



Washington State Department of
Labor & Industries

Domestic Worker Workgroup

Report to the Legislature

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DRAFT

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Executive Summary

Introduction

On May 18, 2021, Engrossed Substitute Senate Bill 5092 (ESSB 5092), the 2021 Operating Budget, was signed into law by Governor Jay Inslee. Section 220(12) directs the Department of Labor & Industries (L&I) to convene a workgroup to “investigate how to make Washington’s industrial insurance system easier to access for employers and hiring entities to provide industrial insurance coverage (coverage) for domestic workers.” The workgroup, known as the Domestic Workers Workgroup (DWW), must look at legislative, regulatory or other changes and report to the Washington State Legislature any such recommendations.

Current State

L&I is dedicated to helping injured workers heal and return to work. Washington’s workers’ compensation system provides benefits to covered workers who suffer from an occupational disease or work-related injury. Within this system, L&I pays for medical treatment and wage replacement for disabled injured workers. However, benefits are provided only for those workers who are covered. [RCW 51.12.020](#) excludes certain employments from mandatory workers’ compensation coverage. The law currently:

1. Exempts domestic servants (referred to as workers throughout this report) unless they are employed in a private home by an employer who has two or more employees regularly employed 40 or more hours a week.
2. Exempts individuals who provide gardening, maintenance or repair in or about the private home of the employer.

However, a household employer can choose elective coverage for these workers.

Recommendations

The DWW considered a series of recommendations to increase access to workers’ compensation coverage for domestic workers and to establish clear language around who should be covered. L&I served in a staff role – providing technical and logistical support, but not weighing in on the recommendations. The DWW voted on and established a majority for the following.

1. Eliminating domestic workers from the “employments excluded” in RCW 51.12.020.
2. Eliminating “persons employed doing gardening, maintenance or repair in, or about a private home...” from the “employments excluded” in RCW 51.12.020
3. Establishing a statutory definition of “domestic worker,” and include “day laborer” in that definition.
 - a. Include an exemption for “casual labor.”
 - b. Include specific language to address coverage when work reasonably expected as part of the domestic service is performed off premises.
4. Directing L&I, as part of the workgroup, to research options for workers’ compensation retaliation investigations without requiring a complaint to be filed by the worker.

5. Directing L&I to establish a process for referrals to other L&I divisions or other agencies, if appropriate, when possible violations of domestic worker rights are identified.
6. Asking the legislature to pass a bill that acknowledges the workgroup's request to adopt the recommendations proposed in the report to ensure mandatory coverage for domestic workers and directs that more work must be done to address additional barriers, both administratively and otherwise. To address those barriers the legislature should direct L&I to reconvene the workgroup and report back with a finalized list of recommendations by July 1, 2025.

There were other topics discussed. However, they were not ready for a final recommendation vote. These topics are in an *Additional Workgroup considerations* section later in this report.

Due to continued interest and work remaining incomplete, the workgroup would like to continue its effort to increase access to workers' compensation coverage for domestic workers in the future.

Report Format

This report provides an introduction to the overall work of the workgroup as well as an overview of the workgroup members and the meetings. In an effort to provide an opportunity for the individuals who provide domestic services to share their experiences and inform the DWW discussions, the report also includes a *Personal Stories and Survey Results* section that features stories provided by the workers, as well as survey results. The stories and survey remain anonymous to encourage greater participation.

The report also includes an overview of the existing process for employers to obtain workers' compensation coverage and the benefits provided to injured workers. The report also makes recommendations to the Washington State Legislature on how to expand access to this coverage for domestic workers.

The report also provides information about other topics the Domestic Workers Workgroup (DWW) discussed in the context of increasing access to workers' compensation. These topics, highlighted in the *Additional Considerations* section, provide a high-level overview of what additional things may need further consideration in the future.

Introduction

On May 18, 2021, Engrossed Substitute Senate Bill 5092 (ESSB 5092), the 2021 Operating Budget, was signed into law. Section 220(12) directed the Department of Labor & Industries (L&I) to convene a Domestic Workers Workgroup (DWW) no later than July 1, 2021, aimed at expanding access to the workers' compensation system for domestic workers and day laborers.

For the purposes of this workgroup and the report, domestic worker refers to an individual performing domestic services in a private home on behalf of a household employer, and day laborer refers to an individual performing maintenance and repair in or about a private home on behalf of a household employer. In both circumstances, individuals providing these services employed by other entities are covered workers (i.e., covered by workers' compensation).

The DWW must “investigate how to make Washington’s industrial insurance system easier to access for employers and hiring entities to provide industrial insurance coverage for domestic workers.” The workgroup must look at legislative, regulatory or other changes, and report to the Washington State Legislature any such recommendations.

The DWW began meeting in July 2021 and met every two months, with some additional special sessions to ensure discussion occurred on all necessary topics needed for reaching recommendations. This included listening sessions and conducting a survey to hear directly from affected workers to learn about their experiences and a how lack of workers' compensation coverage affects them.

L&I facilitated these meetings with the workgroup and often presented information covering several issues and topic areas. This included an overview of current Washington laws regulating workers' compensation. L&I also provided a comparison of workers' compensation coverage requirements for domestic workers by other states. The DWW reviewed relevant case laws setting precedence for

determining employment relationship status, and, finally they discussed potential barriers and possible areas of regulatory change.

The workgroup voted on several recommendations. These included statutory changes as well as administrative actions that L&I could take. Those recommendations are below.

Through the discussions on recommendations, the DWW also identified the need to continue its work and discussions to address additional topics and barriers. These topics are included in the *Additional Workgroup Considerations* section of this report. The workgroup voted to recommend that we reconvene to continue to discuss these issues and identify additional recommendations to expand access to the workers compensations system for domestic workers. The Workgroup also discussed timing of a legislative proposal to address the recommendations. While there is a desire to get these changes into place as soon as possible, there was also a recognition that making these changes without addressing some additional concerns could be problematic.

Workgroup Members & Meetings

The budget proviso directed L&I to convene a workgroup composed of governor-appointed members, as follows:

- Two representatives who are directly impacted domestic workers who work for private home employers or hiring entities;
- Two representatives who are directly impacted day laborers who work for private home employers or hiring entities;
- Two representatives from unions, workers' centers or intermediary nonprofit organizations that assist and/or refer such directly impacted workers;
- Two employer or hiring-entity representatives who directly employ or hire single domestic workers in private homes;
- One employer or hiring entity representative who directly employs or hires day laborers in a private home;
- One representative from a nonprofit organization that educates and organizes household employers; and
- Representatives from the department, serving in an ex officio capacity.

To recruit workgroup members, L&I issued a recruitment announcement and coordinated with Governor Inslee's staff to reach as many interested parties as possible. Through an application process, the Governor's Office provided the final selection of members to the workgroup.

L&I convened the workgroup as outlined in the legislation, and included agency staff with relevant knowledge and expertise. As required by the law, the workgroup met every two months, starting in July 2021.

In late 2021, the workgroup directed L&I to develop a survey to gain additional insight from the broader domestic worker community. This included collecting data associated with the type of work they do as well as on-the-job injuries, lost wages and other experiences these workers may have had.

In January 2022, L&I facilitated a special “after hours” session to provide an opportunity that would not interfere with regular working hours for domestic workers and day laborers to share testimonials associated with personal on-the-job injuries. That same month, L&I launched the survey, with workgroup members sharing its purpose to the broader domestic-worker community. In an effort to promote the survey, L&I also used social media in recognition of the International Domestic Workers Day on June 16.

During the May meeting, L&I and the workgroup reviewed additional topic areas and discussed various barriers that exist for workers’ compensation; the workgroup also considered some draft recommendations for the report. In June, L&I facilitated another special session on recommendations for this report.

These sessions were public meetings held via Zoom. L&I posted meeting materials, summary session notes, the 2021-22 meeting schedule and other documents to the agency website, in English and Spanish. All DWW sessions were facilitated by interpreters to allow for full participation. All communication between L&I and workgroup members was also bi-lingual English/Spanish.

Personal Stories & Survey Results

DWW members felt it was important to hear directly from domestic workers and day laborers affected by the lack of workers’ compensation coverage. The workgroup held two meetings – during and after business hours – to include as many workers as possible. The stories are anonymous, with identification limited to the type of work and the order of the stories.

The workgroup also asked L&I to develop a survey for workers who were unable to attend the work sessions to gather additional data and stories. The survey was posted on the L&I website in both English and Spanish. L&I promoted the survey with a social media post on International Domestic Workers Day, June 16. The survey was anonymous and did not require an answer for every field to be accepted.

PERSONAL STORIES

November 30, 2021, testimonials

Domestic worker #1: I was cleaning a home, alone, when I slipped and fell in the bathtub, injuring my hip, left shoulder and arm. I was scared, a lot came to mind: Do I tell my employer? Will I be able to get myself up? Will my employer believe me or think that I am trying to take advantage? I was also afraid of losing my job and income for months. I was only doing work part time and had other work to fall back on, but that is not always the option. There is also fear that if you leave a job due to an injury, it won’t be there when you come back. Some employers are kind and will listen, but that is not always the case.

Domestic worker #2: I was injured at work, (and) my employer didn’t believe me. I had to pay the bills and all my expenses. I spent three months, if not more than that, out of work. That is why I am asking for your support for all domestic workers and day laborers. There are many families that are suffering due to not having income when we cannot work – when we cannot work and fighting for

our rights. We clean your homes and make sure you're happy with us and our employer. Thank you for listening to me.

Domestic employer #1: *Hand in Hand*, a domestic-workers' organization. We support employers with resources. We also organize domestic workers' rights campaigns. I can share anecdotally what I have heard, but we don't know what happens in [private] homes [with domestic workers]." The legislature needs to hear more of these. Like I said, we work with thousands of domestic workers and employers and find that [most] employers are extremely supportive of helping those they employ. In most cases, it's education and resources – people don't have [an] HR [department] in their homes. I think that employers don't necessarily have the resources to be proactive. Laws needs to be easy to understand and mandatory. Employers aren't going to do it unless it's clear.

January 18, 2022, testimonials

Day laborer #1: Casa Latina provided a work order for a client. The job was to cut the grass, but the homeowner did not have the appropriate tools for the job, but she said to use it (lawnmower) anyways. The lawnmower turned and caught a piece of metal. When I tried to release it, the metal cut my fingers on my right hand. I told the owner that I cut my hand and lost part of my fingers. The homeowner drove me to Harborview and then left. I had to have surgery on my hand, which included removing pieces to reattach my fingers. Afterward, I asked the homeowner if she could help me and she refused. I spent three months on disability with no funds or assistance. L&I said they (sic) could not help me and to check if the homeowner had homeowner's insurance. I required financial aid from the hospital to cover the bills because I didn't have the money and had to apply for low-income assistance. We need to have some support when we can't work.

Domestic worker #3: I have been dedicated to this kind of work (for) 30 years. I had a house where I had been working for eight months. The house had three stories and I always started at the top. I had already finished cleaning and mopping; I had cleaned the stairs and started polishing them. I didn't realize that my shoes were a little damp and was going down the second step with the vacuum and I slipped. It was three sets of stairs I went down, and rolled down the six steps and I let go of the vacuum cleaner. I first apologized to the homeowner for dropping the vacuum and was asked if I wanted to leave. I thought about it but figured, "If I leave, she won't pay for any of the work I've already done," so I went ahead and finished. I continued working until about 3:00 p.m. By then, I was in so much pain I told the homeowner I was leaving a little early. During the drive home, my legs were falling asleep and I was losing sensation in my right foot. It was a very scary drive. The next day, I couldn't move at all. I went to the doctor and they recommended therapy. The therapy provider told me it would be about two months to recover and that I couldn't work, but I had to pay rent and food. There were people from my country who helped me, but it was not enough. I was charged about \$1,000 for therapy, but it did not help. I spent three months without work. After my recovery, the homeowner told me, "We don't need the help anymore because the kids are doing it." We enjoy doing this work. We work hard and do it with care and dedication. I still have issues with my leg and some inflammation today.

Domestic worker #4: I have been cleaning homes for about 10 years. Three years ago when I was cleaning a home, one of the dogs bit my middle finger on my left hand. I was alone and scared. I looked for alcohol and gauze pads. The bleeding wouldn't stop, so I called my boss and let them know I was going to leave without finishing the work. The homeowner told me to wait at the house and they would take me to the doctor and would pay for the bills as well as the days I wasn't able to work for them. The good thing was that I got into contact with my boss. However, they didn't pay for

the other lost wages from not being able to work, and (I) had to wait six weeks before returning to work. I wasn't able to pay part of my rent because of this. The dog bite injured part of the tendons and still causes me issues today. Domestic workers should be covered by L&I.

