
Labor & Workplace Standards Committee

ESSB 5190

Brief Description: Providing health care workers with presumptive benefits during a public health emergency.

Sponsors: Senate Committee on Labor, Commerce & Tribal Affairs (originally sponsored by Senators Holy, Frockt, Conway, Hasegawa, Honeyford, Keiser, King, Lovelett, Randall, Salomon, Van De Wege, Warnick, Wilson, C. and Wilson, J.).

Brief Summary of Engrossed Substitute Bill

- Makes health care employees who left work to quarantine during a public health emergency eligible for unemployment insurance benefits.
- Provides presumptive workers' compensation coverage for health care employees who are in quarantine or contract the disease that is the subject of a public health emergency.
- Specifies the payment of costs and fees to workers after an unsuccessful appeal of workers' compensation benefits.

Hearing Date: 3/12/21

Staff: Lily Smith (786-7175).

Background:

Unemployment Insurance.

An unemployed individual (claimant) is eligible to receive unemployment insurance benefits (UI benefits) if the individual: (1) worked at least 680 hours in the base year; (2) was separated from employment through no fault of the claimant's or quit work for good cause; and (3) is able to

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work, available to work, and is actively searching for suitable work. The Employment Security Department (ESD) administers Washington State's unemployment insurance program.

Benefits paid are charged to the experience-rating of base year employers on a pro rata basis according to the amount of wages paid to the claimant by the employer in the claimant's base year compared to the wages paid by all employers. Some benefits, such as those paid for certain good cause quits, are charged only to the separating employer, or are not charged to any employer.

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.

No worker will receive compensation for or during the day on which injury was received, or the three days following the same, unless their disability continues for a period of 14 consecutive calendar days from the date of injury.

Summary of Engrossed Substitute Bill:

Unemployment Insurance.

During the weeks of a public health emergency (PHE), a health care employee is eligible for UI benefits after leaving work to quarantine due to exposure to, or contracting the disease, that is the subject of the declaration of the PHE.

During the weeks of a PHE, an unemployed individual may also meet the able and available to work requirements if they are:

- an unemployed health care worker who was terminated or left work to quarantine; and
- able to perform, available to perform, and actively seeking suitable work which will commence after quarantine or which can be performed for an employer from the individual's home.

The benefits paid to a health care worker terminated due to quarantine for the disease that is the subject of the PHE are only charged to the experience rating of the separating employer. The benefits paid to a health care worker who left to quarantine are not charged to contribution paying employers.

Misconduct for unemployment insurance eligibility does not include entering quarantine because of exposure to or contracting the disease that is the subject of the declaration of the PHE.

Workers' Compensation.

For health care employees, there is a presumption that any infectious or contagious diseases

which are the subject of a PHE are occupational diseases during a PHE. The health care employee must provide verification to the Department of Labor and Industries (L&I) or the self-insurer, that the employee is in quarantine or has contracted the disease after exposure to the infectious or contagious disease.

The presumption takes effect on the day the national, regional, or state emergency is declared and continues until this declaration is revoked. The two-year time limits for filing claims for occupational disease apply to claims covered under this section.

This presumption of occupational disease may be rebutted by clear and convincing evidence that:

- the exposure to the disease occurred from other employment or nonemployment activities; or
- the employee was working from the employee's home or other location not under the employer's control, on leave from the employee's employment, for the period of quarantine outlined for the disease before the employee's date of disease contraction or period of incapacity resulting from exposure to the disease.

Temporary total disability benefits are payable beginning the first day the worker is directed to quarantine or is unable to work due to the exposure or contraction of the disease. Total temporary disability benefits are not payable for the same period of time that other benefits for the same employees are paid during a PHE.

When a determination involving the presumption is appealed and the final decision allows the claim of benefits, the Board of Industrial Insurance Appeals (BIIA) or court must order all reasonable costs and fees of the appeal to be paid to the worker by the opposing party. When these costs and fees must be paid by the L&I, they must be paid from the accident fund and charged to the costs of the claim. Costs of claims allowed may not affect the experience rating of state fund employers.

When a worker's right to relief is sustained after appeal of a BIIA decision, the court-approved fees and costs are payable directly by the person filing the appeal.

Where an appealing party, other than the L&I or a self-insurer, is ordered to pay attorneys' fees and costs and fails to do so, the L&I or the person entitled to compensation may file for injunctive or other appropriate relief in the superior court.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill contains an emergency clause and takes effect immediately.