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**ENGROSSED SUBSTITUTE SENATE BILL 5115**

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**State of Washington**

**67th Legislature**

**2021 Regular Session**

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

READ FIRST TIME 02/15/21.

1           AN ACT Relating to establishing health emergency labor standards;  
2 adding a new section to chapter 51.32 RCW; adding new sections to  
3 chapter 49.17 RCW; creating a new section; providing a contingent  
4 expiration date; and declaring an emergency.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6           NEW SECTION.   **Sec. 1.** A new section is added to chapter 51.32  
7 RCW to read as follows:

8           (1) For frontline employees who are covered under this title,  
9 there exists a prima facie presumption that any infectious or  
10 contagious diseases that are transmitted through respiratory droplets  
11 or aerosols, or through contact with contaminated surfaces and are  
12 the subject of a public health emergency are occupational diseases  
13 under RCW 51.08.140 during a public health emergency.

14           (2) The frontline employee must provide verification, as required  
15 by the department by rule, to the department and the self-insured  
16 employer that the employee has contracted the infectious or  
17 contagious disease that is the subject of the public health  
18 emergency.

19           (3) This presumption of occupational disease may be rebutted by a  
20 preponderance of the evidence that:

1 (a) The exposure to the infectious or contagious disease which is  
2 the subject of the public health emergency occurred from other  
3 employment or nonemployment activities; or

4 (b) The employee was working from the employee's home, on leave  
5 from the employee's employment, or some combination thereof, for the  
6 period of quarantine consistent with recommended guidance from state  
7 and federal health officials for the disease immediately prior to the  
8 employee's injury, occupational disease, or period of incapacity that  
9 resulted from exposure to the disease which is the subject of the  
10 public health emergency.

11 (4) RCW 51.32.090(7) does not apply to an occupational disease  
12 under this section except that no worker shall receive compensation  
13 for or during the day on which the occupational disease was  
14 contracted. For the purposes of this subsection (4), the day on which  
15 the occupational disease was contracted is whichever date occurs  
16 first of the following:

17 (a) The date that the worker first missed work due to symptoms of  
18 the infectious or contagious disease;

19 (b) The date the worker was quarantined by a medical provider or  
20 public health official; or

21 (c) The date the worker received a positive test result  
22 confirming contraction of the infectious or contagious disease.

23 (5)(a) When a determination involving the presumption established  
24 in this section is appealed to the board of industrial insurance  
25 appeals and the final decision allows the claim of benefits, the  
26 board of industrial insurance appeals shall order that all reasonable  
27 costs of the appeal, including attorneys' fees and witness fees, be  
28 paid to the worker or the worker's beneficiary by the opposing party.  
29 If the opposing party is a state fund employer, the costs and fees  
30 are paid by the employer.

31 (b) When a determination involving the presumption established in  
32 this section is appealed to any court and the final decision allows  
33 the claim for benefits, the court shall order that all reasonable  
34 costs of appeal, including attorneys' fees and witness fees, be paid  
35 to the worker or the worker's beneficiary by the opposing party.

36 (c) When reasonable costs of the appeal must be paid by the  
37 department under this section in a state fund case, the costs shall  
38 be paid from the accident fund and charged to the costs of the claim.  
39 When calculating assessments due to the department for which total  
40 claim costs are the basis, self-insured employers and self-insurance

1 hospital groups formed under RCW 51.14.150 and 51.14.160 may deduct  
2 the cost of payments made under this section from the total of all  
3 claim costs reported.

4 (6) Costs of the payments under this section shall not affect the  
5 experience rating of employers insured by the state fund. These costs  
6 shall be paid from the accident fund.

7 (7) As used in this section:

8 (a) "Assisted living facility" has the same meaning as in RCW  
9 18.20.020.

10 (b) "Farm work" means work performed on a farm, in the employ of  
11 any person, in connection with the cultivation of the soil, or in  
12 connection with raising or harvesting any agricultural or  
13 horticultural commodity, including raising, shearing, feeding, caring  
14 for, training, and management of livestock, bees, poultry, and  
15 furbearing animals and wildlife, or in the employ of the owner or  
16 tenant or other operator of a farm in connection with the operation,  
17 management, conservation, improvement, or maintenance of such farm  
18 and its tools and equipment. For the purposes of this subsection,  
19 "farm work" includes floriculture.

