

By Representative Berry

ESSB 5115 - H COMM AMD

By Committee on Labor & Workplace Standards

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** A new section is added to chapter 51.32
4 RCW to read as follows:

5 (1) For frontline employees who are covered under this title,
6 there exists a prima facie presumption that any infectious or
7 contagious diseases that are transmitted through respiratory droplets
8 or aerosols, or through contact with contaminated surfaces and are
9 the subject of a public health emergency are occupational diseases
10 under RCW 51.08.140 during a public health emergency.

11 (2) The frontline employee must provide verification, as required
12 by the department by rule, to the department and the self-insured
13 employer that the employee has contracted the infectious or
14 contagious disease that is the subject of the public health
15 emergency.

16 (3) This presumption of occupational disease may be rebutted by a
17 preponderance of the evidence that:

18 (a) The exposure to the infectious or contagious disease which is
19 the subject of the public health emergency occurred from other
20 employment or nonemployment activities; or

21 (b) The employee was working from the employee's home, on leave
22 from the employee's employment, or some combination thereof, for the
23 period of quarantine consistent with recommended guidance from state
24 and federal health officials for the disease immediately prior to the
25 employee's injury, occupational disease, or period of incapacity that
26 resulted from exposure to the disease which is the subject of the
27 public health emergency.

28 (4) (a) RCW 51.32.090(7) does not apply to an occupational disease
29 under this section except that no worker shall receive compensation
30 for or during the day on which the occupational disease was
31 contracted. For the purposes of this subsection (4), the day on which

1 the occupational disease was contracted is whichever date occurs
2 first of the following:

3 (i) The date that the worker first missed work due to symptoms of
4 the infectious or contagious disease;

5 (ii) The date the worker was quarantined by a medical provider or
6 public health official; or

7 (iii) The date the worker received a positive test result
8 confirming contraction of the infectious or contagious disease.

9 (b) If leave or similar benefits are paid to the frontline
10 employee as part of a federal or state program for these employees
11 during the public health emergency, temporary total disability
12 benefits are not payable for the same period of time covered by the
13 federal or state program.

14 (5) (a) When a determination involving the presumption established
15 in this section is appealed to the board of industrial insurance
16 appeals and the final decision allows the claim of benefits, the
17 board of industrial insurance appeals shall order that all reasonable
18 costs of the appeal, including attorneys' fees and witness fees, be
19 paid to the worker or the worker's beneficiary by the opposing party.
20 If the opposing party is a state fund employer or retrospective
21 rating group, the costs and fees are paid by the employer or
22 retrospective rating group.

23 (b) When a determination involving the presumption established in
24 this section is appealed to any court and the final decision allows
25 the claim for benefits, the court shall order that all reasonable
26 costs of appeal, including attorneys' fees and witness fees, be paid
27 to the worker or the worker's beneficiary by the opposing party. If
28 the opposing party is a state fund employer or retrospective rating
29 group, the costs and fees are paid by the employer or retrospective
30 rating group.

31 (c) When reasonable costs of the appeal must be paid by the
32 department under this section in a state fund case, the costs shall
33 be paid from the accident fund and charged to the costs of the claim.

34 (d) When calculating assessments due to the department for which
35 total claim costs are the basis, self-insured employers and self-
36 insurance hospital groups formed under RCW 51.14.150 and 51.14.160
37 may deduct the cost of payments made under this section from the
38 total of all claim costs reported.

39 (6) Costs of the payments under this section shall not affect the
40 experience rating of employers insured by the state fund.

1 (7) As used in this section:

2 (a) "Assisted living facility" has the same meaning as in RCW
3 18.20.020.

4 (b) "Farm work" means work performed on a farm, in the employ of
5 any person, in connection with the cultivation of the soil, or in
6 connection with raising or harvesting any agricultural or
7 horticultural commodity, including raising, shearing, feeding, caring
8 for, training, and management of livestock, bees, poultry, and
9 furbearing animals and wildlife, or in the employ of the owner or
10 tenant or other operator of a farm in connection with the operation,
11 management, conservation, improvement, or maintenance of such farm
12 and its tools and equipment. For the purposes of this subsection,
13 "farm work" includes floriculture.

