

# SENATE BILL REPORT

## SB 5911

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As of January 27, 2022

**Title:** An act relating to providing hazard pay retention bonuses to certain health care employees.

**Brief Description:** Providing hazard pay retention bonuses to certain health care employees.

**Sponsors:** Senators Cleveland, Keiser, Billig, Conway, Das, Lovelett, Lovick, Nguyen, Randall, Saldaña, Stanford and Trudeau.

**Brief History:**

**Committee Activity:** Labor, Commerce & Tribal Affairs: 1/27/22.

**Brief Summary of Bill**

- Provides a one-time hazard pay retention bonus (bonus) to certain eligible health care employees practicing in specified COVID units.
- Prohibits employers from taking adverse employment actions to prevent or diminish the receipt of bonuses.
- Creates a health care employee hazard pay account from which the Department of Labor & Industries (L&I) must pay bonuses.

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### SENATE COMMITTEE ON LABOR, COMMERCE & TRIBAL AFFAIRS

**Staff:** Matt Shepard-Koningsor (786-7627)

**Background:** Department of Labor & Industries Oversight. The Washington State Department of Labor & Industries (L&I) oversees workers' rights in the state, which include both wage and non-wage issues. Wage issues include, among other things, minimum wage, overtime, paid sick leave, tips and service charges, and unauthorized deductions. Various laws, such as the Minimum Wage Act and Wage Payment Act establish standards for paying wages. It is unlawful for an employer to deprive employees of their wages. An

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aggrieved employee may file a wage complaint with L&I. L&I must investigate wage complaints and has authority to order citations and notices of assessment against employers found in violation. An employee also has the option of filing a civil action in court to enforce a wage claim against an employer.

Hazard Pay. The United States Department of Labor describes hazard pay as additional pay for performing hazardous work involving physical hardship or extreme physical discomfort and distress that is not adequately alleviated by protective devices. The federal Fair Labor Standards Act (FLSA) establishes minimum wage, overtime pay, record keeping, and youth employment standards affecting many employees in the private sector and in federal, state, and local governments. The FLSA does not require hazard pay.

COVID-19 Hazard Pay. Some local jurisdictions in Washington provide hazard pay to certain workers during the COVID-19 pandemic. For example, the City of Seattle requires certain grocery businesses to pay a hazard pay of four dollars per hour to their employees during the COVID-19 emergency.

**Summary of Bill:** Definitions. "Covered employee" means any of the following employees who practice in COVID units, including, but not limited to, emergency departments, intensive care units, or hospital-based urgent care clinics as a:

- interim, registered, certified, or phlebotomist medical assistant;
- licensed practical or registered nurse;
- nursing assistant; or
- respiratory care practitioner.

"Covered employer" means an employer that employs a covered employee.

Hazard Pay Retention Bonus. A covered employee is eligible for a one-time hazard pay retention bonus (bonus) if the employee worked 240 hours for a covered employer in the 12 calendar weeks immediately preceding June 26, 2022 (eligibility period). L&I may adopt additional eligibility criteria if necessary to comply with federal funding requirements. The bonus is separate, in addition to the employee's other compensation, and must not be considered part of their regular rate of pay or compensation, including when determining overtime.

Employer Provisions. By July 22, 2022, a covered employer must provide the following data to L&I for each covered employee it employs: legal full name; total hours worked during the eligibility period; and mailing address. It is unlawful for a covered employer to discharge, lay off, or reduce any compensation or hours worked by a covered employee to prevent, in whole or in part, the employee from receiving a hazard pay retention bonus.

Department of Labor and Industries Provisions. L&I must determine the amount of the bonus by dividing the sum available for expenditure in the health care employee hazard pay account, minus the sum of L&I's administrative costs plus \$50,000, by the total number of

unique eligible covered employees. The bonus amount may not exceed an amount equal to \$13 per hour.

By September 16, 2022, L&I must issue a bonus to an eligible covered employee. A covered employee denied bonus eligibility may appeal to L&I. L&I must review submitted documentation and follow-up with the covered employee and covered employer. If L&I determines the covered employee is eligible, it must issue a bonus to the employee.

Account. The health care employee hazard pay account is created and revenues to the account must consist of appropriations and transfers by the Legislature and all other funding directed for deposit. The Legislature intends to use federal funding from the Coronavirus State Fiscal Recovery Fund of the American Rescue Plan Act of 2021 to fund the account and pay bonuses. Bonuses are only available until funding in the account is exhausted.

The act expires June 30, 2023.

**Appropriation:** None.

**Fiscal Note:** Requested on January 20, 2022.

**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:** PRO: This bill is brought forward to recognize our health care workers who have put themselves in harm's way for nearly two years and to provide encouragement to remain in their professions. Some of these workers have lived away from their families to ensure they do not contract the virus. This bill recognizes the hard work nurses are doing. Nurses are leaving at alarming rates and hospital work these days is untenable. All hospital workers are on the front line and this bill should include all of these important workers. COVID-19 is everywhere, not just in COVID-specific units. Nurses are overworked and burnt out from this virus. Housekeepers working in hospitals are important and should be included too.

OTHER: L&I has questions regarding the implementation of the bill.

**Persons Testifying:** PRO: Senator Annette Cleveland, Prime Sponsor; Chelene Whiteaker, Washington State Hospital Assn; Erin Allison, RN; Angel Sherburne, Environmental Services Tech; Patricia Brown, LPN; Ryan Rozencranz, RN; Laura Wood, Social Worker; Chelsea Brown, Environmental Services Tech; Terri Niles RN.

OTHER: Tammy Fellin, Labor & Industries.

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