Day laborer #2: I have been a day laborer in Oregon and Washington. I wait at Home Depot. I had a house in Redmond where I did regular yard maintenance. The homeowner had a tree that needed trimmed. I usually stand on the shed to trim them. This one time, it was raining and a little wet; I didn't feel it was safe, but the homeowner told me she was having a party and that she needed it trimmed. I started trimming and a branch came down and took me with it. I fell on the ground, about a seven-foot drop. I felt that something was wrong with my right leg. However, I knew the homeowner was having a party so I completed my work. Two days later, I went (to) SeaMar (clinic) and got a x-ray, which showed a fracture. Casa Latina was able to help, but I was not able to collect money from the homeowner. The homeowner said they felt like I got injured somewhere else and that was the last time I heard from her. I wasn't able to take care of myself and had to stay in a shelter. My family in Mexico didn't get any money. The homeowner never contacted me again.

Day laborer #3: This recently happened after Thanksgiving. I was sent on a job from Casa Latina to address garden drainage and needed to dig a trench. The trench was supposed to be deep and (I) told the homeowner it wasn't safe and the dirt wasn't stable. The employer asked, "Do you want to work or complain," so I worked. One of my legs got stuck in the ditch, and when I tried to get out I heard something pop. I told the employer, and they gave me a phone number for a doctor and told me they would pay my bills. The next day, I went to the clinic and I had a fracture. I called the employer and they never answered. I tried many times to get in touch with them, and they have ignored me.

SURVEY RESULTS

Beginning February 2022, L&I, in collaboration with the DWW, developed and posted a survey to the agency's public website. The workgroup members and other advocacy organizations had access to the link and could share it to increase awareness. The survey's goal was to collect information for consideration in extending workers' compensation benefits to domestic workers and day laborers. The survey was offered in English and Spanish, and responses were anonymous. The survey took approximately 15 minutes to complete. The survey did not require an answer to every question, so if respondents did not know the answer to a question or did not want to answer a question, they could skip to the next one.

This section will highlight some of the key takeaways from the survey. The complete results of the survey are in Appendix A.

The survey received 95 total responses. By allowing respondents to submit the survey without answering every question, the total responses for each question vary.

Respondent characteristics

The first half of the survey focused on collecting general information about the workers, including the type of work they do, how often they provide services and how COVID affected their work.

Of the responses received 66 percent of respondents were housecleaners, 9 percent were either nannies or day laborers, and 4 percent were gardeners. Of the total respondents, 81 percent worked

for household employers on either a recurring basis or on one-time jobs. None of these respondents would be covered by workers' compensation today.

COVID-19 effects on work availability

The survey had several questions about how COVID affected their work. The responses show a decrease in both the total number of households worked for and the total hours worked during the week. During COVID, the percentage of work for a single household, compared to multiple household employers, increased by 22 percent.

While many respondents noted working for multiple household employers, the frequency with which they provided that work varied, with 28 percent, of respondents stating they work twice per month for a single household employer.

Over half of the respondents indicated that they always work alone. Of those who work with others, over half typically worked with only one other person.

On-the-job injuries

The second half of the survey focused on gathering information about on-the-job injuries.

Of all respondents, 32 percent were injured on-the-job. The way in which the worker was injured varied and the type of injury also varied. A "bend, reach or twist" or "slip, trip or fall" were the two most common injuries, and a majority resulting in a "sprain, strain or tear."

More than half of the respondents injured did not inform the household employer of their injury, and those who provided reasons for not informing their household employer commonly stated a fear of the household employer denying their injury occurred or retaliation. Some household employers assisted the injured worker by covering medical expenses or lost earnings when they knew of an injury.

Half of the respondents indicated the injury prevented them from working, and half received medical treatment. Of those who received medical treatment, medical personnel did not ask 44 percent of the respondents if the injury occurred at work.

The effect of the injury varied: 61 percent of injured workers were out of work for less than a week, and 79 percent had medical costs under \$500.

The effect on lost wages had the most variability among the respondents, ranging from under \$100 to more than \$5,000.

Of those workers who were injured on the job, 63 percent were able to return to the same household employer. However, over half of respondents indicated the injury continues to affect their ability to do their jobs.

Current-State Overview

L&I is dedicated to helping injured workers heal and return to work. Workers' compensation is a state-run program administered by the agency. Employers must purchase industrial insurance through L&I or be self-insured. The workers' compensation system is a "no-fault system," meaning L&I will

cover an allowable claim for a workplace injury regardless of cause.¹ A worker injured on the job is entitled to wage replacement and medical benefits. State law (Title 51 RCW) directs L&I to classify all occupations or industries by their degree of hazard, in accordance with standard insurance principles.²

All employers are required to purchase workers' compensation coverage unless explicitly excluded in law. RCW 51.12.020 identifies "excluded employments." As with any insurance program, premiums are paid into the state fund unless the employer is self-insured. Both workers and employers pay premiums.³ These are the only source of revenue for the state fund; there are no other general tax revenues. Benefits paid to workers and administrative costs for L&I to manage the system are both paid from these premiums.⁴

Each employer receives an assignment of one or more risk classifications based on the nature of its business when applying for a workers' compensation account. Risk classification is used in insurance as a method for combining like occupations or industries by the degree of hazard. Each risk classification has separate premium rates that apply to the employers and workers in that classification. As a result, employers and workers in more hazardous industries (more frequent and severe injuries, higher claims costs) generally have higher premium rates than employers and workers in less hazardous industries.

Each year, L&I calculates rates for each risk classification based on the previous five years of claim costs by claim type and hours worked.⁵ These rates are established for all businesses within the same risk classification. The premiums that are paid are divided into four different funds:

- Accident Fund (100 percent employer paid): Pays for injured workers' wage replacement, permanent disability or death benefits and some vocational retraining.⁶
- Medical Aid Fund (half employer paid and half worker paid): Pays for health care and private vocational counselors for covered services provided to injured workers.⁷
- Stay at Work Program (half employer paid and half worker paid): Pays employers partial reimbursement for wages, training and equipment costs provided under light-duty or transitional work for injured workers.⁸
- Supplemental Pension Fund (50 percent employer paid/50 percent worker paid): Pays cost-of-living adjustments on extended wage-replacement benefits and pensions.⁹

L&I does not collect each worker's share directly. Instead, employers have the option to collect their employees' portion through payroll deductions. Some businesses choose not to make employee payroll deductions. These businesses are still responsible for paying the total premium due.

¹ RCW 51.04.010

² WAC 296-17-31029

³ RCW 51.16.140

⁴ RCW 51.15.105

⁵ WAC 296-17A

⁶ RCW 51.44.010

⁷ RCW 51.44.020

⁸ RCW 51.44.180

⁹ RCW 51.44.033

L&I individually adjusts the rates for premiums like other insurance; the more an employer uses its coverage, the higher its rates. The “experience factor,” which L&I calculates annually for each business, is based on workers’ hours (exposure) and claims (losses) occurring during the preceding three years. The experience factor is used to compare with other employers in the same industry. For example, if a business’s claim costs are likely to be higher than other businesses in its risk class, that employer will pay a higher rate.¹⁰

Employers apply for an L&I workers’ compensation account along with their state business license. Employers must:

- Keep track of the number of hours employees work.
- Report the combined hours for all employees in each assigned risk class, quarterly, (every three months) to L&I and pay the premiums for each risk class, or report zero hours if no hours are worked.¹¹
- Keep records and make the records available to L&I for examination in case of an audit.¹²

For claims that are determined to meet legal requirements, L&I pays the cost of healthcare services until the covered worker’s job-related injury or illness has stabilized and reaches a point where no further recovery is expected. If a covered worker is unable to work due to a work-related injury or disease, L&I will pay a portion of the regular wages.¹³ A healthcare provider must certify that the worker is unable to work due to the work-related injury or illness.

The wage replacement or “time-loss compensation” is not full wage replacement. It is approximately 60-75 percent of total wages and is calculated based on a covered worker’s total earnings at the time of injury plus marital status and dependents. These payments are not taxable. Covered workers receive time-loss payments approximately twice a month as long as the healthcare provider verifies that the condition prevents the return to any work.

To determine time-loss benefits, L&I establishes the gross income at the time of injury based on:

- The worker’s wages earned before taxes, from all jobs worked.
- Any employer-provided medical, dental and vision benefits.
- The reasonable value of room and board, housing, heating fuel or similar considerations received from the employer.
- Any bonus received in the last 12 months from the employer the worker was working for when injured.
- Tips the worker reported to the employer for federal income tax purposes.

Depending on the severity of the injury, a worker may have difficulty returning to work. In some cases, vocational services may be available to help with return-to-work options, including retraining for new work.¹⁴ For workers unable to return to any work, a pension may be paid.

¹⁰ RCW 51.16.120

¹¹ RCW 51.16.060

¹² RCW 51.16.070

¹³ RCW 51.08.178

¹⁴ RCW 51.32.095 through RCW 51.32.099

Workgroup Recommendations to the Legislature

This section explores Workgroup recommendations to the state legislature. These aim to increase access to workers' compensation coverage for domestic workers and to establish clear language around who the workers are. They are the result of a yearlong process that began in July 2021.

The DWW began this effort by receiving an overview from L&I on how the current system works today for workers who are covered as well as workers who have elective coverage provided by the household employer. L&I also provided an analysis of workers' compensation coverage for domestic workers in other states, as shown in Appendix B.

The workgroup then held several sessions to hear from individuals who provide domestic services and how injuries on the job have affected their ability to continue to work.

Finally, the workgroup discussed the available options to expand access to workers' compensation coverage as well as the barriers that may exist.

Based on the conversations of the DWW members, L&I developed a list of potential recommendations for the group's consideration. Workgroup members voted on June 16, 2022. Members who were unable to attend had the opportunity to vote on the recommendations via email. From that vote, the workgroup established the following recommendations.

Other topics and potential recommendations that did not receive a vote are covered in the *Additional Workgroup Considerations* section of this report.

RECOMMENDATION 1: ELIMINATE "DOMESTIC WORKERS" FROM THE "EMPLOYMENTS EXCLUDED" IN RCW 51.12.020.

Established in [Washington state law in 1971](#), "Any person employed as a domestic servant in a private home by an employer who has less than two employees regularly employed forty or more hours a week in such employment" was excluded from workers' compensation coverage.¹⁵ The effect is that no domestic worker employed by a household has access to workers' compensation benefits unless they work with more than one domestic worker for 40 or more hours per week, or are employed by a firm and dispatched to a home to clean, or are bonafide independent contractors and choose to cover themselves. Household employers currently have the option to provide elective coverage for these workers if they do not meet the mandatory coverage standards established in state law.

L&I policy 61.03, provided in Appendix C, defines a domestic worker to be "an individual who is privately employed to perform duties in or about a private home for the immediate member(s) of a

¹⁵ The Industrial Insurance Act was enacted in 1911 and covered "extrahazardous" occupation. In 1971, an amendment expanded to include all industries, adding non-hazardous occupations unless specifically exempted.

family. This includes employees performing general household duties, such as maids, cooks, butlers, housekeepers, nannies, gardeners and caretakers.”

By voting to eliminate the domestic-worker exemption from the law, it is then assumed that individuals providing this type of work would be considered covered workers, and the household employer would be responsible for providing workers’ compensation coverage.

Workgroup Discussion

The workgroup discussed the historic inequity related to this statute and expressed significant concerns around the term “servant.” One member noted that using the word “servants” when referring to individuals who are providing domestic services feels like it is referring to a modern slave role.

Recommendation to the Legislature

Members of the Workgroup voted unanimously in support of a recommendation to extend workers’ compensation coverage to domestic workers by removing the exemption in law, thus establishing the intention to ensure that these workers are covered and the household employer would be responsible for providing workers’ compensation coverage.

RECOMMENDATION 2: ELIMINATE “PERSONS EMPLOYED DOING GARDENING, MAINTENANCE OR REPAIR IN, OR ABOUT A PRIVATE HOME...” FROM THE “EMPLOYMENTS EXCLUDED” IN RCW 51.12.020

Established in [Washington state law in 1971](#), “Any person employed to do gardening, maintenance, or repair, in or about the private home of the employer. For the purposes of this subsection, “maintenance” means the work of keeping in proper condition, “repair” means to restore to sound condition after damage, and “private home” means a person’s place of residence” was included under the “employments excluded” section of Title 51.” The effect of this exemption is that any individual who is employed by a household employer, providing what the workgroup referred to as “day laborer” work is excluded from workers’ compensation coverage.

By voting to eliminate the “day laborer” exemption and extend workers’ compensation coverage, it is then assumed that the household employer would be responsible for providing workers’ compensation coverage.

Recommendation to the legislature

Members of the workgroup voted unanimously in support of a recommendation to extend workers’ compensation coverage to “day laborers” by removing the exemption in law, thus establishing the intention to ensure that these workers are covered and the household employer would be responsible for providing workers’ compensation coverage.