14 (c) "Food distribution work" means work where the primary duties
15 include transporting food from food producers or manufacturers to
16 food warehouses or food service operators and retailers.

17 (d) "Food manufacturing work" means work performed for an
18 employer whose North American industry classification code is within
19 "311."

20 (e) "Food processing work" means work handling or processing of
21 any food in any manner of preparation for sale for an employer
22 required to be licensed by the department of agriculture under
23 chapter 69.07 RCW.

24 (f) "Frontline employee" includes the following employees:

25 (i) First responders, including law enforcement officers,
26 firefighters, emergency medical service providers, paramedics, and
27 ambulance drivers. "Firefighters" includes wildland firefighters when
28 performing wildfire suppression or other emergency duties under the
29 incident command system if the firefighter has in-person interaction
30 with the general public or other firefighters as part of their job
31 duties;

32 (ii) Employees performing food processing, food manufacturing,
33 food distribution, farm, and meat packing work;

34 (iii) Maintenance, janitorial, and food service workers at any
35 facility treating patients diagnosed with the infectious or
36 contagious disease that is the subject of the public health
37 emergency;

38 (iv) Drivers and operators employed by a transit agency or any
39 other public entity authorized under state law to provide mass
40 transportation services to the general public;

1 (v) Employees working at a child care facility licensed by the
2 department of children, youth, and families under chapter 43.216 RCW,
3 if the employee has in-person interaction with children or other
4 members of the general public as part of their job duties;

5 (vi) Employees employed by a retail store that remains open to
6 the general public during the public health emergency, if the
7 employee has in-person interaction with the general public as part of
8 their job duties or has in-person interaction with other employees.
9 For the purposes of this subsection, "retail store" means a business
10 whose North American industry classification code is within "44-45";

11 (vii) Employees employed by a hotel, motel, or other transient
12 accommodation licensed under chapter 70.62 RCW that remains open to
13 the general public during the public health emergency, if the
14 employee has in-person interaction with the general public as part of
15 their job duties or has in-person interaction with other employees;

16 (viii) Employees employed by a restaurant, if the employee has
17 in-person interaction with the general public as part of their job
18 duties or works in the kitchen of the restaurant and has in-person
19 interaction with other employees. For the purposes of this
20 subsection, "restaurant" has the same meaning as in RCW 66.04.010;

21 (ix) Home care aides certified under chapter 18.88B RCW and home
22 health aides that provide services under chapter 70.126 RCW that
23 primarily work in the home of the individual receiving care;

24 (x) (A) Corrections officers and correctional support employees
25 working at a correctional institution.

26 (B) For the purposes of this subsection (7) (f) (x):

27 (I) "Correctional institution" has the same meaning as in RCW
28 9.94.049.

29 (II) "Corrections officer" means any corrections agency employee
30 whose primary job function is to provide custody, safety, and
31 security of prisoners in jails and detention facilities.

32 (III) "Correctional support employee" means any employee who
33 provides food services or janitorial services in a correctional
34 institution;

35 (xi) Educational employees, including classroom teachers,
36 paraeducators, principals, librarians, school bus drivers, and other
37 educational support staff, of any school district, or a contractor of
38 a school district, that are required to be physically present at a
39 school or on the grounds of a school where classes are being taught
40 in person, in a transportation vehicle necessary for school

1 operations, or in the home of a student as part of their job duties,
2 if the employee has in-person interaction with students, a student's
3 family members, or other employees as part of their job duties;

4 (xii) Employees of institutions of higher education that are
5 required to be physically present on campus when classes are being
6 taught in person, if the employee has in-person interaction with
7 students or the general public as part of their job duties. For the
8 purposes of this subsection, "institution of higher education" has
9 the same meaning as in RCW 28B.10.016;

10 (xiii) Employees employed by a public library that remains open
11 to the general public during the public health emergency, if the
12 employee has in-person interaction with the general public as part of
13 their job duties or has in-person interaction with other employees.
14 For the purposes of this subsection, "public library" means a library
15 covered by chapter 27.12 RCW.

