting the variance from any standard promulgated under the authority of this chapter. [2010 c 8 § 12009; 1973 c 80 § 9.]

RCW 49.17.100 Inspection—Employer and employee representatives. A representative of the employer and an employee representative authorized by the employees of such employer shall be given an opportunity to accompany the director, or his or her authorized representative, during the physical inspection of any workplace for the purpose of aiding such inspection. Where there is no authorized employee representative, the director or his or her authorized representative shall consult with a reasonable number of employees concerning matters of health and safety in the workplace. The director may adopt procedural rules and regulations to implement the provisions of this section: PROVIDED, That neither this section, nor any other provision of this chapter, shall be construed to interfere with, impede, or in any way diminish the right of employees to bargain collectively with their employers through representatives of their own choosing concerning wages or standards or conditions of employment which equal or exceed those established under the authority of this chapter. [2010 c 8 § 12010; 1986 c 192 § 1; 1973 c 80 § 10.]

RCW 49.17.110 Compliance by employee—Violations—Notice—Review. Each employee shall comply with the provisions of this chapter and all rules, regulations, and orders issued pursuant to the authority of this chapter which are applicable to his or her own actions and conduct in the course of his or her employment. Any employee or representative of employees who in good faith believes that a violation of a safety or health standard, promulgated by rule under the authority of this chapter exists that threatens physical harm to employees, or that an imminent danger to such employees exists, may request an inspection of the workplace by giving notice to the director or his or her authorized representative of such violation or danger. Any such notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the employee or representative of employees. A copy of the notice shall be provided the employer or his or her agent no later than at the time of inspection, except that, upon the request of the person giving such notice, his or her name and the names of individual employees referred to therein shall not appear in such copy or on any record published, released, or made available pursuant to any provision of this chapter. If upon receipt of such notification the director determines that there are reasonable grounds to believe that such violation or danger exists, he or she shall make a special inspection as soon as practicable, to determine if such violation or danger exists. If the director determines there are no reasonable grounds to believe that a violation or danger exists, he or she shall notify the employer and the employee or representative of the employees in writing of such determination.

Prior to or during any inspection of a workplace, any employee or representative of employees employed in such workplace may notify the director or any representative of the director responsible for conducting the inspection, in writing, of any violation of this chapter which he or she has reason to believe exists in such

workplace. The director shall, by rule, establish procedures for informal review of any refusal by a representative of the director to issue a citation with respect to any such alleged violation, and shall furnish the employee or representative of employees requesting such review a written statement of the reasons for the director's final disposition of the case. [2010 c 8 § 12011; 1973 c 80 § 11.]

RCW 49.17.120 Violations—Citations. (1) If upon inspection or investigation the director or his or her authorized representative believes that an employer has violated a requirement of RCW 49.17.060, or any safety or health standard promulgated by rule adopted by the director, or the conditions of any order granting a variance pursuant to this chapter, the director shall with reasonable promptness issue a citation to the employer. Each citation shall be in writing and shall describe with particularity the nature of the violation, including a reference to the provisions of the statute, standard, rule, regulation, or order alleged to have been violated. In addition, the citation shall fix a reasonable time for the abatement of the violation.

(2) The director may prescribe procedures for the issuance of a notice in lieu of a citation with respect to de minimis violations which have no direct or immediate relationship to safety or health.

(3) Each citation, or a copy or copies thereof, issued under the authority of this section and RCW 49.17.130 shall be prominently posted, at or near each place a violation referred to in the citation occurred or as may otherwise be prescribed in regulations issued by the director. The director shall provide by rule for procedures to be followed by an employee representative upon written application to receive copies of citations and notices issued to any employer having employees who are represented by such employee representative. Such rule may prescribe the form of such application, the time for renewal of applications, and the eligibility of the applicant to receive copies of citations and notices.

(4) No citation may be issued under this section or RCW 49.17.130 after the expiration of six months following a compliance inspection, investigation, or survey revealing any such violation.

(5)(a) No citation may be issued under this section if there is unpreventable employee misconduct that led to the violation, but the employer must show the existence of:

(i) A thorough safety program, including work rules, training, and equipment designed to prevent the violation;

(ii) Adequate communication of these rules to employees;

(iii) Steps to discover and correct violations of its safety rules; and

(iv) Effective enforcement of its safety program as written in practice and not just in theory.

(b) This subsection (5) does not eliminate or modify any other defenses that may exist to a citation. [1999 c 93 § 1; 1973 c 80 § 12.]

RCW 49.17.130 Violations—Dangerous conditions—Citations and orders of immediate restraint—Restraints—Restraining orders. (1) If upon inspection or investigation, the director, or his or her authorized representative, believes that an employer has violated a

requirement of RCW 49.17.060, or any safety or health standard promulgated by rules of the department, or any conditions of an order granting a variance, which violation is such that a danger exists from which there is a substantial probability that death or serious physical harm could result to any employee, the director or his or her authorized representative shall issue a citation and may issue an order immediately restraining any such condition, practice, method, process, or means in the workplace. Any order issued under this section may require such steps to be taken as may be necessary to avoid, correct, or remove such danger and prohibit the employment or presence of any individual in locations or under conditions where such danger exists, except individuals whose presence is necessary to avoid, correct, or remove such danger or to maintain the capacity of a continuous process operation in order that the resumption of normal operations may be had without a complete cessation of operations, or where a cessation of operations is necessary, to permit such to be accomplished in a safe and orderly manner. In addition, if any machine or equipment, or any part thereof, is in violation of a requirement of RCW 49.17.060 or any safety or health standard promulgated by rules of the department, and the operation of such machine or equipment gives rise to a substantial probability that death or serious physical harm could result to any employee, and an order of immediate restraint of the use of such machine or equipment has been issued under this subsection, the use of such machine or equipment is prohibited, and a notice to that effect shall be attached thereto by the director or his or her authorized representative.

(2) Whenever the director, or his or her authorized representative, concludes that a condition of employment described in subsection (1) of this section exists in any workplace, he or she shall promptly inform the affected employees and employers of the danger.

(3) An employer may contest an order restraining any condition of employment or practice issued under subsection (1) of this section within 10 working days of the effective date of the order by making an application to the superior court of the county wherein such condition of employment or practice exists. Upon the filing of any such petition, the superior courts of the state of Washington shall have jurisdiction to grant appropriate relief.

(4) At any time that a citation or a citation and order restraining any condition of employment or practice described in subsection (1) of this section is issued by the director, or his or her authorized representative, he or she may in addition request the attorney general to make an application to the superior court of the county wherein such condition of employment or practice exists for a temporary restraining order or such other relief as appears to be appropriate under the circumstances. [2021 c 253 § 1; 2010 c 8 § 12012; 1973 c 80 § 13.]

Rule-making authority—Worker safety and health—2021 c 253: "The department of labor and industries may adopt rules as necessary to implement this act." [2021 c 253 § 6.]

RCW 49.17.140 Appeal to board—Notification of assessment of penalty—Final order—Procedure—Redetermination—Hearing—Rules. (1) If after an inspection or investigation the director or the director's

authorized representative issues a citation under the authority of RCW 49.17.120 or 49.17.130, the department, within a reasonable time after the termination of such inspection or investigation, shall notify the employer using a method by which the mailing can be tracked or the delivery can be confirmed of the penalty to be assessed under the authority of RCW 49.17.180 and shall state that the employer has fifteen working days within which to notify the director that the employer wishes to appeal the citation or assessment of penalty. If, within fifteen working days from the communication of the notice issued by the director the employer fails to notify the director that the employer intends to appeal the citation or assessment penalty, and no notice is filed by any employee or representative of employees under subsection (4) of this section within such time, the citation and the assessment shall be deemed a final order of the department and not subject to review by any court or agency.

(2) If the director has reason to believe that an employer has failed to correct a violation for which the employer was previously cited and which has become a final order, the director shall notify the employer using a method by which the mailing can be tracked or the delivery can be confirmed of such failure to correct the violation and of the penalty to be assessed under RCW 49.17.180 by reason of such failure, and shall state that the employer has fifteen working days from the communication of such notification and assessment of penalty to notify the director that the employer wishes to appeal the director's notification of the assessment of penalty. If, within fifteen working days from the receipt of notification issued by the director the employer fails to notify the director that the employer intends to appeal the notification of assessment of penalty, the notification and assessment of penalty shall be deemed a final order of the department and not subject to review by any court or agency.

(3) If the director has reason to believe that an employer violated an order immediately restraining a condition, practice, method, process, or means in the workplace issued under RCW 49.17.130 or this section or a notice prohibiting the use of a machine or equipment to which a notice prohibiting such use has been attached, the director shall notify the employer using a method by which the mailing can be tracked or the delivery can be confirmed of such violation of the order and of the penalty to be assessed under RCW 49.17.180 by reason of violation of the order and shall state that the employer has 15 working days from the communication of such notification and assessment of penalty to notify the director that the employer wishes to appeal the director's notification of the assessment of penalty. If, within 15 working days from the receipt of notification issued by the director[,] the employer fails to notify the director that the employer intends to appeal the notification of assessment of penalty, the notification and assessment of penalty shall be deemed a final order of the department and not subject to review by any court or agency.