RECOMMENDATION 3: ESTABLISH A STATUTORY DEFINITION OF “DOMESTIC WORKER” AND INCLUDE “DAY LABORER” IN THAT DEFINITION

Removing domestic servants and day laborers from the list of “excluded employments” means there would no longer be a reference in the workers’ compensation law to the type of work these individuals perform. The workgroup felt it was important to establish a definition of domestic worker and to include work performed by a day laborer in that definition.

The workgroup noted the need for additional clarity within the definition, including an exemption for casual labor. There was also a desire to include language to ensure that a worker who is reasonably expected to also provide services outside the home (such as a domestic worker who runs errands in the course of employment) remains covered.

Workgroup Discussion

Ultimately, the workgroup did not vote on a definition, although L&I did provide an example of a definition for consideration.

“Domestic worker” means any worker:

- Employed to provide domestic services or perform maintenance or repair in or about the private home of the employer. This does not include domestic services, maintenance, or repair performed on a casual basis.
- “Domestic services” means duties including nanny (childcare¹⁶), house cleaning, home care worker (caregiving¹⁷), gardening, or cooking.
- “Maintenance” means the work of keeping in proper condition, “repair” means to restore to sound condition after damage.
- “Private home” mean a person’s place of residence, includes work done off premise where performed as part of the domestic service/integral to the duties.
- “Casual labor” means ...¹⁸

Also considered was whether the definition would need to include a direct affirmation of domestic workers’ right to workers’ compensation coverage. That language would include a phrase such as, “Any worker who meets the definition of a domestic worker is considered a covered worker from the moment work commences at a private home.” L&I noted that by removing domestic workers and day laborers from excluded employment categories, there would automatically be a presumption of coverage and advised that additional language was not needed. A workgroup member also noted state law does not currently list other occupations as specifically covered by worker’ compensation, and adding such language for domestic workers could potentially create confusion and inequity if enacted into law.

The workgroup also discussed the Seattle ordinance related to domestic workers, [SMC 14.23](#), as an example of an existing definition for “domestic worker” and “casual basis.”

“Domestic worker” is narrowly construed to mean any worker who 1) is paid by one or more hiring entities; and 2) provides domestic services to an individual or household in or about a private home

¹⁶ L&I would recommend using a term that defines the duties rather than a specific job type

¹⁷ L&I would recommend using a term that defines the duties rather than a specific job type. Home care worker is also a current type of worker who may be covered if they are an Independent Provider for the Consumer Directed Employer.

¹⁸ This definition was discussed separately

as a nanny, house cleaner, home care worker, gardener, cook, or household manager. “Domestic worker” includes hourly and salaried employees, independent contractors, full-time and part-time workers, and temporary workers. “Domestic worker” does not include any individual who is:

1. Working on a casual basis. Casual refers to work that is: 1) irregular, uncertain, or incidental in nature and duration, and 2) different in nature from the type of paid work in which the worker is customarily engaged in.;
2. In a family relationship with the hiring entity; or
3. A home care worker who is paid through public funds.

Clarification of the definition of “casual basis” is in Seattle rule [SHRR 160-130](#).

1. **In general.** Seattle Municipal Code 14.23.010 sets out the two-part test to determine whether a worker is excluded from coverage because the worker is working on a casual basis. A worker is engaged in casual work when that work is: 1) irregular, uncertain, or incidental in nature and duration, and 2) different in nature from the type of paid work in which the worker is customarily engaged. Whether a worker is working on a casual basis depends on a totality of circumstances.
2. **Irregular, uncertain, or incidental.** The irregular, uncertain, or incidental nature of the work will be determined on a case-by-case basis by looking at the scope, duration, and continuity of work engaged by the worker.
3. **Customarily Engaged in Domestic Work – Presumption.** It shall be presumed that a worker is “customarily engaged” in the type of domestic work for which they are being paid, unless the worker voluntarily discloses otherwise to a hiring entity. A voluntary disclosure means that the worker has not been pressured, manipulated, or coerced into asserting that their work is different in nature from the type of paid work in which they are customarily engaged

L&I suggested that when defining “domestic worker” and including “day laborer,” the workgroup consider keeping the current scope of services as-is. The above sample reflects this suggestion. L&I also shared concerns with the Seattle definition of “casual basis,” around the “voluntary disclosure” and the challenge of enforcement.

L&I does have a policy for “casual laborers” with regard to the applicability of minimum-wage rights. L&I Administrative Policy ES.A.1, provided in Appendix D, states that “casual laborers” are exempt from the Minimum Wage Act (MWA) and defines a casual laborer to mean the following.

“**Casual laborers.** Any individual “employed in casual labor in or about a private home” unless the labor is performed in the course of the employer’s trade, business, or profession.

Casual refers to employment that is irregular, uncertain or incidental in nature and duration. This must be determined on a case-by-case basis by looking at the scope, duration and continuity of employment. Employment that is intended to be permanent in nature is not casual, and is not exempt, regardless of the type of work performed. Employment of housekeepers, caregivers, or gardeners on a regular basis is not considered “employed in casual labor” and such workers are subject to the protections of the MWA.”

Recommendation to the Legislature

The DWW voted unanimously on several recommendations related to the definition of domestic worker. This included:

- Establish a definition of domestic worker,
- Include day laborer in that definition,
- Exempt casual labor, and
- Include language to ensure work that is reasonably expected to be performed “off premise” is included in covered work.

The workgroup did not vote on final language to include in a definition.

RECOMMENDATION 4: DIRECT L&I AS PART OF THE WORKGROUP TO RESEARCH OPTIONS FOR WORKERS’ COMPENSATION RETALIATION INVESTIGATIONS WITHOUT REQUIRING A COMPLAINT TO BE FILED BY THE WORKER

Current law, [RCW 51.28.010](#), establishes a worker’s right to file a workers’ compensation claim whenever any injury occurs on the job. The law further states that an employer cannot engage in claims suppression. “Claim suppression” means intentionally:

- (a) Inducing employees to fail to report injuries;
- (b) Inducing employees to treat injuries in the course of employment as off-the-job injuries; or
- (c) Acting otherwise to suppress legitimate industrial insurance claims.

An employer who engages in claim suppression is subject to a penalty of at least \$250, not to exceed \$2,500.¹⁹

[RCW 51.48.025](#) establishes a worker’s remedies if an employer retaliates against the worker for filing a workers’ compensation claim. In order for L&I to investigate a retaliation claim, the worker must file a complaint with L&I alleging the discrimination or a retaliatory act within 90 days of the alleged violation.

Workgroup Discussion

The workgroup discussed and recognized the inherent challenge in not only proving claim suppression and retaliation claims generally, but also the added challenge when trying to establish this with a household employer. There was also concern about the low penalty amounts for violating the claims suppression or retaliation laws.

L&I noted that if there were a desire for the department to take a more active approach to identify and investigate incidents of retaliation, there would need to be legislative action to change the law, as current law requires a worker to file a complaint.

Recommendation to the legislature

The workgroup voted unanimously to direct L&I to research options for workers’ compensation retaliation investigations without requiring a complaint to be filed by the worker. This research and any future discussion would likely result in additional recommendations to the legislature.

¹⁹ [RCW 51.28.025](#)

RECOMMENDATION 5: DIRECT L&I TO ESTABLISH A PROCESS FOR REFERRALS TO OTHER L&I DIVISIONS OR OTHER AGENCIES, IF APPROPRIATE, WHEN POSSIBLE VIOLATIONS OF DOMESTIC WORKER RIGHTS ARE IDENTIFIED.

The DWW direction was to look at ways to expand access to workers' compensation coverage for domestic workers. Through discussions, however, it was clear that workers may not know of their other rights and protections. It would be of benefit to the worker if L&I increased coordination among L&I divisions and other agencies when there were complaints filed by domestic workers.

Workgroup Member Discussion

The members of the DWW pointed out that when there is a single violation of labor standards or rights, there also may be additional ones that have not been reported to L&I or the appropriate agency. The workgroup recommendation would task L&I with the requirement to review complaints from domestic workers and connect with other divisions within the agency that also may be able to investigate labor standards or rights violations. L&I agreed with this recommendation.

Recommendation to the legislature

The workgroup voted unanimously to direct L&I to establish a process for referrals to other L&I divisions or other agencies, if appropriate, when possible violations of domestic worker rights are identified. L&I indicated this is work that can be accomplished without legislative changes.

RECOMMENDATION 6: ASK THE LEGISLATURE TO PASS A BILL THAT ACKNOWLEDGES THE WORKGROUP'S REQUEST TO ADOPT THE RECOMMENDATIONS PROPOSED IN THE REPORT & DIRECT L&I TO RECONVENE THE WORKGROUP

The DWW had extensive conversations around extending workers' compensation coverage to domestic workers and the way to achieve this is to remove these workers from the "employments excluded" RCW. However, while there is a desire to provide these workers with coverage as soon as possible there are additional barriers that need to be addressed.

Workgroup Member Discussion

The workgroup discussed the timing of a legislative proposal. While all recognized these workers are long overdue for access to the workers' compensation system, there were concerns about how-to manage this change. The workgroup discussed existing barriers for household employers that may choose to get elective coverage.

If coverage was mandatory these barriers may discourage compliance or make compliance difficult for those household employers who want to comply. Through these discussions it was decided that additional conversations were needed around how to implement mandatory coverage for these workers. These barriers, as discussed in more detail below, may require legislative changes and L&I process improvements to allow for compliance.

The workgroup discussed several options around timing of a legislative proposal and continuation of the workgroup. Those options included asking the legislature to pass a bill addressing the above recommendations but providing a delayed effective date to allow for continued work. However, there were concerns with this approach, such as it does not guarantee that the workgroup would be able to come up with solutions to the barriers in time.

While the workgroup ultimately decided against recommending a bill with a delayed effective date, they did state their desire to see a bill with language that included the Legislature's intention to provide mandatory coverage for domestic workers in the future.

The language for this recommendation was developed during the workgroups final meeting.

Recommendation to the legislature

The work group unanimously voted to ask the legislature to pass a bill acknowledging the workgroup's recommendations proposed in this report to ensure mandatory coverage for domestic workers and directs more work must be done to address additional barriers, both administrative and otherwise. To address those barriers the legislature should direct L&I to reconvene the workgroup and report back with a finalized list of recommendations by July 1, 2025.

Additional Workgroup Considerations

In addition to the recommendations outlined in the previous section, the workgroup wishes to highlight additional considerations for the legislature. These considerations require further conversation, research and consensus, and the workgroup wants to introduce these topics in this report for initial awareness by the legislature.

Additional items for consideration include:

- Addressing barriers that would limit a household employer's ability to comply with mandatory workers' compensation coverage for domestic workers.
 - Requirement for household employers to get a Unified Business Identifier number
 - Requirement for quarterly reporting & tracking of hours
- Ensuring the necessary outreach is done to educate household employers and workers about the mandatory workers' compensation coverage, if enacted.
- Addressing L&I barriers.
 - Ensuring the premiums collected cover the cost to ensure workers' compensation fund solvency, but do not deter compliance
 - Recognizing the challenge in enforcing and auditing household employers
- Addressing worker barriers.
 - Determining wage rate for purposes of establishing time-loss
 - Fear of retaliation
 - Distrust in government

- Independent-contractor considerations.
 - Direct L&I to research a lower rate for workers performing services similar to those of domestic workers, but who may be determined to be independent contractors, and
 - Grant L&I the authority to set lower rates, in recognition of equity principles and challenges, in the application of the independent-contractor test.
- Role of the intermediary nonprofit organization.

ADDRESSING HOUSEHOLD EMPLOYER BARRIERS

Currently, household employers can purchase elective coverage²⁰ for their domestic workers and day laborers. They also are mandatorily required to purchase coverage if they have two or more domestic workers who work 40 or more hours per week. To purchase either coverage, a household employer follows the same process as all other businesses, including:

- Registering with the Department of Revenue to get a UBI²¹, as required by L& rule ([WAC 296-17-31006](#)).
- Applying for coverage through L&I.
 - Identifying the work being done to establish a risk class, [RCW 51.16.035](#).
 - This must be known in advance; classifications are established under L&I rule (WAC 296-17A).
 - Domestic workers have a single risk class.
 - Day laborers risk class would depend on the type of work being perform.
 - Coverage must be arranged prior to the work beginning, [RCW 51.16.110](#).
- Tracking hours and providing quarterly reporting to L&I, [RCW 51.16.060](#).
 - Including zero-hour reporting if no work is done during the quarter.
- Deduction of the worker contribution.
 - An employer may deduct from a worker contribution from the employee’s pay, [RCW 51.60.140](#).