20 (c) "Food distribution work" means work where the primary duties  
21 include transporting food from food producers or manufacturers to  
22 food warehouses or food service operators and retailers.

23 (d) "Food manufacturing work" means work performed for an  
24 employer whose North American industry classification code is within  
25 "311."

26 (e) "Food processing work" means work handling or processing of  
27 any food in any manner of preparation for sale for an employer  
28 required to be licensed by the department of agriculture under  
29 chapter 69.07 RCW.

30 (f) "Frontline employee" includes the following employees:

31 (i) First responders, including law enforcement officers,  
32 firefighters, emergency medical service providers, paramedics, and  
33 ambulance drivers. "Firefighters" includes wildland firefighters when  
34 performing wildfire suppression or other emergency duties under the  
35 incident command system if the firefighter has in-person interaction  
36 with the general public or other firefighters as part of their job  
37 duties;

38 (ii) Employees employed at a hospital, health care facility,  
39 nursing home, or assisted living facility who interact in person with

1 patients or other members of the general public as part of their job  
2 duties;

3 (iii) Employees performing food processing, food manufacturing,  
4 food distribution, farm, and meat packing work;

5 (iv) Maintenance, janitorial, and food service workers at any  
6 facility treating patients diagnosed with the infectious or  
7 contagious disease that is the subject of the public health  
8 emergency;

9 (v) Drivers and operators employed by a transit agency or any  
10 other public entity authorized under state law to provide mass  
11 transportation services to the general public;

12 (vi) Employees working at a child care facility licensed by the  
13 department of children, youth, and families under chapter 43.216 RCW,  
14 if the employee has in-person interaction with children or other  
15 members of the general public as part of their job duties;

16 (vii) Employees employed by a retail store that remains open to  
17 the general public during the public health emergency, if the  
18 employee has in-person interaction with the general public as part of  
19 their job duties or has in-person interaction with other employees.  
20 For the purposes of this subsection, "retail store" means a business  
21 whose North American industry classification code is within "44-45;"

22 (viii) Employees employed by a hotel, motel, or other transient  
23 accommodation licensed under chapter 70.62 RCW that remains open to  
24 the general public during the public health emergency, if the  
25 employee has in-person interaction with the general public as part of  
26 their job duties or has in-person interaction with other employees;

27 (ix) Employees employed by a restaurant, if the employee has in-  
28 person interaction with the general public as part of their job  
29 duties or works in the kitchen of the restaurant and has in-person  
30 interaction with other employees. For the purposes of this  
31 subsection, "restaurant" has the same meaning as in RCW 66.04.010;

32 (x) Home care aides certified under chapter 18.88B RCW and home  
33 health aides that provide services under chapter 70.126 RCW that  
34 primarily work in the home of the individual receiving care;

35 (xi) (A) Corrections officers and correctional support employees  
36 working at a correctional institution.

37 (B) For the purposes of this subsection (7) (f) (xi):

38 (I) "Correctional institution" has the same meaning as in RCW  
39 9.94.049.

1 (II) "Corrections officer" means any corrections agency employee  
2 whose primary job function is to provide custody, safety, and  
3 security of prisoners in jails and detention facilities.

