

Proclamation 20-46.3 – High-Risk Employees

Frequently Asked Questions

May 3, 2021 Update

Added information about COBRA premium assistance through the federal American Rescue Plan Act (FAQ #3, page 3).

April 21, 2021 Update

Included additional contact information.

GENERAL QUESTIONS

1. Am I a high-risk employee?

A “high risk employee” is any employee defined by the [Centers for Disease Control and Prevention \(CDC\)](#) as more likely to get severely ill from COVID-19. That includes older adults, people who are pregnant, and those that have certain medical conditions or need extra precautions. While there’s no specific age that defined as “older,” risk for severe illness with COVID-19 increases with age, with older adults more likely to get severely ill from COVID-19.

Certain medical conditions can also make a worker “high risk.” Those underlying medical conditions are continually updated as the CDC learns more, but may include cancer, chronic kidney disease, chronic lung disease, dementia, diabetes, certain heart conditions and others. A full list is available on the CDC website under [certain underlying medical conditions](#).

2. I am a high-risk employee. Can my employer require medical verification if I am requesting an accommodation?

Yes. Proclamation 20-46.3 allows an employer to require medical verification that a worker is high risk and is therefore entitled to the protections under the proclamation.

3. What is medical verification? Who provides it?

Medical verification is provided by a health care professional. It is a medical opinion whether the employee is high risk and whether the employee may be able to return to the workplace with additional accommodation. This should take into account the employee’s medical condition, vaccination status, and circumstances of the job or workplace.

4. What must my employer do to accommodate me?

If requested by a worker, an employer must use all available options for alternative work arrangements to protect high risk workers from exposure to COVID-19. If an alternative work arrangement is not feasible, the employer must allow the worker to use their choice of any available leave or unemployment insurance.

5. Can my employer require me to return to the job site?

If your medical provider indicates that you are a high-risk employee and should not return, your employer cannot require you to return by threatening to terminate your position.

Nothing in this proclamation supplants or alters existing legal protections under the Americans with Disabilities Act or entitlements to pregnant workers for accommodation under the Washington Law Against Discrimination.

6. I am now ready to return to work, but my employer didn't hold my job. What do I do?

An employer is required to allow a high risk worker to take leave if they are not able to reach agreement on an alternative work arrangement. A worker who took leave must be allowed to return to their former position. If they are not, a worker may be protected. To file a claim, contact L&I DOSH at 1-800-423-7233.

7. Am I required to get a vaccine?

An employer may require employees to be vaccinated as a condition of employment, with certain exceptions. However, the employer must treat all workers equally. An employer cannot single out any individual worker to require vaccination. For further information, including protections for individuals with medical or religious protections, please review guidance from the [EEOC](#) and [L&I](#).

8. Is my risk reduced if I get vaccinated?

Yes. According to the Washington Department of Health, vaccines are highly effective at preventing COVID-19 and can greatly reduce your chance of getting seriously ill if you get COVID-19. Further information can be found [here](#).

9. Does my vaccine status affect my rights under Proclamation 20-46.3?

The proclamation allows for medical verification to be required prior to an employee receiving an accommodation. It is up to your medical provider, but any medical verification shall take into consideration an employee's vaccination status when making a determination when an employee may return to work.

14-DAY NOTICE

1. What happens if my employer doesn't give me notice before changing my accommodation?

Under Proclamation 20-46.3, employers are required to provide at least 14 calendar days' notice before changing an accommodation or benefits as a result of the new provisions. While that decision is being made, the worker may take leave. If leave is not granted and adverse action is taken such as being terminated, a worker may be protected. Contact L&I DOSH at 1-800-423-7233.

2. What is the earliest date an accommodation is allowed to be changed or a benefit terminated?

An employer is required to give a worker at least 14 calendar days' advanced written notice itemizing any changes to the accommodation. The effective date of the proclamation is April 23rd. The earliest date an existing accommodation may be changed is April 23rd, but only if your employer gave you notice the day the proclamation was issued.

HEALTH COVERAGE

1. What will happen to my employer-provided health coverage?

Under the latest version of the proclamation, employers are permitted to terminate employer-provided health coverage. Employers must ensure that coverage endures through the remainder of the month in which the 14 days' advanced notice lapses.

2. Can you provide an example of how timing works for the end of coverage?

An employer gives their employee notice that employer-provided health coverage will no longer be offered to high-risk employees electing not to return to work. Notice is given on April 20, 2021. Because the 14-day notice period lapses on May 4th and because coverage must continue

through the end of the month, the employee should obtain alternative coverage that begins June 1, 2021, as soon as possible.

3. What are my options for continued coverage?

Once you receive notice from your employer that employer-provided health coverage will be discontinued, you may qualify for COBRA coverage, and you can also explore affordable options through [Washington Healthplanfinder](#).

For free help exploring your options and signing up for coverage through *Washington Healthplanfinder*, call the Customer Support Center. Language assistance is provided in over 200 languages.

1-855-923-4633

TTY: 1-855-627-9604

COBRA Premium Assistance

COBRA recipients may be eligible for premium assistance through the American Rescue Plan Act applying to periods of health coverage on or after April 1, 2021 through September 30, 2021:

<https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/cobra/premium-subsidy>

4. I want to enroll in coverage through *Washington Healthplanfinder*, what actions do I need to take? When do I need to act? How do I avoid a gap in health coverage?

To sign up: visit wahealthplanfinder.org; complete the application; report that you have a 'loss of other coverage'; enter your employer coverage end date (last day you will have employer coverage), review your plan options, and enroll.

When you lose your employer coverage, you have up to 60 days before or after your employer coverage end date to sign up for coverage through *Washington Healthplanfinder*.

To help avoid a gap in health coverage, sign up for coverage before your employer-coverage end date. For example, if your employer coverage ends May 31st, sign-up in May for coverage that will start June 1st. For more information visit: <https://www.wahbexchange.org/loss-of-job/>.

The federal American Rescue Plan Act, which passed in March 2021, has also extended additional financial assistance to individuals who enroll in coverage, making coverage as affordable as ever. You can learn more about the American Rescue Plan and the new available assistance [here](#).

CONTACT INFORMATION

Where do I go for questions about...

1. Reasonable accommodations?

The Washington State Human Rights Commission is the state agency tasked with providing assistance and resolving disputes relating to reasonable accommodations.

Employers who have questions should contact policy@hum.wa.gov.

Employees who have questions should contact (360) 753-6770 or frontdesk@hum.wa.gov.

Employees who wish to file a complaint should fill out the intake form here: <https://www.hum.wa.gov/file-complaint>.

2. Unemployment insurance?

The Washington Employment Security Department handles Washington’s unemployment insurance program, and they can be reached [here](#).

3. Termination while seeking the protections of the high-risk worker proclamation?

The Washington Department of Labor & Industries, Division of Occupational Safety and Health, helps with safety and health discrimination, and they can be reached at 1-800-423-7233.

4. Health coverage alternatives?

The Washington Health Benefit Exchange provides assistance with obtaining health coverage, and the locator tool is found [here](#).