(4) If any employer notifies the director that the employer intends to appeal the citation issued under either RCW 49.17.120 or 49.17.130 or notification of the assessment of a penalty issued under subsections (1) or (2) of this section, or if, within fifteen working days from the issuance of a citation under either RCW 49.17.120 or 49.17.130 any employee or representative of employees files a notice with the director alleging that the period of time fixed in the citation for the abatement of the violation is unreasonable, the director may reassume jurisdiction over the entire matter, or any

portion thereof upon which notice of intention to appeal has been filed with the director pursuant to this subsection. If the director reassumes jurisdiction of all or any portion of the matter upon which notice of appeal has been filed with the director, any redetermination shall be completed and corrective notices of assessment of penalty, citations, or revised periods of abatement completed within a period of thirty working days. The thirty-working-day redetermination period may be extended up to forty-five additional working days upon agreement of all parties to the appeal. The redetermination shall then become final subject to direct appeal to the board of industrial insurance appeals within fifteen working days of such redetermination with service of notice of appeal upon the director. In the event that the director does not reassume jurisdiction as provided in this subsection, the director shall promptly notify the state board of industrial insurance appeals of all notifications of intention to appeal any such citations, any such notices of assessment of penalty and any employee or representative of employees notice of intention to appeal the period of time fixed for abatement of a violation and in addition certify a full copy of the record in such appeal matters to the board. The director shall adopt rules of procedure for the reassumption of jurisdiction under this subsection affording employers, employees, and employee representatives notice of the reassumption of jurisdiction by the director, and an opportunity to object or support the reassumption of jurisdiction, either in writing or orally at an informal conference to be held prior to the expiration of the redetermination period. Except as otherwise provided under subsection (5) of this section, a notice of appeal filed under this section shall stay the effectiveness of any citation or notice of the assessment of a penalty pending review by the board of industrial insurance appeals, but such appeal shall not stay the effectiveness of any order of immediate restraint issued by the director under the authority of RCW 49.17.130. The board of industrial insurance appeals shall afford an opportunity for a hearing in the case of each such appellant and the department shall be represented in such hearing by the attorney general and the board shall in addition provide affected employees or authorized representatives of affected employees an opportunity to participate as parties to hearings under this subsection. The board shall thereafter make disposition of the issues in accordance with procedures relative to contested cases appealed to the state board of industrial insurance appeals.

Upon application by an employer showing that a good faith effort to comply with the abatement requirements of a citation has been made and that the abatement has not been completed because of factors beyond the employer's control, the director after affording an opportunity for a hearing shall issue an order affirming or modifying the abatement requirements in such citation.

(5) An appeal of any violation classified and cited as serious, willful, repeated serious violation, or failure to abate a serious violation does not stay abatement dates and requirements except as follows:

(a) An employer may request a stay of abatement for any serious, willful, repeated serious violation, or failure to abate a serious violation in a notice of appeal under subsection (4) of this section;

(b) When the director reassumes jurisdiction of an appeal under subsection (4) of this section, it will include the stay of abatement request. The issued redetermination decision will include a decision on the stay of abatement request. The department shall stay the

abatement for any serious, willful, repeated serious violation, or failure to abate a serious violation where the department cannot determine that the preliminary evidence shows a substantial probability of death or serious physical harm to workers. The decision on stay of abatement will be final unless the employer renews the request for a stay of abatement in any direct appeal of the redetermination to the board of industrial insurance appeals under subsection (4) of this section;

(c) The board of industrial insurance appeals shall adopt rules necessary for conducting an expedited review on any stay of abatement requests identified in the employer's notice of appeal, and shall issue a final decision within forty-five working days of the board's notice of filing of appeal. This rule making shall be initiated in 2011;

(d) Affected employees or their representatives must be afforded an opportunity to participate as parties in an expedited review for stay of abatement;

(e) The board shall grant a stay of an abatement for a serious, willful, repeated serious violation, or failure to abate a serious violation where there is good cause for a stay unless based on the preliminary evidence it is more likely than not that a stay would result in death or serious physical harm to a worker;

(f) As long as a motion to stay abatement is pending all abatement requirements will be stayed.

(6) When the board of industrial insurance appeals denies a stay of abatement and abatement is required while the appeal is adjudicated, the abatement process must be the same process as the process required for abatement upon a final order.

(7) The department shall develop rules necessary to implement subsections (5) and (6) of this section. In an application for a stay of abatement, the department will not grant a stay when it can determine that the preliminary evidence shows a substantial probability of death or serious physical harm to workers. The board will not grant a stay where based on the preliminary evidence it is more likely than not that a stay would result in death or serious physical harm to a worker. This rule making shall be initiated in 2011. [2021 c 253 § 2; 2017 c 13 § 1. Prior: 2011 c 301 § 13; 2011 c 91 § 1; 1994 c 61 § 1; 1986 c 20 § 1; 1973 c 80 § 14.]

Rule-making authority—Worker safety and health—2021 c 253: See note following RCW 49.17.130.

Effective date—2017 c 13: "This act takes effect January 1, 2018." [2017 c 13 § 2.]

RCW 49.17.150 Appeal to superior court—Review or enforcement of orders. (1) Any person aggrieved by an order of the board of industrial insurance appeals issued under *RCW 49.17.140(3) may obtain a review of such order in the superior court for the county in which the violation is alleged to have occurred, by filing in such court within thirty days following the communication of the board's order or denial of any petition or petitions for review, a written notice of appeal praying that the order be modified or set aside. Such appeal shall be perfected by filing with the clerk of the court and by serving a copy thereof by mail, or personally, on the director and on

the board. The board shall thereupon transmit a copy of the notice of appeal to all parties who participated in proceedings before the board, and shall file in the court the complete record of the proceedings. Upon such filing the court shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings and the record of proceedings a decree affirming, modifying, or setting aside in all or in part, the decision of the board of industrial insurance appeals and enforcing the same to the extent that such order is affirmed or modified. The commencement of appellate proceedings under this subsection shall not, unless ordered by the court, operate as a stay of the order of the board of industrial insurance appeals. No objection that has not been urged before the board shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the board or hearing examiner where the board has denied a petition or petitions for review with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the board, the court may order such additional evidence to be taken before the board and to be made a part of the record. The board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact are supported by substantial evidence on the record considered as a whole, shall be conclusive, and its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with it, the jurisdiction of the court shall be exclusive and the judgment and decree shall be final, except as the same shall be subject to review by the supreme court. Appeals filed under this subsection shall be heard expeditiously.

(2) The director may also obtain review or enforcement of any final order of the board by filing a petition for such relief in the superior court for the county in which the alleged violation occurred. The provisions of subsection (1) of this section shall govern such proceeding to the extent applicable. If a notice of appeal, as provided in subsection (1) of this section, is not filed within thirty days after service of the board's order, the board's findings of fact, decision, and order or the examiner's findings of fact, decision, and order when a petition or petitions for review have been denied shall be conclusive in connection with any petition for enforcement which is filed by the director after the expiration of such thirty day period. In any such case, as well as in the case of an unappealed citation or a notification of the assessment of a penalty by the director, which has become a final order under subsection (1) or (2) of RCW 49.17.140 upon application of the director, the clerk of the court, unless otherwise ordered by the court, shall forthwith enter a decree enforcing the citation and notice of assessment of penalty and shall transmit a copy of such decree to the director and the employer named in the director's petition. In any contempt proceeding brought to enforce a decree of the superior court entered pursuant to this subsection or subsection (1) of this section the superior court may assess the penalties provided in RCW 49.17.180, in addition to

invoking any other available remedies. [1982 c 109 § 1; 1973 c 80 § 15.]

***Reviser's note:** RCW 49.17.140 was amended by 2021 c 253 § 2, changing subsection (3) to subsection (4).

RCW 49.17.160 Discrimination against employee filing complaint, instituting proceedings, or testifying prohibited—Procedure—Remedy. (1) No person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this chapter, or has testified or is about to testify in any such proceeding or because of the exercise by such employee on behalf of himself or herself or others of any right afforded by this chapter. Prohibited discrimination includes an action that would deter a reasonable employee from exercising their rights under this chapter.

(2) Any employee who believes that he or she has been discharged or otherwise discriminated against by any person in violation of this section may, within 90 days after such violation occurs, file a complaint with the director alleging such discrimination. The department may, at its discretion, extend the time period on recognized equitable principles or due to extenuating circumstances.

(3) Within 90 days of the receipt of the complaint filed under this section, the director shall notify the complainant and the employer of his or her determination under subsections (4) and (5) of this section unless the matter is otherwise resolved. The department may extend the period by providing advance written notice to the complainant and the employer setting forth good cause for an extension of the period, and specifying the duration of the extension.

(4)(a) If the director determines that the provisions of this section have been violated, the director will issue a citation and notice of assessment describing the violation to the employer, ordering all appropriate relief, and may assess a civil penalty.

(b) Appropriate relief may include, but is not limited to, the following:

(i) Restoring the complainant to the position of employment held by the complainant when the discrimination occurred, or restoring the complainant to an equivalent position with equivalent employment hours, work schedule, benefits, pay, and other terms and conditions of employment; and

(ii) Ordering the employer to make payable to the complainant earnings that the complainant did not receive due to the employer's discriminatory action, including interest of one percent per month on all earnings owed. The earnings and interest owed will be calculated from the first date earnings were owed to the employee.

(c) A civil penalty not to exceed the maximum penalty for a serious violation under this chapter may be assessed for the first occurrence. A civil penalty not to exceed the maximum penalty for a repeat violation under this chapter may be assessed for each repeat occurrence. Civil penalties are not contingent upon relief being granted to the worker.

(5) If the director finds there is insufficient evidence to determine that the provisions of this section have been violated, the director will issue a letter of closure and the employee may institute the action on his or her own behalf within 30 days of such determination. In any such action the superior court shall have

jurisdiction, for cause shown, to restrain violations of subsection (1) of this section and order all appropriate relief including rehiring or reinstatement of the complainant to his or her former position with back pay.

(6) The department must notify the employer and the complainant of a citation and notice of assessment issued under subsection (4) of this section using a method by which the mailing can be tracked or the delivery can be confirmed. Citations and notices of assessments shall state that the employer has 30 days within which to notify the department that the employer wishes to appeal the citation or notice of assessment, and that the complainant has 15 working days within which to notify the department that the complainant wishes to appeal the order of appropriate relief in the notice of assessment. If, within 30 days from the communication of the notice issued by the director, the employer fails to notify the department that the employer intends to appeal the citation or notice of assessment, and no notice of appeal of the order of appropriate relief is filed by the complainant within such time, the citation and notice of assessment shall be deemed a final order of the department and not subject to review by any court or agency.

