



Legislature Passes COVID-19 Health Emergency Labor Standards Bills

On May 11, 2021, Governor Jay Inslee signed two bills passed by the Washington Legislature (ESSBs 5115 and 5190) aimed at enhancing worker rights and protections during a public health emergency, such as the current coronavirus pandemic.

While the bills were prompted by the current coronavirus pandemic, they were written more broadly to apply to any public health emergency declared by the President or the Governor concerning any infectious or contagious diseases that are transmitted through respiratory droplets or aerosols, or through contact with contaminated surfaces.

Expansion of Workers' Compensation Eligibility During Public Health Emergencies

These bills amend the workers' compensation statute (ch. 51.32 RCW) to create a "prima facie presumption" that healthcare employees and "frontline" workers who contract COVID-19 did so at work for purposes of triggering workers' compensation benefits. "Healthcare employee" means any employee of any healthcare facility or other organization that provides emergency or medical services. "Frontline employees" include:

- first responders, including law enforcement officers, firefighters, EMTs paramedics, and ambulance drivers.
- employees working in food processing, manufacturing, distribution, farm, and meat packing work;
- maintenance, janitorial and food service workers at any healthcare facility treating COVID-19 patients;
- transit drivers and operators;
- workers at licensed child care facilities, retail, hospitality, public libraries, and restaurant workers with public contact;
- home care aides;
- workers at correctional facilities; and
- educational employees (primary and higher education) who are required to physically present to work.

The workplace injury "presumption" can be rebutted by evidence that the disease exposure occurred from other employment or nonemployment activities, or by evidence that the employee was working from home or on leave during the period immediately prior to becoming infected with the disease. This "presumption" can only be rebutted by "clear and convincing evidence" for healthcare workers and by "a preponderance of the evidence" for "frontline workers." In other words, it will be harder to rebut the presumption that healthcare workers diagnosed with COVID-19 contracted the disease at work.

The bills also permit an employee to collect benefits beginning the day after the disease was contracted. Importantly, under these bills the costs of benefits paid would not affect the “experience rating” of employers insured by the state fund.

Prohibition of Discrimination Against “High Risk” Employees

ESSB 5115 makes it illegal for an employer to discriminate against any employee who is “high risk” and seeks an accommodation or leave to minimize exposure to infectious diseases during a public health emergency, like the coronavirus. The bill defines a “high risk” employee as someone who, due to age or underlying health conditions, is considered high risk by the CDC and for whom a medical provider has recommended the employee’s removal from the worksite.

Employers Required to Disclose Outbreaks and Exposure

ESSB 5115 amends the state industrial safety and health act (ch. 49.17 RCW) to require employers with more than 50 employees at a workplace to report to L&I within one day any infectious disease outbreak, defined as 10 or more confirmed cases. Employers must not disclose employees’ personal identifying information.

Additionally, ESSB 5115 also provides that if an employer receives notice of a potential infectious disease exposure concerning one of its employees then it must, within one business day, provide written notice to all employees at the worksite. “Worksite” means the building, store, or facility where the employee who tested positive worked, but it does not include any buildings, floors, or other locations the individual did not enter. The employer must also notify the union representing any such employees. These notice requirements do not apply to employers who are health care facilities.

Expanded Unemployment Protections for Healthcare Workers

ESSB 5190 also expands unemployment compensation rights and benefits for healthcare workers. For example, ESSB 5190 amends the unemployment compensation statute to provide that healthcare workers who leave work to quarantine following an exposure, as recommended by the CDC or local health authorities, are not disqualified from obtaining unemployment benefits and do not engage in “misconduct” which would preclude them from obtaining unemployment benefits.

Effective Dates

These bills are effective immediately and will be in effect until the current public health emergency is over.

Employer Action Items

Employers should ensure that the person(s) in their organization responsible for overseeing COVID-related safety planning is made aware of the new reporting and employee-notification

obligations established by ESS 5115. Additionally, for those employers that continue to have high-risk employees seeking leave or other accommodations, they should be mindful of this new statutory protection those employees have against discrimination. While a recent update to Governor Inslee's proclamation on high-risk workers does afford employers greater latitude to request information to evaluate needed accommodations and to suspend employer-paid medical benefits,¹ employers should carefully navigate any modifications to accommodations in place for high-risk employees to avoid liability under this new law. Employers are encouraged to confer with legal counsel before taking action that may adversely affect a high-risk employee.

If you have specific questions about this new legislation or other employer obligations, please feel free to reach out to one of the attorneys in Summit Law Group's Labor & Employment group.

Important Notification

This summary is intended to provide an overview of recent legal developments. This summary is not intended to be, and should not be interpreted as, legal advice. Employers are encouraged to contact a Summit Law Group attorney or other legal counsel for guidance regarding particular situations.

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¹ See Proclamation 20-46.3 (https://www.governor.wa.gov/sites/default/files/proclamations/proc_20-46.3.pdf) and FAQ's on Proclamation 20-46.3 (https://www.governor.wa.gov/sites/default/files/proc_20-46.3%20FAQ.pdf?utm_medium=email&utm_source=govdelivery).