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# COVID-19 Employer Requirements & Employee Accommodation Considerations

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- Where specific issues arise, attendees should seek legal advice from a licensed employment law practitioner regarding the particular facts and circumstances of the matter at issue.
- Information related to COVID-19 and the relevant law continues to evolve. The information provided in this webinar is current as of January 12, 2021. Where information presented here conflicts with federal, state or local laws, the law should be followed.



# Families First Coronavirus Response Act

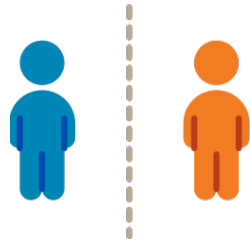

# FFCRA

- Formally ended December 31, 2020
- Voluntary through March 31, 2021 with continued tax credit available
- Unused time - no new “bucket” of benefits as a result of continued tax credit
- Don't forget about PTO, Vacation, WA PSL, WA FML, WA High-Risk Worker Proclamation, FMLA, ADA

# Employer Responsibilities and Accommodation



# General Employer Responsibilities

- Provide cloth facial coverings or appropriate PPE
- Require employees to wear appropriate facial covering or PPE (generally)
- Cooperate with public health authorities
- Notify local health jurisdiction within 24 hrs re: COVID-19
- Comply with worksite-specific safety practices for applicable industry
- Education
- Six ft distance or other prevention measures 
- Frequent handwashing and related supplies, gloves (as practical) 
- Adequate housekeeping schedule
- Screen employees for COVID-19 signs and symptoms at start of shift
- Post sign requiring customers wear cloth face coverings
- Follow High-Risk Worker Proclamation



# High-Risk Worker Proclamation

- Effective through **June 12, 2021** (unless extended)
  - Look to CDC definition of High-Risk Worker
    - Health care provider certification
  - Accommodate alternative work assignments (telework/remote work), reassignment, social distancing measures, etc.
  - May not oppose use of accrued leave or unemployment benefits
  - Fully maintain all employer-related health insurance benefits until employee able to return to work
  - No adverse employment action against employee for using benefits under proclamation resulting in termination or permanent replacement
  - Does not apply to afford right to accommodation to protect high-risk family member (PFML? / FMLA?)

Proclamation 20-46:

<https://www.governor.wa.gov/sites/default/files/proclamations/20-46%20-%20COVID-19%20High%20Risk%20Employees.pdf>



# Mask/Cloth Face Covering Requirements

- Employers are required to provide cloth face coverings to employees free of charge
- Employees are required to wear a cloth face covering except:
  - When working alone, communicating with hearing impaired, etc.
- Medical and disability considerations
  - Require supporting documentation
  - ADA interactive process
  - Cannot just forego mask without other mitigation/accommodation

<https://www.lni.wa.gov/agency/outreach/coronavirus-covid-19-worker-face-covering-and-mask-requirements-questions>

<https://lni.wa.gov/forms-publications/F414-168-000.pdf>





# Industry-Specific Requirements

- <https://www.governor.wa.gov/issues/issues/covid-19-resources/covid-19-reopening-guidance-businesses-and-workers>

- Healthy Washington – Roadmap to Recovery (next slide)

