

## **New Year, New Worker Protections: Preparing for SB 5258**



Beginning January 1, 2020, Washington employers in industries including

hospitality, retail, security, and contracted property services will need to comply with a new law amending the Washington Law Against Discrimination (WLAD).

Signed into law by Governor Jay Inslee in May 2019, Senate Bill 5258 provides heightened sexual harassment and assault protections for certain workers. The new protections require hospitality, retail, security and contracted property service employers (1) to adopt a sexual harassment policy; (2) to provide mandatory anti-harassment and assault training to all managers, supervisors and employees; (3) to educate employees about available resources and protections for reporting violations; and (4) to provide certain isolated workers with panic buttons. Additionally, the Department of Labor & Industries (L&I) was directed to publish "advice and guidance" for employers regarding the panic button requirement. Lastly, the new law outlines specific reporting requirements for property service contractors, as defined in the statute.

Even though the law officially became effective on July 28, 2019, employers were given a grace period in which to implement the new requirements. As of January 1, 2020, all large hotel and motel employers (those with 60 or more rooms) are required to be in full compliance, while all other affected employers have until January 1, 2021 to comply.

### **Covered Employers and Protected Employees**

The new law applies specifically to hotels, motels, retailers, security guard servicers, and property service contractors of any size. As defined in the applicable section of the code, a covered employer includes "any person, association, partnership, property services contractor, or public or private corporation, whether for-profit or not, who employs one or more persons."

While all hotel and motel employers are affected, smaller hotel and motel operators, those with fewer than 60 rooms, were excluded from the January 1, 2020 compliance deadline. The state legislature likely believed that larger hospitality employers were in a better position to meet the shorter implementation window, since the bill's requirements mirrored provisions imposed on large hospitality operators by municipal ordinance in cities across the country, including Seattle, Chicago, New York, and Miami Beach.

The new law expressly defines "property services contractor" as any employer with workers who provide commercial janitorial services for another person or on behalf of an employer. The definition excludes individuals who enter into independent contracting agreements to provide janitorial services, so long as the other party is the owner or lessee of the property being served.

The new law does not define which employers qualify as "retailers," and no official guidance has been provided by L&I to clarify this question. The Minimum Wage Act (MWA), which is similarly situated under Title 49 of the code dealing with Labor Regulations, may suggest an applicable definition. Under the MWA, a "retail or service establishment" includes any "establishment seventy-five percent of whose annual dollar volume of sales of goods or services, or both, is not for resale and is recognized as retail sales or services in the particular industry." RCW 49.46.010.

While the broad language used to define employers under the new law is rather expansive, in practice the scope is limited by the operative definition of "employee." A covered employer need comply only if they have one or more workers engaged in a narrow range of occupations under specific circumstances.

Under the new statute, "employee" is defined as "an individual who spends a majority of her or his working hours alone, or whose primary work responsibility involves working without another coworker present, and who is employed by an employer as a janitor, security guard, hotel or motel housekeeper, or room service attendant." Hotel and motel employers should note, this definition includes housekeeping teams that work in hotel rooms next to or across the hallway from each other if each housekeeper is alone while working in their respective rooms.

## **The New Law's Requirements**

As detailed above, SB 5258 imposes several requirements on affected employers. The new law also outlines reporting requirements for property service contractors.

## **The Sexual Harassment Policy, Mandatory Training, and Education Requirements**

Affected employers with at least one protected employee are required to adopt a sexual harassment policy. The law does not specify what a compliant policy must entail, but L&I has published guidance with best practices and has provided a model sexual harassment policy and procedures on its [website](#), which employers can customize for their specific workplaces.

The new law also requires affected employers to provide mandatory sexual harassment training to all employees, supervisors, and managers. Again, the statute does not specify content requirements, only that the training must be designed to do the following:

- Prevent sexual assault and harassment in the workplace
- Prevent sexual discrimination in the workplace
- Educate employees about available protections for anyone who reports violations

The law is also silent about the duration or frequency of required trainings. The best practices guidance published by L&I includes a section on sexual harassment training, which would be a good place for any employer to start in developing a compliant training program.

Employers must also provide each employee with a list of resources, which must include contact information for the following agencies:

- The Equal Employment Opportunity Commission
- The Washington State Human Rights Commission
- Local anti-harassment and sexual assault prevention advocacy groups

No additional guidance or resources have been published regarding what local resources will meet the requirements. Although, according to L&I's best practices, employers should be prepared to offer information about resources like counseling services, workplace affinity/identity groups, victim advocacy services, and employee assistance program resources.

### **The Panic Button Requirement**

Affected employers must also provide "panic buttons" for employees who regularly work in isolation. Unlike the other requirements, L&I was directed by the statute to publish "advice and guidance" regarding the panic button requirement. In December 2019, the Department of Labor & Industries Division of Occupational Safety and Health (DOSH) published the required guidance.

DOSH's guidance clarifies that the panic button must be an "emergency contact device" that effectively summons immediate assistance to the employee's location when activated. Additionally, the guidance includes the "effectiveness criteria" for compliant panic buttons.

- The devices must be designed to be carried by the user (e.g., lanyards, clip-ons, etc.).
- The devices must be simple to activate (e.g., a single action like a push, pull, or tap that provides a sustained signal) without delays caused by entering passwords or waiting for the system to turn on.
- When activated, the device's signal must be effective for the circumstances (e.g., designated personnel will be able to detect it regardless of their location and distinguish it from other audible or visual alarms and ambient noise).
- The device must be designed to summon immediate assistance and allow responders to accurately identify the user's location.
- The device must reliably work in all locations on all shifts and the activation of one device must not obscure the activation of others.
- The device should minimize inadvertent activation and resist possible disabling by attackers.

The guidance also clarifies what types of devices would not likely be considered effective. These include the following:

- Signaling devices (strobes, horns, or buzzers)
- Radios
- Cellphones
- Pagers

Employers are prohibited from passing any of the costs associated with providing the panic buttons to the employees, including costs for service and maintenance or required supplies, such as batteries.

The statute also provides an exception from the panic button requirement for security guard service companies that are separately licensed under Title 18 of the code.

### **Reporting Requirements for Property Service Contractors**

The new law imposes specific reporting requirements on employers that meet the definition of a property service contractor. These employers must submit the following information to L&I:

- The date the required sexual harassment policy was adopted
- The total number of employees who received the mandatory training
- The physical address of each work location where janitorial services is provided
- The total number of workers or contractors that provide services at each location
- Their total hours worked

L&I is directed by the statute to adopt rules to implement these reporting requirements and to ensure the aggregated data is available upon request.

## Key Takeaways

Employers who may be affected by this new law, especially any employer that operates a hotel or motel, should begin identifying possible devices that will meet the panic button requirements per the DOSH guidance. Some employers, such as small retailers with limited staff, may also want to evaluate their current staffing policies and procedures to limit the amount of time any individual employee is required to work alone.

Assistance in developing effective sexual harassment policies and mandatory trainings may prove helpful in complying with these new requirements. Employers should also look out for any additional rules or guidance published by L&I over the next year. Those employers who are concerned about meeting any of the requirements of the new law are encouraged to seek advice from trusted counsel.

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## Authors



### [Emily A. Bushaw](#)

Partner

[EBushaw@perkinscoie.com](mailto:EBushaw@perkinscoie.com) [206.359.3069](tel:206.359.3069)

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