

Washington: Proclamation Extending Job Protections to High-Risk Employees during COVID-19 Crisis

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Washington State Governor Jay Inslee has issued a Proclamation extending various job protections to “high-risk” Washington employees. The Proclamation protects (1) any individual aged 65 or older, (2) anyone living in a nursing home or long-term care facility, and (3) those with “certain chronic underlying health conditions.”

The Proclamation went into effect immediately and will remain in effect at least until 11:59 p.m. on June 12, 2020. The Proclamation is unusual as it appears intended to create new substantive, if temporary, workplace rights without legislative action.

The Proclamation provides the following for “high-risk” employees:

- When employees request alternative work assignments to protect themselves from the risk of exposure to COVID-19 on the job, employers must utilize all available options, including telework, alternative or remote work locations, reassignment, and social distancing measures. If alternative work arrangements are not feasible, the employer must allow the employee to use all of the employee’s employer-granted accrued leave options. It is the employee’s decision to use accrued leave or unemployment insurance in any sequence.
- If the employee’s paid time off is exhausted during the period of leave, the employer must fully maintain all employer-related health insurance benefits until the employee is deemed eligible to return to work. The Proclamation does not indicate how exactly the employee would be “deemed” eligible to return to work. It also does not explain what it means to “fully maintain” insurance.
- Employers may not retaliate against or take adverse employment action in a way that would result in the permanent replacement of employees who exercise their rights under the Proclamation.
- Employers and unions cannot enforce any provisions in an employment contract that contradict or interfere with the Proclamation.
- The Proclamation should be generally construed to protect employees from loss of their positions, employment benefits, and retaliation for decisions related to the Proclamation.
- The Proclamation does not prohibit hiring a temporary employee, as long as it does not negatively affect the “permanent” employee’s right to return to their existing position without any negative ramifications.
- Employers may require employees who do not report to work in reliance of the Proclamation to give the employer up to five days’ notice of the employee’s intention to report or return to work.
- Employers may take employment action when “no work reasonably exists,” such as a reduction in force. However, where no work exists, employers may not take action that may adversely affect the employee’s eligibility for unemployment benefits.

Any violations of the Proclamation are subject to criminal penalties (as is the case with all of the Governor’s recent Proclamations).

Jackson Lewis has a dedicated team tracking and responding to the developing issues facing employers in this difficult time. If you need guidance in handling the complicated issues pertaining to COVID-19 and related business closures, contact a Jackson Lewis attorney to discuss.

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