



Washington Labor & Employment Legislative Update: What Employers Need to Know

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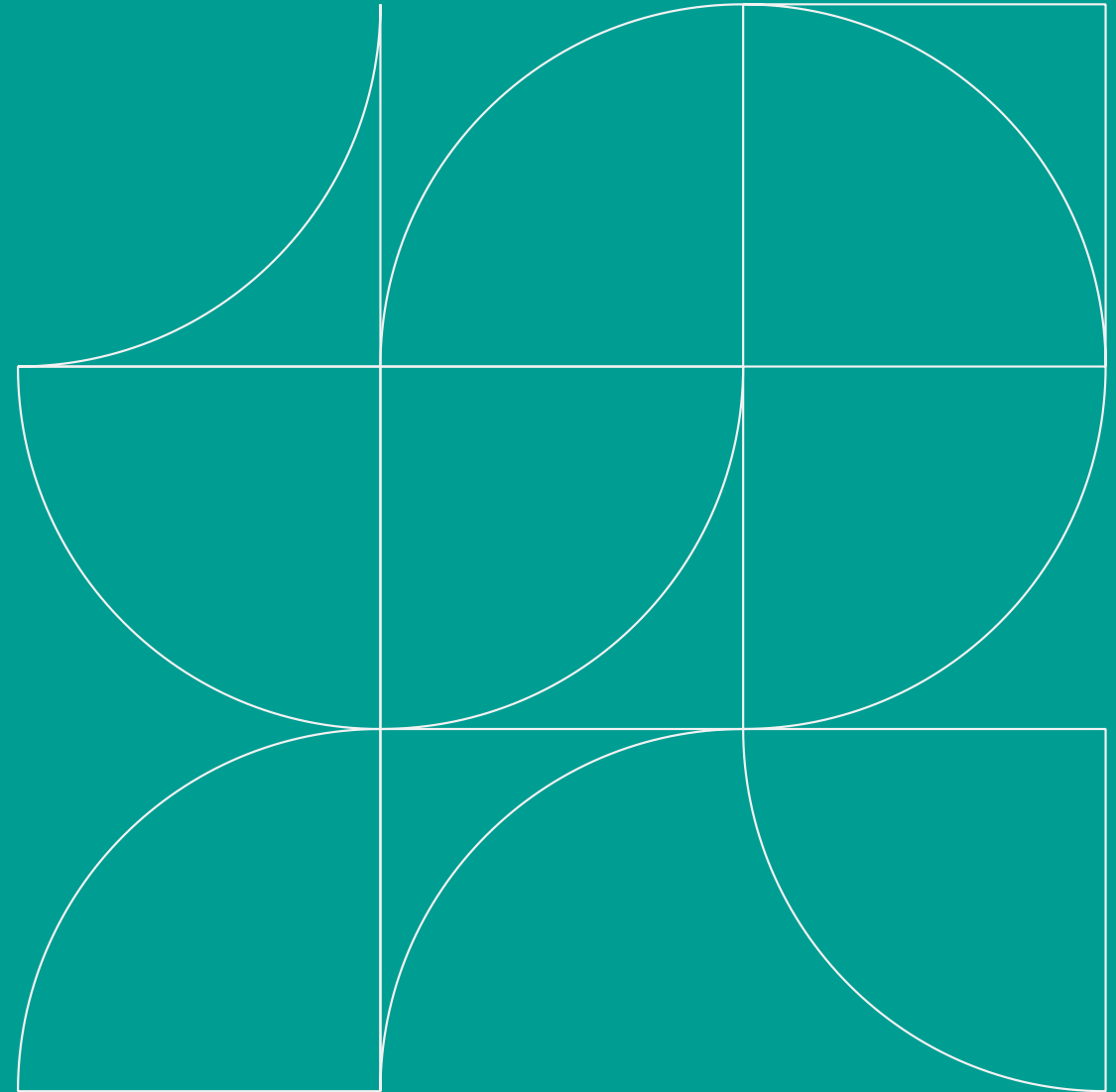


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Agenda

- 01** Effective January 1, 2022
- 02** Enacted Laws
- 03** Bills on the Governor's Desk
- 04** COVID-19 – Looking Toward a New Normal
- 05** Seattle Independent Contractor Protections Ordinance

