

Washington Department of Labor & Industries Institutes New Emergency Rules for Washington Employers During Pandemics and Health Emergencies

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On May 11, 2021, the Health Emergency Labor Standards Act (HELSEA) became effective. HELSEA applies to workplaces during a declared public health emergency involving an infectious or contagious disease. On August 10, 2021, Washington State Department of Labor & Industries (L&I) instituted emergency rules in response to HELSEA. L&I's new employer rules include:

1. Reporting and notification for COVID-19 outbreaks or exposures.
2. Accommodation of voluntary use of face masks and other personal protective equipment (PPE).

Employers with 50 or more "covered employees" at a workplace or work site are required, within 24 hours, to report COVID-19 "outbreaks" of 10 or more employees to L&I. "Covered employees" are hourly, salaried, labor, management, part-time, and seasonal employees, and any employee hired from a temporary help service, employee leasing service, or personnel supply service if the employer supervises the employee on a day-to-day basis. The new rule applies to COVID-19 outbreaks of 10 or more test-confirmed employee infections with test-collection dates that occur during:

- When any two (or more) cases have occurred within 14 consecutive calendar days of each other (and ends when 28 consecutive calendar days have passed without a new infection), or
- When the Washington State Department of Health or a local health agency communicates to the employer that there is a COVID-19 outbreak at their workplace or work site.

The employer has 24 hours to report the outbreak by calling L&I's Division of Occupational Safety and Health (DOSH) at 1.800.4BE.SAFE (or 1.800.423.7233) and following the option for "reporting fatalities, hospitalizations, amputations or loss of an eye." Employers should *not* include employee names or personal identifying information when making this report. Once reported, no further reporting is required unless a new outbreak occurs.

Employers must notify employees of potential exposure to COVID-19 during the pandemic. The notification is required no matter the employer size and must occur each time an employer receives notice of potential exposure through employer testing, from an employee or from a medical provider. If an employer receives notice of potential exposure, the employer must notify all covered employees who were on the premises at the same work site *on the same day*.

Under the new rules, employers must allow any employee or contractor (regardless of vaccination status) to voluntarily use PPE—but only after the employer has decided that use will not create a safety hazard, Interfere with the employer's security requirements, or conflict with other applicable health and safety rules.

L&I's new rules apply to the COVID-19 pandemic and during any future pandemic or public health emergency involving an infectious disease as declared or ordered by the president of the United States or by the Washington state governor.