Washington State Hospital Association

2022
POLICY BRIEF

Employment Laws Should be Enforced by the State, Not Private Parties (HB 1076)

Background

"Qui tam" is when private residents are authorized to sue on behalf of the government in exchange for a portion of the financial award. California created qui tam powers to enforce employment law through its 2004 Private Attorneys General Act (PAGA). It remains the first – and only – state in the nation with this type of law. According to California's Department of Industrial Relations, the law has proven ineffective for protecting workers and has proven to be a burden on state resources[1]. The law also creates obstacles to curing alleged violations[2] and incentivizes abusive litigation[3].

Following California's overall model, HB 1076 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 judgment or settlement. HB 1076 treats every alleged violation as if it is a deliberate action and provides no explicit opportunity for an employer to cure an alleged violation. HB 1076 is also ripe for abuse due to minimal state oversight.

WSHA Position

WSHA strongly opposes HB 1076. The bill incentivizes frivolous and abusive lawsuits, and it will penalize well-intentioned employers as much as bad actors. Now more than ever, as businesses are trying to recover from COVID-19 pandemic, we should not be adding additional legal exposure and costs that have not proven to be protective of workers.

Key Messages

- HB 1076 circumvents 10 different labor laws that have enforcement procedures and penalty provisions. Many of the laws were carefully negotiated by the legislature and would be undermined if HB 1076 becomes law.
- Washington does not need private litigation to enforce labor laws on behalf of the Department of Labor & Industries (L&I). Employees can file wage and workplace safety complaints directly with L&I via its website for investigation. L&I's enforcement data shows a high success rate in resolving complaints.

[1] Department of Industrial Relations. FY 2019-2020 Budget Change Request. (May 2019)
[2] Senate Law and Justice Committee Work Session. (Sep. 23, 2020)
[3] California Assembly Labor and Employment Committee. Analysis of AB 1654. (31 Aug. 2018)

Updated: mm/dd/yr

- L&I is managing its caseload and does not have a case backlog. L&I's staff said in February 2021[4], "L&I does not have a backlog of wage complaints it is unable to investigate." Additionally, the department's 2020 report[5] on wage and labor law enforcement makes no mention of an enforcement backlog.
- L&I's 2020 enforcement data indicates more education for employers is needed as Washington's labor laws continue to change. HB 1076 does nothing to encourage education efforts by L&I. Instead, the bill prioritizes punishment and litigation over curing and compliance. This means an employer could face enormous penalties for a single unintentional and minor violation without a realistic ability to cure the violation.
- The only way for an employer to work with L&I under HB 1076 is if the agency decides to investigate the qui tam claim. However, L&I's Employment Standards Program anticipates investigating only 7% of an estimated 800 qui tam claims per year[6]. This means most qui tam claims will end up in the legal system instead of being resolved through L&I.
- California's example demonstrates there are likely to be unforeseen costs to Washington State to implement and monitor this type of law. Such resources would be better invested in compliance education and prevention work.

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[4] Liability Reform Coalition. "HB 1076 (qui tam) is unnecessary." (Feb. 2021)
[5] Department of Labor & Industries. Wage, Leave, and Youth Employment Investigations: 2020 Annual Report to the Governor. (Dec. 2020)
[6] HB 1076 Fiscal Note. (10 Mar 2021)