

Labor and Workplace Standards Committee

House of Representatives State of Washington

Final Report for 2016 (Regular and Special Session)

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House of Representatives
State of Washington

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**2016 FINAL REPORT
House Labor Committee**

Summary of Major Legislation

APPRENTICESHIP

Compliance with apprenticeship utilization requirements was the topic of **HB 2846**, which passed the Committee and died in House Rules. Had the bill been enacted, noncompliance would be one of the violations that count towards debarring a contractor from bidding on public works. In addition, to be a responsible bidder, a bidder could not have been found out of compliance with utilization requirements.

While no Committee activity took place this year on **EHB 1590**, a 2015 bill, the bill again passed off the House floor. The bill would have required completion of an apprenticeship program to obtain a journey level or residential specialty electrician certificate beginning July 1, 2021, and would have made other changes in the electrical laws. The bill died in the Senate Commerce and Labor Committee.

BUILDING AND CONSTRUCTION

For several years, the Committee has dealt with the policy issue of when legislative action should be required to address specific construction work regulatory issues, and when those issues may be addressed at the agency level. **HB 2886**, which was enacted, gives the Department of Labor and Industries (Department) additional administrative leeway by allowing the Department to modify certain electrical specialty scopes by rule.

COLLECTIVE BARGAINING

HB 2490 and **HB 2829** dealt with public employee collective bargaining and both would have made contract negotiations open to the public. In addition, **HB 2490** would have provided that in an election, the ballot must include the existing bargaining representative as well as a choice for no union representation. **HB 2829** would have defined what financial feasibility means for the purposes of the Director of the Office of Financial Management certifying a request for funds as being financially feasible for the state. Neither bill received a public hearing.

HB 2849 would have granted interest arbitration to commissioned court marshals of certain city police departments. It received a hearing and passed the House, but died in the Senate Ways and Means Committee. It was very similar to a bill that was enacted in 2015, which granted interest arbitration to court marshals of certain counties.

EMPLOYMENT – DISCRIMINATION

ESHB 2307, HB 2404, and ESSB 6149 all dealt with employers providing reasonable accommodation to employees for their pregnancy and pregnancy-related health conditions. They each would have required some form of reasonable accommodations, for example, providing flexible restroom, food, and water breaks, allowing for sitting, and placing limits on heavy lifting. However, the bills differed in policy choices such as: which employers would be subject to the reasonable accommodation requirements (size of the employer), which agency would have enforcement authority (Human Rights Commission, Department of Labor and Industries, or the Attorney General's Office), and what remedies would be available to an aggrieved employee (private civil action or administrative complaint). None of the bills passed the Legislature, but ESHB 2307 and ESSB 6149 both passed their respective chambers.

The Committee again passed out **ESHB 1646**, the Equal Pay Opportunity Act, a bill that was introduced last year. The bill would have modified the Equal Pay Act to include prohibiting less favorable employment opportunities based on gender, change the employer defense, and provide additional remedies. The bill also would have prohibited retaliation for certain workplace wage discussions and other activities. ESHB 1646 died in the Senate Commerce and Labor Committee.

HB 2894 was a "workplace bullying" bill and would have made it an unfair practice, under the Washington Law Against Discrimination, to subject an employee to an abusive work environment.

EMPLOYMENT – GENERAL

General employment issues include topics such as personnel management and noncompete agreements. The Committee dealt with a number of bills in this category, including several that focused on issues relating to law enforcement employment. Washington State Patrol officers will receive pay increases under **E2SHB 2872**. Compensation for troopers, sergeants, lieutenants, and captains will increase by 5 percent July 1, 2016. Beginning July 1, 2017, trooper and sergeant compensation must be guided by the average of compensation paid to corresponding officers in certain local law enforcement agencies, and certain lieutenants and captains will receive proportionate increases.

Another bill focusing on law enforcement was **HB 2399**, which would have prohibited a law enforcement agency from considering the number of citations issued, or the amount of penalties assessed, by a law enforcement officer in the agency's performance review of the officer. The bill died in the Senate Transportation Committee.

