

ESSB 5115 - H COMM AMD

By Committee on Labor & Workplace Standards

ADOPTED AND ENGROSSED 4/5/21

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** A new section is added to chapter 51.32
4 RCW to read as follows:

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

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

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

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

21 (b) The employee was working from the employee's home, on leave
22 from the employee's employment, or some combination thereof, for the
23 period of quarantine consistent with recommended guidance from state
24 and federal health officials for the disease immediately prior to the
25 employee's injury, occupational disease, or period of incapacity that
26 resulted from exposure to the disease which is the subject of the
27 public health emergency.

28 (4) (a) RCW 51.32.090(7) does not apply to an occupational disease
29 under this section except that no worker shall receive compensation
30 for or during the day on which the occupational disease was
31 contracted. For the purposes of this subsection (4), the day on which

1 the occupational disease was contracted is whichever date occurs
2 first of the following:

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

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

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

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

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

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

21 (7) As used in this section:

22 (a) "Assisted living facility" has the same meaning as in RCW
23 18.20.020.

24 (b) "Farm work" means work performed on a farm, in the employ of
25 any person, in connection with the cultivation of the soil, or in
26 connection with raising or harvesting any agricultural or
27 horticultural commodity, including raising, shearing, feeding, caring
28 for, training, and management of livestock, bees, poultry, and
29 furbearing animals and wildlife, or in the employ of the owner or
30 tenant or other operator of a farm in connection with the operation,
31 management, conservation, improvement, or maintenance of such farm
32 and its tools and equipment. For the purposes of this subsection,
33 "farm work" includes floriculture.

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

37 (d) "Food manufacturing work" means work performed for an
38 employer whose North American industry classification code is within
39 "311."

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

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

6 (i) First responders, including law enforcement officers,
7 firefighters, emergency medical service providers, paramedics, and
8 ambulance drivers. "Firefighters" includes wildland firefighters when
9 performing wildfire suppression or other emergency duties under the
10 incident command system if the firefighter has in-person interaction
11 with the general public or other firefighters as part of their job
12 duties;

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

15 (iii) Maintenance, janitorial, and food service workers at any
16 facility treating patients diagnosed with the infectious or
17 contagious disease that is the subject of the public health
18 emergency;

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

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

26 (vi) Employees employed by a retail store that remains open to
27 the general public during the public health emergency, if the
28 employee has in-person interaction with the general public as part of
29 their job duties or has in-person interaction with other employees.
30 For the purposes of this subsection, "retail store" means a business
31 whose North American industry classification code is within "44-45";

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

37 (viii) Employees employed by a restaurant, if the employee has
38 in-person interaction with the general public as part of their job
39 duties or works in the kitchen of the restaurant and has in-person

1 interaction with other employees. For the purposes of this
2 subsection, "restaurant" has the same meaning as in RCW 66.04.010;

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

6 (x) (A) Corrections officers and correctional support employees
7 working at a correctional institution.

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

9 (I) "Correctional institution" has the same meaning as in RCW
10 9.94.049.

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

14 (III) "Correctional support employee" means any employee who
15 provides food services or janitorial services in a correctional
16 institution;

17 (xi) Educational employees, including classroom teachers,
18 paraeducators, principals, librarians, school bus drivers, and other
19 educational support staff, of any school district, or a contractor of
20 a school district, that are required to be physically present at a
21 school or on the grounds of a school where classes are being taught
22 in person, in a transportation vehicle necessary for school
23 operations, or in the home of a student as part of their job duties,
24 if the employee has in-person interaction with students, a student's
25 family members, or other employees as part of their job duties;

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

32 (xiii) Employees employed by a public library that remains open
33 to the general public during the public health emergency, if the
34 employee has in-person interaction with the general public as part of
35 their job duties or has in-person interaction with other employees.
36 For the purposes of this subsection, "public library" means a library
37 covered by chapter 27.12 RCW.

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

1 (h) "Nursing home" means a nursing home licensed under chapter
2 18.51 RCW.

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

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

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

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

14 (1) During a public health emergency:

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

21 (b) The department must consult with the department of health on
22 the infectious or contagious disease that is the subject of the
23 public health emergency:

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

26 (ii) When investigating health care entities and issuing
27 citations under this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38 (a) Provide written notice to all employees, and the employers of
39 subcontracted employees, who were on the premises at the same

1 worksite as the qualifying individual that they may have been exposed
2 to the infectious or contagious disease. The written notice must be
3 made in a manner the employer normally uses to communicate
4 employment-related information. Written notice may include, but is
5 not limited to, personal service, email, or text message if it can
6 reasonably be anticipated to be received by the employee within one
7 business day of sending and must be in both English and the language
8 understood by the majority of the employees; and

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

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

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

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

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

23 (6) For the purposes of this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 NEW SECTION. **Sec. 5.** This act is necessary for the immediate
19 preservation of the public peace, health, or safety, or support of
20 the state government and its existing public institutions, and takes
21 effect immediately."

22 Correct the title.

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