

## Updates

July 31, 2020

### State of Washington Extends Existing Protections for “High-Risk Workers” Amid COVID-19

In [Proclamation 20-46.2](#) (July 29, 2020), Washington Governor Jay Inslee extended existing protections for "high-risk workers" for the duration of the current state of emergency. The Office of the Governor also issued a short guidance memorandum clarifying who is a "high-risk worker" and when employers can request medical verification.

The existing protections appear in Proclamation 20-46 (April 13, 2020). Employers in the state of Washington are required to provide accommodations and other protections to certain "high-risk workers" to protect them from exposure to the novel coronavirus, including the following:

- Providing alternative work assignments or arrangements, including but not limited to telework, alternative or remote work locations, reassignment, and social distancing measures, when feasible
- When alternatives work arrangements are not feasible, allowing high-risk workers to utilize all available accrued leave options or unemployment insurance in any sequence at the discretion of the employee, free from risk of retaliation
- Maintaining all employer-related health insurance benefits until the employee is deemed eligible to return to work
- Not permanently replacing employees because they have exercised their rights under the proclamation

These protections were set to expire on August 1. Proclamation 20-46.2 extends them for the duration of the state of emergency.

The guidance memorandum clarifies who is a "high-risk worker." Referencing the Centers for Disease Control and Prevention (CDC), the memorandum states that "only those employees who fall within the following categories are covered by Proclamation 20-46.2 and any future versions of the order":

- Employees who are 65 years or older
- Employees whose conditions are listed by the CDC under the "at increased risk" category
- Employees whose conditions are listed by the CDC under the "might be at increased risk" category, but only if, based on the employee's medical circumstances and workplace conditions, the employee is, in fact, at increased risk for suffering severe illness from COVID-19

The guidance memorandum also states when an employer may and may not require verification from a medical provider with respect to a high-risk employee.

- Employers generally **must not** require verification from a medical provider when the employee either is 65 years or older or falls within the CDC's "at increased risk" category.
- However, the employer **may** require verification if the high-risk worker seeks to use any leave where a state or federal law, collective bargaining agreement, or contractual obligation separately requires verification (e.g., paid sick leave under Initiative 1433, employer-administered paid leave, Families First Coronavirus Response Act paid leave, and unemployment insurance compensation).
- Employers also **may** require verification from a medical provider when the employee falls within the "might be at an increased risk" category.

Contact experienced counsel with any questions regarding these protections.

## Authors

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