

Human Trafficking - Discussion on 2009 Legislation

During the 2009 Legislative Session, the Legislature passed E2SSB 5850 which required employers of foreign workers to provide a disclosure statement to those workers. The Legislature established requirements for what should be included in the disclosure statement, including a notice to the workers informing them that they are subject to workplace protections under state and federal law. The legislation applied to all foreign workers, except for those possessing an H1B visa. A penalty section stating that employers who fail to provide the disclosure statement would be subject to the Consumer Protection Act was included in the legislation and was subsequently vetoed by the Governor.

Discussion began after the 2009 Session on whether the exemption for H1B visa holders should remain and whether other visa holders or workers should be exempted from the new law's requirements. Suggestions for appropriate penalties for employers who fail to provide the required disclosure statement were also addressed. Summaries of suggested penalties and exemptions to the requirements of the statute, with additional questions, are attached below. Also listed are suggested ways to inform the public and the targeted workers of the Act.

The purpose of this document is to receive input and suggestions from interested stakeholders. The list is not exhaustive of all possibilities and the Committee will appreciate receiving comment and additional suggestions.

Please review the items listed below for discussion at the October 2 meeting of the Senate Labor, Commerce & Consumer Protection Committee which meets 10 a.m. to noon. One hour will be devoted to the work session which will begin approximately at 11 a.m. Panels will provide input with time remaining for limited public input. Written comments will also be accepted.

Penalty suggestions and issues for discussion

- 1) Should a fine be established for failure to provide the disclosure form, such as for an L&I civil infraction? A suggestion was to start the fine at the first offense, increase it for the second offense, and increase it again for the third and subsequent offenses.
 - a) What should the fine be for the first, second and subsequent offenses?
 - b) Should there be a criminal penalty after the second or third offense?
- 2) Should the fine be payable to the worker or to L&I to offset enforcement costs? Or should the fine and payment of the fine be modeled after the wage payment act, chapter 49.48 RCW?

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- 3) Should a private right of action be permitted, allowing the payment of damages if actual harm is established? For example, California permits restitution for equitable remedies such as loss of profit if it is made unlawfully.
 - a) How should situations involving a victim who is reticent to take action be addressed? Would allowing a prevailing plaintiff to recover attorney fees motivate victims to seek redress?
- 4) What existing programs can be used to reduce enforcement costs?
- 5) Record keeping -- how should the employer provide proof that the disclosure form has been provided to the worker?

Exemption suggestions and issues for discussion

- 6) Should additional exemptions for other visa/worker classifications be added?
- 7) Should the exemption for H1B visa holders be removed from the statute? (H1B visa holders are foreign workers who may temporarily engage in employment. This employment occurs in specialty occupations, including occupations requiring theoretical and practical application of highly specialized knowledge in fields such as architecture, engineering, mathematics, physical sciences, social sciences, biotechnology, medicine and health, education, law, accounting, business, theology, and the arts.)
- 8) If the worker is being provided another substantially similar notice, such as a federal disclosure, should that satisfy the requirement under the statute?

Notification to workers

- 9) What else can be done to ensure workers learn of the disclosure form requirements?

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- a) Place employment notices at all places of business, such as on posters placed with other notices with substantially similar content such as minimum wage, WISHA, non-discrimination policies, etc. These notices would inform foreign workers but also increase "public awareness." Notices should include ways to identify trafficking victims and a hotline number. Enforcement would be through L&I and AGO.

 - b) Place a voluntary public notice in common areas - similar to the "Alcohol and Pregnancy Do Not Mix" notices. To encourage cooperation, the legislation could drop the Act's disclosure requirement or require disclosure to all employees. The public notice in common areas would incorporate the "3 P's" concept of the anti-trafficking effort: Prevention, Protection and Prosecution.

 - c) Use of social media - YouTube videos, etc.?
- 10) Should the Office of Crime Victims Advocacy assist in notifying workers? (See document prepared by OCVA, "Identifying and Responding to Victims of Human Trafficking in Washington" for the Department of Health to provide to health professionals associations, as required under E2SSB 5850).
- 11) Should the Anti-Trafficking Task Force continue its work with new statutory authority or voluntarily to assist victims in finding access to services?
- 12) Other?