



STATE OF WASHINGTON
— OFFICE OF GOVERNOR JAY INSLEE —

**PROCLAMATION BY THE GOVERNOR
AMENDING PROCLAMATIONS 20-05 AND 20-46, et seq.**

20-46.3

High-Risk Employees – Workers’ Rights

WHEREAS, on February 29, 2020, I issued Proclamation 20-05, proclaiming a State of Emergency for all counties throughout Washington State as a result of the coronavirus disease 2019 (COVID-19) outbreak in the United States and confirmed person-to-person spread of COVID-19 in the state of Washington; and

WHEREAS, as a result of the continued worldwide spread of COVID-19, its significant progression in Washington State, and the high risk it poses to our most vulnerable populations, I have subsequently issued several amendatory proclamations, exercising my emergency powers under RCW 43.06.220 by prohibiting certain activities and waiving and suspending specified laws and regulations; and

WHEREAS, the COVID-19 disease, caused by a virus that spreads easily from person to person which may result in serious illness or death and has been classified by the World Health Organization as a worldwide pandemic, continues to persist in the state of Washington; and

WHEREAS, the Centers for Disease Control and Prevention (CDC) reports that groups at higher risk of severe illness or death from COVID-19 are those over 65 years of age, and people of any age who have certain chronic underlying health conditions; and

WHEREAS, on April 14, 2020, I issued Proclamation 20-46 to protect our public and private sector workers in high-risk categories from the significant life, health and safety risks of the COVID-19 disease, requiring employers to seek any and all options for alternative work arrangements and to protect these workers from certain impacts to their employment and benefits; and

WHEREAS, on June 9, 2020, I issued Proclamation 20-46.1, extending the prohibitions in Proclamation 20-46 until August 1, 2020, and on July 29, 2020, I further extended the prohibitions with Proclamation 20-46.2 for the duration of the current state of emergency initially proclaimed in Proclamation 20-05, or until otherwise rescinded or amended; and

WHEREAS, despite an increase in infections, hospitalizations, and deaths in the latter half of 2020, Washington State has avoided overwhelming the state’s health care systems

throughout this pandemic through rigorous safety and prevention measures, such as physical distancing and masking, as well as social and economic prohibitions; and

WHEREAS, through the tireless work of all Washingtonians and, as of April 5, 2021, the successful administration of 3,798,746 vaccine doses, fully immunizing more than one million Washingtonians, many hundreds of thousands of whom are high-risk individuals; the threat of COVID-19 to the lives of Washingtonians is decreasing; and

WHEREAS, the CDC reports that all vaccines available in Washington are safe and effective, having been evaluated using tens of thousands of participants in clinical trials and having proven to significantly decrease the likelihood of infection; and

WHEREAS, on January 11, 2021, I issued Proclamation 20-25.12, “Healthy Washington – Roadmap to Recovery,” wherein I found it appropriate to begin easing the prohibitions and restrictions critical to the state’s pandemic response; and

WHEREAS, the Washington State Department of Health continues to maintain a Public Health Incident Management Team in coordination with the State Emergency Operations Center and other supporting state agencies to manage the public health aspects of the incident; and

WHEREAS, the Washington State Military Department Emergency Management Division, through the State Emergency Operations Center, continues to coordinate resources across state government to support the Department of Health and local health officials in alleviating the impacts to people, property, and infrastructure, and continues to coordinate with the Department of Health in assessing the impacts and long-term effects of the incident on Washington State and its people.

NOW, THEREFORE, I, Jay Inslee, Governor of the state of Washington, as a result of the above-noted situation, and under RCW 38.08, 38.52, and 43.06, do hereby proclaim: that a State of Emergency continues to exist in all counties of Washington State; that Proclamation 20-05 and all amendments thereto remain in effect; that Proclamations 20-05 and 20-46, et seq., are amended to extend all of the prohibitions therein through the duration of the current state of emergency initially proclaimed in Proclamation 20-05, or until otherwise rescinded or amended; and that my memorandum to Proclamation 20-46.2, dated July 29, 2020, is rescinded as of April 23, 2021.