(7) If an employer or complainant notifies the department of an appeal, the department may reassume jurisdiction according to the timeline, process for hearing, and issuance of corrective notices of redetermination under RCW 49.17.140(4). The redetermination shall become final subject to direct appeal by an employer or complainant to the board of industrial insurance appeals within 15 working days of such redetermination with service of notice of appeal upon the director. In the event that the director does not reassume jurisdiction as provided in this subsection, the director shall promptly notify the state board of industrial insurance appeals of all notifications of intention to appeal the citation and notice of assessment and certify a full copy of the record in such appeal matters to the board. The board of industrial insurance appeals shall afford an opportunity for a hearing in the case of each such appellant and the department shall be represented in such hearing by the attorney general and the board shall in addition provide the complainant an opportunity to participate as a party to hearings of employer appeals under this subsection and provide the employer an opportunity to participate as a party to hearings of complainant appeals under this subsection. The board shall thereafter make disposition of the issues in accordance with procedures relative to contested cases appealed to the state board of industrial insurance appeals. A notice of appeal filed under this section shall stay the effectiveness of any citation or notice of assessment except orders of reinstatement pending review by the board of industrial insurance appeals.

(8) Civil penalties imposed under this section shall be paid to the director for deposit in the supplemental pension fund established in RCW 51.44.033.

(9) Collections of amounts owed for unpaid citations and notices of assessment will be handled pursuant to the procedures outlined in RCW 51.48.120 through 51.48.150.

(10) Nothing in this section diminishes the rights, privileges, or remedies of any employee under any federal or state law or under any collective bargaining agreement. The department and complainant may pursue remedies in superior court that are outside the board of

industrial insurance appeals' jurisdiction. [2021 c 253 § 3; 2010 c 8 § 12013; 1973 c 80 § 16.]

Effective date—2021 c 253 § 3: "Section 3 of this act takes effect July 1, 2022." [2021 c 253 § 7.]

Rule-making authority—Worker safety and health—2021 c 253: See note following RCW 49.17.130.

RCW 49.17.170 Injunctions—Temporary restraining orders. (1) In addition to and after having invoked the powers of restraint vested in the director as provided in RCW 49.17.130 the superior courts of the state of Washington shall have jurisdiction upon petition of the director, through the attorney general, to enjoin any condition or practice in any workplace from which there is a substantial probability that death or serious physical harm could result to any employee immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by this chapter. Any order issued under this section may require such steps to be taken as may be necessary to avoid, correct, or remove such danger and prohibit the employment or presence of any individual in locations or under conditions where such danger exists, except individuals whose presence is necessary to avoid, correct, or remove such danger or to maintain the capacity of a continuous process operation to resume normal operation without a complete cessation of operations, or where a cessation of operations is necessary, to permit such to be accomplished in a safe and orderly manner.

(2) Upon the filing of any such petition the superior courts of the state of Washington shall have jurisdiction to grant such injunctive relief or temporary restraining order pending the outcome of enforcement proceedings pursuant to this chapter, except that no temporary restraining order issued without notice shall be effective for a period longer than five working days.

(3) Whenever and as soon as any authorized representative of the director concludes that a condition or practice described in subsection (1) exists in any workplace, he or she shall inform the affected employees and employers of the danger and may recommend to the director that relief be sought under this section.

(4) If the director arbitrarily or capriciously fails to invoke his or her restraining authority under RCW 49.17.130 or fails to seek relief under this section, any employee who may be injured by reason of such failure, or the representative of such employees, may bring an action against the director in the superior court for the county in which the danger is alleged to exist for a writ of mandamus to compel the director to seek such an order and for such further relief as may be appropriate or seek the director to exercise his or her restraining authority under RCW 49.17.130. [2010 c 8 § 12014; 1973 c 80 § 17.]

RCW 49.17.180 Violations—Civil penalties. (1) Except as provided in RCW 43.05.090, any employer who willfully or repeatedly violates the requirements of RCW 49.17.060, of any safety or health standard adopted under the authority of this chapter, of any existing rule or regulation governing the conditions of employment adopted by the department, or of any order issued granting a variance under RCW

49.17.080 or 49.17.090 may be assessed a civil penalty not to exceed seventy thousand dollars for each violation. However, if the state is required to have a higher maximum penalty to qualify a state plan under the occupational safety and health administration, then the maximum civil penalty is the higher maximum penalty required under the occupational safety and health administration. A minimum penalty of five thousand dollars shall be assessed for a willful violation; unless set to a specific higher amount by the federal occupational safety and health administration and this state is required to equal the higher penalty amount to qualify a state plan.

(2) Any employer who has received a citation for a serious violation of the requirements of RCW 49.17.060, of any safety or health standard adopted under the authority of this chapter, of any existing rule or regulation governing the conditions of employment adopted by the department, or of any order issued granting a variance under RCW 49.17.080 or 49.17.090 as determined in accordance with subsection (7) of this section, shall be assessed a civil penalty not to exceed seven thousand dollars for each such violation. However, if the state is required to have a higher maximum penalty to qualify a state plan under the occupational safety and health administration, then the maximum civil penalty is the higher maximum penalty required under the occupational safety and health administration.

(3) Any employer who has received a citation for a violation of the requirements of RCW 49.17.060, of any safety or health standard adopted under this chapter, of any existing rule or regulation governing the conditions of employment adopted by the department, or of any order issued granting a variance under RCW 49.17.080 or 49.17.090, where such violation is specifically determined not to be of a serious nature as provided in subsection (7) of this section, may be assessed a civil penalty not to exceed seven thousand dollars for each such violation, unless such violation is determined to be de minimis or, if the state is required to have a higher maximum penalty to qualify a state plan under the occupational safety and health administration, then the maximum civil penalty is the higher maximum penalty required under the occupational safety and health administration.

(4) Any employer who fails to correct a violation for which a citation has been issued under RCW 49.17.120 or 49.17.130 within the period permitted for its correction, which period shall not begin to run until the date of the final order of the board of industrial insurance appeals in the case of any review proceedings under this chapter initiated by the employer in good faith and not solely for delay or avoidance of penalties, may be assessed a civil penalty of not more than seven thousand dollars for each day during which such failure or violation continues. However, if the state is required to have a higher maximum penalty to qualify a state plan under the occupational safety and health administration, then the maximum civil penalty is the higher maximum penalty required under the occupational safety and health administration.

(5) Any employer who has been issued an order immediately restraining a condition, practice, method, process, or means in the workplace, pursuant to RCW 49.17.130 or 49.17.170, and who nevertheless continues such condition, practice, method, process, or means, or who continues to use a machine or equipment or part thereof to which a notice prohibiting such use has been attached, may be assessed a civil penalty of not more than the maximum penalty for a serious violation under this section for each day the employer

continues such condition, practice, method, process, or means, or continues to use a machine or equipment or part thereof to which a notice prohibiting such use has been attached.

(6) Any employer who violates any of the posting requirements of this chapter, or any of the posting requirements of rules adopted by the department pursuant to this chapter related to employee or employee representative's rights to notice, including but not limited to those employee rights to notice set forth in RCW 49.17.080, 49.17.090, 49.17.120, 49.17.130, 49.17.220(1), and 49.17.240(2), shall be assessed a penalty not to exceed seven thousand dollars for each such violation. However, if the state is required to have a higher maximum penalty to qualify a state plan under the occupational safety and health administration, then the maximum civil penalty is the higher maximum penalty required under the occupational safety and health administration. Any employer who violates any of the posting requirements for the posting of informational, educational, or training materials under the authority of RCW 49.17.050(7), may be assessed a penalty not to exceed seven thousand dollars for each such violation. However, if the state is required to have a higher maximum penalty to qualify a state plan under the occupational safety and health administration, then the maximum civil penalty is the higher maximum penalty required under the occupational safety and health administration.

(7) For the purposes of this section, a serious violation shall be deemed to exist in a workplace if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use in such workplace, unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation.

(8) The director, or his or her authorized representatives, shall have authority to assess all civil penalties provided in this section, giving due consideration to the appropriateness of the penalty with respect to the number of affected employees of the employer being charged, the gravity of the violation, the size of the employer's business, the good faith of the employer, and the history of previous violations.

(9) Civil penalties imposed under this chapter shall be paid to the director for deposit in the supplemental pension fund established by RCW 51.44.033. Civil penalties may be recovered in a civil action in the name of the department brought in the superior court of the county where the violation is alleged to have occurred, or the department may utilize the procedures for collection of civil penalties as set forth in RCW 51.48.120 through 51.48.150. [2021 c 253 § 4; 2018 c 128 § 1; 2010 c 8 § 12015; 1995 c 403 § 629; 1991 c 108 § 1; 1986 c 20 § 2; 1973 c 80 § 18.]

Rule-making authority—Worker safety and health—2021 c 253: See note following RCW 49.17.130.

Effective date—2018 c 128: "This act takes effect January 1, 2019." [2018 c 128 § 2.]

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

RCW 49.17.190 Violations—Criminal penalties. (1) Any person who gives advance notice of any inspection to be conducted under the authority of this chapter, without the consent of the director or his or her authorized representative, shall, upon conviction be guilty of a gross misdemeanor and be punished by a fine of not more than one thousand dollars or by imprisonment for not more than six months, or by both.

(2) Whoever knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this chapter shall, upon conviction be guilty of a gross misdemeanor and be punished by a fine of not more than ten thousand dollars, or by imprisonment for not more than six months or by both.

(3) Any employer who wilfully and knowingly violates the requirements of RCW 49.17.060, any safety or health standard promulgated under this chapter, any existing rule or regulation governing the safety or health conditions of employment and adopted by the director, or any order issued granting a variance under RCW 49.17.080 or 49.17.090 and that violation caused death to any employee shall, upon conviction be guilty of a gross misdemeanor and be punished by a fine of not more than one hundred thousand dollars or by imprisonment for not more than six months or by both; except, that if the conviction is for a violation committed after a first conviction of such person, punishment shall be a fine of not more than two hundred thousand dollars or by imprisonment for not more than three hundred sixty-four days, or by both.