**Effective
January 1, 2022**



Increased Minimum Wage

Effective January 1, 2022

- Washington State Minimum Wage - \$14.49
- Seattle Minimum Wage
 - \$17.27 for large employers (> 500 employees)
 - \$15.75 for small employers (500 or fewer employees) – if the employer pays \$1.52 per hour toward medical benefits and/or \$1.52 per hour in tips
 - \$17.27 for small employers (500 or fewer employees) – if the employer does not pay \$1.52 per hour toward medical benefits and/or \$1.52 per hour in tips

Effective January 1, 2022

- Agricultural Minimum Wage
 - Martinez-Cuevas v. DeRuyter Brothers Dairy decision – dairy workers exemption to OT held unconstitutional
 - Senate Bill 5172 – OT for weekly hours exceeding 55
 - On January 1, 2023 – OT for weekly hours exceeding 47
 - On January 1, 2024 – OT for hours exceeding 40

Increased Salary Thresholds

Effective January 1, 2022

- Overtime Exempt = 1.75 times the current state minimum wage for large and small employers
\$1,014.30 per week (\$52,743.60/year)
- Noncompetition agreements void unless:
 - Employees earning more than \$107,301.04; and
 - Independent contractors earning more than \$268,252.59

Washington Cares Act – HB 1732 and HB 1733

- Governor Inslee **signed January 27, 2022**
- Changes include:
 - Workers near retirement (born before 1968) will be able to qualify for partial benefits on a pro-rated basis.
 - Workers who live out of state and work in Washington, military spouses, workers on non-immigrant visas, and certain veterans with disabilities will be able to opt out of the program if they choose.
 - Workers will begin contributing to the fund in July 2023. Employers will refund any premiums collected in 2022 so far.
 - Refunds for any premiums that were withheld must be made within 120 days