Under **HB 2543**, which died on the Senate Second Reading calendar, lawful permanent residents would have been eligible for city police and fire department and county sheriff civil service positions, as well as Washington State Patrol officer positions.

The appropriate use of noncompetition agreements continued to be of interest to the Committee. **HB 2406** and **HB 2931** took different approaches to the issue. **HB 2406** would have made noncompetition agreements void for specific occupations, including cosmetologists, drywall applicators, musicians, and fast food workers. Under **HB 2931**, agreements with temporary or seasonal employees, with independent contractors, and for employees terminated without just cause or laid off would have been void. In addition, courts would no longer be allowed to reform agreements. The bill also would have created a rebuttable presumption that an agreement for more than one year or for employees who are not executives is unreasonable and void.

2SHB 1701 was a carry-over from the 2015 session and would have prohibited employers from excluding applicants from initial interviews solely based on the existence of an applicant's criminal record. The bill was not re-heard in Committee in 2016, but the Committee did vote it out and it died in House Rules.

SAFETY AND HEALTH

The issue of safety on dairy farms was a new topic for the Committee in 2016. **SHB 2484** would have required the Department of Labor and Industries to adopt rules specific to dairy farms that, among other things, would have established training requirements for employees and periodic inspections of dairy farms. The bill also would have made changes to provisions dealing with employees filing retaliation complaints. **SHB 2484** would have lengthened the time in which dairy farm employees could bring a retaliation complaint and would have created a rebuttable presumption for dairy farm employees regarding retaliation claims. The bill was voted out of Committee but died in the Appropriations Committee.

Commercial janitorial safety was an issue raised in 2014 and 2015 and again this session. **HB 2917** would have required the Department of Labor and Industries to conduct a research study to measure workers' safety and health risks associated with janitorial tasks, taking into consideration janitors' work environment, workload, and tools and equipment used. The bill died in the House Rules Committee.

UNEMPLOYMENT INSURANCE

HB 2578 would have expanded the types of activities that "count" for purposes of work search requirements for unemployment claimants. Meeting with a career counselor at an accredited institution of higher education would qualify and the Employment Security Department would have been allowed to define by rule other methods of qualifying job-search activity.

WAGE AND HOUR

As in 2015, the Committee passed out **SHB 1354**, which would have created anti-retaliation provisions in several wage and related laws. The bill did not pass out of the Appropriation Committee.

Overtime hours for home care workers was an issue raised last year because of changes made to federal rules by the United States Department of Labor. In response to the changes, **E2SHB 1725** was enacted and addresses the issue of overtime hours for individual providers (IPs). The bill requires the Department of Social and Health Services (DSHS) to develop rules limiting the number of hours the DSHS may pay an IP (up to 60 to 65 hours a week), depending on how many hours the IP worked previously and other factors. The bill contains provisions for when those limits may be exceeded. E2SHB 1725 also creates a Joint Legislative-Executive Overtime Oversight Task Force to monitor spending and drivers of overtime costs.

Similar to last session, there were several prevailing wage bills considered by the Committee. **HB 1231**, which would have required prevailing wage rates to be established based on collective bargaining agreements, was a carry-over from the 2015 session. It did not receive a second hearing in 2016, but the Committee and the House did pass it out again. The bill died in the Senate Commerce and Labor Committee. **HB 2844**, a new bill in 2016, would have required training in prevailing wages and public works to be a responsible bidder.

There were a few bills referred to the Committee addressing worker wages. Regarding minimum wage issues, **HB 2291** would have allowed employers to meet minimum wage rate requirements through wages and employee benefits, such as medical plans. The bill would have also allowed employers to pay a youth wage rate equal to the federal minimum wage rate. **HB 2489** was similar to bills introduced last session. Under HB 2489, ordinances, regulations, or rules from local governments regarding minimum wage would apply equally to both unionized and nonunionized employers and the minimum wage requirements established by the local government could not be waived in a collective bargaining agreement. **HB 2491** would have provided that state law preempts local ordinances regarding wages and hours of work, except for local ordinances governing local government employees. These bills did not receive a public hearing.

