

SENATE BILL REPORT

SB 5190

As of January 28, 2021

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: 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, Commerce & Tribal Affairs: 1/28/21.

Brief Summary of Bill

- Makes health care workers eligible for unemployment insurance benefits for workers who are terminated or left work to quarantine during a public health emergency.
- Provides presumptive workers' compensation coverage for health care workers who contract the disease that is the subject of a public health emergency.

SENATE COMMITTEE ON LABOR, COMMERCE & TRIBAL AFFAIRS

Staff: Susan Jones (786-7404)

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 work, available to work, and is actively searching for suitable work. The Employment Security Department (ESD)

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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 Bill: The bill as referred to committee not considered.

Summary of Bill (Proposed Substitute): Unemployment Insurance. After July 4, 2021, and during the weeks of a public health emergency (PHE), an unemployed individual, who worked at a health care facility and was directly involved in the delivery of health services, and was terminated or left from work due to entering quarantine, because of exposure to or contracting the disease that is the subject of the declaration of the PHE, is eligible for UI benefits. It is presumed that the worker was exposed to the disease at the health care facility. This eligibility does not eliminate any employment rights an employee may have for any other violation of the laws.

During the weeks of a PHE, an unemployed individual may also meet the requirements of being able to work, available to work, and is actively searching for suitable work, if unemployed health care worker, who was terminated or left work to quarantine, is 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 who was terminated due to quarantine 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 who are covered under industrial insurance, there exists a prima facie presumption that any infectious or contagious diseases which are the subject of a PHE are occupational diseases during a PHE. There is a presumption that the health care employee contracted or was exposed to the disease at the health care facility. The health care employee must provide verification to the Department of Labor and Industries and the self-insured employer that the employee has contracted or is in quarantine after exposure to the infectious or contagious disease.

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, on leave from the employee's employment for a period of 14 or more consecutive days before the employee's injury, occupational disease, or period of incapacity resulted from exposure to the disease.

The period of time disability must continue to receive compensation for the first three days after the injury is reduced to 10 consecutive days from 14 consecutive calendar days.

The costs of the workers' compensation payment are paid from the accident fund.

Definitions. Health care facility means a facility that provides health care services directly to patients, including but not limited to, a hospital, clinic, health care provider's office, health maintenance organization, diagnostic or treatment center, neuropsychiatric or mental health facility, hospice, or nursing home.

Public health emergency means a declaration or order that covers the jurisdiction where the unemployed individual was working on the date the individual became unemployed concerning any dangerous, contagious, or infectious diseases, including a pandemic, and is issued by the President of the United States, has declared a national or regional emergency, or the Governor declared a state of emergency. For unemployment purposes, it also includes a state of emergency declared by the Governor or state executive of another state where the unemployed individual was working at the time of the declaration.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony on Proposed Substitute: PRO: This is a common

sense measure to solve a problem faced by health care workers during the COVID crisis. Police and fire workers have certain presumptions when there is a strong correlation. There is a much more direct and immediate correlation with infectious diseases for health care workers. In a time of a national or state emergency, we need to take care of the people we are asking to step up.

Many workers in long-term care and nursing home facilities are risking their lives and being exposed and having to take time off. They need to have access to these important benefits. When the pandemic first started, personal protection equipment (PPE) was in short supply and some health care workers, even with direct patient contact, did not get PPE for several months. Doors of COVID patients were not always labelled. Examples were given of many workers getting COVID and they were deemed to have a community exposure, even though they are using PPE. They were told they could not get workers' compensation without a formal exposure.

Health care employees should not have to fight with their employers to get protection. We want to make sure all the workers in health care facilities, including receptionists, those delivering meals, and workers in infection control and sanitation, are covered.

COVID has brought to light ways we can protect health care workers. Because of ridiculous technicalities, health workers had to use their sick leave. We need to make it very clear and easy to understand that benefits are available. During COVID, the presumptive eligibility has been piecemeal. Some employers have pushed back on eligibility. Clear communication is needed.

CON: We did not have a lot of time to digest the proposed substitute. For the UI section and the employees leaving work, we are concerned about unintended consequences for staffing. We need to have proper staffing.

For workers' compensation, it protects self-insurers but the same protection is not in the UI provisions. We would like consistency.

We would like consistency in having the preponderance of the evidence standard like the Legislature provided for firefighters and fire investigators, rather than the clear and convincing evidence standard in the bill. The burden is one step below the beyond a reasonable doubt standard. This opens employers up to third party claims by shifting the burden as opposed to the shield employers have for workers compensation.

This bill, like the HELSA bill, applies to any contagious and infectious disease. The Zika virus seems to still be a public health emergency and transmission was through a mosquito bite. That would be covered under the bill. To presume that the bite occurred in a health care setting is too broad. Exposure is not defined.

OTHER: There are some technical changes to make, the bill covers the workers the sponsor

intends to cover.

Under the Governor's proclamation, there is no presumption. L&I has criteria. It is highly likely that a health care worker is going to meet the criteria for a workers' compensation. Under the Governor's proclamation, the employer has an obligation to let the employee choose which leave to take.

There have been 3700 workers' compensation claims. About 3 percent have been rejected. Regular workers' compensation claims have a 10 percent rejection. The number of claims is low. There may be misinformation or lack of information for workers' compensation for these claims.

Persons Testifying: PRO: Senator Jeff Holy, Prime Sponsor; Mindy Brandli, Washington State Nurses Association; Erin Haick, SEIU 925; Madeleine Foutch, SEIU 775 Long-Term Caregivers Union; Scott Lawrence, UFCW Local 21.

CON: Kris Tefft, Washington Self Insurers Association; Robert Battles, Association of Washington Business.

OTHER: Vickie Kennedy, Labor and Industries; Lisa Thatcher, Washington State Hospital Association.

Persons Signed In To Testify But Not Testifying: No one.