(4) Any employer who has been issued an order immediately restraining a condition, practice, method, process, or means in the workplace, pursuant to RCW 49.17.130 or 49.17.170, and who nevertheless continues such condition, practice, method, process, or means, or who continues to use a machine or equipment or part thereof to which a notice prohibiting such use has been attached, shall be guilty of a gross misdemeanor, and upon conviction shall be punished by a fine of not more than ten thousand dollars or by imprisonment for not more than six months, or by both.

(5) Any employer who shall knowingly remove, displace, damage, or destroy, or cause to be removed, displaced, damaged, or destroyed any safety device or safeguard required to be present and maintained by any safety or health standard, rule, or order promulgated pursuant to this chapter, or pursuant to the authority vested in the director under RCW 43.22.050 shall, upon conviction, be guilty of a misdemeanor and be punished by a fine of not more than one thousand dollars or by imprisonment for not more than ninety days, or by both.

(6) Whenever the director has reasonable cause to believe that any provision of this section defining a crime has been violated by an employer, the director shall cause a record of such alleged violation to be prepared, a copy of which shall be referred to the prosecuting attorney of the county wherein such alleged violation occurred, and the prosecuting attorney of such county shall in writing advise the director of the disposition he or she shall make of the alleged violation. [2011 c 96 § 40; 2010 c 8 § 12016; 1986 c 20 § 3; 1973 c 80 § 19.]

Findings—Intent—2011 c 96: See note following RCW 9A.20.021.

RCW 49.17.200 Confidentiality—Trade secrets. All information reported to or otherwise obtained by the director, or his or her authorized representative, in connection with any inspection or proceeding under the authority of this chapter, which contains or which might reveal a trade secret shall be considered confidential, except that such information may be disclosed to other officers or employees concerned with carrying out this chapter, or when relevant in any proceeding under this chapter. In any such proceeding the director, the board of industrial insurance appeals, or the court shall issue such orders as may be appropriate to protect the confidentiality of trade secrets. [2010 c 8 § 12017; 1973 c 80 § 20.]

Uniform trade secrets act: Chapter 19.108 RCW.

RCW 49.17.210 Research, experiments, and demonstrations for safety purposes—Confidentiality of information—Variances. The director is authorized to conduct, either directly or by grant or contract, research, experiments, and demonstrations as may be of aid and assistance in the furtherance of the objects and purposes of this chapter. Employer identity, employee identity, and personal identifiers of voluntary participants in research, experiments, and demonstrations shall be deemed confidential and shall not be open to public inspection. Information obtained from such voluntary activities shall not be deemed to be medical information for the purpose of RCW 51.36.060 and shall be deemed confidential and shall not be open to public inspection. The director, in his or her discretion, is authorized to grant a variance from any rule or regulation or portion thereof, whenever he or she determines that such variance is necessary to permit an employer to participate in an experiment approved by the director, and the experiment is designed to demonstrate or validate new and improved techniques to safeguard the health or safety of employees. Any such variance shall require that all due regard be given to the health and safety of all employees participating in any experiment. [1991 c 89 § 1; 1973 c 80 § 21.]

RCW 49.17.220 Records—Reports—Notice to employee exposed to harmful materials. (1) Each employer shall make, keep, and preserve, and make available to the director such records regarding his or her activities relating to this chapter as the director may prescribe by regulation as necessary or appropriate for the enforcement of this chapter or for developing information regarding the causes and prevention of occupational accidents and illnesses. In order to carry out the provisions of this section such regulations may include provisions requiring employers to conduct periodic inspections. The director shall also issue regulations requiring that employers, through posting of notices or other appropriate means, keep their employees informed of their protections and obligations under this chapter, including the provisions of applicable safety and health standards.

(2) The director shall prescribe regulations requiring employers to maintain accurate records, and to make periodic reports of work-related deaths, and of injuries and illnesses other than minor injuries requiring only first aid treatment and which do not involve

medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job.

(3) The director shall issue regulations requiring employers to maintain accurate records of employee exposures to potentially toxic materials or harmful physical agents which are required to be monitored or measured. Such regulations shall provide employees or their representatives with an opportunity to observe such monitoring or measuring, and to have access to the records thereof. Such regulations shall also make appropriate provisions for each employee or former employee to have access to such records as will indicate his or her own exposure to toxic materials or harmful physical agents. Each employer shall promptly notify any employee who has been or is being exposed to toxic materials or harmful physical agents in concentrations or at levels which exceed those prescribed by any applicable safety and health standard promulgated under this chapter and shall inform any employee who is being thus exposed of the corrective action being taken. [2010 c 8 § 12018; 1973 c 80 § 22.]

RCW 49.17.230 Compliance with federal act—Agreements and acceptance of grants authorized. The director is authorized to adopt by rule any provision reasonably necessary to enable this state to qualify a state plan under section 18 of the Occupational Safety and Health Act of 1970 (Public Law 91-596, 84 Stat. 1590) to enable this state to assume the responsibility for the development and enforcement of occupational safety and health standards in all workplaces within this state subject to the legislative jurisdiction of the state of Washington. The director is authorized to enter into agreement with the United States and to accept on behalf of the state of Washington grants of funds to implement the development and enforcement of this chapter and the Occupational Safety and Health Act of 1970. [1973 c 80 § 23.]

RCW 49.17.240 Safety and health standards. (1) The director in the promulgation of rules under the authority of this chapter shall establish safety and health standards for conditions of employment of general and/or specific applicability for all industries, businesses, occupations, crafts, trades, and employments subject to the provisions of this chapter, or those that are a national or accepted federal standard. In adopting safety and health standards for conditions of employment, the director shall solicit and give due regard to all recommendations by any employer, employee, or labor representative of employees.

(2) Any safety and health standard adopted by rule of the director shall, where appropriate, prescribe the use of labels or other forms of warning to insure that employees are apprised of all hazards to which they may be exposed, relevant symptoms, and appropriate emergency treatment, and proper conditions and precautions of safe use or exposure. Where appropriate, such rules shall so prescribe suitable protective equipment and control or technological procedures to be used in connection with such hazards and shall provide for monitoring or measuring employee exposure at such locations and intervals, and in such manner as may be reasonably necessary for the protection of employees. In addition, where appropriate, any such rule shall prescribe the type and frequency of

medical examinations or other tests which shall be made available, by the employer or at his or her cost, to employees exposed to such hazards in order to most effectively determine whether the health of such employees is adversely affected by such exposure. In the event that such medical examinations are in the nature of research, as determined by the director, such examinations may be furnished at the expense of the department. The results of such examinations or tests shall be furnished only to the director, other appropriate agencies of government, and at the request of the employee to his or her physician.

(3) Whenever the director adopts by rule any safety and health standard he or she may at the same time provide by rule the effective date of such standard which shall not be less than thirty days, excepting emergency rules, but may be made effective at such time in excess of thirty days from the date of adoption as specified in any rule adopting a safety and health standard. Any rule not made effective thirty days after adoption, having a delayed effectiveness in excess of thirty days, may only be made upon a finding made by the director that such delayed effectiveness of the rule is reasonably necessary to afford the affected employers a reasonable opportunity to make changes in methods, means, or practices to meet the requirements of the adopted rule. Temporary orders granting a variance may be utilized by the director in lieu of the delayed effectiveness in the adoption of any rule. [2010 c 8 § 12019; 1973 c 80 § 24.]

RCW 49.17.243 Safety and health investment projects—Grants or contracts—Rules. (1) The director is authorized to provide funding from the medical aid fund established under RCW 51.44.020, by grant or contract, for safety and health investment projects for workplaces insured for workers' compensation through the department's state fund. This shall include projects to: Prevent workplace injuries, illnesses, and fatalities; create early return-to-work programs; and reduce long-term disability through the cooperation of employers and employees or their representatives.

(2) Awards may be granted to organizations such as, but not limited to, trade associations, business associations, employers, employees, labor unions, employee organizations, joint labor and management groups, and educational institutions in collaboration with state fund employer and employee representatives.

(3) Awards may not be used for lobbying or political activities; supporting, opposing, or developing legislative or regulatory initiatives; any activity not designed to reduce workplace injuries, illnesses, or fatalities; or reimbursing employers for the normal costs of complying with safety and health rules.

(4) Funds for awards shall be distributed as follows: At least twenty-five percent for projects designed to develop and implement innovative and effective return-to-work programs for injured workers; at least twenty-five percent for projects that specifically address the needs of small businesses; and at least fifty percent for projects that foster workplace injury and illness prevention by addressing priorities identified by the department in cooperation with the Washington industrial safety and health act advisory committee and the workers' compensation advisory committee.

(5) The department shall adopt rules as necessary to implement this section. [2011 1st sp.s. c 37 § 501.]

Finding—Effective date—2011 1st sp.s. c 37: See notes following RCW 51.32.090.

RCW 49.17.250 Voluntary compliance program—Consultation and advisory services. (1) In carrying out the responsibilities for the development of a voluntary compliance program under the authority of RCW 49.17.050(8) and the rendering of advisory and consultative services to employers, the director may grant an employer's application for advice and consultation, and for the purpose of affording such consultation and advice visit the employer's workplace. Such consultation and advice shall be limited to the matters specified in the request affecting the interpretation and applicability of safety and health standards to the conditions, structures, machines, equipment, apparatus, devices, materials, methods, means, and practices in the employer's workplace. The director in granting any requests for consultative or advisory service may provide for an alternative means of affording consultation and advice other than on-site consultation.