WORKERS' COMPENSATION

Allowing employers to obtain medical aid coverage for volunteers was the subject of **ESSB 6293**, which was signed by the Governor. ESSB 6293 allows an employer to obtain medical coverage for the employer's student volunteers and unpaid students (those students of public or private K-12 schools or institutions of higher education, who are volunteering with an employer as part of a class or program). The bill also allows employers who provide medical coverage to choose to pay premiums at the rate for 100 hours of volunteer service for each volunteer, rather than tracking the actual number of hours.

HB 2805 and **HB 2806** both dealt with the occupational diseases of firefighters. Similar to a bill introduced last session, HB 2805 would have required the Department of Labor and Industries to conduct rule-making to require the reporting of all hazardous exposures suffered by firefighters in the course of employment. HB 2806 would have added emergency medical technicians and public employee fire investigators to the list of

workers covered by the presumption of occupational disease. In addition, HB 2806 would have added additional cancers and other conditions to the list of diseases and conditions presumed to be occupational. Both bills passed the House but died in the Senate Commerce and Labor Committee.

Another bill addressing an issue familiar to the Committee was **HB 2441**, relating to the Social Security retirement offset. Unlike previous bills which would have eliminated the offset for all injured workers, HB 2441 would have eliminated the offset only for workers already receiving or who had applied to receive retirement benefits before they were injured. The bill died in the Senate Commerce and Labor Committee.

The Committee heard but did not take action on a number of other workers' compensation bills. These included **HB 2337**, which would have established a 60 month limit on temporary time-loss benefits, and **HB 2338**, which would have terminated temporary time-loss benefits when a worker reaches maximum medical improvement. Two bills that came over from the Senate dealt with workers' compensation coverage issues. **ESB 6321** would have modified the seven-part independent contractor test for construction contractors, and **SSB 6289** would have stated that an entity administering a digital platform for certain domestic services and gardening, maintenance, or repair in a private home is not an employer.

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Bills Enacted

BILL NO.	PRIME SPONSOR	SUMMARY
<i>BUILDING AND CONSTRUCTION</i>		
2886	Manweller	Electrical scope of practice - Authorizes the Department of Labor and Industries to modify the scopes of work for certain electrical specialties by rule.
<i>COLLECTIVE BARGAINING</i>		
2872	Fey	Washington State Patrol (WSP) - Provides for implementation of the recommendations of the Joint Transportation Committee's Washington State Patrol Recruitment and Retention Study. Requires the WSP and the Office of Financial Management to agree to an addendum to collective bargaining agreements specifying minimum monthly salary levels to be the average of compensation paid to the corresponding rank from specified local law enforcement agencies.
<i>SAFETY AND HEALTH</i>		
2443	Sells	Conversion vending units and medical units - Requires conversion vending units (food trucks) and medical units manufactured out of state to meet certain standards. Modifies plan review requirements for conversion vending units.
2444	Manweller	Classification system - Requires the Department of Labor and Industries to use an updated classification system for purposes of assessing employers for the Worker and Community Right to Know fund.
5342	Hasegawa	Human trafficking definitions - Defines "human trafficking" and other terms for purposes of disclosures to foreign workers.

WAGE AND HOUR		
1725	Cody	Overtime hours for individual providers - Limits the number of hours the Department of Social and Health Services (DSHS) may pay an individual provider (IP) based on how many hours the IP previously worked and other factors. Allows payment for hours exceeding the limits under certain circumstances. Requires the DSHS to adopt rules establishing criteria to pay for additional hours and to adopt emergency rules until permanent rules can be adopted. Creates a Joint Legislative-Executive Overtime Oversight Task Force to monitor spending and drivers of overtime costs. <i>The Committee did not take action on this bill in 2016. However, the Appropriations Committee passed it and it was amended on the House floor.</i>
WORKERS' COMPENSATION		
6293	Braun	Volunteers and unpaid students - Allows an employer to obtain medical aid coverage for student volunteers and unpaid students in private or public K-12 schools and higher education institutions. Allows an employer to pay premiums at the rate due for 100 hours of volunteer service for each volunteer or unpaid student.

