



## Employment Laws Should be Enforced by the State, Not Private Parties (HB 1965)

### Background

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“Qui tam” refers to when private citizens (“relators”) are authorized to sue on behalf of the government in exchange for a portion of the financial award. Qui tam is most commonly known as an enforcement tool against Medicare and Medicaid fraud, under the state and federal False Claims Acts. California created qui tam powers to enforce employment law violations. It was the first – and only – state in the nation with this type of law. **The impact of California’s law has been so severe, certain unionized employers were subsequently exempted from the law to protect them from “significant legal abuse... class action lawsuits over minor employment issues... [and] enormous pressure... to settle claims regardless of the validity of those claims.”**<sup>1</sup> Other employers have sued California over the law, for violating due process protections and denying them equal protection under the law.

Following California’s overall model, HB 1965 authorizes anyone, regardless of whether they are the aggrieved employee, to sue employers under various employment laws relating to wages, overtime, safety, leave, and others, on behalf of state agencies in exchange for up to 40% of the proceeds. It establishes a default civil penalty and a public database of qui tam notices filed with the state.

### WSHA Position

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WSHA strongly opposes HB 1965. The bill incentivizes frivolous and abusive lawsuits, and it will penalize well-intentioned employers as much as bad actors.

### Key Messages

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- Washington does not require “private attorneys” to enforce laws on behalf of the Department of Labor & Industries (L&I). In its 2019 Annual Report on wages and other issues, L&I stated it had no more than 140 backlogged cases and more than half of the money collected for workers’ wages was through voluntary compliance by employers.
- Most employers do not intentionally violate employment laws and the laws recognize as much, often linking civil penalties to willfulness. But HB 1965 does not distinguish between intentional bad actors and unintentional mistakes. It establishes a default civil penalty if none exists in the underlying law and applies it for each employee impacted by the violation for *each* two-week time period. This means an employer could face enormous penalties for a single unintentional and minor violation they were unaware of.
- Trial lawyers are the real winners in HB 1965, not workers. In California, workers have received as little as a dollar, while their lawyers earned millions. Under HB 1965, civil penalties are not even distributable to workers.

### Contact Information

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<sup>1</sup> See [August 31, 2018, Analysis by California Assembly of Labor and Employment re: Bill No. 1654](#)