

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE SENATE BILL 5115

67th Legislature
2021 Regular Session

Passed by the Senate April 14, 2021
Yeas 32 Nays 16

President of the Senate

Passed by the House April 5, 2021
Yeas 68 Nays 30

**Speaker of the House of
Representatives**

Approved

Governor of the State of Washington

CERTIFICATE

I, Brad Hendrickson, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 5115** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE SENATE BILL 5115

AS AMENDED BY THE HOUSE

Passed Legislature - 2021 Regular Session

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

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

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

23 (b) If leave or similar benefits are paid to the frontline
24 employee as part of a federal or state program for these employees
25 during the public health emergency, temporary total disability
26 benefits are not payable for the same period of time covered by the
27 federal or state program.

28 (5) When calculating assessments due to the department for which
29 total claim costs are the basis, self-insured employers and self-
30 insurance hospital groups formed under RCW 51.14.150 and 51.14.160
31 may deduct the cost of payments made under this section from the
32 total of all claim costs reported.

33 (6) Costs of the payments under this section shall not affect the
34 experience rating of employers insured by the state fund.

35 (7) As used in this section:

36 (a) "Assisted living facility" has the same meaning as in RCW
37 18.20.020.

38 (b) "Farm work" means work performed on a farm, in the employ of
39 any person, in connection with the cultivation of the soil, or in
40 connection with raising or harvesting any agricultural or

1 horticultural commodity, including raising, shearing, feeding, caring
2 for, training, and management of livestock, bees, poultry, and
3 furbearing animals and wildlife, or in the employ of the owner or
4 tenant or other operator of a farm in connection with the operation,
5 management, conservation, improvement, or maintenance of such farm
6 and its tools and equipment. For the purposes of this subsection,
7 "farm work" includes floriculture.

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

11 (d) "Food manufacturing work" means work performed for an
12 employer whose North American industry classification code is within
13 "311."

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

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

19 (i) First responders, including law enforcement officers,
20 firefighters, emergency medical service providers, paramedics, and
21 ambulance drivers. "Firefighters" includes wildland firefighters when
22 performing wildfire suppression or other emergency duties under the
23 incident command system if the firefighter has in-person interaction
24 with the general public or other firefighters as part of their job
25 duties;

26 (ii) Employees performing food processing, food manufacturing,
27 food distribution, farm, and meat packing work;

28 (iii) Maintenance, janitorial, and food service workers at any
29 facility treating patients diagnosed with the infectious or
30 contagious disease that is the subject of the public health
31 emergency;

32 (iv) Drivers and operators employed by a transit agency or any
33 other public entity authorized under state law to provide mass
34 transportation services to the general public;

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

39 (vi) Employees employed by a retail store that remains open to
40 the general public during the public health emergency, if the

1 employee has in-person interaction with the general public as part of
2 their job duties or has in-person interaction with other employees.
3 For the purposes of this subsection, "retail store" means a business
4 whose North American industry classification code is within "44-45";

5 (vii) Employees employed by a hotel, motel, or other transient
6 accommodation licensed under chapter 70.62 RCW that remains open to
7 the general public during the public health emergency, if the
8 employee has in-person interaction with the general public as part of
9 their job duties or has in-person interaction with other employees;

10 (viii) Employees employed by a restaurant, if the employee has
11 in-person interaction with the general public as part of their job
12 duties or works in the kitchen of the restaurant and has in-person
13 interaction with other employees. For the purposes of this
14 subsection, "restaurant" has the same meaning as in RCW 66.04.010;

15 (ix) Home care aides certified under chapter 18.88B RCW and home
16 health aides that provide services under chapter 70.126 RCW that
17 primarily work in the home of the individual receiving care;

18 (x) (A) Corrections officers and correctional support employees
19 working at a correctional institution.

20 (B) For the purposes of this subsection (7) (f) (x):

21 (I) "Correctional institution" has the same meaning as in RCW
22 9.94.049.

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

26 (III) "Correctional support employee" means any employee who
27 provides food services or janitorial services in a correctional
28 institution;

29 (xi) Educational employees, including classroom teachers,
30 paraeducators, principals, librarians, school bus drivers, and other
31 educational support staff, of any school district, or a contractor of
32 a school district, that are required to be physically present at a
33 school or on the grounds of a school where classes are being taught
34 in person, in a transportation vehicle necessary for school
35 operations, or in the home of a student as part of their job duties,
36 if the employee has in-person interaction with students, a student's
37 family members, or other employees as part of their job duties;

38 (xii) Employees of institutions of higher education that are
39 required to be physically present on campus when classes are being
40 taught in person, if the employee has in-person interaction with

1 students or the general public as part of their job duties. For the
2 purposes of this subsection, "institution of higher education" has
3 the same meaning as in RCW 28B.10.016;

4 (xiii) Employees employed by a public library that remains open
5 to the general public during the public health emergency, if the
6 employee has in-person interaction with the general public as part of
7 their job duties or has in-person interaction with other employees.
8 For the purposes of this subsection, "public library" means a library
9 covered by chapter 27.12 RCW.

10 (g) "Meat packing work" means work slaughtering animals and
11 processing and packaging meat products for sale and the rendering of
12 animal by-products.

13 (h) "Nursing home" means a nursing home licensed under chapter
14 18.51 RCW.

15 (i) "Public health emergency" means a declaration or order
16 concerning any infectious or contagious diseases, including a
17 pandemic and is issued as follows:

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

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

23 (j) "School" has the same meaning as in RCW 28A.210.070.

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

26 (1) During a public health emergency:

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

33 (b) The department must consult with the department of health on
34 the infectious or contagious disease that is the subject of the
35 public health emergency:

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

38 (ii) When investigating health care entities and issuing
39 citations under this section.

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

3 (2) The department may use the reports in subsection (1) of this
4 section to identify potential clusters of infections at specific
5 workplaces or industries and investigate workplaces for violations of
6 this chapter.

7 (3) During a public health emergency, the name, email and
8 residential addresses, license plate number, and other personally
9 identifiable information regarding employees of the department are
10 exempt from disclosure under chapter 42.56 RCW to the extent that the
11 disclosure would violate their right to privacy or pose a risk to
12 their personal safety or security.

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

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

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

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

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

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

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

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

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

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

1 (a) The president of the United States has declared a national or
2 regional emergency that covers every county in the state of
3 Washington; or

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

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

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

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

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

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

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

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

30 (5) This section does not apply to employers who are health care
31 facilities as defined in RCW 9A.50.010. For employees of health care
32 facilities with known or suspected high-risk exposure, notification
33 to the employee, and with the employee's authorization, to their
34 union representative, if any, by the facility must occur within 24
35 hours of confirmed exposure.

36 (6) For the purposes of this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34 NEW SECTION. **Sec. 5.** This act is necessary for the immediate
35 preservation of the public peace, health, or safety, or support of

1 the state government and its existing public institutions, and takes
2 effect immediately.

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