4 (III) "Correctional support employee" means any employee who  
5 provides food services or janitorial services in a correctional  
6 institution;

7 (xii) Educational employees, including classroom teachers,  
8 paraeducators, principals, librarians, school bus drivers, and other  
9 educational support staff, of any school district, or a contractor of  
10 a school district, that are required to be physically present at a  
11 school or on the grounds of a school where classes are being taught  
12 in person, in a transportation vehicle necessary for school  
13 operations, or in the home of a student as part of their job duties,  
14 if the employee has in-person interaction with students, a student's  
15 family members, or other employees as part of their job duties;

16 (xiii) Employees of institutions of higher education that are  
17 required to be physically present on campus when classes are being  
18 taught in person, if the employee has in-person interaction with  
19 students or the general public as part of their job duties. For the  
20 purposes of this subsection, "institution of higher education" has  
21 the same meaning as in RCW 28B.10.016;

22 (xiv) Employees employed by a public library that remains open to  
23 the general public during the public health emergency, if the  
24 employee has in-person interaction with the general public as part of  
25 their job duties or has in-person interaction with other employees.  
26 For the purposes of this subsection, "public library" means a library  
27 covered by chapter 27.12 RCW.

28 (g) "Health care facility" has the same meaning as in RCW  
29 9A.50.010.

30 (h) "Meat packing work" means work slaughtering animals and  
31 processing and packaging meat products for sale and the rendering of  
32 animal by-products.

33 (i) "Nursing home" means a nursing home licensed under chapter  
34 18.51 RCW.

35 (j) "Public health emergency" means a declaration or order  
36 concerning any infectious or contagious diseases, including a  
37 pandemic and is issued as follows:

38 (i) The president of the United States has declared a national or  
39 regional emergency that covers every county in the state of  
40 Washington; or

1 (ii) The governor of Washington has declared a state of emergency  
2 under RCW 43.06.010(12).

3 (k) "School" has the same meaning as in RCW 28A.210.070.

4 NEW SECTION. **Sec. 2.** A new section is added to chapter 49.17  
5 RCW to read as follows:

6 (1) During a public health emergency:

7 (a) An employer with more than 50 employees at a workplace or  
8 worksite, within 24 hours of confirming that 10 or more of their  
9 employees at the workplace or worksite in this state have tested  
10 positive for the infectious or contagious disease that is the subject  
11 of the public health emergency, must report the positive tests to the  
12 department in a form prescribed by the department.

13 (b) The department must consult with the department of health on  
14 the infectious or contagious disease that is the subject of the  
15 public health emergency:

16 (i) Before issuing regulatory guidance, rules, directives, or  
17 orders for health care facilities under this section; and

18 (ii) When investigating health care entities and issuing  
19 citations under this section.

20 (c) The report required in (a) of this subsection may not include  
21 any employee names or personal identifying information.

22 (2) The department may use the reports in subsection (1) of this  
23 section to identify potential clusters of infections at specific  
24 workplaces or industries and investigate workplaces for violations of  
25 this chapter.

26 (3) During a public health emergency, the name, email and  
27 residential addresses, license plate number, and other personally  
28 identifiable information regarding employees of the department is  
29 exempt from disclosure under chapter 42.56 RCW to the extent that the  
30 disclosure would violate their right to privacy or pose a risk to  
31 their personal safety or security.

32 (4) This section does not require an employee to disclose any  
33 medical condition or diagnosis to their employer.

34 (5) This section does not alter or eliminate any other reporting  
35 obligations an employer has under state or federal law.

36 (6)(a) During a public health emergency, no employer may  
37 discharge, permanently replace, or in any manner discriminate against  
38 an employee who is high risk as a result of the employee:

1 (i) Seeking accommodation that protects them from the risk of  
2 exposure to the infectious or contagious disease; or

3 (ii) If no accommodation is reasonable, utilizing all available  
4 leave options, including but not limited to leave without pay and  
5 unemployment insurance, until completion of the public health  
6 emergency or accommodation is made available.

7 (b) This subsection (6) does not alter or diminish any existing  
8 remedy available to the worker under current state or federal law.

9 (c) For the purposes of this subsection (6), "an employee who is  
10 high risk" means an employee who:

11 (i) Due to age or an underlying health condition, is at a high  
12 risk of severe illness from the disease that is the subject of the  
13 public health emergency, as defined by the centers for disease  
14 control and prevention; and

15 (ii) A medical provider has recommended the employee's removal  
16 from the workforce because of their high risk of severe illness.

