

# FINAL BILL REPORT

## ESSB 5190

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### C 251 L 21

Synopsis as Enacted

**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.).

**Senate Committee on Labor, Commerce & Tribal Affairs**  
**House Committee on Labor & Workplace Standards**  
**House Committee on Appropriations**

**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) 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.

For unemployment insurance purposes, 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, declaring a national or regional emergency, the Washington State Governor or the governor or state executive of another state where the unemployed individual was working at the time of the declaration, declaring a state of emergency.

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*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.*

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:** Unemployment Insurance. For unemployment insurance claims, on or 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 left work for the period of quarantine consistent with CDC or state or local health department guidance because of exposure to or contracting the disease that is the subject of the declaration of the PHE, is eligible for UI benefits.

During the weeks of a PHE, an unemployed health care worker may also meet the requirements of being able to work, available to work, and is actively searching for suitable work, if the 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 entering quarantine because of exposure to or contracting 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 work 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 quarantine consistent with CDC or state or local health department guidance 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 exists a prima facie presumption that any infectious or contagious diseases which are the subject of a PHE are occupational diseases during a PHE. The presumption applies to health care employees of any health care facility or other organization that provides emergency or medical services, who has or likely has had direct contact with any person who has been exposed to or tested positive for any infectious or contagious diseases which are the subject of the PHE. The health care employee must provide verification to the Department of Labor and Industries 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.

The three-day waiting period does not apply except the worker may not receive compensation for or during the day the disease was contracted. The day the disease was contracted is the earlier of the first day of missed work due to symptoms; the date the worker was quarantined by a medical provider or public health officer; or the date of a positive test. If leave or similar benefits are paid to the worker as part of a federal or state program for these employees during the PHE, total temporary disability benefits are not payable for the same period of time covered by this federal or state program.

Costs of these claims will not affect the experience rating of state fund employers. Self-insurers may deduct the cost claim payments from the total of claim costs reported.

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.

For worker's compensation purposes, public health emergency means a declaration or order that covers the jurisdiction where the individual was working on the date the individual of exposure concerning any dangerous, contagious, or infectious diseases, including a pandemic, and is issued by the President of the United States declaring a national or regional emergency, or the Governor declaring a state of emergency.

**Votes on Final Passage:**

Senate	34	15	
House	84	14	(House amended)
Senate	37	12	(Senate concurred)

**Effective:** May 11, 2021