Washington State Hospital Association

2021
POLICY BRIEF

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

Background

"Qui tam" is when private citizens 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, the legislation 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. It establishes a default civil penalty and a public database of qui tam notices filed with the state.

WSHA Position

WSHA strongly opposes this legislation. 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

- Washington does not need private litigation to enforce laws on behalf of the Department of Labor & Industries (L&I). L&I's 2019 report[4] on wage and labor law enforcement 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.
- L&I's 2019 data indicates more education for employers is needed as Washington's labor laws continue to change. The legislation does nothing to encourage education efforts by L&I. Instead, the proposal prioritizes punishment and litigation over curing and compliance.
- Most employers do not intentionally violate employment laws, and current laws recognize this. But the bill does not distinguish between intentional bad actors and unintentional mistakes. This means an employer

[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)
[4] WA Department of Labor & Industries. *Wage, Child Labor and Protected Leave Investigations 2019 Annual Report to the Governor*. (Dec. 2019)

could face enormous penalties for a single unintentional and minor violation without a realistic ability to cure the violation.

- 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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