



New COVID-related notice requirements: What Washington employers need to know

By Shawna Fruin ■ August 6, 2021

In addition to the Washington occupational disease presumptions addressed in our prior Health Emergency Labor Standards (“HELSA”) blog [here](#), the new statutes also mandate that employers give one-day notice to employees and the Department of Labor and Industries, if there are workplace exposures related to a public health emergency such as COVID-19.

These rules went into effect on May 11, 2021, the day Governor Inslee signed the bill. The crucial parts of the two notice provisions, which have separate rules for notice to provide to employees and notice to provide to the Washington Department of Labor and Industries, are as follows:

Notice to Employees

Employers obligated by the rule: All employers.

When: If the POTUS or Washington governor declares a public health emergency and the employer receives “notice of a potential exposure” to the infectious/contagious disease at issue in the emergency, the employer must give notice within one day of the potential exposure. (Public health emergency status can be tracked at the Governor’s page [here](#)). “Notice of potential exposure” means notice from a public health official, licensed medical provider, employee, or employer testing protocol that an employee was a “qualifying individual,” or that an employee was exposed to a qualifying individual at the worksite. “Qualifying individual” means a person with a positive lab test, diagnosis, public official isolation order, or death due the infectious/contagious disease at issue in the emergency.

Contents of Notice: Employers need to give notice of potential exposure (“that they may have been exposed to the infectious or contagious disease”), but not specific employee names or identifiers.

To Whom: Employers need to give notice to all employees, and employers of subcontracted employees, who were on the premises at the same worksite as the qualifying individual. “Worksite” means building, store, facility, agricultural field, or other location where the qualifying individual worked, but does not mean buildings, floors, or other locations of the employer that the qualifying

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Novel legal issues are arising as HELSA is being implemented



Reinisch
Wilson Weier PC
LAW OFFICES

OREGON: 10260 SW Greenburg Rd., Suite 1250, Portland, OR 97223 • T 503-245-1846 / F 503-452-8066
WASHINGTON: 15395 SE 30th Place, Suite 230, Bellevue, WA 98007 • T 206-622-7940 / F 206-622-5902
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Shawna Fruin is an attorney at Reinisch Wilson Weier PC. She may be reached at 503.452.7270 or ShawnaF@rwwcomplaw.com.

HELSA notices (continued)

individual did not enter.

How: The notice must be written and provided in “a manner the employer the employer normally uses to communicate employment-related information.” Personal service, email, and text are ok if it is reasonable to anticipate the employees will receive the notice in one business day of sending. It needs to be in English and “the language understood by the majority of the employees.”

Notice to the State

Employers obligated by the rule: Employers with 50 or more employees at a workplace or worksite.

When: If it is a public health emergency and the employer receives notice that 10 or more employees at a workplace/worksites tested positive for an infectious/contagious disease at issue in a public health emergency, then the employer must send notice within 24 hours.

Contents of Notice: The employer must report the positive tests.

To Whom: The Department of Labor and Industries.

How: The Department is in the process of enacting an emergency rule (most likely WAC 296-62-060004) that will explain how to report these cases, but has not published the rule to date. The most recent draft of that rule says that employers should report their required cases by calling DOSH at 1-800-4BE-SAFE (1-800-423-7233), and using the option to report fatalities, hospitalizations, amputations, or loss of an eye—but this is not enacted yet and therefore the final rule may have different directions. If you have questions about reporting prior to publication of the emergency rule, the Department’s email for addressing HELSA questions is HELSA@lni.wa.gov.

The new HELSA notice rules require employers to act fast (within one day) to give the requisite notice to its employees and Washington State. If you have questions about complying with these rules, please feel free to reach out to the attorneys at Reinisch Wilson Weier PC. ■

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