<https://www.governor.wa.gov/sites/default/files/HealthyWashington.pdf>

# Healthy Washington - Roadmap to Recovery

Activities	Phase 1	Phase 2
<b>Social and At-Home Gathering Size — Indoor</b>	Prohibited	Max of 5 people from outside your household, limit 2 households
<b>Social and At-Home Gathering Size — Outdoor</b>	Max of 10 people from outside your household, limit 2 households	Max of 15 people from outside your household, limit 2 households
<b>Worship Services</b>	Indoor maximum 25% capacity	Indoor maximum 25% capacity
<b>Retail Stores</b> (includes farmers' markets, grocery and convenience stores, pharmacies)	Maximum 25% of capacity, encourage curbside pick-up	Maximum 25% of capacity, encourage curbside pick-up
<b>Professional Services</b>	Remote work strongly encouraged, 25% capacity otherwise.	Remote work strongly encouraged, 25% capacity otherwise.
<b>Personal Services</b>	Indoor maximum 25% capacity.	Indoor maximum 25% capacity.
<b>Eating and Drinking Establishments</b> (establishments only serving individuals 21+ and no food remain closed)	Indoor dining prohibited. Outdoor dining, 11 PM close, maximum 6 per table, limit 2 households per table	Indoor dining available 25% capacity, 11 PM close. Outdoor dining available, maximum 6 per table, limit 2 households per table
<b>Weddings and Funerals</b>	Ceremonies are limited to a total of no more than 30 people. Indoor receptions, wakes, or similar gatherings in conjunction with such ceremonies are prohibited.	Ceremonies and indoor receptions, wakes, or similar gatherings in conjunction with such ceremonies are permitted and must follow the appropriate venue requirements. If food or drinks are served, eating and drinking requirements apply. Dancing is prohibited.
<b>Indoor Recreation and Fitness Establishments</b> (includes gyms, fitness organizations, indoor recreational sports, indoor pools, indoor K-12 sports, indoor sports, indoor personal training, indoor dance, no-contact martial arts, gymnastics, climbing)	Low risk sports (including dance, no-contact martial arts, gymnastics, and climbing) permitted for practice and training only in stable groups of no more than 5 athletes. Appointment based fitness/training; 45-minute max session, no more than 1 customer/athlete per room or per 500/sq. ft. for large facilities.	Low and moderate risk sports competitions permitted (no tournaments). Fitness and training maximum 25% capacity.
<b>Outdoor Sports and Fitness Establishments</b> (outdoor fitness organizations, outdoor recreational sports, outdoor pools, outdoor parks and hiking trails, outdoor campsites, outdoor K-12 sports, outdoor sports, outdoor personal training, outdoor dance, outdoor motorsports)	Low and moderate risk sports permitted for practice and training only (no tournaments). Outdoor guided activities, hunting, fishing, motorsports, parks, camping, hiking, biking, running, snow sports, permitted.	Low, moderate, and high-risk sports competitions allowed (no tournaments), maximum 200 including spectators.
<b>Indoor Entertainment Establishments</b> (includes aquariums, indoor theaters, indoor arenas, indoor concert halls, indoor gardens, indoor museums, indoor bowling, indoor trampoline facilities, indoor cardrooms, indoor entertainment activities of any kind, indoor event spaces)	Private rentals/tours for individual households of no more than 6 people permitted. General admission prohibited.	Maximum 25% capacity. If food or drinks are served, eating and drinking requirements apply.
<b>Outdoor Entertainment Establishments</b> (includes zoos, outdoor gardens, outdoor aquariums, outdoor theaters, outdoor stadiums, outdoor event spaces, outdoor arenas, outdoor concert venues, rodeos)	Ticketed events only: Groups of 10, limit 2 households, timed ticketing required.	Groups of 15, limit 2 households per group, maximum 200 including spectators.

NOTE: Live entertainment is no longer prohibited but must follow guidance above for the appropriate venue. Long-term Care facilities, professional and collegiate sports remain governed by their current guidance/proclamations separate from this plan.

# Vaccinations

- Vaccination itself is not a medical examination
- Employers may require COVID vaccinations (exceptions – medical/religious)
  - If medical screening by employer or third party contracted by employer = screening questions must be job-related and consistent with business necessity
  - Vaccination administered by third party not contracted by employer (e.g. pharmacy, health care provider, etc.) = need not demonstrate screening questions job-related and consistent with business necessity
- Employer may require proof of receipt of COVID-19 vaccination – not a disability-related inquiry (warn not to provide genetic information)
- Accommodation analysis



# Direct Threat Analysis

Must demonstrate that there is a “significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation”

The ADA requires individual assessment of:

1. The duration of the risk;
2. The nature and severity of the potential harm;
3. The likelihood that the potential harm will occur; and
4. The imminence of the potential harm

29 CFR section 1630.2(r)

EEOC suggests reliance upon the CDC guidance.



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THANK YOU!

QUESTIONS/COMMENTS?