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Other Bills Passed Out of Committee*

BILL NO.	PRIME SPONSOR	SUMMARY	STATUS
<i>APPRENTICESHIP</i>			
1590	Reykdal	Electrician certification - Requires completion of an apprenticeship to obtain a journey level or residential specialty electrician certification beginning July 1, 2021, and makes other changes in the electrical laws. <i>The Committee did not take action on this bill in 2016. However, the bill passed the House, as amended, and died in the Senate Commerce and Labor Committee.</i>	S Commerce & Labor
2846	Ormsby	Utilization - Provides that noncompliance with apprenticeship utilization requirements is one of the violations that count towards debarring a contractor from bidding on public works. Provides that, for purposes of meeting the responsible bidder criteria, the bidder must not have been found out of compliance with apprenticeship utilization requirements.	H Rules R
<i>COLLECTIVE BARGAINING</i>			
2849	Goodman	Interest arbitration - Extends interest arbitration to court marshals of any city with a population of more than 400,000 who are employed by the city municipal court and commissioned by the city police department.	S Ways & Means
<i>EMPLOYMENT -- DISCRIMINATION</i>			
1646	Senn	Equal Pay Opportunity Act - Modifies the Equal Pay Act to include prohibiting the provision of less favorable employment opportunities based on gender and modify the employer defense and remedies. Prohibits retaliation for certain workplace wage discussions and other matters.	S Commerce & Labor

* The summary describes the bill at the highest status attained in the House. The status indicated is prior to the transmission of bills to the original house and adjournment sine die.

2307	Farrell	Reasonable accommodations for pregnancy - Requires employers to provide reasonable accommodation for pregnancy, childbirth, and pregnancy-related health conditions, unless the accommodation would impose an undue hardship on the employer's business.	S Commerce & Labor
6149	Keiser	Reasonable accommodations for pregnancy - Requires employers to provide reasonable accommodation for pregnancy-related or childbirth-related health conditions, unless the accommodation would impose an undue hardship on the employer's business.	S Rules
<i>EMPLOYMENT -- GENERAL</i>			
1512	Sells	Law enforcement officer's disciplinary action - Prohibits a law enforcement agency from taking disciplinary action against an officer solely because the officer's name appears on a prosecutor's recurring witness list. <i>The Committee did not take action on this bill in 2016. However, the bill passed the House and died in the Senate Law and Justice Committee.</i>	S Law & Justice
1701	Moscoso	Pre-employment inquiries - Prohibits an employer from excluding an applicant from an initial interview solely because of a criminal record. Exempts certain employers from the prohibitions. Authorizes the Attorney General's Office to investigate violations and impose penalties.	H Rules X
2399	Holy	Law enforcement officer's performance review and citations - Prohibits the consideration of the number of citations an officer issues, or the amount of penalties assessed, in any performance review of the law enforcement officer.	S Transportation
2406	Manweller	Noncompetition agreements - Makes noncompetition agreements void and unenforceable for hair designers, cosmetologists, barbers, manicurists, estheticians, drywall applicators, musicians, and individuals who work in a fast-food establishment.	H Rules X