(2) The director, or an authorized representative, will make recommendations regarding the elimination of any hazards disclosed within the scope of the on-site consultation. No visit to an employer's workplace shall be regarded as an inspection or investigation under the authority of this chapter, and no notices or citations shall be issued, nor, shall any civil penalties be assessed upon such visit, nor shall any authorized representative of the director designated to render advice and consult with employers under the voluntary compliance program have any enforcement authority: PROVIDED, That in the event an on-site visit discloses a serious violation of a health and safety standard as defined in *RCW 49.17.180(6), and the hazard of such violation is either not abated by the cooperative action of the employer, or, is not subject to being satisfactorily abated by the cooperative action of the employer, the director shall either invoke the administrative restraining authority provided in RCW 49.17.130 or seek the issuance of injunctive process under the authority of RCW 49.17.170 or invoke both such remedies.

(3) Nothing in this section shall be construed as providing immunity to any employer who has made application for consultative services during the pendency of the granting of such application from inspections or investigations conducted under RCW 49.17.070 or any inspection conducted as a result of a complaint, nor immunity from inspections under RCW 49.17.070 or inspections resulting from a complaint subsequent to the conclusion of the consultative period. This section shall not be construed as requiring an inspection under RCW 49.17.070 of any workplace which has been visited for consultative purposes. However, in the event of a subsequent inspection, the director, or an authorized representative, may in his or her discretion take into consideration any information obtained during the consultation visit of that workplace in determining the nature of an alleged violation and the amount of penalties to be assessed, if any. Such rules and regulations to be promulgated pursuant to this section shall provide that in all instances of serious violations as defined in *RCW 49.17.180(6) which are disclosed in any consultative period, shall be corrected within a specified period of time at the expiration of which an inspection will be conducted under the authority of RCW 49.17.070. All employers requesting consultative services shall be

advised of the provisions of this section and the rules adopted by the director relating to the voluntary compliance program. Information obtained by the department as a result of employer-requested consultation and training services shall be deemed confidential and shall not be open to public inspection. Within thirty days of receipt, the employer shall make voluntary services reports available to employees or their collective bargaining representatives for review. Employers may satisfy the availability requirement by requesting a copy of the reports from the department. The director may provide by rule for the frequency, manner, and method of the rendering of consultative services to employers, and for the scheduling and priorities in granting applications consistent with the availability of personnel, and in such a manner as not to jeopardize the enforcement requirements of this chapter. [1991 c 89 § 2; 1973 c 80 § 25.]

***Reviser's note:** RCW 49.17.180 was amended by 2021 c 253 § 4, changing subsection (6) to subsection (7).

RCW 49.17.260 Statistics—Investigations—Reports. In furtherance of the objects and purposes of this chapter, the director shall develop and maintain an effective program of collection, compilation, and analysis of industrial safety and health statistics. The director, or his or her authorized representative, shall investigate and analyze industrial catastrophes, serious injuries, and fatalities occurring in any workplace subject to this chapter, in an effort to ascertain whether such injury or fatality occurred as the result of a violation of this chapter, or any safety and health standard, rule, or order promulgated pursuant to this chapter, or if not, whether a safety and health standard or rule should be promulgated for application to such circumstances. The director shall adopt rules relating to the conducting and reporting of such investigations. Such investigative report shall be deemed confidential and only available upon order of the superior court after notice to the director and an opportunity for hearing: PROVIDED, That such investigative reports shall be made available without the necessity of obtaining a court order, to employees of governmental agencies in the performance of their official duties, to the injured worker or his or her legal representative or his or her labor organization representative, or to the legal representative or labor organization representative of a deceased worker who was the subject of an investigation, or to the employer of the injured or deceased worker or any other employer or person whose actions or business operation is the subject of the report of investigation, or any attorney representing a party in any pending legal action in which an investigative report constitutes relevant and material evidence in such legal action. [2010 c 8 § 12020; 1973 c 80 § 26.]

RCW 49.17.270 Administration of chapter. The department shall be the sole and paramount administrative agency responsible for the administration of the provisions of this chapter, and any other agency of the state or any municipal corporation or political subdivision of the state having administrative authority over the inspection, survey, investigation, or any regulatory or enforcement authority of safety and health standards related to the health and safety of employees in

any workplace subject to this chapter, shall be required, notwithstanding any statute to the contrary, to exercise such authority as provided in this chapter and subject to interagency agreement or agreements with the department made under the authority of the interlocal cooperation act (chapter 39.34 RCW) relative to the procedures to be followed in the enforcement of this chapter: PROVIDED, That in relation to employers using or possessing sources of ionizing radiation the department of labor and industries and the department of social and health services shall agree upon mutual policies, rules, and regulations compatible with policies, rules, and regulations adopted pursuant to chapter 70A.388 RCW insofar as such policies, rules, and regulations are not inconsistent with the provisions of this chapter. [2021 c 65 § 56; 1973 c 80 § 27.]

Explanatory statement—2021 c 65: See note following RCW 53.54.030.

RCW 49.17.280 Agricultural workers and handlers of agricultural pesticides—Coordination of regulation and enforcement with department of agriculture. (1) As used in this section, "federal worker protection standard" or "federal standard" means the worker protection standard for agricultural workers and handlers of agricultural pesticides adopted by the United States environmental protection agency in 40 C.F.R., part 170 as it exists on June 6, 1996.

(2)(a) No rule adopted under this chapter may impose requirements that make compliance with the federal worker protection standard impossible.

(b) The department shall adopt by rule safety and health standards that are at least as effective as the federal standard. Standards adopted by the department under this section shall be adopted in coordination with the department of agriculture.

(3) If a violation of the federal worker protection standard, or of state rules regulating activities governed by the federal standard, is investigated by the department and by the department of agriculture, the agencies shall conduct a joint investigation if feasible, and shall share relevant information. However, an investigation conducted by the department under Title 51 RCW solely with regard to industrial insurance shall not be considered to be an investigation by the department for this purpose. The agencies shall not issue duplicate citations to an individual or business for the same violation of the federal standard or state rules regulating activities governed by the federal standard. By December 1, 1996, the department and the department of agriculture shall jointly establish a formal agreement that: Identifies the roles of each of the two agencies in conducting investigations of activities governed by the federal standard; and provides for protection of workers and enforcement of standards that is at least as effective as provided to all workers under this chapter. The department's role under the agreement shall not extend beyond protection of safety and health in the workplace as provided under this chapter. [1996 c 260 § 2.]

Finding—Intent—1996 c 260: "The legislature finds that the state's highly productive and efficient agriculture sector is composed predominately of family owned and managed farms and an industrious and efficient workforce. It is the intent of the legislature that the

department of agriculture and the department of labor and industries coordinate adoption, implementation, and enforcement of a common set of worker protection standards related to pesticides in order to avoid inconsistency and conflict in the application of those rules. It is also the intent of the legislature that the department of agriculture and the department of labor and industries coordinate investigations with the department of health as well. Further, coordination of enforcement procedures under chapter 260, Laws of 1996 shall not reduce the effectiveness of the enforcement provisions of the Washington industrial safety and health act of 1973 or the Washington pesticide application act. Finally, when the department of agriculture or the department of labor and industries anticipates regulatory changes to standards regarding pesticide application and handling, they shall involve the affected parties in the rule-making process and solicit relevant information. The department of agriculture and the department of labor and industries shall identify differences in their respective jurisdictions and penalty structures and publish those differences." [1996 c 260 § 1.]

Severability—1996 c 260: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1996 c 260 § 6.]

Department of agriculture authority: RCW 17.21.440.

RCW 49.17.285 Medical monitoring—Records on covered pesticides—Reports. Employers whose employees receive medical monitoring under chapter 296-307 WAC, Part J-1, shall submit records to the department of labor and industries each month indicating the name of each worker tested, the number of hours that each worker handled covered pesticides during the thirty days prior to testing, and the number of hours that each worker handled covered pesticides during the current calendar year. The department of labor and industries shall work with the department of health to correlate this data with each employee's test results. No later than January 1, 2005, the department of labor and industries shall require employers to report this data to the physician or other licensed health care professional and department of health public health laboratory or other approved laboratory when each employee's cholinesterase test is taken. The department shall also require employers to provide each employee who receives medical monitoring with: (1) A copy of the data that the employer reports for that employee upon that employee's request; and (2) access to the records on which the employer's report is based. [2004 c 272 § 1.]

Effective date—2004 c 272: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 1, 2004]." [2004 c 272 § 4.]

RCW 49.17.288 Cholinesterase monitoring—Reports. By January 1, 2005, January 1, 2006, and January 1, 2007, the department of labor and industries shall report the results of its data collection, correlation, and analysis related to cholinesterase monitoring to the

house of representatives committees on agriculture and natural resources and commerce and labor, or their successor committees, and the senate committees on agriculture and commerce and trade, or their successor committees. These reports shall also identify any technical issues regarding the testing of cholinesterase levels or the administration of cholinesterase monitoring. [2004 c 272 § 2.]

Effective date—2004 c 272: See note following RCW 49.17.285.

RCW 49.17.300 Temporary worker housing—Electricity—Storage, handling, preparation of food—Rules. By December 1, 1998, the department of labor and industries shall adopt rules requiring electricity in all temporary worker housing and establishing minimum requirements to ensure the safe storage, handling, and preparation of food in these camps, regardless of whether individual or common cooking facilities are in use. [1998 c 37 § 3.]

RCW 49.17.310 Temporary worker housing—Licensing, operation, and inspection—Rules—Definition. The department and the department of health shall adopt joint rules for the licensing, operation, and inspection of temporary worker housing, and the enforcement thereof. For the purposes of this section "temporary worker housing" has the same meaning as given in RCW 70.114A.020. [1999 c 374 § 2.]

RCW 49.17.320 Temporary worker housing operation standards—Departments' agreement—Enforcement—Definition. By December 1, 1999, the department and the department of health shall jointly establish a formal agreement that identifies the roles of each of the two agencies with respect to the enforcement of temporary worker housing operation standards.

The agreement shall, to the extent feasible, provide for inspection and enforcement actions by a single agency, and shall include measures to avoid multiple citations for the same violation.

