



**FOR IMMEDIATE RELEASE**

**June 8, 2020**

## **BIAW Lawsuit Would Stop L&I Emergency Rule to Fine Businesses**

**Olympia, WA** The Building Industry of Washington today filed a lawsuit to repeal an emergency rule that authorizes the Department of Labor and Industries (L&I) to fine businesses that violate Gov. Inslee’s Stay at Home Order.

The suit, filed in Thurston County Superior Court, asks the court to strike down the new emergency rule, adopted by L&I on May 26, on the grounds that it is illegal, unconstitutional and unnecessary.

“L&I already has the power to shut down businesses or construction sites that aren’t complying with the safety requirements in the order and law enforcement can also arrest violators,” said BIAW General Counsel Jackson Maynard. “We agree that COVID-19 is an emergency. But given that the department already has these penalties as tools for enforcement, there is no justification for the agency to also issue fines.”

BIAW participated in a working group established by the governor, which included input from L&I, that recommended the Phase I and II safety requirements for construction that the governor adopted and ordered. Those requirements included a role of L&I for enforcement, but the only penalty specifically mentioned in either the Phase I or Phase II requirements is shutting down a construction jobsite until compliance can be achieved. State law also provides that violations of emergency orders can be punished criminally as a gross misdemeanor.

BIAW alleges that the emergency rule, as written, violates due process and exceeds the statutory authority given to the agency by the Legislature. In the statute granting the governor the power to issue orders, the Legislature spelled out only one means of enforcement, a gross misdemeanor, which is punishable by a \$5000 fine and 364 days in jail. The Legislature did not provide the authority for state agencies to pass rules that let them establish fines as well.

Following the adoption of the emergency rule by L&I, BIAW petitioned Gov. Inslee to repeal the agency's action, but the governor refused the request.

“The governor is using circular logic,” Maynard explained further. “He thinks that his emergency orders can give authority to an agency to enforce the orders in a manner that violates the statute that lets him issue emergency orders in the first place. According to the law, however, in order to pass an emergency rule and bypass all the normal procedures for rulemaking, an agency needs clear legislative authority and a clearly defined need. L&I has neither.”

###

*The Building Industry Association of Washington is the voice of the housing industry as the state's largest trade association with nearly 8,000-member companies employing approximately 265,000 people. The association is dedicated to ensuring and enhancing the vitality of the building industry for the benefit of its members and the housing needs of the citizens. Learn more at: [www.biaw.com](http://www.biaw.com)*

**For more information, please contact:**

Jennifer Spall, Communications & Public Relations Director  
Building Industry Association of Washington  
111 21st Avenue SW  
Olympia, WA 98501  
Phone: (360) 352-7800  
[jennifers@biaw.com](mailto:jennifers@biaw.com)