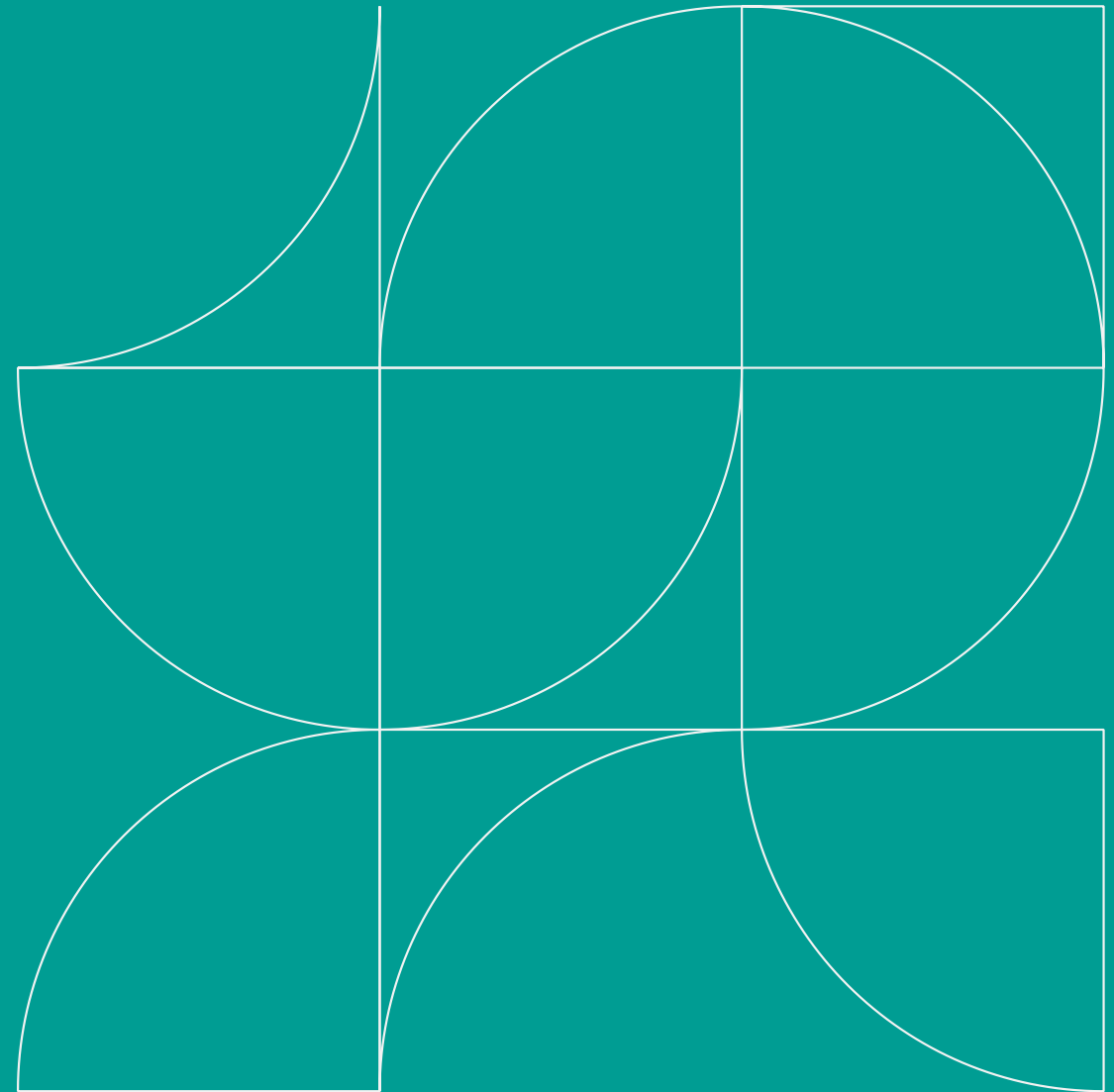
Washington Wage Recovery Act

- RCW 60.90 *et seq.*
- Allows certain employees to place a lien on their employers' property to secure unpaid wages and other compensation
 - “Employee” is broadly defined: “any individual currently or formerly employed by an employer”
 - But not “highly compensated employees” (compensation at or above \$130,000)
- Types of property subject to wage liens includes:
 - Any real property in the State owned by the employer; goods and tangible chattel paper in the State; accounts and payment intangibles

Washington Wage Recovery Act

- Certain requirements for recording a wage lien
 - Wage lien must be recorded within two years from the date wages were first due
 - Wage lien must be filed in the county where the property is located
 - Pay filing fee
- Employee must then file an action for the underlying wage claim within 8 months of the date the wage lien was recorded
- Employers who believe the claim of lien to be frivolous, excessive, or made without reasonable cause may file a motion in court
 - For an order directing the employee to appear and show cause as to why the relief should be granted

Enacted Laws



Expanding presumption for workers' compensation to personnel working at radiological hazardous waste facilities (SSB 5890)

- Governor signed on March 11; **effective date March 11, 2022** (emergency)
- Expands current coverage for workers at the Hanford nuclear site to all employees who work with or near high-level radioactive waste or “mixed waste,” including inspectors.
- Covers “any structure and its lands where high-level radioactive waste or mixed waste is stored or disposed of, except certain military installations.”
- “Mixed waste” includes wastes such as source, special nuclear, or by-product material subject to the Atomic Energy Act of 1954.
 - Medical, laboratory, or commercial waste containing radium-226 or utilizing.
- Removes presumption for communicable respiratory diseases (i.e., COVID-19)

Protecting confidentiality of employees using employee assistance programs (SB 5564)

- Governor signed on March 4; **effective date June 9, 2022**
- Background: Certain employers provide their employees with Employee Assistance Programs (EAP)
 - Programs offered as part of a benefits plan and provide support for work and life concerns (depression, stress, addictions)
- This bill provides the same confidentiality protections for private EAPs as those outlined in the Washington State Employee Assistance Program (available to state employees).
 - Unlawful for an employer to obtain individually identifiable information regarding an employee's participation in an EAP

Shared reporting responsibilities for LTSS and PFML programs (HB 1613)

- Governor signed on March 11; **effective date June 9, 2022**
- Information on individuals or employers obtained through the collection of premiums for the Long-Term Services and Supports (LTSS) program must be kept private and confidential in the same manner as in the Paid Family and Medical Leave (PFML) program
- But the law is intended to allow the Employment Security Department to administer the PFML and LTSS trust programs side-by-side
 - New law allows confidential information or records in the PFML program to be disclosed to state agencies for administering ESD's responsibilities under the LTSS trust program