For the purposes of this section, "temporary worker housing" has the same meaning as provided in RCW 70.114A.020. [1999 c 374 § 4.]

RCW 49.17.350 Flaggers. (1) The director of the department of labor and industries shall adopt permanent rules that take effect no later than March 1, 2001, revising any safety standards governing flaggers.

(2) The transportation commission shall adopt permanent rules that take effect no later than March 1, 2001, revising any safety standards governing flaggers.

(3) The utilities and transportation commission shall adopt permanent rules that take effect no later than March 1, 2001, revising any safety standards and employment qualifications governing flaggers.

(4) The permanent rules adopted pursuant to this section shall be designed to improve options available to ensure the safety of flaggers, ensure that flaggers have adequate visual warning of objects approaching from behind them, and, with respect to the utilities and transportation commission rules, update employment qualifications for flaggers.

(5) In developing permanent rules adopted pursuant to this section, state agencies and commissions shall consult with other persons with an interest in improving safety standards and updating employment qualifications for flaggers. State agencies and commissions shall coordinate and make consistent, to the extent possible, permanent rules. State agencies and commissions shall report, by April 22, 2001, to the senate labor and workforce development committee and the house of representatives commerce and labor committee on the permanent rules adopted pursuant to this section. [2000 c 239 § 2.]

Emergency rules: "(1) The director of the department of labor and industries shall adopt emergency rules that take effect no later than June 1, 2000, revising any safety standards governing flaggers.

(2) The transportation commission shall adopt emergency rules that take effect no later than June 1, 2000, revising any safety standards governing flaggers.

(3) The utilities and transportation commission shall adopt emergency rules that take effect no later than June 1, 2000, revising any safety standards governing flaggers.

(4) Notwithstanding RCW 34.05.350, the emergency rules adopted pursuant to this section shall remain in effect or be adopted in sequence until March 1, 2001, or the effective date of the permanent rules adopted pursuant to RCW 49.17.350, whichever is earlier.

(5) The emergency rules adopted pursuant to this section shall be designed to improve options available to ensure the safety of flaggers, and ensure that flaggers have adequate visual warning of objects approaching from behind them.

(6) In developing emergency rules adopted pursuant to this section, state agencies and commissions shall consult with other persons with an interest in improving safety standards for flaggers. State agencies and commissions shall report, by September 15, 2000, to the senate labor and workforce development committee and the house of representatives commerce and labor committee on the emergency rules adopted pursuant to this section." [2000 c 239 § 1.]

Effective date—2000 c 239 §§ 1 and 2: "Sections 1 and 2 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [March 31, 2000]." [2000 c 239 § 9.]

Short title—2000 c 239 §§ 1 and 2: "Sections 1 and 2 of this act may be known and cited as the "Kim Vendl Worker Safety Act."" [2000 c 239 § 10.]

Captions not law—2000 c 239: "Captions used in this act are not any part of the law." [2000 c 239 § 11.]

RCW 49.17.360 Ergonomics Initiative—Intent. Washington must aid businesses in creating new jobs. Governor Locke's competitiveness council has identified repealing the state ergonomics regulations as a top priority for improving the business climate and creating jobs in Washington state. A broad coalition of democrats and republicans have introduced bills repeatedly to bring legislative oversight to this issue. This measure will repeal an expensive, unproven rule. This

measure will aid in creating jobs and employing the people of Washington. [2004 c 1 § 1 (Initiative Measure No. 841, approved November 4, 2003).]

Construction—Severability—2004 c 1 (Initiative Measure No. 841): See notes following RCW 49.17.370.

RCW 49.17.370 Ergonomics Initiative—Definition—Rule repeal. For the purposes of this section, "state ergonomics regulations" are defined as the rules addressing musculoskeletal disorders, adopted on May 26, 2000, by the director of the department of labor and industries, and codified as WAC 296-62-05101 through 296-62-05176. The state ergonomics regulations, filed on May 26, 2000, by the director and codified as WAC 296-62-05101 through 296-62-05176 are repealed. The director shall not have the authority to adopt any new or amended rules dealing with musculoskeletal disorders, or that deal with the same or similar activities as these rules being repealed, until and to the extent required by congress or the federal occupational safety and health administration. [2004 c 1 § 2 (Initiative Measure No. 841, approved November 4, 2003).]

Construction—2004 c 1 (Initiative Measure No. 841): "The provisions of this act are to be liberally construed to effectuate the intent, policies, and purposes of this act." [2004 c 1 § 3 (Initiative Measure No. 841, approved November 4, 2003).]

Severability—2004 c 1 (Initiative Measure No. 841): "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2004 c 1 § 4 (Initiative Measure No. 841, approved November 4, 2003).]

RCW 49.17.400 Construction crane safety—Definitions. The definitions in this section apply throughout RCW 49.17.400 through 49.17.430 unless the context clearly requires otherwise.

(1) "Apprentice operator or trainee" means a crane operator who has not met requirements established by the department under RCW 49.17.430.

(2) "Attachments" includes, but is not limited to, crane-attached or suspended hooks, magnets, grapples, clamshell buckets, orange peel buckets, concrete buckets, drag lines, personnel platforms, augers, or drills and pile-driving equipment.

(3) "Certified crane inspector" means a crane inspector who has been certified by the department.

(4) "Construction" means all or any part of excavation, construction, erection, alteration, repair, demolition, and dismantling of buildings and other structures and all related operations; the excavation, construction, alteration, and repair of sewers, trenches, caissons, conduits, pipelines, roads, and all related operations; the moving of buildings and other structures, and the construction, alteration, repair, or removal of wharfs, docks, bridges, culverts, trestles, piers, abutments, or any other related construction, alteration, repair, or removal work. "Construction" does not include manufacturing facilities or powerhouses.

(5) "Crane" means power-operated equipment used in construction that can hoist, lower, and horizontally move a suspended load. "Crane" includes, but is not limited to: Articulating cranes, such as knuckle-boom cranes; crawler cranes; floating cranes; cranes on barges; locomotive cranes; mobile cranes, such as wheel-mounted, rough-terrain, all-terrain, commercial truck mounted, and boom truck cranes; multipurpose machines when configured to hoist and lower by means of a winch or hook and horizontally move a suspended load; industrial cranes, such as carry-deck cranes; dedicated pile drivers; service/mechanic trucks with a hoisting device; a crane on a monorail; tower cranes, such as fixed jib, hammerhead boom, luffing boom, and self-erecting; pedestal cranes; portal cranes; overhead and gantry cranes; straddle cranes; side-boom tractors; derricks; and variations of such equipment.

(6) "Crane operator" means an individual engaged in the operation of a crane.

(7) "Professional engineer" means a professional engineer as defined in RCW 18.43.020.

(8) "Qualified crane operator" means a crane operator who meets the requirements established by the department under RCW 49.17.430.

(9) "Safety or health standard" means a standard adopted under this chapter. [2007 c 27 § 2.]

Intent—2007 c 27: "The legislature intends to promote the safe condition and operation of cranes used in construction work by establishing certification requirements for construction cranes and qualifications for construction crane operators. The legislature intends that standards for safety of construction cranes and for certification of personnel operating cranes in construction work be established." [2007 c 27 § 1.]

Effective date—2007 c 27: "This act takes effect January 1, 2010." [2007 c 27 § 7.]

RCW 49.17.410 Construction crane safety—Application. (1) RCW 49.17.400 through 49.17.430 apply to cranes used with or without attachments.

(2) RCW 49.17.400 through 49.17.430 do not apply to:

(a) A crane while it has been converted or adapted for a nonhoisting or nonlifting use including, but not limited to, power shovels, excavators, and concrete pumps;

(b) Power shovels, excavators, wheel loaders, backhoes, loader backhoes, and track loaders when used with or without chains, slings, or other rigging to lift suspended loads;

(c) Automotive wreckers and tow trucks when used to clear wrecks and haul vehicles;

(d) Service trucks with mobile lifting devices designed specifically for use in the power line and electric service industries, such as digger derricks (radial boom derricks), when used in the power line and electric service industries for auguring holes to set power and utility poles, or handling associated materials to be installed or removed from utility poles;

(e) Equipment originally designed as vehicle-mounted aerial devices (for lifting personnel) and self-propelled elevating work platforms;

(f) Hydraulic jacking systems, including telescopic/hydraulic gantries;

(g) Stacker cranes;

(h) Powered industrial trucks (forklifts);

(i) Mechanic's truck with a hoisting device when used in activities related to equipment maintenance and repair;

(j) Equipment that hoists by using a come-along or chainfall;

(k) Dedicated drilling rigs;

(l) Gin poles used for the erection of communication towers;

(m) Tree trimming and tree removal work;

(n) Anchor handling with a vessel or barge using an affixed A-frame;

(o) Roustabouts;

(p) Cranes used on-site in manufacturing facilities or powerhouses for occasional or routine maintenance and repair work; and

(q) Crane operators operating cranes on-site in manufacturing facilities or powerhouses for occasional or routine maintenance and repair work. [2007 c 27 § 3.]

Intent—Effective date—2007 c 27: See notes following RCW 49.17.400.

RCW 49.17.420 Construction crane certification program—Rules—Certificate of operation. (1) The department shall establish, by rule, a crane certification program for cranes used in construction. In establishing rules, the department shall consult nationally recognized crane standards.

