
SUBSTITUTE SENATE BILL 5115

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; and declaring an
4 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
20 clear and convincing 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 five percent or more of
9 their employees at the workplace or worksite in this state have
10 tested positive for the infectious or contagious disease that is the
11 subject of the public health emergency, must report the positive
12 tests to the department in a form prescribed by the department.

13 (b) An employer with 50 or fewer employees at a workplace or
14 worksite, within 24 hours of confirming that 10 percent or more of
15 their employees at the workplace or worksite in this state have
16 tested positive for the infectious or contagious disease that is the
17 subject of the public health emergency, must report the positive
18 tests to the department in a form prescribed by the department.

19 (c) The department must consult with the department of health on
20 the infectious or contagious disease that is the subject of the
21 public health emergency:

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

24 (ii) When investigating health care entities and issuing
25 citations under this section.

26 (d) The reports required in (a) and (b) of this subsection may
27 not include any employee names or personal identifying information.

28 (2) The department may use the reports in subsection (1) of this
29 section to identify potential clusters of infections at specific
30 workplaces or industries and investigate workplaces for violations of
31 this chapter.

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

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

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

3 (6) For the purposes of this section, "public health emergency"
4 means a declaration or order concerning any infectious or contagious
5 diseases, including a pandemic and is issued as follows:

6 (a) The president of the United States has declared a national or
7 regional emergency that covers every county in the state of
8 Washington; or

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

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

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

17 (a) Provide written notice to all employees, and the employers of
18 subcontracted employees, who were on the premises at the same
19 worksite as the qualifying individual that they may have been exposed
20 to the infectious or contagious disease. The written notice must be
21 made in a manner the employer normally uses to communicate
22 employment-related information. Written notice may include, but is
23 not limited to, personal service, email, or text message if it can
24 reasonably be anticipated to be received by the employee within one
25 business day of sending and must be in both English and the language
26 understood by the majority of the employees; and

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

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

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

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

35 (5) This section does not apply to employers who are health care
36 facilities as defined in section 1(7)(g) of this act. For employees
37 of health care facilities with known or suspected high-risk exposure,
38 notification to the employee, and with the employee's authorization,

1 to their union representative, if any, by the facility must occur
2 within 24 hours of confirmed exposure.

3 (6) For the purposes of this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 NEW SECTION. **Sec. 5.** This act is necessary for the immediate
2 preservation of the public peace, health, or safety, or support of
3 the state government and its existing public institutions, and takes
4 effect immediately.

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