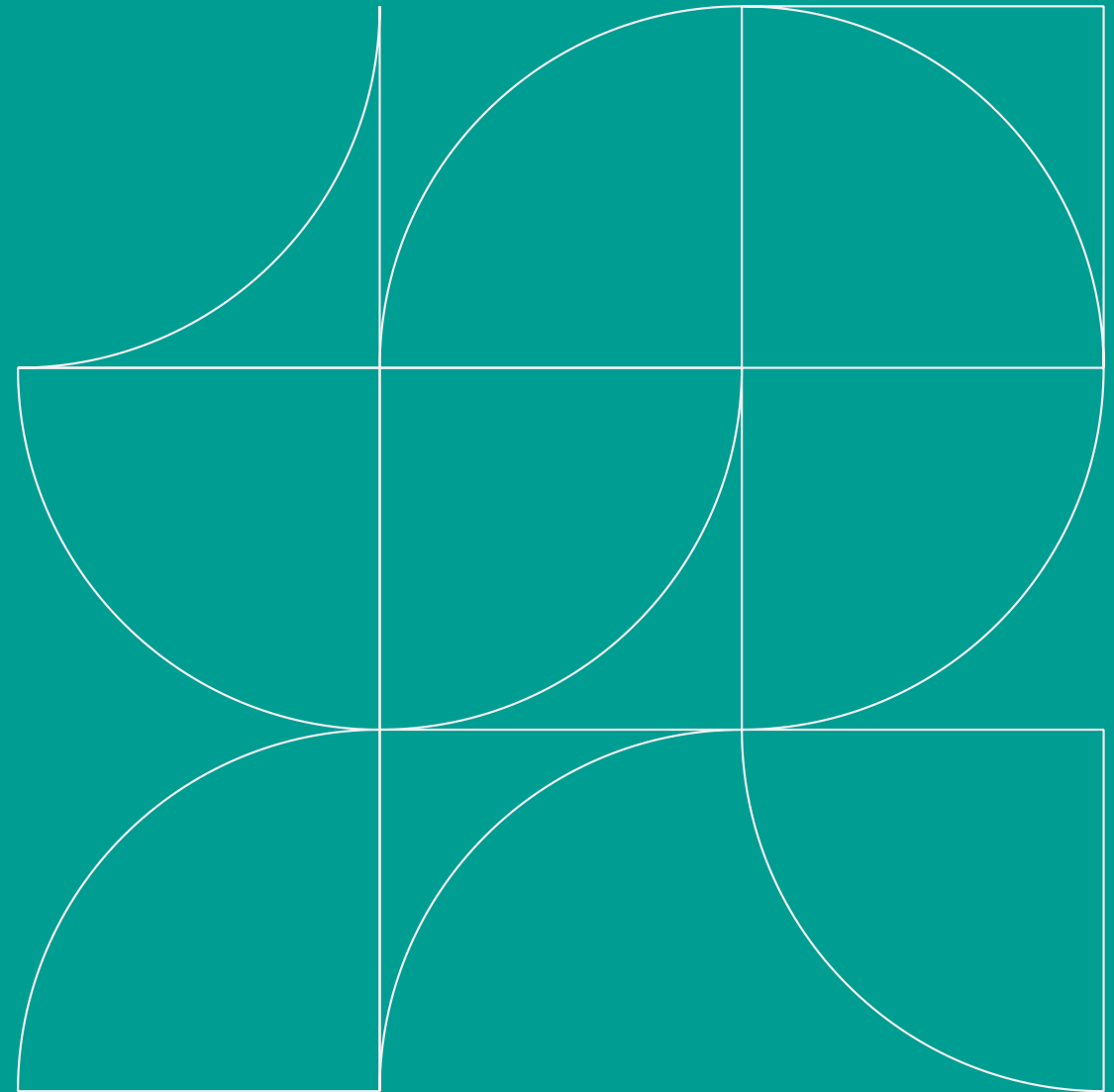
Elimination of subprevailing wage certificates for individuals with disabilities (SB 5763)

- Governor signed on March 11; **effective date June 9, 2022**
- Washington requires prevailing wages to be paid to laborers, workers, and mechanics employed upon all public works and under all public building service maintenance contracts
 - Currently, the director of the Department of L&I can provide for the employment of individuals with disabilities at wages lower than the applicable prevailing wage rate through the issuance of special certificates (valid for 1 year)
- The new law repeals the current statute requiring the director of L&I to issue these subprevailing wage certificates
 - No subprevailing wage certificates currently in use, but supporters seek to eliminate opportunities for people with disabilities to be paid at lower wages

Employers to reimburse employee fees when paycheck is dishonored by non-acceptance or nonpayment (SHB 1794)

- Governor signed on March 11; **effective date June 9, 2022**
- It is unlawful for an employer to deprive an employee of his or her minimum wages
 - One example of a failure to pay wages owed is if a paycheck is denied for non-sufficient funds
- Under the new law, employers that pay employees with an instrument later returned for nonsufficient funds must reimburse the employee for fees charged by the employee's financial institution, unless the employer can show that it was returned due to error