(2) The crane certification program must include, at a minimum, the following:

(a) The department shall establish certification requirements for crane inspectors, including an experience requirement, an education requirement, a training requirement, and other necessary requirements determined by the director;

(b) The department shall establish a process for certified crane inspectors to issue temporary certificates of operation for a crane and the department to issue a final certificate of operation for a crane after a certified crane inspector determines that the crane meets safety or health standards, including meeting or exceeding national periodic inspection requirements recognized by the department;

(c) Crane owners must ensure that cranes are inspected and load proof tested by a certified crane inspector at least annually and after any significant modification or significant repairs of structural parts. If the use of weights for a unit proof load test is not possible or reasonable, other recording test equipment may be used. In adopting rules implementing this requirement, the department may consider similar standards and practices used by the federal government;

(d) Tower cranes and tower crane assembly parts must be inspected by a certified crane inspector both prior to assembly and following erection of a tower crane;

(e) Before installation of a nonstandard tower crane base, the engineering design of the nonstandard base shall be reviewed and acknowledged as acceptable by an independent professional engineer;

(f) A certified crane inspector must notify the department and the crane owner if, after inspection, the certified crane inspector finds that the crane does not meet safety or health standards. A certified crane inspector shall not attest that a crane meets safety or health standards until any deficiencies are corrected and the correction is verified by the certified crane inspector; and

(g) Inspection reports including all information and documentation obtained from a crane inspection shall be made available or provided to the department by a certified crane inspector upon request.

(3) Except as provided in RCW 49.17.410(2), any crane operated in the state must have a valid temporary or final certificate of operation issued by the certified crane inspector or department posted in the operator's cab or station.

(4) Certificates of operation issued by the department under the crane certification program established in this section are valid for one year from the effective date of the temporary operating certificate issued by the certified crane inspector.

(5) This section does not apply to maritime cranes regulated by the department. [2007 c 27 § 4.]

Intent—Effective date—2007 c 27: See notes following RCW 49.17.400.

RCW 49.17.430 Qualified construction crane operators—Rules—Apprentice operators or trainees—Reciprocity. (1) Except for training purposes as provided in subsection (3) of this section, an employer or contractor shall not permit a crane operator to operate a crane unless the crane operator is a qualified crane operator.

(2) The department shall establish, by rule, requirements that must be met to be considered a qualified crane operator. In establishing rules, the department shall consult nationally recognized crane standards for crane operator certification. The rules must include, at a minimum, the following:

(a) The crane operator must have a valid crane operator certificate, for the type of crane to be operated, issued by a crane operator testing organization accredited by a nationally recognized accrediting agency which administers written and practical examinations, has procedures for recertification that enable the crane operator to recertify at least every five years, and is recognized by the department;

(b) The crane operator must have up to two thousand hours of documented crane operator experience, which meets experience levels established by the department for crane types and capacities by rule; and

(c) The crane operator must pass a substance abuse test conducted by a recognized laboratory service.

(3) An apprentice operator or trainee may operate a crane when:

(a) The apprentice operator or trainee has been provided with training prior to operating the crane that enables the apprentice operator or trainee to operate the crane safely;

(b) The apprentice operator or trainee performs operating tasks that are within his or her ability, as determined by the supervising qualified crane operator; and

(c) The apprentice operator or trainee is under the direct and continuous supervision of a qualified crane operator who meets the following requirements:

(i) The qualified crane operator is an employee or agent of the employer of the apprentice operator or trainee;

(ii) The qualified crane operator is familiar with the proper use of the crane's controls;

(iii) While supervising the apprentice operator or trainee, the qualified crane operator performs no tasks that detract from the qualified crane operator's ability to supervise the apprentice operator or trainee;

(iv) For equipment other than tower cranes, the qualified crane operator and the apprentice operator or trainee must be in direct line of sight of each other and shall communicate verbally or by hand signals; and

(v) For tower cranes, the qualified crane operator and the apprentice operator or trainee must be in direct communication with each other.

(4) The department may recognize crane operator certification from another state or territory of the United States as equivalent to qualified crane operator requirements if the department determines that the other jurisdiction's credentialing standards are substantially similar to the qualified crane operator requirements. [2007 c 27 § 5.]

Intent—Effective date—2007 c 27: See notes following RCW 49.17.400.

RCW 49.17.440 Construction crane safety—Rules—Implementation. The department of labor and industries shall adopt rules necessary to implement RCW 49.17.400 through 49.17.430. [2007 c 27 § 6.]

Intent—Effective date—2007 c 27: See notes following RCW 49.17.400.

RCW 49.17.460 Definitions. The definitions in this section apply throughout RCW 49.17.465, this section, and section 1, chapter 39, Laws of 2011 unless the context clearly requires otherwise.

(1) "Antineoplastic drug" means a chemotherapeutic agent that controls or kills cancer cells.

(2) "Hazardous drugs" means any drug identified by the national institute for occupational safety and health at the centers for disease control or any drug that meets at least one of the following six criteria: Carcinogenicity, teratogenicity or developmental toxicity, reproductive toxicity in humans, organ toxicity at low doses in humans or animals, genotoxicity, or new drugs that mimic existing hazardous drugs in structure or toxicity. [2011 c 39 § 2.]

Declaration—Intent—2011 c 39: "The legislature declares that health care personnel who work with or near hazardous drugs in health care settings may be exposed to these agents in the air, on work surfaces, clothing, and medical equipment or through patient contact. According to the national institute for occupational safety and health (NIOSH), early concerns about occupational exposure to antineoplastic

drugs first appeared in the 1970s. Antineoplastic and other hazardous drugs may cause skin rashes, infertility, miscarriage, birth defects, and have been linked to a wide variety of cancers. The national institute for occupational safety and health published an alert on preventing occupational exposures to antineoplastic and other hazardous drugs in health care settings in 2004 with an update in 2010. In this alert, the institute "presents a standard precautions or universal precautions approach to handling hazardous drugs safely: that is, NIOSH recommends that all hazardous drugs be handled as outlined in this Alert." It is the intent of the legislature to require health care facilities to follow rules requiring compliance with all aspects of the institute's alert regardless of the setting in order to protect health care personnel from hazardous exposure to such drugs." [2011 c 39 § 1.]

RCW 49.17.465 Handling hazardous drugs—Health care facilities—Rules. The director of labor and industries shall adopt by rule requirements for the handling of antineoplastic and other hazardous drugs in health care facilities regardless of the setting. Rule making under this section shall consider input from hospitals, organizations representing health care personnel, other stakeholders and shall consider reasonable time for facilities to implement new requirements. The rules will be consistent with and not exceed provisions adopted by the national institute for occupational safety and health's 2004 alert on preventing occupational exposures to antineoplastic and other hazardous drugs in health care settings as updated in 2010. The department's adoption of the rules may incorporate updates and changes to the institute's guidelines as made by the centers for disease control and prevention. Enforcement of these requirements will be according to all provisions in this chapter. [2011 c 39 § 3.]

Declaration—Intent—2011 c 39: See note following RCW 49.17.460.

RCW 49.17.470 Entertainers and adult entertainment establishments—Entertainer training—Panic buttons—Recording of accusations—Enforcement—Entertainer advisory committee. (1)(a) The department shall develop or contract for the development of training for entertainers. The training must include, but not be limited to:

(i) Education about the rights and responsibilities of entertainers, including with respect to working as an employee or independent contractor;

(ii) Reporting of workplace injuries, including sexual and physical abuse and sexual harassment;

(iii) The risk of human trafficking;

(iv) Financial aspects of the entertainer profession; and

(v) Resources for assistance.

(b) As a condition of receiving or renewing an adult entertainer license issued by a local government on or after July 1, 2020, an entertainer must provide proof that the entertainer took the training described in (a) of this subsection. The department must make the training reasonably available to allow entertainers sufficient time to take the training in order to receive or renew their licenses on or after July 1, 2020.

(2) An adult entertainment establishment must provide a panic button in each room in the establishment in which an entertainer may be alone with a customer, and in bathrooms and dressing rooms. An entertainer may use the panic button if the entertainer has been harmed, reasonably believes there is a risk of harm, or there is an other emergency in the entertainer's presence. The entertainer may cease work and leave the immediate area to await the arrival of assistance.

(3)(a) An adult entertainment establishment must record the accusations it receives that a customer has committed an act of violence, including assault, sexual assault, or sexual harassment, towards an entertainer. The establishment must make every effort to obtain the customer's name and if the establishment cannot determine the name, it must record as much identifying information about the customer as is reasonably possible. The establishment must retain a record of the customer's identifying information for at least five years after the most recent accusation.

(b) If an accusation is supported by a statement made under penalty of perjury or other evidence, the adult entertainment establishment must decline to allow the customer to return to the establishment for at least three years after the date of the incident. The establishment must share the information about the customer with other establishments with common ownership and those establishments with common ownership must also decline to allow the customer to enter those establishments for at least three years after the date of the incident. No entertainer may be required to provide such a statement.

(4) For the purposes of enforcement, except for subsection (1) of this section, this section shall be considered a safety or health standard under this chapter.

(5) This section does not affect an employer's responsibility to provide a place of employment free from recognized hazards or to otherwise comply with this chapter and other employment laws.

(6) The department shall convene an entertainer advisory committee to assist with the implementation of this section, including the elements of the training under subsection (1) of this section. At least half of the advisory committee members must be former entertainers who held or current entertainers who have held an adult entertainer license issued by a local government for at least five years. At least one member of the advisory committee must be an adult entertainment establishment which is licensed by a local government and operating in the state of Washington. The advisory committee shall also consider whether additional measures would increase the safety and security of entertainers, such as by examining ways to make the procedures described in subsection (3) of this section more effective and reviewing the fee structure for entertainers. If the advisory committee finds and recommends additional measures that would increase the safety and security of entertainers and that those additional measures would require legislative action, the department must report those recommendations to the appropriate committees of the legislature.

(7) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Adult entertainment" means any exhibition, performance, or dance of any type conducted in a premises where such exhibition, performance, or dance involves an entertainer who:

(i) Is unclothed or in such attire, costume, or clothing as to expose to view any portion of the breast below the top of the areola

or any portion of the pubic region, anus, buttocks, vulva, or genitals; or

(ii) Touches, caresses, or fondles the breasts, buttocks, anus, genitals, or pubic region of another person, or permits the touching, caressing, or fondling of the entertainer's own breasts, buttocks, anus, genitals, or pubic region by another person, with the intent to sexually arouse or excite another person.