17 (7) For the purposes of this section, "public health emergency"  
18 means a declaration or order concerning any infectious or contagious  
19 diseases, including a pandemic and is issued as follows:

20 (a) The president of the United States has declared a national or  
21 regional emergency that covers every county in the state of  
22 Washington; or

23 (b) The governor of Washington has declared a state of emergency  
24 under RCW 43.06.010(12) in every county in the state.

25 NEW SECTION. **Sec. 3.** A new section is added to chapter 49.17  
26 RCW to read as follows:

27 (1) During a public health emergency, if an employer receives a  
28 notice of potential exposure to the infectious or contagious disease  
29 that is the subject of the public health emergency, the employer  
30 must, within one business day of potential exposure:

31 (a) Provide written notice to all employees, and the employers of  
32 subcontracted employees, who were on the premises at the same  
33 worksite as the qualifying individual that they may have been exposed  
34 to the infectious or contagious disease. The written notice must be  
35 made in a manner the employer normally uses to communicate  
36 employment-related information. Written notice may include, but is  
37 not limited to, personal service, email, or text message if it can  
38 reasonably be anticipated to be received by the employee within one

1 business day of sending and must be in both English and the language  
2 understood by the majority of the employees; and

3 (b) Provide a written notice to the exclusive representative, if  
4 any, of employees under this subsection (1).

5 (2) The written notice under subsection (1) of this section may  
6 not include any employee names or personal identifying information.

7 (3) This section does not alter or eliminate any other reporting  
8 obligations an employer has under state or federal law.

9 (4) This section does not require an employee to disclose any  
10 medical condition or diagnosis to their employer.

11 (5) This section does not apply to employers who are health care  
12 facilities as defined in section 1(7)(g) of this act. For employees  
13 of health care facilities with known or suspected high-risk exposure,  
14 notification to the employee, and with the employee's authorization,  
15 to their union representative, if any, by the facility must occur  
16 within 24 hours of confirmed exposure.

17 (6) For the purposes of this section:

18 (a) "Notice of potential exposure" means any of the following:

19 (i) Notification to the employer from a public health official or  
20 licensed medical provider that an employee was exposed to a  
21 qualifying individual at the worksite;

22 (ii) Notification to the employer from an employee, or their  
23 emergency contact, that the employee is a qualifying individual;

24 (iii) Notification through a testing protocol of the employer  
25 that the employee is a qualifying individual.

26 (b) "Public health emergency" means a declaration or order  
27 concerning any infectious or contagious diseases, including a  
28 pandemic and is issued as follows:

29 (i) The president of the United States has declared a national or  
30 regional emergency that covers every county in the state of  
31 Washington; or

32 (ii) The governor of Washington has declared a state of emergency  
33 under RCW 43.06.010(12) in every county in the state.

34 (c) "Qualifying individual" means any person who has:

35 (i) A positive laboratory test for the infectious or contagious  
36 disease that is the subject of the public health emergency;

37 (ii) A positive diagnosis of the infectious or contagious disease  
38 that is the subject of the public health emergency by a licensed  
39 health care provider;



1 (iii) An order to isolate by a public health official related to  
2 the infectious or contagious disease that is the subject of the  
3 public health emergency; or

4 (iv) Died due to the infectious or contagious disease that is the  
5 subject of the public health emergency, in the determination of a  
6 local health department.

7 (d) "Worksite" means the building, store, facility, agricultural  
8 field, or other location where the qualifying individual worked.  
9 "Worksite" does not include any buildings, floors, or other locations  
10 of the employer that the qualifying individual did not enter.

11 NEW SECTION. **Sec. 4.** This act may be known and cited as the  
12 health emergency labor standards act.

13 NEW SECTION. **Sec. 5.** This act is necessary for the immediate  
14 preservation of the public peace, health, or safety, or support of  
15 the state government and its existing public institutions, and takes  
16 effect immediately.

17 NEW SECTION. **Sec. 6.** This act expires upon the expiration or  
18 termination of proclamation 20-05, and any subsequent orders  
19 extending or amending the proclamation, declaring a state of  
20 emergency on February 29, 2020, for all counties in Washington due to  
21 COVID-19.

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