Bills on the Governor's desk



SHB 1795 - Delivered to Governor Inslee on March 7

- Current law:
 - Prohibits employers from requiring EEs to sign a nondisclosure agreement preventing them from disclosing sexual harassment or sexual assault occurring in the workplace and other work related events
 - Does not apply to confidential settlement agreements
- The bill would repeal and replace the current law. It prohibits nondisclosure and non-disparagement provisions in agreements by employers and employees not to disclose conduct, or a settlement involving conduct, regarding:
 - Discrimination, harassment, retaliation, wage and hour violations, sexual assault

SHB 1795 - Delivered to Governor Inslee on March 7

- Prohibited provisions include those contained in:
 - Employment agreements, independent contractor agreements, agreements to pay compensation in exchange for the release of a legal claim, or any other agreement between an employer and employee
 - “Employee” means current, former, and prospective employees or independent contractors
- Applies retroactively to invalidate provisions in agreements before effective date and that were agreed to at the outset of employment or during the course of employment
 - But the retroactivity clause does not apply to a nondisclosure or nondisparagement provision in an agreement to settle a legal claim
- Penalty: liable in a civil cause of action for actual or statutory damages of \$10,000, whichever is more, as well as reasonable attorneys’ fees and costs
- Not on 3/17/2022 Bill Action Schedule

SB 5649 – Delivered to Governor Inslee on March 11

- Modifies Washington Paid Family and Medical Leave Act
- Allows a qualifying employee to **use family leave during the seven calendar days** following the **death of a family member** for whom the family would have qualified for medical or family leave
- Eliminates need for certification of a serious health condition during the first six weeks after a baby is born (postnatal period)
- Specifies that any PFML taken during the **first six weeks after a baby is born must be medical**, unless the employee chooses to use family leave
- From July 1, 2022 until 12 months after end of the state of emergency, ESD must ask the applicant **whether their family or medical leave is related to the COVID-19 pandemic**.
- Authorizes ESD to issue a **predetermination of eligibility and benefits prior to the employee's start of leave**.
- Requires ESD to publish a list of employers with approved voluntary plans on its website
- Not on 3/17/2022 Bill Action Schedule

SSB 5761 - Delivered to Governor Inslee on March 11

- Current law (if employer has 15+ employees):
 - Upon request of an applicant for employment (after employer offered applicant the position) or a current employee offered an internal position, employer must provide the minimum wage or range scale for that position
- The bill would remove employer requirement to provide salary information after an initial job offer, upon request of the applicant
- Instead, beginning January 1, 2023, the bill would require employers to disclose in each posting for each job opening the wage scale or salary range, and a general description of all of the benefits and other compensation to be offered to the hired applicant
- Not on 3/17/2022 Bill Action Schedule

SHB 2076 - Delivered to Governor Inslee on March 10

- Concerning rights and obligations of Transportation Network Company (TNC) drivers and Transportation Network Companies
 - Examples: typical rideshare and other delivery-based companies
- Regulations of TNCs generally only address liability insurance requirements
 - TNC drivers must carry certain insurance. Coverage amounts differ depending on whether the driver is transporting a passenger
- SHB 2076 includes provisions regarding minimum driver compensation, notices, paid sick time, industrial insurance, unemployment insurance, and PFML

