

HOUSE BILL REPORT

ESSB 5190

As Reported by House Committee On:
Labor & Workplace Standards
Appropriations

Title: An act relating to providing health care workers with presumptive benefits during a public health emergency.

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 History:

Committee Activity:

Labor & Workplace Standards: 3/12/21, 3/19/21 [DPA];

Appropriations: 3/30/21, 3/31/21 [DPA(LAWS)].

**Brief Summary of Engrossed Substitute Bill
(As Amended By Committee)**

- 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.

HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Majority Report: Do pass as amended. Signed by 5 members: Representatives Sells, Chair; Berry, Vice Chair; Mosbrucker, Assistant Ranking Minority Member; Bronoske and Ortiz-Self.

Minority Report: Do not pass. Signed by 1 member: Representative Hoff, Ranking Minority Member.

Minority Report: Without recommendation. Signed by 1 member: Representative Harris.

Staff: Lily Smith (786-7175).

Background:

Unemployment Insurance.

An unemployed individual (claimant) is eligible to receive unemployment insurance 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 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 Amended Bill:

Unemployment Insurance.

During the weeks of a public health emergency (PHE), a health care employee is eligible for unemployment insurance benefits after leaving work for the period of recommended or

directed quarantine due to exposure to, or contracting the disease, that is the subject of the declared PHE.

During the weeks of a PHE, an unemployed health care worker 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 a health care worker who left work for the period of recommended or directed quarantine because of exposure to or contracting the disease that is the subject of the declared 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 an 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.

The provision not allowing time-loss benefits for the first three days does not apply, except that no benefits will be paid for the first day on which the occupational disease was contracted. The day on which the disease was contracted is the sooner of: the date the worker first missed work due to symptoms; the date the worker was quarantined; or the date

the worker received a positive test result.

Costs of claims allowed may not affect the experience rating of state fund employers. Self-insured employers and self-insurance hospital groups may deduct the cost of payments for certain assessments.

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.

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.

Amended Bill Compared to Engrossed Substitute Bill:

For purposes of unemployment insurance, the amended bill:

- specifies that health care employee eligibility related to quarantine is for the period of quarantine consistent with recommended guidance or direction from certain entities; and
- applies the misconduct exception related to quarantine and the availability to work provisions specifically to health care workers.

For purposes of the presumption of occupational disease under workers' compensation, the amended bill:

- removes the specification that the health care employee contracted or was exposed to the disease at the health care facility;
- disallows payment of benefits on the date the disease was contracted but waives the standard three-day waiting period;
- provides for deduction of the costs of payments for certain assessments from self-insured employers and self-insurance hospital groups; and
- modifies the definition of "health care employee" from one who may have direct contact with certain persons, to having or likely having had such contact.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) Workers asked to operate in a dangerous environments should be provided benefits when they are needed. A health care worker that has been keeping others safe on the frontlines should not need to fight for workers' compensation. This bill will address one of the many crises faced by health care workers every day of the COVID-19 pandemic. These workers have dealt with insufficient personal protective equipment and irregular staffing. Working on the front lines is a nightmare, even more so if you get this disease and your employer denies your claim. Some workers have had to use years of saved time off to recover if unable to prove exactly where the disease was contracted. Whole families can be at risk along with the worker, who may also be the primary breadwinner.

(Opposed) Creating this presumption is based on the assumption that workers are having difficulty getting coverage, which is not the case for COVID-19-related claims. These workers already have access to benefits. It will be confusing and difficult to administer to different standards and other terms for the same population of workers. This bill shifts the burden to employers, which will be almost impossible to meet. The standard for rebutting the presumption should be by a preponderance of the evidence, and it should be consistent across the bills to avoid conflicts. The costs of noncharged benefits are still paid by employers through socialization. Additional clarification is needed to make quarantines under the bill consistent with the Centers for Disease Control guidance, and the definition of exposure consistent with that used by the Governor in recent proclamations.

(Other) The presumption should be aligned between this bill and others. By linking the presumption to having contracted the disease at the healthcare facility, it may inadvertently exclude first responders. There should also be a closer look at paying benefits from the date of manifestation, which is also likely to be a day the employee is already earning wages.

Persons Testifying: (In support) Senator Holy, prime sponsor; Shelly Pollock-Mead, Washington State Nurses Association; Erin Haick, Service Employees International Union 925; Madeleine Foutch, Service Employees International Union 775 Long-Term Caregivers Union; and Samantha Grad, United Food and Commercial Workers 21.

(Opposed) Lisa Thatcher, Washington State Hospital Association; Robert Battles, Association of Washington Business; and Christine Brewer, Washington Self Insurers Association.

(Other) Tammy Fellin, Department of Labor and Industries.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass as amended by Committee on Labor & Workplace Standards. Signed by 21 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Corry, Assistant Ranking Minority Member; Chopp, Cody, Dolan, Fitzgibbon, Frame, Hansen, Harris, Johnson, J., Lekanoff, Pollet, Ryu, Senn, Springer, Stonier, Sullivan and Tharinger.

Minority Report: Do not pass. Signed by 10 members: Representatives Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Boehnke, Caldier, Chandler, Dye, Hoff, Jacobsen and Schmick.

Minority Report: Without recommendation. Signed by 2 members: Representatives Rude and Steele.

Staff: Heidi Cao (786-7157).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Labor & Workplace Standards:

No new changes were recommended.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

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

Staff Summary of Public Testimony:

(In support) Presumptive coverage for these workers will secure important benefits in critical times. It is important that appeal costs and attorneys' fees are covered, as it is consistent with the intent of the bill. The number of appeals should be low, as the costs of these claims will be socialized. Health care workers have made great sacrifices, including sleeping in their cars to protect their own families, while working on the front lines of this pandemic with continuous exposure to the disease. Many health care workers began the pandemic with little or no leave. When those workers got sick, many employers argued that it was because of community transmission. Health care workers deserve better.

(Opposed) There are issues with the costs to the fund and to employers, which includes the state. The presumption in the bill is different for different groups and is not consistent with other bills. A standard of "clear and convincing" is not the right standard to use for this

presumption. The language specifying that retrospective rating groups, as well as state fund employers, would be responsible for attorneys' fees is not appropriate. Different language should be used in this provision that is more appropriate for the relationship between employers and these groups.

Persons Testifying: (In support) Shelly Pollock Mead, Washington State Nurses Association; Madeleine Foutch, Service Employees International Union 775; and Sybill Hyppolite, Washington State Labor Council, American Federation of Labor and Congress of Industrial Organizations.

(Opposed) Carolyn Logue, Washington Food Industry Association; and Robert Battles, Association of Washington Business.

Persons Signed In To Testify But Not Testifying: None.