The workgroup recognizes that this may not be an easy process for household employers to comply with, and wishes to have further discussions to find ways to ease or address these barriers. Addressing some of these barriers may require changes to state law.

OUTREACH & EDUCATION

Removing domestic workers and day laborers from the excluded-employments law creates an assumption that the workers are covered workers and their household employers would be required to purchase workers’ compensation coverage. This would be a substantial change from current law and require significant outreach to household employers to inform them of the new requirement.

²⁰ [RCW 51.12.110](#)

²¹ If not obtaining workers’ compensation coverage, household employers would register with Department of Revenue only if they pay a domestic worker \$1,000 or more in a calendar quarter. A household employer also is required to obtain unemployment insurance if it pays a domestic worker \$1,000 or more in a calendar quarter.

L&I is familiar with providing education campaigns to workers and employers to inform them of their rights and responsibilities. However, this type of outreach campaign would differ from other L&I outreach campaigns, as it would be aimed at all *potential* household employers. L&I also would need to inform workers of this new right to workers' compensation coverage. The campaign would likely need to include information around how to file a claim if a work-related injury occurred.

L&I has conducted various outreach campaigns that have included direct mailings, social media posts and radio/television ads. L&I also works with employer-trusted organizations to help inform their members about requirements, resources and services. It is likely that many of these same outreach tools could help to reach the broad audience of household employers.

Through the workgroup conversations, it also became clear that some of these workers may not be aware of some rights that already exist. For example, a worker who provides remodeling services to a household employer is considered a covered worker today. There is a desire by the workgroup to look at informing workers of their existing rights.

When considering outreach campaigns to domestic workers, the workgroup also noted that while Spanish may be a language that many of these workers speak, varying dialects and education levels could affect their ability to understand written Spanish-language outreach material. Another point was that government documents often sound very formal and academic, and that may affect their readability. The workgroup recommended that L&I work with trusted organizations for these workers to provide education materials to ensure workers understand their rights and protections.

ADDRESSING L&I BARRIERS

State law directs L&I to use good insurance principles when determining workers' compensation rates. In this context, it means the money coming in should match the money going out. By establishing a new right to workers' compensation coverage, L&I also must establish a risk class that addresses the nature of the work. While there is currently a risk class for domestic workers, adding day laborers into that class could affect the current rate.

L&I also recognizes the challenges that may exist for ensuring household employers comply with a new requirement. Currently, L&I is able to look at business reports to other agencies as one way to determine whether they are complying with applicable workers' compensation laws. However, L&I would have no way of determining if a household is employing a domestic worker. L&I also can audit a known employer to determine compliance with workers' compensation, but audits of homeowners to determine they employ domestic workers would be challenging. This would create audit and enforcement challenges and could affect solvency of the workers' compensation trust fund if not enough household employers are paying into the system.

ADDRESSING WORKER BARRIERS

When a covered worker files an injury claim with L&I, the time-loss considerations take into account all wages earned at the time. This is a simple process when a worker works for a single employer. However, when a worker works for multiple employers, L&I would need to collect wage information from all of the worker's employers to determine the appropriate wage replacement to pay to the

worker. If L&I is unable obtain wage information, the worker is then paid the minimum amount, which currently is \$959.26 per month.²²

As noted previously in the retaliation recommendation, proving retaliation and claim suppression allegations can be a challenge. These workers face the additional challenge of not having standard employment contracts with the household employer, so an employer may choose to end their work at any time. These worker rely on recurring work and may fear being fired if they file a workers' compensation claim. This fear may prevent them from filing a claim and continuing to work while injured or losing income while they recover. The workgroup also recognized that many of these workers may not have a positive association with government and may be hesitant to file a claim.

INDEPENDENT CONTRACTOR CONSIDERATIONS

The workgroup expressed concern that some domestic workers are low-wage, independent contractors. As an independent contractor, the worker *could* elect to pay for workers' compensation coverage, but may choose to forego coverage due to the cost. Some members of the workgroup proposed directing L&I to research establishing a lower rate for domestic workers who may be determined to be independent contractors, and granting L&I the authority to set lower rates for these types of independent contractors.

L&I noted that establishing lower rates for a certain subset of workers would go against established insurance principles. Other members of the workgroup were concerned with creating special carve-outs for one group of workers whose coverage would be subsidized by all others.

ROLE OF AN INTERMEDIARY NONPROFIT ORGANIZATION

The budget proviso that established the DWW also directed them to “explore the possible role of intermediary nonprofit organizations that assist and refer domestic workers and day laborers.” Through the group discussions, L&I provided an example of the Consumer Directed Employer (CDE), established in 2018 in Title 74.39a RCW. The CDE is the legal employer for individual providers for certain purposes, including:

- Withholding, filing and paying income and employment taxes, including compensation premiums and unemployment taxes.
- Providing other administrative and employment-related supports.
- Setting wages and benefits for individual providers, including labor (wages, benefits and any associated taxes) and administrative rates.
- Primary right to select, dismiss, assign hours and supervise the work.

The CDE is required to have a statewide presence to serve workers throughout the state. While not all home-care aides are a part of the CDE, if they are funded by the Medicaid state plan, Medicaid waiver programs, chapter 71A.12 RCW, RCW 74.13.270 or similar state-funded in-home care programs, then they must be an individual provider and a part of the CDE.

The workgroup discussed concerns with this method and whether it could serve as a model to expand workers' compensation coverage to domestic workers. While there is currently a nonprofit

²² RCW 51.08.178

organization based in Seattle that works with these workers to help them find jobs, there are concerns about using this same organization to provide workers' compensation coverage and defining it as an employer. It is also unknown if other such entities exist.

There is also the challenge of providing statewide services. The workgroup recognizes that domestic workers operate statewide, and it would be crucial to ensure that workers from all geographic regions have access to this service.

Another barrier discussed in mirroring this model is how to ensure compliance. While an independent provider is not required to be a part of the CDE, they must participate in the CDE in order to receive Medicaid funding. There is no similar requirement for domestic workers to participate in an intermediate organization's system.

Conclusion

This report examines a broad range of information, deliberations and discussions held by the Domestic Workers Workgroup. The recommendations in this report are designed to increase access to workers' compensation benefits for domestic workers and day laborers. Some of the recommendations require action by the state legislature, and the workgroup hopes to engage in conversations with legislators to help identify ways to enact such changes.

In addition to the legislative recommendations, the concerns highlighted in the "Additional Considerations" section identify topics for future workgroup conversations. With additional approval and direction from the legislature, the workgroup anticipates continuing to collaboratively address any additional barriers, and report additional findings to the legislature.

Appendices

Appendix A – Survey Results

	Question Content	Answer Choices	# of Responses	Percentage
		English Survey	20 (9 complete)	
		Spanish Survey	89 (77 complete)	
Q1	In the last year have you been paid to work as a domestic worker or day laborer?			
		Yes	82	92%
		No	7	8%
			89	
Q2	What kind of work do you do?			
		House cleaner	59	66%
		Nanny or other in-home childcare	8	9%
		Gardner	4	4%
		Day laborer	8	9%
		Other	10	11%
			89	
Q3	Which of the following work arrangements apply to you? (Check all that apply)			
		I work for one or more household employer(s) on a regular schedule (For example, daily, weekly, or monthly work).	58	66%

		I work for a company that provides services to private homes (For example, a housecleaning or landscaping company).	10	11%
		I get referred by a temporary agency to provide work to a household employer. The temporary agency pays me directly.	1	1%
		I work for myself through a licensed business I own	6	7%
		I work for a household employer on one-time jobs.	13	15%
			88	
Q4	How long have you been regularly working as a domestic worker or day laborer?			
		6 months or less	12	13%
		1 year	16	18%
		1-5 years	33	37%
		More than 5 years	29	32%

			90	100%
Q5	On average within a single week, how many different household employers do you generally work for?			
	a. Prior to COVID pandemic			
		1 household	30	37%
		2-5 households	41	50%
		6-10 households	5	6%
		More than 10 households	6	7%
			82	
	b. During COVID pandemic			
		1	47	59%
		2-5 households	32	40%
		6-10 households	1	1%

		More than 10 households	0	0%
			80	
Q6	When you work for a single household employer, how many hours per week do you usually work?			
	a. Prior to COVID pandemic			
		Less than 5	34	40%
		5-10 hours	18	21%
		11-20 hours	11	13%
		21-30 hours	10	12%
		31-40 hours	8	9%
		More than 40 hours	5	6%
			86	
	b. During COVID pandemic			
		Less than 5	42	51%
		5-10 hours	22	27%
		11-20 hours	4	5%
		21-30 hours	5	6%
		31-40 hours	7	9%
		More than 40 hours	2	2%
			82	
Q7	If you work for the same household employer, how often do you work for them?			

		Daily	19	22%
		Several days a week	13	15%
		Once a week	18	21%
		3 times each month	3	3%
		2 times each month	24	28%
		Once per month	6	7%

		Every other month	1	1%
		Other	2	2%
			86	
Q8	When at a household, do you work together with other workers? If never, skip to question 10.			
		Never	43	57%
		Sometimes	19	25%
		Always	13	17%
			75	
Q9	When you work with other workers, how many others do you work with?			
		1	20	59%
		2-5	10	29%
		6-10	4	12%
			34	
Q10	When at a household, is the household employer usually present?			
		Yes	32	39%
		No	23	28%
		Sometimes	28	34%
			83	
Q11	Have you been injured while working for a household employer, OR has a doctor or other medical professional diagnosed you with a work-related illness related to this work? If no, skip to question 29.			
		Yes	26	32%
		No	56	68%
			82	
Q12	How did your injury occur?			

		Bend, reach, or twist	9	26%
		Chemical exposure	4	11%

		Fall from a height	1	3%
		Trip, slip or fall	9	26%
		Fire	0	0%
		Repetitive motion	3	9%
		Violence	0	0%
		Other	9	26%
			35	100%
Q13	What was your injury?			0%
		Sprain, strain, tear	12	33%
		Animal or insect bites or scratches	0	0%
		Abrasion/bruise	5	14%
		Cuts	1	3%
		Open wound or puncture	3	8%
		Broken or fractured bone(s)	3	8%
		Burn	0	0%
		Poisoning	2	6%
		Dislocation	1	3%
		Illness or disease	2	6%
		Other	7	19%
			36	
Q14	Did you tell the household employer of the injury?			
		Yes	20	44%
		No	25	56%

			45	
Q15	If no, why not?			
		fillable	20	
Q16	If you told the household employer of the injury, did they provide you with any assistance?			
		Yes	6	38%

		No	10	63%
			16	
Q17	If yes, check all that apply.			
		Pay for medical expenses	5	50%
		Cover lost earnings	5	50%
		File a homeowners insurance claim		
		Other		
			10	
Q18	Did you inform anyone else (i.e., another worker on site, organization) of your injury?			
		Yes	11	31%
		No	24	69%
			35	

Q19	If yes, who? (Limit response to generic position/title of individual, type of organization. Do not use real names of individuals or organizations)			
		Fillable	12	
Q20	Did the person/organization you informed help you in any way?			
		Yes	9	33%
		No	18	67%
			27	
Q21	If yes, check all that apply			
		File a claim against the homeowner's insurance	1	
		Apply for government assistance		
		Other	10	
Q22	Did this injury prevent you from working?			
		Yes	16	50%
		No	16	50%
			32	
Q23	Did you seek medical care/treatment for your injury?			
		Yes	17	50%
		No	17	50%

			34	
Q24	If yes, were you asked by medical personnel if the injury occurred at work?			
		Yes	15	56%
		No	12	44%
			27	

Q25	Who paid for your medical care/treatment?			
		You or your family; out of pocket	16	59%
		Workers' compensation or L&I	3	11%
		Your employer without a workers' compensation claim or through on-site medical treatment	1	4%
		Other source	7	26%
			27	
Q26	How long were you out of work due to this injury?			
		Less than one day	10	32%
		Less than a week	9	29%
		Less than 1 month	6	19%
		More than 1 month	3	10%
		More than 6 months	3	10%
		More than a year	0	0%
			31	
Q27	How much were your out-of-pocket costs for required medical care (estimated)?			
		Under \$100	10	36%
		\$100-500	12	43%
		\$500-1000	2	7%
		\$1000-5000	2	7%
		More than \$5000	2	7%
			28	
Q28	How much income did you lose due to your inability to work (estimated)?			
		Under \$100	5	16%
		\$100-500	10	32%

		\$500-1000	9	29%
		\$1000-5000	6	19%
		More than \$5000	1	3%

			31	
Q29	When you returned to work, were you able to return to the same household?			
		Yes	17	63%
		No	10	37%
			27	
Q30	Upon returning to work, does your injury currently impact your ability to do any part of your normal job?			
		Yes	16	52%
		No	15	48%
			31	
Q31	Is there any other information you would like to provide for this survey?			
		Fillable	17	



Workers' Compensation – State Comparison of Domestic Worker Coverage

November 8, 2021

Overview

This document is a review of state workers' compensation laws related to domestic workers. This review included both types of domestic workers addressed under Washington's workers' compensation laws - individuals privately employed to perform duties in or about a private home and individuals employed to do gardening, maintenance or repair work in or about the private home of the employer.

