Insights, News & Events

WASHINGTON CHANGES KEY EMPLOYER OBLIGATIONS FOR HIGH-RISK WORKERS

Insights
Apr 20, 2021

Washington Governor Jay Inslee recently amended an executive proclamation that imposes certain workplace protection for high-risk workers during pandemic, granting employers some additional flexibility that will take effect April 23. However, stringent obligations remain in place, so employers should ensure they are fully up to speed on the rules. What do you need to know about the changes about to take effect – and the rules already in place?

What Hasn't Changed

Certain key obligations from the original Proclamation 20-46 and subsequent amendments remain in place:

- Employers must provide high-risk workers, as defined by the Centers for Disease Control and Prevention, with "**feasible alternative work assignments**" upon request, such as telework, alternative or remote work locations, reassignment, and social distancing measures.
- Where such arrangements are not feasible, high-risk employees may use any **employer-granted accrued leave** (such as PTO) or unemployment insurance, in any sequence, at their discretion.
- Employers are **prohibited from permanently replacing** high-risk employees if they opt for leave or unemployment. However, employers may hire temporary workers to cover a high-risk worker's leave, so long as the high-risk worker is permitted to return to work without any negative ramifications to their employment status. Further,

Related People

Meghan McNabb
Associate
206.693.5066

Catharine Morisset
Partner
206.693.5076

employers are not prohibited from a reduction in force when no work reasonably exists, unless doing so adversely impacts high-risk workers' eligibility for unemployment benefits.

Summary of Key Changes – Effective April 23, 2021

There are three primary changes that will take effect at the end of this week – two of which provide looser rules for employers to follow, and another that adds an additional administrative obligation for employers.

- Employers will be permitted to **require medical verification** from any employee who is availing themselves of the protection of this proclamation, to determine if the employee is high-risk and if the employee can return to the workplace with additional accommodations in place. Employers should follow the same interactive process required by state and federal disability laws.
- Employers may **terminate employer-provided health coverage** so long as they provide at least 14 days' advanced written notice and the employee whose coverage is being terminated is not eligible for coverage under the Family and Medical Leave Act (FMLA), a collective bargaining agreement, or other condition specific to the employment relationship. However, employer-provided health coverage must remain effective through the end of the calendar month of the month in which the 14-day notice lapses.
- Employers are required to provide at least 14 days' **advanced written notice** explaining any accommodation changes.

Conclusion

While the recent amendment certainly expands employers' options as it relates to high-risk employees, you should continue to proceed cautiously regarding any adverse employment actions regarding high-risk workers. We will continue to monitor for developments and provide updates as appropriate. Make sure you are subscribed to Fisher Phillips' Insight System to get the most up-to-date information.

Service Focus

Employee Leaves and Accommodations

Related Offices

Seattle

For further information, contact your Fisher Phillips attorney, any attorney in our Seattle office, or any member of our COVID-19 Taskforce. You can also review our nationwide Comprehensive and Updated FAQs for Employers on the COVID-19 Coronavirus and our FP Resource Center for Employers, maintained by our Taskforce.