Washington Employers Need To Provide Alternative Work For High-Risk Workers To Reduce COVID-19 Exposure

Insights
4.17.20

Washington's Governor Jay Inslee just issued temporary Proclamation 20-46 that requires employers to provide high-risk workers an alternative work assignment if requested to prevent exposure to COVID-19. If one is not feasible, employees have the discretion to use employer-granted accrued leave or unemployment benefits in any sequence. Employers are also prohibited from permanently replacing high-risk employees if they opt for leave or unemployment. The Proclamation expires June 12, 2020, unless extended.

[Ed. Note: The governor has indefinitely extended this Proclamation until further notice.]

Important Details
Under the governor's Proclamation, high-risk workers are defined by the Centers for Disease Control and Prevention. Specifically, this includes workers 65 years of age or older. It also includes workers with underlying medical conditions, particularly if not well controlled, including those who are immunosuppressed (such as those with immune deficiencies, receiving cancer treatment, organ or bone marrow transplantation, HIV or AIDS, or prolonged use of immune weakening medications or corticosteroids), or who suffer from serious heart conditions, chronic lung disease, moderate to severe asthma, chronic kidney disease undergoing dialysis, liver diseases, diabetes, or severe obesity (BMI of 40 or higher).

Employers must provide these high-risk workers any feasible alternative work assignment if requested, including but not limited to telework, alternative, or remote work locations, reassignment, and social distancing measures.

If an alternative work assignment is not feasible, the high-risk worker must be permitted and given discretion to use any available employer-granted accrued leave or unemployment benefits in any sequence. Moreover, if the high-risk worker takes but exhausts leave, the employer must maintain all employer-related health insurance benefits until they are deemed eligible to return to work. Any high-risk worker who does not report to work may be required to give up to five day's advance notice of any decision to return to work.

Employers are further 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

Copyright © 2024 Fisher Phillips LLP. All Rights Reserved.

worker's leave, so long as the high-risk worker is permitted to return to work without any negative ramifications for their employment status. And employers are not prohibited from acting when no work reasonably exists by way of a reduction in force that includes high-risk workers, unless doing so adversely impacts high-risk workers' eligibility for unemployment benefits.

Washington employers should strictly adhere to these requirements and refrain from enforcing any contractual prohibitions that may conflict. The Proclamation calls for applying its requirements to the greatest extent possible to protect high-risk workers from loss of their position, loss of employment benefits, and retaliation. Employers are subject to criminal penalties if they do not comply.

Conclusion

Employers should proceed cautiously regarding any high-risk worker who seeks an alternative work arrangement to avoid exposure to COVID-19 and strictly adhere to these requirements. We will continue to monitor the rapidly developing COVID-19 situation and provide updates as appropriate. Make sure you are subscribed to Fisher Phillips' Alert System to get the most up-to-date information. 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.

This Legal Alert provides an overview of a specific city law. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

Service Focus

Counseling and Advice

Workplace Safety and Catastrophe Management

Trending

COVID-19/Vaccine Resource Center

Related Offices

Seattle

Copyright © 2024 Fisher Phillips LLP. All Rights Reserved.