Two states require workers compensation coverage for domestic workers. Twenty-one states require workers' compensation coverage only when specific conditions are met. Twenty-seven states have voluntary workers compensation coverage only. Where identified, the state definitions for domestic workers are included. If a state had a definition that included duties such as lawn care, gardening, or home repair/maintenance, an asterisk was placed next to the state and the duty was italicized in the definition for comparison purposes. Note that not all states have definitions for domestic workers. Washington State is the only state we identified that fits into two categories – coverage required when specific condition met for individuals privately employed to perform duties in or about a private home and voluntary coverage only for individuals employed to do gardening, maintenance or repair work in or about the private home of the employer.

Also included is information on the way in which an employer can obtain workers compensation coverage when required by law. Those states that offer the ability to self-insure for workers' compensation require the business to apply and all have specific requirements that may include total assets, number of employees, years in business etc. Many states also required a security deposit or surety bond be filed with the state. These requirements likely preclude homeowners from meeting the requirements for self-insurance.

Domestic Worker Coverage	Count of States
Required coverage	2
Coverage required when specific condition met	21
Voluntary coverage only	27

Coverage Condition	Count of States
Based on hours worked by a domestic worker	8
Based on wages paid to a domestic worker	7
Based on employers gross annual payroll	2
Based on the number of domestic workers hired <u>or</u> wages paid to domestic workers	2
Based on the number of domestic workers hired <u>and</u> the hours worked by each domestic worker	2

Category 1 - Required Coverage for Domestic Workers

State	Requirements	Definition of Domestic Workers
New Hampshire*	Coverage required for all domestic employees through an insurance company authorized to provide comprehensive personal liability, tenants or homeowners insurance.	Definition: "Domestic labor" or "domestic services" means the performance of such duties as housekeeping, childcare, <i>gardening</i> , <i>handy person work</i> , and serving as a companion or caregiver for children or others who are not physically or mentally infirm.
New Jersey	All household employers must obtain coverage through any stock company or mutual association for domestic workers, however filing and notice requirements are exempted.	

Category 2 - Coverage for Domestic Workers Required When Specific Conditions are Met

Condition: Hours Worked by a Domestic Worker

This section covers workers compensation requirements based on the hours worked by a domestic worker for a single employer/household.

State	Condition for Coverage	Definition of Domestic Workers & Mechanism for Coverage
Colorado*	Domestic workers who work at least 40 hours per week and five days a week	<p>Definition: Persons who do domestic work or <i>maintenance, repair, remodeling, yard, lawn, tree, or shrub planting or trimming, or similar work</i> about the private home of the employer.</p> <p>Domestic workers include nannies and au pairs.</p>

State	Condition for Coverage	Definition of Domestic Workers & Mechanism for Coverage
		<hr/> <p>Mechanism for Coverage: Option to self-insure or purchase commercial insurance through an insurance carrier.</p> <p>To self-insure an employer must have:</p> <ul style="list-style-type: none"> • Been in business for at least 5 years and; <ul style="list-style-type: none"> ○ Have at least 300 full-time employees working in Colorado <u>or</u> <ul style="list-style-type: none"> ○ Have, or have a parent company with, assets of at least \$100 million
Connecticut	Domestic workers who work at least 26 hours per week	<p>Definition: Includes nannies, maids, housekeepers, butlers, residential companions, and several others.</p> <hr/> <p>Mechanism for Coverage: Option to provide a medical care plan under the Worker’s Compensation Act through insurer, third party administrator, mutual, or to self-insure which requires a security deposit through a surety bond.</p>
Illinois	Domestic workers who work 40 hours or more per week for a period of 13 or more consecutive weeks.	Mechanism for Coverage: Option to self-insure or purchase workers compensation insurance through an insurance company.
Massachusetts	Domestic workers who work at least 16 hours per week	Mechanism for Coverage: Purchase private workers compensation insurance.
Michigan	Domestic workers who work 35 hours or more per week for 13 weeks or longer during the preceding 52 weeks.	Mechanism for Coverage: Option to self-insure, which includes the option to “group self-insure” or purchase private workers compensation insurance.

State	Condition for Coverage	Definition of Domestic Workers & Mechanism for Coverage
		<p>Group self-insure allows multiple small employers which operate the same kind of business can band together to obtain approval for self-insurance as a group. Group self-insurance allows multiple small employers practicing the same business or trade to obtain approval for self-insurance as a group.</p>
New York*	Domestic workers who work at least 40 hours per week.	<p>Definition: Chauffeurs, nannies, home health aides, nurses, babysitters, au pairs, maids, cooks, housekeepers, laundry workers, butlers, companions, and <i>gardeners</i> in a private household</p> <hr/> <p>Mechanism for Coverage: Option to purchase insurance through a private carrier, develop a self-insurance program, or obtain insurance through the State Insurance Fund</p>
South Dakota*	Domestic workers who work 20 hours per week in any calendar week and for more than six weeks in any 13-week period.	<p>Definition: Employees who performs services in or around a home, which pertain to a house, home, household, <i>lawn, garden</i>, or family. Includes baby sitters.</p> <hr/> <p>Mechanism for Coverage: Option to purchase insurance through a “self-insured company.”</p>
Utah*	Domestic workers who work at least 40 hours per week	<p>Definition: Household worker hired by domestic employers such as, but not limited to, a nanny, babysitter, <i>yard worker</i>, driver, health aide, private nurse, housekeeper, caretaker, and cleaning people.</p> <hr/> <p>Mechanism for Coverage: May develop a self-insurance program or purchase through a private carrier.</p>

State	Condition for Coverage	Definition of Domestic Workers & Mechanism for Coverage
		Self-insurance requirements include: <ul style="list-style-type: none"> • Having been in business for at least 5 years • A net worth of at least \$10,000,000 • A surety bond or cash deposit to the state treasurer • Excess coverage

Condition: Wages Earned by a Domestic Worker

This section covers workers' compensation requirements based on the wages earned by a domestic worker from a single employer/household.

State	Condition for coverage	Definition of Domestic Workers & Mechanism for Coverage
Delaware	Domestic workers who earn at least \$750 in any 3-month period	Mechanism for Coverage: Option to purchase private workers compensation insurance through a corporation, association or organization approved by the Department
Hawaii	Domestic workers who earn at least \$225 during the calendar quarter	Mechanism for Coverage: Option to self-insure, or purchase private workers compensation coverage through any stock, mutual, reciprocal, or other insurer authorized by the state.
Iowa	Domestic workers who earn at least \$1,500 during 12 consecutive months	Mechanism for Coverage: Option to purchase insurance through a private insurance company or qualify as a self-insurer.
Maryland	Domestic workers who earn at least \$1,000 in a calendar quarter	Mechanism for Coverage: Option to purchase workers' compensation insurance from any insurance company licensed to write workers' compensation insurance in the State of Maryland or from the Chesapeake Employers' Insurance Company; or to self-insure.
Minnesota	Domestic workers who earn at least \$1,000 in a 3-month period	Mechanism for Coverage: Option to purchase workers' compensation coverage through an insurance agent or company. If an employer is unable to obtain insurance in the voluntary market, assigned risk-plan

		coverage (sometimes referred to as "assigned risk-pool" insurance) can be obtained.
Ohio*	Domestic workers who earn at least \$160 in any 13-week period	<p>Definition: Includes domestic workers with duties for cooking, <i>gardening</i>, housekeeping, and babysitting</p> <hr/> <p>Mechanism for Coverage: Employers must pay semiannually to the State Insurance Fund or they may self-insure.</p>
Wyoming	Domestic workers who earns at least \$1,000 in each quarter of the preceding calendar year	Mechanism for Coverage: Purchase workers compensation through the State Insurance Fund.

Condition: Employer's Gross Annual Payroll

This section covers workers' compensation requirements based on the single employer/household's gross annual wages (wages paid to all employees, not limited to domestic workers).

State	Condition	Notes: Definition of Domestic Workers & Mechanism for Coverage
Kansas	An employer with a payroll exceeding \$20,000 must secure workers' compensation coverage for its employees.	Mechanism for Coverage: Option to purchase workers' compensation insurance coverage through a licensed insurance agent, a group-funded pool or self-insurance.
Oklahoma	An employer with a payroll exceeding \$50,000 must secure workers' compensation coverage for its employees.	Mechanism for Coverage: Option to purchase insurance through a private insurance company or qualify as a self-insurer.

Condition: Based on the number of domestic workers hired or wages paid to domestic workers

State	Condition for coverage	Definition of Domestic Workers & Mechanism for Coverage
California*	<p>In the 90-day period preceding injury, either occur:</p> <p>Employment was, or was contracted to be, at least 52 hours;</p> <p><u>Or</u></p> <p>Employment was, or was contracted to be, for wages at least \$100.</p>	<p>Definition: Individuals performing services related to the care of persons in private households or <i>maintenance of private households or their premises</i>. Includes childcare providers, caregivers of people with disabilities, sick, convalescing, or elderly persons, house cleaners, housekeepers, maids, and other household occupations.</p> <hr/> <p>Mechanism for Coverage: Coverage may be part of homeowners' insurance; otherwise employer must provide coverage from a private insurer, a self-insurance program, or the State Compensation Insurance Fund.</p>
South Carolina	<p>If domestic worker works for a household that employs 4 or more employees, this includes part time workers;</p> <p><u>Or</u></p> <p>An employer has an annual payroll of more than \$3,000, regardless of the number of workers employed during that period.</p>	<p>Mechanism for Coverage: Option to purchase workers compensation through a private insurance carrier or through the state's assigned risk program administered by the National Council on Compensation Insurance (NCCI).</p>

Condition: Based on the number of domestic workers hired and hours worked by domestic workers

State	Condition for coverage	Definition of Domestic Workers & Mechanism for Coverage
Kentucky	Two or more domestic workers are regularly employed for 40 or more hours per week.	Mechanism for Coverage: Option to purchase workers' compensation coverage through a private insurance company, a self-insurance group, self-insurance or through Kentucky Employers Mutual Insurance.
Washington	Two or more domestic workers are regularly employed for 40 or more hours per week.	<p>Definition: An individual who is privately employed to perform duties in or about a private home. This includes household duties such as maids, cooks, butlers, housekeepers, nannies, and caretakers</p> <hr/> <p>Mechanism for Coverage: Pay into the state workers' compensation fund, or employers may self-insure.</p> <p><i>See below for voluntary coverage for individuals employed to do gardening, maintenance or repair in or about the private home of the employer.</i></p>

Category 3 - Voluntary Coverage only; 27 states total, sample of state definitions

State	Definition of domestic worker
Montana*	Definition: "household or domestic employment" means employment of persons other than members of the household for the purpose of tending to the aid and comfort of the employer or members of the employer's family, including but not limited to housecleaning and <i>yard work</i> . The term does not include employment beyond the scope of normal household or domestic duties, such as home health care or domiciliary care
Nevada*	Definition: "Domestic service employee" means an employee who performs any household service in or about a private residence or any other location at which a person resides. The term includes, without limitation: Caregivers and other persons who are employed at a residential facility for groups, as defined under Nevada

State	Definition of domestic worker
	law; and companions, babysitters, cooks, waiters, valets, housekeepers, nannies, nurses, janitors, persons employed to launder clothes and linens, caretakers, <i>persons who perform minor repairs, gardeners</i> , home health aides, personal care aides and chauffeurs of automobiles for family use.
Oregon	Definition: "A worker employed as a domestic servant in or about a private home. For the purposes of this subsection "domestic servant" means any worker engaged in household domestic service by private employment contract, including, but not limited to, home health workers."
Washington*	<p>Definition: Any person employed to do <i>gardening, maintenance or repair</i> in or about the private home of the employer. "Maintenance" means the work of keeping in proper condition. "Repair" means to restore to sound condition after damage.</p> <p><i>See above for conditional coverage for individuals who is privately employed to perform duties in or about a private home.</i></p>

Policy 61.03 - Coverage for Domestic Servants

Article ID : 50000000002258

Section:	Coverage and Jurisdiction	Effective:	08-1-15
Title:	Policy 61.03 - Coverage for Domestic Servants	Cancel:	Policy 61.03 dated 7-16-13

See Also:

RCW 51.12.020 (1) (employments excluded)
 RCW 51.12.110 (optional coverage)
 WAC 296-17-31021 (units of exposure)
 WAC 296-17A-6510 (domestic servants/home care assistants employed in or about the private residence of a home owner)
 Policy 61.04 (processing applications for elective coverage)
 Policy 30.11 (non-agency spouse attendant services)
 Everist v. DLI, 57 Wn. App. 483, 789 P.2d 760
 Dana's Housekeeping v. DLI, 76Wn. App. 600

Approved by: _____
 Sandi Haerling for the Insurance Services Policy Council

 Mike Ratko, Acting Program Manager for Employer Services

This policy provides guidelines for determining when domestic servants employed in or about private homes (private home is defined as a place of residence) may be excluded from mandatory industrial insurance coverage.