16 (g) "Meat packing work" means work slaughtering animals and
17 processing and packaging meat products for sale and the rendering of
18 animal by-products.

19 (h) "Nursing home" means a nursing home licensed under chapter
20 18.51 RCW.

21 (i) "Public health emergency" means a declaration or order
22 concerning any infectious or contagious diseases, including a
23 pandemic and is issued as follows:

24 (i) The president of the United States has declared a national or
25 regional emergency that covers every county in the state of
26 Washington; or

27 (ii) The governor of Washington has declared a state of emergency
28 under RCW 43.06.010(12).

29 (j) "School" has the same meaning as in RCW 28A.210.070.

30 NEW SECTION. **Sec. 2.** A new section is added to chapter 49.17
31 RCW to read as follows:

32 (1) During a public health emergency:

33 (a) An employer with more than 50 employees at a workplace or
34 worksite, within 24 hours of confirming that 10 or more of their
35 employees at the workplace or worksite in this state have tested
36 positive for the infectious or contagious disease that is the subject
37 of the public health emergency, must report the positive tests to the
38 department in a form prescribed by the department.

1 (b) The department must consult with the department of health on
2 the infectious or contagious disease that is the subject of the
3 public health emergency:

4 (i) Before issuing regulatory guidance, rules, directives, or
5 orders for health care facilities under this section; and

6 (ii) When investigating health care entities and issuing
7 citations under this section.

8 (c) The report required in (a) of this subsection may not include
9 any employee names or personal identifying information.

10 (2) The department may use the reports in subsection (1) of this
11 section to identify potential clusters of infections at specific
12 workplaces or industries and investigate workplaces for violations of
13 this chapter.

14 (3) During a public health emergency, the name, email and
15 residential addresses, license plate number, and other personally
16 identifiable information regarding employees of the department are
17 exempt from disclosure under chapter 42.56 RCW to the extent that the
18 disclosure would violate their right to privacy or pose a risk to
19 their personal safety or security.

20 (4) This section does not require an employee to disclose any
21 medical condition or diagnosis to their employer.

22 (5) This section does not alter or eliminate any other reporting
23 obligations an employer has under state or federal law.

24 (6)(a) During a public health emergency, no employer may
25 discharge, permanently replace, or in any manner discriminate against
26 an employee who is high risk as a result of the employee:

27 (i) Seeking accommodation that protects them from the risk of
28 exposure to the infectious or contagious disease; or

29 (ii) If no accommodation is reasonable, utilizing all available
30 leave options, including but not limited to leave without pay and
31 unemployment insurance, until completion of the public health
32 emergency or accommodation is made available.

33 (b) This subsection (6) does not alter or diminish any existing
34 remedy available to the worker under current state or federal law.

35 (c) For the purposes of this subsection (6), "an employee who is
36 high risk" means an employee who:

37 (i) Due to age or an underlying health condition, is at a high
38 risk of severe illness from the disease that is the subject of the
39 public health emergency, as defined by the centers for disease
40 control and prevention; or

1 (ii) A medical provider has recommended the employee's removal
2 from the workforce because of their high risk of severe illness.

3 (7) For the purposes of this section, "public health emergency"
4 means a declaration or order concerning any infectious or contagious
5 diseases, including a pandemic and is issued as follows:

6 (a) The president of the United States has declared a national or
7 regional emergency that covers every county in the state of
8 Washington; or

9 (b) The governor of Washington has declared a state of emergency
10 under RCW 43.06.010(12) in every county in the state.

