
HOUSE BILL 1785

State of Washington

68th Legislature

2023 Regular Session

By Representative Berry

1 AN ACT Relating to establishing COVID-19 as an occupational
2 disease; amending RCW 51.32.181; creating new sections; and declaring
3 an emergency.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** The legislature finds that it is an
6 important and essential protection for workers who contracted
7 COVID-19 during the COVID-19 pandemic, to be fully protected and
8 covered under our workers' compensation system. The legislature
9 intends to give consistent presumptive protections to all workers who
10 contracted COVID-19 during the COVID-19 pandemic when proximately
11 caused by exposures at work, as expressed by the legislature in RCW
12 51.32.181 as established in Laws of 2021, chapter 252, section 1. The
13 legislature further intends to ensure workers' compensation
14 protections to any worker who has shown that workplace exposure was a
15 proximate cause of contracting COVID-19, and to impose no further
16 requirements on any worker to impair the worker's eligibility for
17 benefits and coverage. It is the intent of the legislature that the
18 board of industrial insurance appeals decision *In re Christopher J.*
19 *Sutherland*, docket number: 21 15953 (August 8, 2022) be overturned.

1 **Sec. 2.** RCW 51.32.181 and 2022 c 290 s 1 are each amended to
2 read as follows:

3 (1)(a) For all workers covered under this title, any infectious
4 or contagious diseases that are transmitted through respiratory
5 droplets or aerosols, or through contact with contaminated surfaces
6 and are the subject of a public health emergency, and which are shown
7 to be proximately caused by employment or work conditions, whether
8 through the presumption set out in this section or otherwise, are
9 occupational diseases under RCW 51.08.140.

10 (b) Beginning on the effective date of this section, a worker or
11 the survivor of a worker who has died as a result of any infectious
12 or contagious disease that is transmitted through respiratory
13 droplets or aerosols, or through contact with contaminated surfaces
14 and is the subject of a public health emergency, and whose claim was
15 denied by order of the department, the board of industrial insurance
16 appeals, or a court, may file a new claim for the same exposure and
17 contended condition or disease, if the denial was made before the
18 effective date of this section.

19 (2) For frontline employees who are covered under this title,
20 there exists a prima facie presumption that any infectious or
21 contagious diseases that are transmitted through respiratory droplets
22 or aerosols, or through contact with contaminated surfaces and are
23 the subject of a public health emergency are occupational diseases
24 under RCW 51.08.140 during a public health emergency.

25 ~~((+2))~~ (3) The frontline employee must provide verification, as
26 required by the department by rule, to the department and the self-
27 insured employer that the employee has contracted the infectious or
28 contagious disease that is the subject of the public health
29 emergency.

30 ~~((+3))~~ (4) This presumption of occupational disease may be
31 rebutted by a preponderance of the evidence that:

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

35 (b) The employee was working from the employee's home, on leave
36 from the employee's employment, or some combination thereof, for the
37 period of quarantine consistent with recommended guidance from state
38 and federal health officials for the disease immediately prior to the
39 employee's injury, occupational disease, or period of incapacity that

1 resulted from exposure to the disease which is the subject of the
2 public health emergency.

3 ~~((4))~~ (5)(a) RCW 51.32.090(7) does not apply to an occupational
4 disease under this section except that no worker shall receive
5 compensation for or during the day on which the occupational disease
6 was contracted. For the purposes of this subsection ~~((4))~~ (5), the
7 day on which the occupational disease was contracted is whichever
8 date occurs first of the following:

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

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

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

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

20 ~~((5))~~ (6) When calculating assessments due to the department
21 for which total claim costs are the basis, self-insured employers and
22 self-insurance hospital groups formed under RCW 51.14.150 and
23 51.14.160 may deduct the cost of payments made under this section
24 from the total of all claim costs reported.

25 ~~((6))~~ (7) Costs of the payments under this section shall not
26 affect the experience rating of employers insured by the state fund.

27 ~~((7))~~ (8) As used in this section:

28 (a) "Assisted living facility" has the same meaning as in RCW
29 18.20.020.

30 (b) "Farm work" means work performed on a farm, in the employ of
31 any person, in connection with the cultivation of the soil, or in
32 connection with raising or harvesting any agricultural or
33 horticultural commodity, including raising, shearing, feeding, caring
34 for, training, and management of livestock, bees, poultry, and
35 furbearing animals and wildlife, or in the employ of the owner or
36 tenant or other operator of a farm in connection with the operation,
37 management, conservation, improvement, or maintenance of such farm
38 and its tools and equipment. For the purposes of this subsection,
39 "farm work" includes floriculture.

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

4 (d) "Food manufacturing work" means work performed for an
5 employer whose North American industry classification code is within
6 "311."

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

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

12 (i) First responders, including law enforcement officers,
13 firefighters, emergency medical service providers, paramedics, and
14 ambulance drivers. "Firefighters" includes wildland firefighters when
15 performing wildfire suppression or other emergency duties under the
16 incident command system if the firefighter has in-person interaction
17 with the general public or other firefighters as part of their job
18 duties;

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

21 (iii) Maintenance, janitorial, and food service workers at any
22 facility treating patients diagnosed with the infectious or
23 contagious disease that is the subject of the public health
24 emergency;

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

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

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

38 (vii) Employees employed by a hotel, motel, or other transient
39 accommodation licensed under chapter 70.62 RCW that remains open to
40 the general public during the public health emergency, if the

1 employee has in-person interaction with the general public as part of
2 their job duties or has in-person interaction with other employees;

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

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

11 (x)(A) Corrections officers and correctional support employees
12 working at a correctional institution.

13 (B) For the purposes of this subsection (~~((7))~~) (8)(f)(x):

14 (I) "Correctional institution" has the same meaning as in RCW
15 9.94.049.

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

19 (III) "Correctional support employee" means any employee who
20 provides food services or janitorial services in a correctional
21 institution;

22 (xi) Educational employees, including classroom teachers,
23 paraeducators, principals, librarians, school bus drivers, and other
24 educational support staff, of any school district, or a contractor of
25 a school district, that are required to be physically present at a
26 school or on the grounds of a school where classes are being taught
27 in person, in a transportation vehicle necessary for school
28 operations, or in the home of a student as part of their job duties,
29 if the employee has in-person interaction with students, a student's
30 family members, or other employees as part of their job duties;

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

37 (xiii) Employees employed by a public library that remains open
38 to the general public during the public health emergency, if the
39 employee has in-person interaction with the general public as part of
40 their job duties or has in-person interaction with other employees.

1 For the purposes of this subsection, "public library" means a library
2 covered by chapter 27.12 RCW;

3 (xiv) Employees employed by the department of licensing who are
4 assigned to review, process, approve, and issue driver licenses to
5 the general public, if the employee has in-person interaction with
6 the general public as part of their job duties or has in-person
7 interaction with other employees.

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

11 (h) "Nursing home" means a nursing home licensed under chapter
12 18.51 RCW.

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

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

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

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

22 NEW SECTION. **Sec. 3.** This act applies to all claims, regardless
23 of the date of exposure or the date the claim is filed.

24 NEW SECTION. **Sec. 4.** This act is necessary for the immediate
25 preservation of the public peace, health, or safety, or support of
26 the state government and its existing public institutions, and takes
27 effect immediately.

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