

Background

Two new workplace safety and health rules, *Public Health Emergency Reporting and*

Notification Requirements for Infectious and Contagious Diseases, WAC 296-62-600, and Public Health Emergency Voluntary Personal Protective Equipment Usage, WAC 296-62-601, were adopted August 10, 2021 in Washington state. The rules take effect during declared public health emergencies involving an infectious or contagious disease, including the current COVID-19 pandemic. They incorporate the following legislation signed into law by Gov. Jay Inslee:

- Employer reporting and notification requirements originating from the *Engrossed Substitute Senate Bill (ESSB) 5115* (also known as the *Health Emergency Labor Standards Act* or “HELSA”).
- Requirements for employers to accommodate voluntary use of face masks and other personal protective equipment (PPE) based on Substitute Senate Bill (SSB) 5254, *Concerning the use of protective devices and equipment during a public health emergency.*

The following questions and answers can help you understand and comply with the new rules, WAC 296-62-600 and WAC 296-62-601, found at www.Lni.wa.gov/rulemaking-activity/A021-31/2131CR103EAdoption.pdf.

Reporting Outbreaks to L&I

Are employers required to report outbreaks to L&I during the current COVID-19 pandemic?

Yes, the reporting requirements are in effect now for any COVID-19 outbreaks that occur at a particular workplace or worksite in Washington state with more than 50 covered employees¹. They will remain in effect until the declared public health emergency ends.

These requirements will also apply during any future pandemic or other public health emergency involving an infectious or contagious disease as declared or ordered by the President of the United States or by the Washington state governor.

What’s an outbreak?

In general, an outbreak is a cluster of infections occurring at a specific workplace or worksite in a particular timeframe.

This new regulation applies specifically to COVID-19 outbreaks of ten or more test-confirmed employee infections with test collection dates that occur during:

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

1. **Covered employees** are hourly, salaried, labor, management, part-time, and seasonal employees; and any employee hired from a temporary help service, employee leasing service, or personnel supply service if they supervise the employee on a day-to-day basis (per WAC-296-27-02103 at <https://apps.leg.wa.gov/WAC/default.aspx?cite=296-27-02103>).



How do employers report outbreaks and how much time do they have to report?

Once the employer learns that ten or more cases have occurred in a workplace or work site, the employer has 24 hours to report the outbreak by calling L&I's Division of Occupational Safety and Health (DOSH) at 1-800-4BE-SAFE (or 1-800-423-7233) and following the option for "reporting fatalities, hospitalizations, amputations or loss of an eye."

When reporting to DOSH, **do not include any employee name(s) or personal identifying information.**

Do employers need to report more than once during an outbreak?

Once the employer has reported an outbreak no further reporting is required for that outbreak, even if additional cases occur.

It is possible that some workplaces could experience a new outbreak after passing 28 days without a new case; if that happens, the employer would need to report the new outbreak.

Notifying Employees of Potential Exposure

Are employers required to notify employees of potential exposure to COVID-19 during the current pandemic?

Yes. The notification requirements are in effect now for COVID-19 cases and will remain in effect until the declared public health emergency ends.

Furthermore, these requirements would go into effect during any future pandemic or other public health emergency involving an infectious or contagious disease as declared or ordered by the President of the United States or by the Washington state governor.

What if I have 50 or fewer employees?

As noted above, employers with 50 or fewer covered employees at a particular worksite do not have to report outbreaks to L&I; however, they are still required to notify covered employees of potential exposure.

Are health care facilities covered by these notification requirements?

Health care facilities that provide health care services directly to patients, including but not limited to, a hospital, clinic, health care provider's office, health

maintenance organization, diagnostic or treatment center, neuropsychiatric or mental health facility, hospice, or nursing home are **not** covered by this rule.

Notification requirements for health care facilities are being addressed through separate rulemaking.

What triggers the notification requirement?

The notification requirement is triggered each time an employer receives a notice of potential exposure:

- Through their testing protocol that an employee is a qualifying individual², OR
- From an employee (or their emergency contact) that the employee is a qualifying individual, OR
- From a medical provider or public health official that an employee was exposed to a qualifying individual at the worksite.

Whom must employers notify?

The employer must notify all covered employees who were on the premises at the same worksite on the same day as a qualifying individual who may have been infectious or contagious. For COVID-19, a qualifying individual could be infectious or contagious:

- At least two days before feeling sick; or, if asymptomatic, at least 2 days before being tested, AND
- Until they are isolated and/or leave the worksite.

Does the employer need to provide written notice to anyone else?

Yes, employers must also provide written notice to the:

- Employee-authorized union representative(s) of any covered employee receiving notification.
- Temporary help service, employee-leasing service, or personnel supply service employer of any employee receiving notification.

How are employers supposed to provide notification?

The employer must provide written notice in a manner normally used to communicate employment-related information; this includes personal service, email, or text message — if the notification can reasonably be anticipated to be received within one business day by the employee.

2. A qualifying individual is someone who has tested positive for COVID-19, been diagnosed by a health care provider with COVID-19, been ordered to go into isolation, or has died due to an infectious or contagious disease that is subject to a public health emergency.

Written notification must be in English and the language understood by a majority of the employees.

Can notices include employee names?

No. Written notices to covered employees **must not include any employee name(s) or personal information.**

Notices to unions can include information such as the program or area where the covered employee works as long as the information will not lead to the identity of the covered employee.

How much time does an employer have to notify?

One business day from receiving notice of potential exposure(s).

Voluntary Use of Personal Protective Equipment (PPE)

What is voluntary PPE use?

Voluntary use refers to the **optional use** of a face mask or other PPE by an employee or contractor in the workplace when it's **not required by the Washington Industrial Safety and Health Act**

(WISHA, Chapter 49.17 RCW) or the employer during a public health emergency involving an infectious or contagious disease.

Voluntary use can also occur when an employee or contractor required to use PPE wants to upgrade their level of protection; for example, an employee required to use a cloth face covering wants to voluntarily use a more protective mask such as an N95 or medical procedure mask.

What should an employer do if someone wants to voluntarily use PPE?

Employers must allow any employee or contractor (fully vaccinated or not) to voluntarily use PPE but only after the employer has determined use will not:

- Create a safety or health hazard, OR
- Interfere with the employer's security requirements, OR
- Conflict with PPE requirements specified by other applicable health and safety rules.

Do employers need to pay for PPE voluntarily used?

No, employers must only pay for required PPE.