2543	Stokesbary	Civil service - lawful permanent residents - Provides that city police and fire department and county sheriff civil service applicants may be lawful permanent residents as an alternative to United States citizens. Provides that the background investigation for fully commissioned peace officer and reserve officer positions includes verification of status as a United States citizen or lawful permanent resident.	S Rules X
2931	Stanford	Noncompetition agreements - Provides that courts may not reform noncompetition agreements. Makes void noncompetition agreements with temporary and seasonal employees, with independent contractors, or for employees terminated without just cause or laid off. Creates a rebuttable presumption that a noncompetition agreement for more than one year or for employees who are not executives is unreasonable and void.	H Rules X
<i>SAFETY AND HEALTH</i>			
1651	Ryu	Human trafficking definitions - Defines "human trafficking" and other terms for purposes of disclosures to foreign workers. (Similar bill, SB 5342, enacted.)	S Rules X
2484	Walkinshaw	Dairy farms - Requires the Department of Labor and Industries (Department) to adopt rules applicable to dairy farms, including rules mandating employee training and establishing dairy-specific safety and health standards. Requires the Department to create a dairy safety emphasis unit to, among other things, ensure that every dairy farm is inspected at least once every three years. Extends the time frames under which dairy farm employees may file a retaliation complaint, creates a rebuttable presumption, and specifies additional court remedies.	H Appropriations
2917	Gregerson	Commercial janitors - Requires the Department of Labor and Industries to conduct a study on commercial janitorial safety.	H Rules R

UNEMPLOYMENT INSURANCE			
2578	Jinkins	Job search requirements - Allows in-person activities with a career counselor at an accredited institution of higher education to qualify as a job-search activity and allows the Employment Security Department to define by rule other methods of job-search activity.	H Rules
WAGE AND HOUR			
1231	Ormsby	Collective bargaining agreements - Requires the Department of Labor and Industries to establish the prevailing rate of wage using collective bargaining agreements.	S Commerce & Labor
1284	Haler	Railroad workers - Requires railroad carriers to observe rules limiting the hours of service for yardmasters and prohibits carriers from disrupting yardmasters during their required off-duty rest periods. <i>This bill died in House Rules in 2015. It was not returned to Committee in 2016, but was placed on 2nd reading before it was returned to Rules.</i>	H Rules X
1354	Ryu	Retaliation - Creates parallel retaliation provisions in several wage and related laws and establishes criminal penalties and administrative and court enforcement for violation of retaliation provisions.	H Appropriations
1809	Haler	Train crew size - Establishes minimum crew size requirements for freight and passenger trains and trains carrying hazardous materials, and creates exceptions to the requirements and penalties for violations. <i>The Committee did not take action on this bill in 2016. However, the bill passed the House and died in the Senate Law and Justice Committee.</i>	H Rules X
2803	Ormsby	Prevailing wage posting - Creates a penalty for prevailing wage posting violations.	H Rules X
2844	Ormsby	Prevailing wage training - responsible bidder criteria - Requires training in public works and prevailing wage to be a responsible bidder on public works.	S Commerce & Labor
2845	Ormsby	Prevailing wage statute of limitations - Provides that the time period for recovery of wages owed to a worker affected by a prevailing wage determination is tolled from the time the determination request is filed until the determination is final.	S Rules X

WORKERS' COMPENSATION			
2805	Reykdal	Reporting of hazardous exposures - Requires the Department of Labor and Industries to begin rule-making to require the reporting of all hazardous exposures suffered by firefighters in the course of employment.	S Commerce & Labor
2806	Kuderer	Presumption of occupational diseases - Adds certain emergency medical technicians and public employee fire investigators to the list of workers covered by the occupational disease presumption for purposes of industrial insurance. Adds strokes occurring under certain conditions, methicillin-resistant staphylococcus aureus (MRSA), and several cancers to the list of diseases.	S Commerce & Labor
2441	Kirby	Social security offset - Eliminates the Social Security retirement offset for injured workers who either were receiving or had applied to receive Social Security benefits before being injured.	S Commerce & Labor