1. A domestic servant is defined as an individual who is privately employed to perform duties in or about a private home for the immediate member(s) of a family.

This includes employees performing general household duties, such as maids, cooks, butlers, housekeepers, nannies, gardeners, and caretakers.

2. Domestic servants working for a business are mandatorily covered.

Domestic servants working for a business whose operations are for commercial purposes such as an adult family home are mandatorily covered (Dana's Housekeeping v. DLI).

3. Domestic servants may be excluded from industrial insurance coverage.

If an individual employs any number of domestic servants and only one servant regularly works 40 hours or more per week, industrial insurance is not mandatory.

Example: If one domestic servant works 40 hours per week and 20 domestic servants work 39 hours per week each, coverage is not required.

4. Domestic servants may fall under the mandatory provisions of industrial insurance.

If an individual employs any number of domestic servants and two or more regularly work 40 hours or more each per week, the individual is required to provide industrial insurance coverage for all domestic servants.

Example: If two domestic servants work 40 hours each per week and 20 domestic servants work 39 hours per week each, coverage is mandatory and ALL hours are reportable for all domestic servants.

NOTE: All work hours including hours spent on the premises subject to call are used when determining whether coverage is mandatory. If you have two live-in domestic servants, all domestic servants are mandatorily covered.

5. "On-call" or overnight time is included in the calculation of hours for determining mandatory coverage.

"On-call" or overnight time spent at the job site is included in the calculation to determine if there are two or more regularly employed (40 hours or more each per week) workers. For purposes of determining reportable hours, you must look at the basis of payment (salaries, hourly, or assumed 480 hours). The average hourly wage computation may also be applied to determine reportable hours for the domestic servant risk classification.

6. Home health care providers, including nurses, may be considered domestic servants.

Home health care providers and nurses are not considered to be domestic servants and are mandatorily covered for industrial insurance. If, however, a home health care provider and/or a nurse perform domestic duties in addition to their health care duties, they are treated as domestic servants.

7. Optional elective coverage for industrial insurance is available for domestic servants.

Individuals hiring domestic servants who do not fall under the mandatory provisions of industrial insurance may elect to cover their domestic servants by filing an Application for Elective Coverage of Excluded Employments form (for existing business). Coverage will become effective on the date following receipt of the elective coverage form unless a later date is indicated. The effective date cannot be prior to the date of receipt.

For technical questions please contact Employer Services Technical Support Unit at (360) 902-4729.



**STATE OF WASHINGTON
DEPARTMENT OF LABOR AND INDUSTRIES
EMPLOYMENT STANDARDS**

TITLE: MINIMUM WAGE ACT

NUMBER:

ES.A.1

APPLICABILITY

CHAPTER: [RCW 49.46](#)

[WAC 296-128](#)

ISSUED:

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SEE ALSO:

[ES.A.8.1](#),

[ES.A.9.1-9](#),

[ES.A.13](#),

[ES.B.1](#), [ES.C.2](#), [ES.D.1](#)

**ADMINISTRATIVE POLICY
DISCLAIMER**

This policy is designed to provide general information in regard to the current opinions of the Department of Labor & Industries on the subject matter covered. This policy is intended as a guide in the interpretation and application of the relevant statutes, regulations, and policies, and may not be applicable to all situations. This policy does not replace applicable RCW or WAC standards. If additional clarification is required, the Program Manager for Employment Standards should be consulted.

This document is effective as of the date of print and supersedes all previous interpretations and guidelines. Changes may occur after the date of print due to subsequent legislation, administrative rule, or judicial proceedings. The user is encouraged to notify the Program Manager to provide or receive updated information. This document will remain in effect until rescinded, modified, or withdrawn by the Director or his or her designee.

This policy provides guidance on the applicability of Washington’s Minimum Wage Act (MWA), [RCW 49.46](#). The guidance includes descriptions of which employers are subject to the statute, which employees are subject to the protections of the law, and which employees are specifically exempt from the MWA’s protections and requirements.

General [RCW 49.46](#) applicability

1. What is [RCW 49.46](#), the Washington Minimum Wage Act, and when does it apply?

The Washington Minimum Wage Act (MWA), [RCW 49.46](#), establishes a minimum wage for employees in Washington State. *See* [RCW 49.46.005](#) and [RCW 49.46.020](#). The MWA also requires employers to pay overtime wages of at least 1.5 times an employee’s regular rate of pay for all hours worked in excess of 40 in a workweek (*see* [RCW 49.46.130](#)), requires employers to provide employees with paid sick leave (*see* [RCW 49.46.200](#) and [RCW 49.46.210](#)), and requires employers to pay to their employees all tips, gratuities, and service charges that are due to the employees (*see* [RCW 49.46.020](#)(3) and [RCW 49.46.160](#)). The

MWA also prohibits employers from retaliating against their employees for exercising any of their rights under the MWA (*see* [RCW 49.46.810](#)).

The MWA is in addition and supplementary to all other standards (local, state, or federal laws, ordinances, rules or regulations) relating to wages, hours and working conditions, including the Industrial Welfare Act. *See* [RCW 49.46.120](#). When the standards are different, the law or rule that is more protective or favorable to an employee is the standard that applies. Individuals with questions about more protective standards found in federal law should contact the U.S. Department of Labor, Wage and Hour Division.

Rules promulgated under [RCW 49.46](#) can generally be found under [WAC 296-128](#). All of these rules have the same force of law as the provisions of [RCW 49.46](#) itself.

2. What employers are subject to [RCW 49.46](#)?

Generally, an “employer” under [RCW 49.46.010](#)(4) is “any individual, partnership, association, corporation, business trust, or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee.” Any employer who meets this definition must comply with the statute requirements. Certain employers who meet this definition may also be subject to the [Fair Labor Standards Act \(FLSA\)](#), in addition to the MWA. FLSA is administered by the U.S. Department of Labor, and clarification about those standards must be obtained from that agency. Employers must follow the laws that are more protective to the worker when there is a difference between the provisions of state, local, and federal laws.

Additionally, the Washington State Supreme Court held in *Becerra v. Expert Janitorial, LLC*, 181 Wn.2d 186, 332 P.3d 415 (2014), that the “joint employer doctrine” applies to the MWA, and adopted FLSA’s economic reality test to determine whether one or more entities are joint employers for purposes of MWA liability. This means that there may be more than one employer responsible for ensuring compliance with the MWA requirements under certain circumstances.

3. Which employees are subject to the protections of [RCW 49.46](#)?

The protections of the MWA apply to all Washington-based “employees.” An “employee” is defined as “any individual employed by an employer” *except* those employees specifically excluded by the legislature in [RCW 49.46.010](#)(3)(a) through (p). Whether or not an “employee” is Washington-based is fact-specific, and analyzed on a case-by-case basis. *See* Administrative Policy [ES.A.13](#) for more information on the “Washington-based” standard.

If a worker is exempt from the MWA then state law does not require the employer to provide paid sick leave, minimum wage, overtime, or other protections to that worker. Local or federal law may impose different requirements.

For workers to whom the MWA applies, there are some additional, specific exceptions to the overtime requirements. As a result, some employees may be entitled to minimum wage, paid sick leave, and tips and service charges, even if overtime pay is not required. *See* [RCW 49.46.130](#) and Administrative Policy [ES.A.8.1](#), “Overtime” for more information on overtime requirements.

4. Definition of Employ.

“Employ” means to engage, suffer or permit to work. *See* [RCW 49.46.010](#)(3) and [WAC 296-126-002](#)(3).

See Administrative Policy [ES.C.2](#) for a detailed discussion of hours worked during the course of employment.

Types of workers not covered by [RCW 49.46](#)

5. Which employees does the statute specifically exclude from the protections of the MWA?

The following exemptions are found in [RCW 49.46.010](#)(3). The MWA does not apply to employees covered by these exemptions. Application of these exemptions depends on the facts, which must be carefully evaluated on a case-by-case basis. Employers have the burden of proving an exemption applies.

- (a) **Certain agricultural employees.** An individual who is employed as a hand harvest pieceworker in the region of employment, *and* who commutes daily from his or her permanent residence to the farm upon which he or she is employed *and* who has been employed in agriculture less than thirteen weeks during the preceding calendar year. Each of the elements listed above must be met in order for the exemption to apply.

Note: All other agricultural workers *are* covered under MWA.

- (b) **Casual laborers.** Any individual “employed in casual labor in or about a private home” *unless* the labor is performed in the course of the employer’s trade, business, or

profession.

Casual refers to employment that is irregular, uncertain or incidental in nature and duration. This must be determined on a case-by-case basis by looking at the scope, duration and continuity of employment. Employment that is intended to be permanent in nature is not casual, and is not exempt, regardless of the type of work performed.

Employment of housekeepers, caregivers, or gardeners on a regular basis is not considered “employed in casual labor” and such workers are subject to the protections of the MWA.

- (c) **Bona Fide Executive, Administrative, Professional, Computer Professional or Outside Sales employees.** Any individual who meets the exemption requirements in [WAC 296-128-500 – 545](#). See Administrative Policies [ES.A.9.1-9](#) for further discussion of these “white collar” exemptions.
- (d) **Volunteer work for an educational, charitable, religious, state or local governmental body or agency or non-profit organization.** Any volunteer engaged in the public service activities of the above type of organizations as long as there is no employer-employee relationship between the organization and the individual *or* the individual gives his or her services gratuitously to the organization.

The department uses the following interpretation in determining whether workers are volunteers exempt from the MWA. Individuals are considered volunteers only when their services are offered freely and without pressure or coercion, direct or implied, from an employer. Individuals who volunteer or donate their services, usually on a part-time or irregular basis, for public service or for humanitarian objectives, and are not acting as employees or expecting pay, are not generally considered employees of the entities for whom they perform their services.

Unpaid employment is unlawful. An employee-employer relationship exists where there is a contemplation or expectation of payment for goods or services provided.

However, individuals do not lose their volunteer status solely because they receive a nominal fee or stipend. An individual who volunteers to provide periodic services on a year-round basis may likewise receive a nominal monthly or annual fee without losing volunteer status. If the “volunteers” are paid for their services beyond reimbursement for expenses, reasonable benefits or a nominal fee, they are considered employees. A nominal fee may not be a substitute for wage compensation and must not be tied to productivity.

An individual is not a volunteer if he or she is otherwise employed by the same agency or organization to perform services similar to or identical to those for which the individual proposes to volunteer. If an individual provides services as a volunteer and then receives wages for services, that individual is no longer exempt and must be paid at least minimum wage and overtime pay for hours worked in excess of 40 hours per workweek.

These same requirements apply to determine whether a worker is a volunteer exempt from the protections of [RCW 49.12](#), the Industrial Welfare Act. See

Volunteers are not allowed in a “for-profit” business. Any individual, partnership, association, corporation, business trust, or any person or group of persons acting directly or indirectly in the interest of a “for-profit” employer is subject to the provisions of the MWA and must pay wages to any individual who they permit to perform any work.

- (e) **Individuals who are employed full time by a state or local governmental agency or nonprofit educational, charitable, or religious organization and who also do volunteer work for the agency.** Such individuals are exempt from the MWA only with respect to the voluntary services.
- (f) **Newspaper vendors or carriers.** The department construes “newspaper vendors or carriers” very narrowly and does not include magazine carriers or vendors, those who distribute advertising circulars, or persons who sell or distribute literature at events, such as concerts and sporting events.
- (g) **Employees of carriers subject to Part I of the Interstate Commerce Act (Railroads and Pipelines).** Part I of the Interstate Commerce Act is limited to railroads and pipelines only. Interstate motor carriers are covered under Part II of the Interstate Commerce Act and are not exempted from the MWA by this definition.

Non-railroad employees may also be subject to this exemption from the MWA if their activity is integral to the interstate commerce of the railroads. Whether non-railroad employees are exempt should be considered on a case-by-case basis.

- (h) **Forest protection and fire prevention.** Any persons engaged in forest protection and fire prevention activities.
- (i) **Employees of charitable institutions charged with child care responsibilities.** Employees of charitable institutions charged with child care responsibilities as long as the charitable institution is “engaged primarily in the development of character or citizenship or promoting health or physical fitness or providing or sponsoring recreational opportunities or facilities for young people or members of the armed forces of the United States.”