11 NEW SECTION. **Sec. 3.** A new section is added to chapter 49.17
12 RCW to read as follows:

13 (1) During a public health emergency, if an employer receives a
14 notice of potential exposure to the infectious or contagious disease
15 that is the subject of the public health emergency, the employer
16 must, within one business day of potential exposure:

17 (a) Provide written notice to all employees, and the employers of
18 subcontracted employees, who were on the premises at the same
19 worksite as the qualifying individual that they may have been exposed
20 to the infectious or contagious disease. The written notice must be
21 made in a manner the employer normally uses to communicate
22 employment-related information. Written notice may include, but is
23 not limited to, personal service, email, or text message if it can
24 reasonably be anticipated to be received by the employee within one
25 business day of sending and must be in both English and the language
26 understood by the majority of the employees; and

27 (b) Provide a written notice to the exclusive representative, if
28 any, of employees under this subsection (1).

29 (2) The written notice under subsection (1) of this section may
30 not include any employee names or personal identifying information.

31 (3) This section does not alter or eliminate any other reporting
32 obligations an employer has under state or federal law.

33 (4) This section does not require an employee to disclose any
34 medical condition or diagnosis to their employer.

35 (5) This section does not apply to employers who are health care
36 facilities as defined in RCW 9A.50.010. For employees of health care
37 facilities with known or suspected high-risk exposure, notification
38 to the employee, and with the employee's authorization, to their

1 union representative, if any, by the facility must occur within 24
2 hours of confirmed exposure.

3 (6) For the purposes of this section:

4 (a) "Notice of potential exposure" means any of the following:

5 (i) Notification to the employer from a public health official or
6 licensed medical provider that an employee was exposed to a
7 qualifying individual at the worksite;

8 (ii) Notification to the employer from an employee, or their
9 emergency contact, that the employee is a qualifying individual;

10 (iii) Notification through a testing protocol of the employer
11 that the employee is a qualifying individual.

12 (b) "Public health emergency" means a declaration or order
13 concerning any infectious or contagious diseases, including a
14 pandemic and is issued as follows:

15 (i) The president of the United States has declared a national or
16 regional emergency that covers every county in the state of
17 Washington; or

18 (ii) The governor of Washington has declared a state of emergency
19 under RCW 43.06.010(12) in every county in the state.

20 (c) "Qualifying individual" means any person who has:

21 (i) A positive laboratory test for the infectious or contagious
22 disease that is the subject of the public health emergency;

23 (ii) A positive diagnosis of the infectious or contagious disease
24 that is the subject of the public health emergency by a licensed
25 health care provider;

26 (iii) An order to isolate by a public health official related to
27 the infectious or contagious disease that is the subject of the
28 public health emergency; or

29 (iv) Died due to the infectious or contagious disease that is the
30 subject of the public health emergency, in the determination of a
31 local health department.

32 (d) "Worksite" means the building, store, facility, agricultural
33 field, or other location where the qualifying individual worked.
34 "Worksite" does not include any buildings, floors, or other locations
35 of the employer that the qualifying individual did not enter.

36 NEW SECTION. **Sec. 4.** This act may be known and cited as the
37 health emergency labor standards act.

1 NEW SECTION. **Sec. 5.** This act is necessary for the immediate
2 preservation of the public peace, health, or safety, or support of
3 the state government and its existing public institutions, and takes
4 effect immediately."

5 Correct the title.

EFFECT: (1) Removes employees of hospitals, health care
facilities, nursing homes, and assisted living facilities from the
bill;

 (2) Removes the provision expiring the bill upon the expiration
of the Governor's proclamation related to COVID-19;

 (3) Provides that an employee is a "high risk employee" if
either:

 (a) The employee meets the definition of high risk as defined by
the Centers for Disease Control and Prevention; or

 (b) A medical provider has recommended the employee be removed
from the workplace due to their high risk of severe illness (rather
than requiring the employee to meet both conditions);

 (4) Specifies that if leave or similar benefits are paid to a
frontline employee under a federal or state program for such
employees during the public health emergency, time-loss benefits will
not be paid to the employee for the same time period covered by the
federal or state program;

 (5) Provides that a retrospective rating group may be liable for
the costs of appeal, if the retro group is the opposing party;

 (6) Removes the provision specifying that the costs of claims
must be paid from the Accident Fund.

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