
**Labor & Workplace Standards
Committee**

HB 1785

Brief Description: Establishing COVID-19 as an occupational disease.

Sponsors: Representatives Berry, Lekanoff, Santos, Ormsby and Pollet.

Brief Summary of Bill

- Modifies the Health Emergency Labor Standards Act by specifying that certain infectious or contagious diseases proximately caused by employment or work conditions during a public health emergency are occupational diseases for all workers for the purposes of workers' compensation claims and benefits.
- Overturns a Board of Industrial Insurance Appeals' decision where it determined that a worker's COVID-19 infection did not constitute an occupational disease.

Hearing Date: 2/17/23

Staff: Kelly Leonard (786-7147).

Background:

Workers' Compensation — Occupational Diseases.

A worker who is injured or affected by an occupational disease in the course of employment is entitled to workers' compensation benefits, which may include medical, temporary time-loss, and other benefits. Injuries and occupational diseases are distinct. An injury occurs suddenly and traumatically, whereas an occupational disease arises naturally and proximately out of employment. For certain occupations, there is a presumption that certain medical conditions are

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occupational diseases. For example, in the case of firefighters, it is presumed that respiratory disease, certain cancers, and other specified conditions are occupational diseases.

Health Emergency Labor Standards Act.

The Health Emergency Labor Standards Act (HELSA), enacted in 2021, established a presumption of occupational disease during a public health emergency for frontline employees. The HELSA presumption covers any infectious or contagious diseases transmitted through respiratory droplets or aerosols, or through contact with contaminated surfaces, that are the subject of a public health emergency. This presumption may be rebutted based on certain factors. Frontline employees covered by the HELSA presumption include first responders, retail employees, and mass transportation service employees, among others. For certain types of employees, such as retail, restaurant, and public library employees, the employee must have in-person interactions to be covered.

In re Christopher J. Sutherland (No. 21 15953).

On August 8, 2022, the Board of Industrial Insurance Appeals issued a decision in *In re Christopher J. Sutherland*, Case No. 21 15953, determining that the working conditions of a log scaler with Weyerhaeuser were not distinctive of the conditions of everyday life vis-à-vis COVID-19. Further, even though both the claimant and his coworker contracted COVID-19, his infection was a coincidence and not particular to the conditions of his employment. Therefore, the claimant did not develop an occupational disease.

Summary of Bill:

The Board of Industrial Insurance Appeals' decision in *In re Christopher J. Sutherland* is expressly overturned. The Legislature intends to establish consistent presumptive protections to all workers who contracted COVID-19 during the COVID-19 pandemic when proximately caused by exposures at work, as expressed through the HELSA. The Legislature intends to ensure workers' compensation protections to any worker who has shown that workplace exposure was a proximate cause of contracting COVID-19, and to impose no further requirements on any worker to impair the worker's eligibility for benefits and coverage.

For all workers, any infectious or contagious diseases that are transmitted through respiratory droplets or aerosols, or through contact with contaminated surfaces and are the subject of a public health emergency, and which are shown to be proximately caused by employment or work conditions, whether through the presumption for frontline workers or otherwise, are occupational diseases.

This bill applies to all claims, regardless of the date of exposure or the date the claim was filed. A worker or the survivor of a worker who has died as a result of any infectious or contagious disease that is transmitted through respiratory droplets or aerosols, or through contact with contaminated surfaces and is the subject of a public health emergency, and whose claim was denied before the effective date of the bill, may file a new claim for the same exposure and contended condition or disease.

Appropriation: None.

Fiscal Note: Requested on February 13, 2023.

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