“Charitable institutions” include churches and other organizations commonly set up under the not-for-profit corporations act if they are recognized by the United States Internal Revenue Service under the tax exemption provision, section 501(c)(3). Typical examples include the YMCA, YWCA, Girl Scouts’ organizations, Boy Scouts of America organizations, etc.

“Charged with child care responsibilities” typically means these activities are referenced in the organization's charter, by-laws, or other governing documents. It may also be helpful to evaluate the percentage of the budget and resources of the organization that go towards child care responsibilities.

Charitable institutions charged with child care responsibilities that are “engaged primarily in the development of character or citizenship or promoting health or physical fitness or providing or sponsoring recreational opportunities or facilities

for young people or members of the armed forces of the United States” may be engaged in activities related, but not limited to:

- Character development
- Social responsibility
- Mental or physical health
- Recreation
- Youth services
- Services for members of the armed forces of the United States

- (j) **Individuals whose duties require they reside or sleep at their place of employment or who otherwise spend a substantial portion of their work time subject to call.** This exemption encompasses two categories of workers: (1) Those individuals whose duties require that they reside or sleep at their place of employment, and (2) Those individuals who otherwise spend a substantial portion of work time subject to call and not engaged in the performance of active duties.

“Reside or sleep” pertains to employees whose job duties require them to reside at the place of employment and are exempt from all MWA requirements including minimum wage, overtime, and paid sick leave requirements. Merely residing or sleeping at the place of employment does not exempt individuals from the MWA. In order for individuals to be exempt, their duties must require that they sleep or reside at the place of their employment. An agreement between the employee and employer for the employee to reside or sleep at the place of employment for convenience, or merely because housing is available at the place of their employment, would not meet the exemption.

Some positions where the employee’s duties may require them to reside or sleep at the place of their employment include apartment managers, maintenance personnel, hotel/motel managers, managers of self-storage facilities, and some agricultural workers such as shepherders.

- (k) **Inmates and others in custody.** Residents, inmates or patients of state, county or municipal correctional, detention, treatment or rehabilitative institution are exempt from all MWA protections and are not required to be paid minimum wage if they perform work directly for, and at, the institution's premises where they are incarcerated, and remain under the direct supervision and control of the institution. Residents, inmates or patients of state, county or municipal correctional, detention, treatment or rehabilitative institution assigned by facility officials to work on facility premises for a private corporation at rates established and paid for by public funds are not employees of the private corporation and would not be subject to the MWA.
- (l) **Elected or appointed public officials and employees of the state legislature.** The MWA does not apply to any individual who holds a public elective or appointive office of the state, any county, city, town, municipal corporation, political subdivision, or any instrumentality thereof, or to any employee of the state legislature.
- (m) **Washington State ferry crews.** The MWA does not apply to vessel operating crews of the Washington State ferries, as long as the Department of Transportation operates the ferries.
- (n) **Crews of non-American vessels.** The MWA applies to persons employed as seamen on

an American vessel but does not apply to seamen employed on non-American vessels.

- (o) **Farm interns.** The MWA does not apply to any farm intern providing services to a small farm that has a special certificate issued by the department under [RCW 49.12.470](#).
- (p) **Junior ice hockey players.** The MWA does not apply to an individual between 16 and 21 years old, in their capacity as a player for a junior ice hockey team that is a member of a regional, national, or international league, and that contracts with an arena owned, operated, or managed by a public facilities district created under [RCW 36.100](#).

6. Independent Contractors are not Employees.

A bona fide independent contractor is exempt from the MWA because that person is not “employed” by an employer. However, an employer cannot avoid complying with the MWA by merely designating someone as an “independent contractor.” Whether a worker is an independent contractor must be carefully evaluated on a case-by-case basis.

To determine whether an individual is an employee or a legitimate independent contractor for purposes of the MWA, the department looks to the following factors on a case-by-case basis:

- The degree of control that the business has over the worker (the more control a business exerts over the worker, the more likely the worker is an employee);
- The worker’s opportunity for profit or loss is dependent on the worker’s managerial skill (when the worker’s opportunity for profit is not limited by a business, and the worker controls his or her own business expenses, the worker is more likely an independent contractor);
- The worker’s investment in equipment or material (where the worker’s investment in equipment or materials is substantial, the worker is more likely an independent contractor);
- The degree of skill required for the job (when a worker brings a special skill to a job and employs those skills in an independent manner, the worker is more likely an independent contractor);
- The degree of permanence of the working relationship (when a limited term working relationship exists, the worker is more likely an independent contractor);
- The degree to which the services rendered by the worker are an integral part of the business (when the services performed by a worker are integral to the business, the worker is more likely an employee).

All of these factors should be considered and weighed in combination with each other in each case.

7. Who else may be excluded from the protections of the MWA?

Some individuals may be exempt from the protections of the Minimum Wage Act for reasons other than the exemptions listed explicitly in the statute. For example, federal employees are also not subject to the protections of the MWA. Due to constitutional preemption, federal employees are instead subject to comparable federal laws such as the Fair Labor Standards Act.

Jurors in Washington State are not considered employees of the state or the court for which they are serving as a juror, even if they receive a stipend, and are therefore not covered under the MWA. *See Rocha v. King County*, 195 Wn.2d 412, 460 P.3d 624 (2020).

Department of Labor and Industries authority under [RCW 49.46](#)

8. What is the scope of the department’s authority under the Minimum Wage Act?

The department has the authority to investigate complaints to determine whether there has been a violation of the MWA. Through the course of an investigation, the department has the authority to gather data and may enter workplaces, examine and copy records, question employees, and investigate such facts, conditions, practices, or matters deemed necessary or appropriate to make a determination. *See [RCW 49.46.040](#)*.

See Administrative Policy [ES.D.1](#) for a complete discussion of MWA recordkeeping requirements, including the types of records that employers subject to the MWA must maintain and produce to the department.

9. What is the department’s administrative enforcement authority regarding violations of the Minimum Wage Act?

The chart below illustrates the department’s administrative authority to investigate and seek remedies relating to a violation, as outlined in statute or regulation:

	Statute	Related Policies	Employee Remedies	Department Remedy	Enforcement Authority
Minimum wage	RCW 49.46.020	ES.A.2 – ES.A.7	Wages & interest	Civil penalty	Wage Payment Act, RCW 49.48.082 - 49.48.087
Overtime	RCW 49.46.130	ES.A.8.1 – ES.A.8.2	Wages & interest	Civil penalty	Wage Payment Act, RCW 49.48.082 - 49.48.087
Retaliation for exercise of a MWA right	RCW 49.46.210 (4)		Earnings & interest, restoration of position, employer compliance	Civil penalty	WAC 296-128-780 - WAC 296-128-800
Paid sick leave	RCW 49.46.020 (4) and RCW 49.46.210	ES.B.1 – ES.B.2	Payment for paid sick leave & interest, restoration of sick leave balances. <i>See</i> No. 10, below.	Civil penalty	Wage Payment Act, RCW 49.48.082 - 49.48.087 , and WAC 296-128-810
Tips, gratuities, and service	RCW 49.46.020 (3) and RCW	ES.A.12	Tips, gratuities, service charges, & interest	Civil penalty	Wage Payment Act, RCW 49.48.082 -

charges	49.46.160				49.48.087 , and WAC 296-128-820
Violations of other rights under RCW 49.46	RCW 49.46.810		Employer compliance	Civil penalty	WAC 296-128-830 - WAC 296-128-850

An employer that fails or refuses to comply with the recordkeeping requirements found in the MWA, and in the department’s corresponding rules, refuses to cooperate with the department’s reasonable investigation, or fires or discriminates against an employee because the employee has complained to the department, could also be subject to criminal prosecution under [RCW 49.46.100](#). The department refers criminal violations under [RCW 49.46.100](#) to a city or county prosecutor or the Office of the Attorney General.

In addition to the department’s authority to investigate and bring legal action against an employer for violations of [RCW 49.46](#) on behalf of workers, aggrieved workers retain the right to file a civil action against the employer.

10. What remedies are available to employees when the department investigates paid sick leave violations?

If an employee files a complaint with the department alleging that their employer failed to provide them with paid sick leave as provided in [RCW 49.46.200](#) and [49.46.210](#), the department will investigate the complaint as an alleged violation of a wage payment requirement under the Wage Payment Act. See [RCW 49.48.082](#)(12). The department has the authority to order additional remedies when its investigation results in a finding that the employer failed to provide the employee with paid sick leave accrual, use, or carryover. See [WAC 296-128-810](#). The remedies that may be ordered after such findings are dependent on whether an employee is still employed by the same employer.

When the department's investigation results in a finding that the employer failed to provide the employee with paid sick leave accrual, use, or carryover, and the employee is *still employed* by the same employer, the employee may elect to:

- (a) Receive full access to the balance of accrued paid sick leave hours unlawfully withheld by the employer during the period of noncompliance; or
- (b) Receive payment from the employer at their normal hourly compensation for each hour of paid sick leave that the employee would have used or been *reasonably expected to use*, whichever is greater, during the period of noncompliance. See Administrative Policy [ES.B.2](#) for more information on computing an employee’s normal hourly compensation. The employee will receive full access to the balance of accrued paid sick leave hours unlawfully withheld by the employer, less the number of paid sick leave hours paid out to the employee.

Note: The department interprets “reasonably expected to use” by relying on [recent data](#) regarding “the frequency of work-loss days” for adults aged 18 and over as published by the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention (CDC). This data

found that the average worker misses 3.7 workdays (based on eight-hour workdays) due to illness per year.

When the department's investigation results in a finding that the employer failed to provide the employee with paid sick leave accrual, use, or carryover, and the employee is *no longer employed* by the same employer, the employee may elect to:

- (a) Receive payment at their normal hourly compensation from their employer for all hours of paid sick leave that would have accrued during the period of noncompliance;
- (b) Receive reinstatement of the balance of paid sick leave hours that would have accrued during the period of noncompliance, in anticipation of the employee's rehiring within 12 months of separation; or
- (c) Receive a combination of payment and reinstatement from the employer for all hours of paid sick leave that would have accrued during the period of noncompliance.

Appendix E – Case Law Supplemental Document



November 8, 2021

Relevant Current Case Law for Direction and Control

In re: Henry Industries, Inc., Dckt No. 13 11525 (April 4, 2014)

The requirement that the worker provide a vehicle while an important part of the contract is not the primary object of the contract—Bd. found sign. the requirement that drivers complete drug, alcohol and background screening; contract term indefinite, “personal” long term relationship with independent contractors).

Burchett v. Dep’t of Labor & Indus., 146 Wn. 85 (1927)

State Supreme Court noted that the power of an employer to terminate the employment at any time is incompatible with the full control of the work which is usually enjoyed by an independent contractor, and hence is considered as a strong circumstance tending to show the subserviency of the employee.

Indeed, it has been said that no single fact is more conclusive, perhaps, then the unrestricted right of the employer to end the particular service whenever he chooses, without regard to the final result of the work itself. *Id.* quoting 14 R.C.L. 72 at 803.

Hubbard v Dep’t of Labor & Indus., 198 Wn. 354 (1939)

State Supreme Court noted a long line of cases that have consistently stated that the “power to

terminate employment at any time is incompatible with a free control of work usually enjoyed by an independent contractor.”

Dana’s Housekeeping, Inc., v. Dep’t of Labor & Indus., 76 Wn. App. 600, 886 P.2d 1147 (1995)

The court concluded that the housecleaner’s personal labor was for the benefit of Dana’s Housekeeping and therefore were covered workers. The court wrote: “If the realities demonstrate the labor is for Dana’s benefit, the existence of a third party customer does not place the worker outside the scope of industrial insurance coverage. Id. quoting Lloyds, 33 Wn. App. 745, 752, 662 P.2d 391. (1982).

The court also held that the domestic servant exclusion of RCW 51.12.020(1) does not apply to businesses.

The court also disposed of Dana’s claim that the relationship with its cleaners was really “an agreement to accept referrals and share a fee” and looked instead at the essence of the work under the contract, not the characterization of the parties’ relationship.

Dep’t of Labor & Indus. v. Tacoma Yellow Cab, 31 Wn. App. 117 at 124, 639 P.2d 843 (1982)

When determining whether an independent contractor is a covered worker if they had the authority to or in fact did delegate all or part of the work they are contracted to perform, the “realities of the situation” must be looked at, not the mere technical aspect of having workers.

Delivery Express, Inc. v. Washington State Department of Labor and Industries, 9 Wn.App.2d 131, 442 P.3d 637 (2019)

“[B]oth the contractor agreements and the broker-carrier agreements contain non-compete clauses that limit the drivers’ ability to solicit business from DEI customers, both during the term of the agreement and for 6 to 12 months thereafter. Such a clause is another strong indication that DEI entered into a contract with the driver for his or her personal skills at delivering packages in an efficient manner, rather than simply leasing a vehicle to effectuate deliveries.”

