

# FINAL BILL REPORT

## ESSB 5115

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Synopsis as Enacted

**Brief Description:** Establishing health emergency labor standards.

**Sponsors:** Senate Committee on Labor, Commerce & Tribal Affairs (originally sponsored by Senators Keiser, Lias, Conway, Kuderer, Lovelett, Nguyen, Salomon, Stanford and Wilson, C.).

**Senate Committee on Labor, Commerce & Tribal Affairs**  
**House Committee on Labor & Workplace Standards**

**Background:** Workers' Compensation. Under the state's industrial insurance laws, a worker who, in the course of employment, is injured or suffers disability from an occupational disease is entitled to certain benefits. To prove an occupational disease, the worker must show that the disease arose naturally and proximately out of employment. For certain occupations, such as firefighters, there is a presumption that certain medical conditions are occupational diseases.

Washington Industrial Safety and Health Act. Under the Washington Industrial Safety and Health Act (WISHA), an employer must provide a workplace free from recognized hazards. The Department of Labor and Industries (L&I) administers WISHA. L&I has adopted general safety standards that apply to most industries, and has safety standards that apply only to specific industries.

**Summary:** Occupational Disease Presumption for Frontline Employees. For frontline employees, there exists a presumption that any infectious or contagious diseases that are transmitted through respiratory droplets or aerosols, or through contact with contaminated surfaces and are the subject of a public health emergency are occupational diseases during a public health emergency for the purposes of workers' compensation. The employee must provide verification, as required by L&I, that the employee has contracted the infectious or contagious disease.

The presumption may be rebutted by a preponderance of the evidence that:

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- exposure to the disease occurred from other employment or non-employment activities; or
- the employee was working from the employee's home or was on leave for a period of quarantine consistent with recommended guidance from state and federal health officials immediately prior to the employee's injury, occupational disease, or period of incapacity that resulted from exposure to the disease.

Costs of the payments under the occupational disease presumption do not affect the experience rating of the employers insured by the state fund.

When calculating assessments due to L&I, self-insured employers and self-insurance hospital groups may deduct the cost of payments made for the occupational disease presumption from the total of all claim costs reported.

Employer Reporting to L&I. During a public health emergency, an employer with more than 50 employees at a workplace, within 24 hours of confirming that ten or more of their employees at the workplace have tested positive for the infectious or contagious disease that is the subject of the public health emergency must report the positive tests to L&I.

Reports to L&I are prohibited from including any employee's name or personal identifying information. L&I may use the reports to identify potential clusters of infections at specific workplaces or industries and investigate workplaces for violations of WISHA. An employee is not required to disclose any medical condition or diagnosis to their employer.

L&I must consult with the Department of Health (DOH) on the infectious or contagious disease:

- before issuing regulatory guidance, rules, directives, or orders related to the reporting requirement for health care facilities; and
- when investigating health care entities and issuing citations related to the reporting requirement.

During a public health emergency, the name, email and residential address, license plate number, and other personally identifiable information regarding employees of L&I is exempt from disclosure under the Public Records Act to the extent the disclosure would violate their right to privacy or pose a risk to their personal safety.

Employer Reporting to Employees. During a public health emergency, if an employer receives a notice of potential exposure to the infectious or contagious disease that is the subject of the public health emergency, the employer must provide written notice of potential exposure to employees, and, when applicable, their union, and employers of subcontractors who were on the premises at the same worksite.

Notice of potential exposure means:

- notification from a public health official or licensed medical provider that an

- employee was exposed to a qualifying individual at the worksite;
- notification to the employer from an employee, or their emergency contact, that the employee is a qualifying individual; or
- notification through a testing protocol of the employer that the employee is a qualifying individual.

A qualifying individual means a person who has:

- a positive laboratory test;
- a positive diagnosis from a licensed health care provider;
- an order to isolate by a public health official; or
- died due to the infectious or contagious disease, in the determination of a local health department.

Employers who are health care facilities are required to notify employees with known or suspected high-risk exposure and their union within 24 hours of confirmed exposure.

High Risk Employees. During a public health emergency, no employer may discharge, permanently replace, or discriminate against an employee who is high risk as a result of the employee seeking accommodation that protects them from exposure to the infectious or contagious disease or, if no accommodation is reasonable, using all available leave options.

An employee who is high risk is an employee who, due to age or an underlying health condition is at a high risk of severe illness from the disease and a medical provider has recommended the employee's removal from the workforce.

For the purposes of employer reporting and the treatment of high-risk employees, L&I must consult with DOH before issuing regulatory guidance, rules, directives, or orders for health care facilities, and when investigating health care entities and issuing citations.

Public Health Emergency. A public health emergency is a declaration or order concerning any infectious or contagious disease, including a pandemic and is issued as follows:

- the President of the United States has declared a national or regional emergency that covers every county in the state; or
- the Governor has declared a state of emergency in every county in the state.

Frontline Employee. Frontline employees are the following employees:

- first responders, including law enforcement officers, firefighters, emergency medical service providers, paramedics, and ambulance drivers;
- employees performing food processing, food manufacturing, food distribution, farm, and meat packing work;
- maintenance, janitorial, and food service workers at any facility treating patients diagnosed with the infectious or contagious disease that is the subject of the public health emergency;
- drivers and operators employed by a transit agency or any other public entity

- providing mass transportation services;
- employees working at a licensed child care facility that interact in person with children or other members of the general public;
- retail employees at stores that remain open to the general public during the public health emergency if the employee has in-person interaction with the general public or other employees;
- employees of a hotel, motel, or other transient accommodation that remains open to the general public during the public health emergency, if the employee has in-person interaction with the general public or other employees;
- restaurant employees, if the employee has in-person interaction with the general public or other employees;
- home care aides and home health aides that primarily work in the home of the individual receiving care;
- corrections officers and correctional support employees;
- educational employees, including teachers, paraeducators, principals, librarians, school bus drivers, and other educational support staff and contractors that are required to be physically present at a school, or on the grounds of a school, where classes are being taught in person, in a school transportation vehicle, or in the home of a student as part of their job duties, if the employee has in-person interaction with students, a student's family members, or other employees;
- employees at higher education institutions that are required to be physically present on campus where classes are being taught in person, if the employee has in-person interaction with students or other employees; and
- employees employed by a public library that remains open, if the employee has in-person interaction with the general public or other employees.

**Votes on Final Passage:**

Senate	48	1	
House	70	27	(House amended)
House	68	30	(vote reconsidered/House amended)
Senate	32	16	(Senate concurred)

**Effective:** May 11, 2021