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Bills Referred to Committee

BILL NUMBER	PRIME SPONSOR	SUMMARY
<i>BUILDING AND CONSTRUCTION</i>		
2548	Condotta	Contractor, conveyance, and electrical appeals - Limits the total fee for all appeals from one investigation to \$250 for businesses with 12 or fewer employees and no violations in the previous five years.
2549	Condotta	Conveyances - Provides that rules adopted by the Department of Labor and Industries on or after January 1, 2013, regarding minimum standards for conveyances apply to existing conveyances no earlier than 10 years after the rule is adopted.
2810	Taylor	Electrical Rules - Requires the Department of Labor and Industries, the Washington Cities Electrical Committee, and the Technical Advisory Committee to have an equal vote in the adoption of non-administrative electrical rules.
<i>COLLECTIVE BARGAINING</i>		
2490	Manweller	Open contract negotiations and elections – Requires contract negotiations to be open to the public. Creates procedures for individual providers to vote on existing representation or no representation and procedures for other bargaining representatives to appear on the ballot.
2829	Chandler	Open contract negotiations and financial feasibility – Requires contract negotiations to be open to the public. Provides definitions for terms, such as financially feasible (for the purposes of the OFM certifying collective bargaining agreements for financial feasibility) and provides a process for what happens if the OFM does not certify request for funds as feasible.

<i>EMPLOYMENT -- DISCRIMINATION</i>		
2404	Kochmar	Reasonable accommodations pregnancy - Requires employers to provide reasonable accommodations to an employee for pregnancy-related or childbirth-related health conditions with written certification from her doctor, unless the accommodation presents an undue hardship on the employer.
2894	Cody	Workplace bullying - Makes it an unfair practice under the Washington Law Against Discrimination to subject an employee to an abusive work environment.
<i>EMPLOYMENT - GENERAL</i>		
3003	Taylor	Method of payment - Requires payment by paper check upon request of an employee.
<i>WAGE AND HOUR</i>		
2291	MacEwen	Total compensation and youth wages - Allows medical and other benefits to be included when calculating the minimum wage paid. Allows federal minimum wage rate for employees under the age of 18.
2491	Manweller	State preemption - Provides for state preemption of local wage laws and contracts applied to private employers.
2489	Manweller	Application of local ordinances - Provides that local ordinances on minimum wage must apply to both unionized and nonunionized employers and may not be waived in collective bargaining agreements.
<i>WORKERS' COMPENSATION</i>		
2336	Manweller	Self-insured employer claim closure time frame - Requires the Department of Labor and Industries to adjudicate a self-insured employer's request to close a claim within 90 days of the request.
2337	Manweller	Time-loss maximum duration - Establishes a 60 month limit on temporary time-loss benefits.

2338	Manweller	Temporary time-loss end at maximum medical improvement - Provides that temporary time-loss benefits for injured workers terminate when a worker reaches maximum medical improvement.
2383	Reykdal	Acupuncture as an authorized treatment for injured workers - Requires the Department of Labor and Industries to establish acupuncture as an approved treatment and East Asian medicine practitioners as providers for injured workers.
2922	Manweller	Exemption for certain workers hired through digital platforms -Provides that an entity administering a digital platform for certain domestic services and gardening, maintenance, or repair in a private home is not an employer.
6321	Baumgartner	Construction independent contractor seven-part test - Modifies the seven-part independent contractor test for construction contractors for purposes of workers' compensation.
6289	Baumgartner	Exemption for certain workers hired through digital platforms - Provides that an entity administering a digital platform for certain domestic services and gardening, maintenance, or repair in a private home is not an employer.

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Bills Removed from Committee

BILL NO.	PRIME SPONSOR	SUMMARY	STATUS
2505	Hunt, G.	Payroll cards – Prohibits telephone and Internet balance inquiry fees and certain maintenance fees on payroll deposit accounts.	H Rules R
2600	Orcutt	Farm Internship Program - Adds Clark, Cowlitz, and Lewis counties to the farm internship program pilot project.	H Hi Ed
2625	Appleton	Fire Protection Contractor License Fund - Eliminates use of the Fire Protection Contractor License Fund for hospital inspections.	H Gen Govt & Inf
2630	Appleton	Overpayment of Wages by a Municipal Corporation - Provides that wage overpayment provisions apply to all municipal corporations, not limited to cities and counties.	H Rules X