...In re Rainbow International, BIIA Dec., 88 2664 (1990)

Where every aspect of the route manager's job is controlled by the employer and the employer supplies the work as well as the equipment, the fact that the route managers hire helpers and do not believe they are employees does not make them independent contractors. A right to control the work performed and an absolute right to terminate the relationship without liability are inconsistent with the concept of an independent contract and establish an employer-employee relationship

B&R Sales, Inc., v. Dep’t of Labor & Indust., (No. 45765-7 II March 10, 2015).

Court of Appeals case involved a floor covering retailer that contracted with installers. The Court held: “ that the contractors were "workers" under RCW 51.08.180 because the primary object of their contracts was their personal labor despite their use of expensive specialized tools and equipment.”

Dep’t of Labor & Indust. v. Lyons Enterprises, Inc., DBA Jan-Pro Cleaning Systems, No. 45033-0-11 (February 2015).

The Court of Appeals held that Lyons’ franchisees without employees are covered workers covered by the Board. But franchisees who have employees are not covered, citing *White v. Dep’t of Labor & Indus. 48 Wn. 2d 470 (1956)*.

Jamison v. Dep’t of Labor & Indust., 65 Wn. App. 125 at 133, 877 P.2d 1085 (1992).

The fact that independent contractors, who perform the same work as workers for the firm who are not independent contractors, can and/or do delegate their work under the contract is not in itself dispositive of whether the independent contractors are covered workers or not.

Joint Employer Liability

There is no statutory guidance to support joint employer liability, and we rely on the relevant statutes to properly determine the employer. As of right now, there isn’t joint employer liability for workers’ compensation other than prime contractor liability (PCL).

[Appendix F – Workers’ Compensation Overview Supplemental Document](#)

March 14, 2022

Workers’ compensation - Overview

- Employers must purchase industrial insurance through L&I (or be self-insured through L&I)
- No-fault system – meaning L&I will cover an allowable claim for a workplace injury regardless of who is at fault
- Includes wage replacement and medical benefits to workers injured on the job
- Title 51 RCW directs L&I to classify all occupations or industries by their degree of hazard, in accordance with standard insurance principles.

State fund

- All employers participate in the state fund unless they are self-insured.
- Employer premiums are the only source of revenue for the State – no other general tax revenues.
- Worker claim benefits are paid out of state fund.
- The state fund also covers administrative costs.

Risk Classifications

- When an employer applies for a workers compensation account, they are assigned one or more risk classifications based on the nature of their business.
- Risk classification is a method for combining like occupations or industries by the degree of hazard.
- Each risk classification has separate base premium rates that apply to the employers and workers in that classification.
- As a result, employers and workers in more hazardous industries (more frequent and severe injuries, higher claims costs) generally have higher premium rates than employers and workers in less hazardous industries.

Premium Rates

- Base rates are set for businesses within a risk classification.
- Employer premiums are distributed into four (4) different funds:
 - Accident Fund: Pays for injured workers' wage replacement, permanent disability or death benefits, and some vocational retraining.
 - Medical Aid Fund: Pays for health care and private vocational counselors for covered services provided to injured workers.
 - Stay at Work: Pays employers partial reimbursement for wages, training, and equipment costs provided under light duty or transitional work for injured workers.
 - Supplemental Pension Fund: Pays cost of living adjustments on extended wage replacement benefits.

Payroll deduction

- Under state law, a portion of the premium due, equal to one-half of the Medical Aid Fund rate, Stay at Work rate, and Supplemental Pension Fund assessment, may be paid by employee contribution.
- L&I does not collect each worker's share directly. Instead, employers have the option to collect their employees' portion through payroll deductions.
- Some businesses choose not to make employee payroll deductions. These businesses are still responsible for paying the total premium due.

Setting base rates

- Each year, L&I actuaries calculate base rates for each risk classification based on the previous five (5) years of claim costs by claim type and hours worked.

Experience rating

- L&I individually adjusts the base rates for premiums using an *experience factor*, which L&I calculates annually for each business.
- The experience factor of an employer is based on workers' hours (exposure) and claims (losses) occurring during the preceding three years.

- The experience factor is a prediction of how a business's future claim costs will compare to their risk classifications.
- For example, if a business's claim cost costs are likely to be higher than other businesses in their risk classifications, L&I will assign an experience factor greater than one (1).

Reporting and Paying Premiums

- Employers apply for an L&I workers' compensation account along with their state business license.
- Employers keep track of the number of hours employees work.
- Employers report the combined hours for all employees in each assigned risk class. quarterly [every three (3) months] to L&I and pay the premiums for each risk class.
- L&I rules require reporting every quarter your account's activity, even if no hours are worked.
- Employers must keep records and make the records available to L&I for examination in case of an audit.

Worker Benefits – Health care services

- For accepted claims, L&I pays the cost of health care services until the covered worker's injury or illness has stabilized and reached a point where no further recovery is expected.

Worker Benefits – Wage replacement

- If a covered worker is unable to work due to their work-related injury or disease, L&I will pay a portion of their regular wages. A health care provider must certify that the worker is unable to work due to the work-related injury or illness.
- The wage replacement or "time-loss compensation" is not full wage replacement. It is approximately 60-75% of total wages and is calculated based on a covered worker's total earnings at the time of injury plus marital status and dependents.
- Covered workers receive time-loss payments approximately twice a month as long as the health care provider verifies that the condition prevents the return to any work.

Worker Benefits – Establishing income

- In order to determine a covered worker's time-loss benefits, L&I establishes the gross income at the time of a covered worker's injury based on:
 - The worker's wages earned before taxes, from all jobs worked.
 - Any employer provided medical, dental and vision benefits.
 - The reasonable value of room and board, housing, heating fuel or similar considerations received from the employer.
 - Any bonus received in the last twelve (12) months from the employer the worker was working for when injured.
 - Tips the worker reported to their employer for federal income tax purposes.

Getting back to work

- Depending on the severity of the injury, a worker may have difficulty returning to work.
- In some cases, vocational services may be used to help with return-to-work options, including retraining for new work.

Appendix G – Relevant Statutes Supplemental Document



May 9, 2022

Workers' Compensation – Relevant Statutes

This reference document provides the relevant RCW's and WAC's related to workers compensation coverage through the Department of Labor and Industries. This document also contains relevant statutes for other agencies.

“RCW” refers to the Revised Code of Washington, which are laws adopted by the Legislature and can only be changed through additional legislation or the initiative process.

“WAC” refers to the Washington Administrative Code, which are rules adopted by state agencies to implement laws. WAC's require statutory authority in RCW in order to be approved. WAC's can be changed by going through the Administrative Procedures Act, [Chapter 34.05 RCW](#).

- Employments excluded [RCW 51.12.020: Employments excluded. \(wa.gov\)](#)
- Homeowners practical steps to set up a Workers Compensation account and required registration with DOR and L&I
 - [WAC 296-17-31006](#)
- Homeowners reporting requirements to L&I
 - [RCW 51.16.060](#) – Quarterly report of payrolls
 - [RCW 51.16.070](#) – Employers records – Unified business identifier – confidentiality
- How Workers Compensation premiums are calculated and how payment is effected (risk classifications premiums attached to them, multiplied by hours worked by worker, worker contribution rate)
 - [RCW 51.16.035](#) Classifications – Premiums – Rules
 - [RCW 51.16.100](#) – Classification Changes (fund self-supporting requirement)
 - [RCW 51.16.140](#) – Premium liability of worker (deduction of worker contribution)
 - [WAC 296-17-31010](#) – [WAC 296-17-31012](#) – Premium Costs – Classification Assignment
 - [WAC 296-17A](#) – Risk Classifications
 - [WAC 296-17-35201](#): Recordkeeping and retention
- Insurance Principals
 - [WAC 296-17-31029](#)
- How time-loss wages calculated and how pay rate calculated
 - [RCW 51.08.178](#)
 - [WAC 296-14-522](#) – What does “wages” mean?
 - [WAC 296-14-4124](#) – What are considered as “wage replacement benefits”?
 - [WAC 296-14-350](#) – Claim allowance and wage determination in

- occupation disease cases
- Elective coverage of both types (1) private home employer of domestic worker (RCW 51.12.020) and (2) self-employed domestic worker
 - [RCW 51.12.110](#) – Elective Coverage
 - Currently a homeowner can elect coverage for a domestic worker or day laborer who is working in their home that does not meet the criteria established in [RCW 51.12.020\(1\) or \(2\)](#)
 - An business owner, this would include independent contractors, can also elect workers compensation [WAC 296-17-31007](#):
 - This would require them to be a business owner and would have a different risk class than the one for a homeowner.
 - Janitorial housekeeping class 6602
 - Chore services class 6511
 - Landscaping services are 0308
- Independent Contractor Determination
 - [Personal labor test](#)
 - One of these statements must be true:
 1. The individual brings their own employees to perform the work, and you do not control the individual or their employees.
 2. The individual brings heavy or costly specialized heavy equipment and their expertise to operate it, and you does not control the individual (Examples: MRI machine, earth-moving equipment, ultrasound machine).
 - Independent contractors must be free from direction and control, and meet the other criteria referenced in [RCW 51.08.195](#).
 - This comes into play if the worker does not pass the personal labor test, then L&I would use the 6-part or 7-part test to determine if they are a covered worker.
 - Some examples of direction and control:
 - The individual works with you or your staff.
 - You don't have a contract that establishes the independence, or the contract has provisions that represent control.
 - You set hours or keep timesheets.
 - You pay the individual on a more frequent cycle than you pay your other creditors.
 - You retain the ability to hire and fire within the contract period for reasons other than breach of contract.
 - Our [Independent Contractor's Guide](#) has additional information on this.

Other Agencies' Statutes

Employment Security Department

- [RCW 50.04.160](#) – domestic services performed in a private home are not considered employment unless the person is paid more that \$1,000 in any calendar quarter
- This requirement mirrors the requirement on the federal level

Department of Revenue

- Independent Contractor Registration Requirement, [RCW 82.32.030](#)
 - If **any** of the following apply:
 - Your business is required to collect retail sales tax.
 - Your gross income is \$12,000 per year or more.
 - Your business is required to pay any other taxes or fees to the Department of Revenue.
 - You are considered a business when you engage in any activity, including hobbies, for gain, benefit, or advantage (regardless of profit or loss).
- Homeowner Registration – When hiring domestic employees, be prepared to enter the following information:
 - Will payroll for the household employees exceed \$1000 per calendar quarter? (Threshold based on the ESD requirement.)
 - Will you need optional insurance coverage of these employees?
 - First date of employment
 - First date that the wages to an employee will be paid.
 - Number of employees that you plan to hire.
 - Estimated number of hours that all employees will work in a 3-month period.
 - Describe the primary job responsibilities and duties of the employees.

Internal Revenue Service [2022 Publication 926 \(irs.gov\)](#)

Table 1. Do You Need To Pay Employment Taxes?

IF you ...		THEN you need to ...
A	Pay cash wages of \$2,400 or more in 2022 to any one household employee. Don't count wages you pay to: <ul style="list-style-type: none"> • Your spouse, • Your child under the age of 21, • Your parent (see Wages not counted, later, for an exception), or • Any employee under the age of 18 at any time in 2022 (see Wages not counted, later, for an exception). 	Withhold and pay social security and Medicare taxes. <ul style="list-style-type: none"> • The taxes are 15.3%¹ of cash wages. • Your employee's share is 7.65%.¹ (You can choose to pay it yourself and not withhold it.) • Your share is 7.65%.
B	Pay total cash wages of \$1,000 or more in any calendar quarter of 2021 or 2022 to household employees. Don't count wages you pay to: <ul style="list-style-type: none"> • Your spouse, • Your child under the age of 21, or • Your parent. 	Pay FUTA tax. <ul style="list-style-type: none"> • The tax is 6% of cash wages. • Wages over \$7,000 a year per employee aren't taxed. • You may also owe state unemployment tax.
¹ In addition to withholding Medicare tax at 1.45%, you must withhold a 0.9% Additional Medicare Tax from wages you pay to an employee in excess of \$200,000 in a calendar year. You're required to begin withholding Additional Medicare Tax in the pay period in which you pay wages in excess of \$200,000 to an employee and continue to withhold it each pay period until the end of the calendar year. Additional Medicare Tax is only imposed on the employee. There is no employer share of Additional Medicare Tax. All wages that are subject to Medicare tax are subject to Additional Medicare Tax withholding if paid in excess of the \$200,000 withholding threshold.		
Note. If neither A nor B above applies, you don't need to pay any federal employment taxes. But you may still need to pay state employment taxes.		