FURTHERMORE, for any high-risk worker who is unable to return to the workplace with or without accommodation due to the COVID-19 pandemic, employers **remain prohibited from**:

1. Failing to utilize all available options for alternative work assignments to protect high-risk employees, if requested, from exposure to COVID-19; and

2. Failing to permit any high-risk employee in a situation where an alternative work arrangement is not feasible to use any available employer-granted accrued leave or unemployment insurance, in any sequence, at the discretion of the employee; and
3. Taking adverse employment action against any employee for exercising their rights under this Proclamation that would result in loss of the employee's current employment position by permanent replacement; and
4. Making changes to a high-risk employee's accommodations under Proclamation 20-46, et seq., without providing the employee 14 calendar days' advanced written notice itemizing the changes. Notice may be provided as early as April 9, 2021.

Effective April 23, 2021, employers are **no longer prohibited from**:

1. Requiring medical verification from any employee who is availing themselves of the protections of this proclamation.
 - a. Medical verification shall include a determination of or medical opinion as to whether the employee is high risk and whether the employee may be able to return to the workplace with additional accommodations in place, taking into consideration the employee's medical condition, vaccination status, and the particular circumstances of their job or workplace.
 - b. For purposes of obtaining medical verification, employers must follow the same interactive process required by state and federal disability laws, ensuring that employees have a reasonable amount of time to respond. Employers and employees may commence the process on April 9, 2021, but employers **may not mandate** commencement prior to April 23, 2021.
2. Failing to fully maintain all employer-related health insurance benefits, starting in the calendar month following the month in which the 14-day notice described in paragraph 4, above, lapses; and unless the employee is otherwise eligible under the Family and Medical Leave Act of 1993, Pub.L. 103-3; a collective bargaining agreement; or other condition specific to the employment relationship.

For purposes of this Proclamation, a "high risk employee" is synonymous with any employee defined by the Centers for Disease Control as being more likely to get severely ill from COVID-19.

This Proclamation shall be construed to protect the employee, to the greatest extent possible, from loss of their position and retaliation for decisions made regarding whether and how to work for their employer pursuant to this Proclamation.

This Proclamation shall not be construed:

1. To prohibit an employer from hiring temporary employees so long as it does not negatively impact the permanent employee's right under this Proclamation to return to their employment position without any negative ramifications to their employment status by the employer; or
2. To prohibit an employer from requiring employees who do not report to work under this Proclamation to give up to five days' advance notice to the employer of any decision to report to work or return to work under this Proclamation; or
3. To prohibit an employer from taking employment action when no work reasonably exists, such as in a circumstance of a reduction in force, for a high-risk employee during this Proclamation. However, in the case that no work exists, employers shall not take action that may adversely impact an employee's eligibility for unemployment benefits; or
4. To apply any new rights or obligations created by this Proclamation 20-46.3 retroactively; or
5. To modify my prior clarification that employers may require medical verification from high-risk employees seeking to use any leave where a state or federal law, collective bargaining agreement, or contractual obligation separately requires verification; or
6. To minimize my strong support for telework, the use of alternative or remote work locations, reassignment, and social distancing measures where possible, all of which will continue to mitigate the spread of COVID-19 as employees, who cannot work remotely, return to the workplace; or
7. To minimize my strong support for employers to consider options, where feasible, to continue to provide assistance, including benefits, information, or other resources, to high-risk employees for the duration of the state of emergency.

I again direct that the plans and procedures of the *Washington State Comprehensive Emergency Management Plan* be implemented throughout state government. State agencies and departments are directed to continue utilizing state resources and doing everything reasonably possible to support implementation of the *Washington State Comprehensive Emergency Management Plan* and to assist affected political subdivisions in an effort to respond to and recover from the COVID-19 pandemic.

I continue to order into active state service the organized militia of Washington State to include the National Guard and the State Guard, or such part thereof as may be necessary