(b) "Adult entertainment establishment" or "establishment" means any business to which the public, patrons, or members are invited or admitted where an entertainer provides adult entertainment to a member of the public, a patron, or a member.

(c) "Entertainer" means any person who provides adult entertainment within an adult entertainment establishment, whether or not a fee is charged or accepted for entertainment and whether or not the person is an employee under RCW 49.17.020.

(d) "Panic button" means an emergency contact device by which the entertainer may summon immediate on-scene assistance from another entertainer, a security guard, or a representative of the [adult] entertainment establishment. [2019 c 304 § 1.]

RCW 49.17.480 Asbestos plan requirements in RCW 70A.450.070(1)(b)—Penalties. (1) The asbestos plan requirements in RCW 70A.450.070(1)(b) are an industrial health or safety standard adopted under the authority of this chapter.

(2) A violation of the requirements of RCW 70A.450.070(1)(b) is subject to the penalties established under RCW 49.17.180 and 49.17.190 for violations of safety or health standards adopted under the authority of this chapter. [2020 c 100 § 4.]

RCW 49.17.485 Personal protective devices and equipment—Public health emergency. (1) The requirements of this section apply only during a public health emergency. For the purposes of this section, "public health emergency" means a declaration or order relating to controlling and preventing the spread of any infectious or contagious disease that covers the jurisdiction where the individual or business performs work, and is issued as follows:

(a) The president of the United States has declared a national or regional emergency;

(b) The governor has declared a state of emergency under RCW 43.06.010(12); or

(c) An order has been issued by a local health officer under RCW 70.05.070.

(2) Every employer who does not require employees or contractors to wear a specific type of personal protective equipment must accommodate its employee's or contractor's voluntary use of that specific type of protective device or equipment, including gloves, goggles, face shields, and face masks, as the employee or contractor deems necessary.

(3) The provisions of subsection (2) of this section applies only when:

(a) The voluntary use of these protective devices and equipment does not introduce hazards to the work environment and is consistent with the provisions of this chapter and corresponding rules established by the department as of April 26, 2021;

(b) The use of facial coverings does not interfere with an employer's security requirements; and

(c) The voluntary use of these protective devices and equipment does not conflict with standards for that specific type of equipment established by the department of health or the department.

(4) An employer may verify that voluntary use of personal protective equipment meets all regulatory requirements for workplace health and safety.

(5) An employer may not apply to the director of the department, under RCW 49.17.080, for a temporary order granting a variance from this subsection. [2021 c 146 § 1.]

Effective date—2021 c 146: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 26, 2021]." [2021 c 146 § 2.]

RCW 49.17.490 Temporary workers—Safety—Staffing agency and worksite employer duties. (1) Before the assignment of an employee to a worksite employer, a staffing agency must:

(a) Inquire about the worksite employer's safety and health practices and hazards at the actual workplace where the employee will be working to assess the safety conditions, workers tasks, and the worksite employer's safety program; these activities are required at the start of any contract to place workers and may include visiting the actual worksite. If, during the inquiry or anytime during the period of the contract, the staffing agency becomes aware of existing job hazards that are not mitigated by the worksite employer, the staffing agency must make the host employer aware, urge the host employer to correct it, and document these efforts, otherwise the staffing agency must remove the temporary workers from the worksite;

(b) Provide training to the employee for general awareness safety training for recognized industry hazards the employee may encounter at the worksite. Industry hazard training must be completed, in the preferred language of the employee, and must be provided at no expense to the employee. The training date and training content must be maintained by the staffing agency and provided to the employee upon request;

(c) Transmit a general description of the training program including topics covered to the worksite employer, whether electronically or on paper, at the start of the contract with the worksite employer;

(d) Provide the department's hotline number for the employee to call to report safety hazards and concerns as part of the employment materials provided to the employee; and

(e) Inform the employee who the employee should report safety concerns to at the workplace.

(2) This section does not diminish any existing worksite employer or staffing agency responsibility as an employer to provide a place of employment free from recognized hazards or to otherwise comply with this chapter and other employment laws. Both entities are responsible for compliance with this chapter and the rules enacted pursuant to this chapter.

(3) Before the employee engages in work for the worksite employer, the worksite employer must:

(a) Document and inform the staffing agency about anticipated job hazards likely encountered by the staffing agency employee;

(b) Review the safety and health awareness training provided by the staffing agency to determine if it addresses recognized hazards for the worksite employer's industry;

(c) Provide specific training tailored to the particular hazards at their workplaces; and

(d) Document and maintain records of site-specific training and provide confirmation that the training occurred to the staffing agency within three business days of providing the training.

(4) If the worksite employer changes the job tasks or work location and new hazards may be encountered, the worksite employer must:

(a) Inform both the staffing agency and the employee; and

(b) Inform both the staffing agency and the employee of job hazards not previously covered before the employee undertakes the new tasks and update personal protective equipment and training for the new job tasks, if necessary.

(5) A staffing agency or employee may refuse a new job task at the worksite when the task has not been reviewed or if the employee has not had appropriate training to do the new task.

(6) A worksite employer that supervises an employee of a staffing agency must provide worksite specific training to the employee and must allow a staffing agency to visit any worksite where the staffing agency's employees are or will be working to observe and confirm the worksite employer's training and information related to the worksite's job tasks, safety and health practices, and hazards.

(7) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) A "staffing agency" is an employer as defined in this chapter and North American industry classification system 561320 and means an organization that recruits and hires its own employees and temporarily assigns those employees to perform work or services for another organization, under such other organization's supervision, to: (i) Support or supplement the other organization's workforce; (ii) provide assistance in special work situations including, but not limited to, employee absences, skill shortages, or seasonal workloads; or (iii) perform special assignments or projects.

(b) "Worksite employer" is an employer as defined in this chapter and means an individual, company, corporation, or partnership with which a staffing agency contracts or otherwise agrees to furnish persons for temporary employment in the industries described in sectors 23 and 31 through 33 of the North American industry classification system.

(8) A staffing agency or worksite employer may not retaliate against a staffing agency employee who reports safety concerns.

(9) The department may enact rules to implement this section. [2021 c 37 § 1.]

RCW 49.17.500 Adoption of policies requiring the use of a smoke evacuation system during a surgical procedure. *(Effective January 1, 2024.)* (1) A health care employer shall adopt policies that require the use of a smoke evacuation system during any planned surgical procedure that is likely to generate surgical smoke which would otherwise make contact with the eyes or respiratory tract of the occupants of the room.

(2) The health care employer may select any smoke evacuation system that accounts for surgical techniques and procedures vital to patient safety and that takes into account employee safety.

(3) The department shall ensure compliance with this section during any on-site inspection.

(4) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Energy generating device" means a tool that performs a surgical function using heat, laser, electricity, or other form of energy.

(b) "Health care employer" means a hospital, as defined in RCW 70.41.020, or an ambulatory surgical facility, as defined in RCW 70.230.010.

(c) "Smoke evacuation system" means equipment designed to capture and neutralize surgical smoke at the point of origin, before the smoke makes contact with the eyes or the respiratory tract of occupants in the room. Smoke evacuation systems may be integrated with the energy generating device or separate from the energy generating device.

(d) "Surgical smoke" means the by-product that results from contact with tissue by an energy generating device.

(5) The department may adopt rules as necessary to administer this section. [2022 c 129 § 1.]

Effective dates—2022 c 129: "This act takes effect January 1, 2024, except that for the following hospitals, this act takes effect January 1, 2025:

(1) Hospitals certified as critical access hospitals under 42 U.S.C. Sec. 1395i-4;

(2) Hospitals with fewer than 25 acute care beds in operation;

(3) Hospitals certified by the centers for medicare and medicaid services as sole community hospitals; and

(4) Hospitals that qualify as a medicare dependent hospital." [2022 c 129 § 2.]

Reviser's note: Chapter 129, Laws of 2022 contains two effective dates. Section 2, chapter 129, Laws of 2022 identifies an effective date of January 1, 2024, for the act, and an effective date of January 1, 2025, for the act with respect to certain hospitals as enumerated in that section.

RCW 49.17.505 Surgical smoke evacuation account. ***(Effective January 1, 2024.)*** (1) The surgical smoke evacuation account is created in the custody of the state treasurer. Revenues to the account consist of appropriations and transfers by the legislature and all other funding directed for deposit into the account. Only the director of the department of labor and industries or the director's designee may authorize expenditures from the account. The account is subject to the allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. Expenditures from the account may be used only for purposes provided in subsection (3) of this section.

(2) By July 1, 2025, the director of the department of labor and industries must certify to the state treasurer the amount of any unobligated moneys in the surgical smoke evacuation account that were appropriated by the legislature from the general fund during the 2023-2025 fiscal biennium, and the treasurer must transfer those moneys back to the general fund.

(3)(a) Subject to the funds available in the surgical smoke evacuation account and beginning January 2, 2025, a hospital described in (b) of this subsection may apply to the department of labor and industries for reimbursement for the costs incurred by the hospital on or before January 1, 2025, to purchase and install smoke evacuation systems as defined in RCW 49.17.500. The reimbursement may not exceed $1,000 for each operating room in the hospital. The reimbursements under this subsection are only available until moneys contained in the account are exhausted.

(b) Only the following hospitals may apply for reimbursement:

(i) Hospitals certified as critical access hospitals under 42 U.S.C. Sec. 1395i-4;

(ii) Hospitals with fewer than 25 acute care beds in operation;

(iii) Hospitals certified by the centers for medicare and medicaid services as sole community hospitals; and

(iv) Hospitals that qualify as a medicare dependent hospital.

(c) The department of labor and industries must determine the process for making an application for reimbursement. [2022 c 129 § 3.]

Effective dates—2022 c 129: See note following RCW 49.17.500.

RCW 49.17.900 Short title. This act shall be known and cited as the Washington Industrial Safety and Health Act of 1973. [1973 c 80 § 29.]