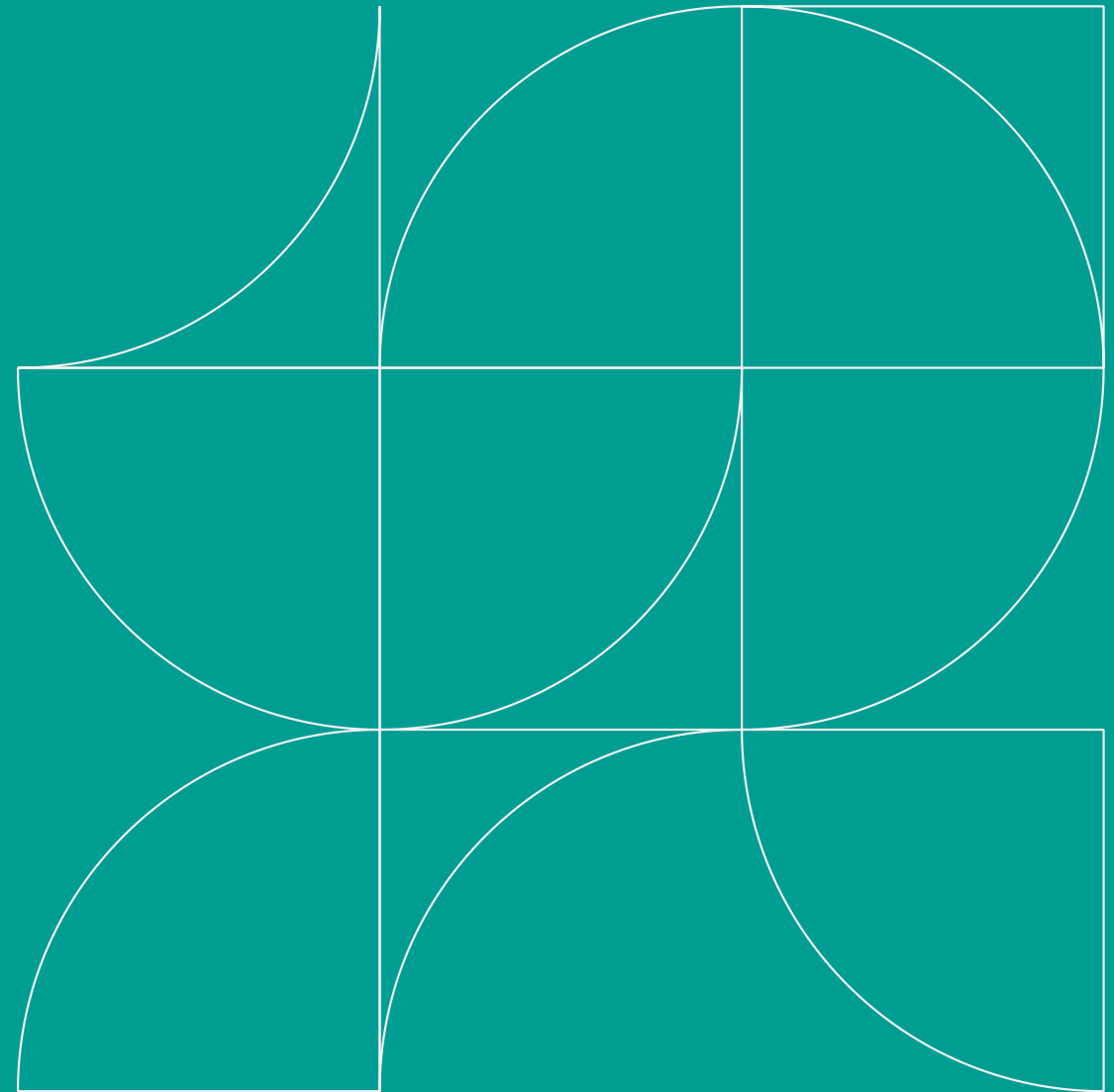
Not on 3/17/2022 Bill Action Schedule

SHB 1902 - Delivered to Governor Inslee on March 10

- Provides an exception to the process for reopening a workers' compensation claim when the claimant submits a reopening application in a timely manner.
- The reopening period may be extended up to 120 days if:
 - the provider does not submit required information to L&I or the self-insurer within the required 60-day window and
 - the worker demonstrates the application was completed within 30 days of provision of services.
 - Not on 3/17/2022 Bill Action Schedule

COVID-19

**Looking Toward a New
Normal**



Status of COVID-19 Mitigation Requirements

- Masks
 - State-wide mask mandate ended at 11:59 pm on 3/11/2022 for most
 - Not public transportation, healthcare, correctional facilities, congregate care
 - Governor amended Proclamation 20-25.19
 - Department of Health amended Order 20-03.8
 - L&I (WA OSHA) amended Directive 1.70 and guidance
- Vaccinations
 - Remain required for certain state employees and others (healthcare)
 - King County ended proof of vaccination requirement (gyms, restaurants, etc) on 3/1/2022
- Looking Forward
 - Things may continue to change rapidly

Grocery Worker Hazard Pay

- City of Seattle
 - Effective February 3, 2021
 - Provides \$4/hr “hazard pay” to grocery workers
 - Non-salaried workers (generally)
 - Employers with 500+ employees
- Bellingham
 - Effective May 25, 2021
 - Provides \$4/hr “hazard pay” to grocery workers
 - Employers with 500+ employees (at least 40 in Bellingham)
- Both
 - Anti-retaliation provisions
 - “Convenience stores” not covered

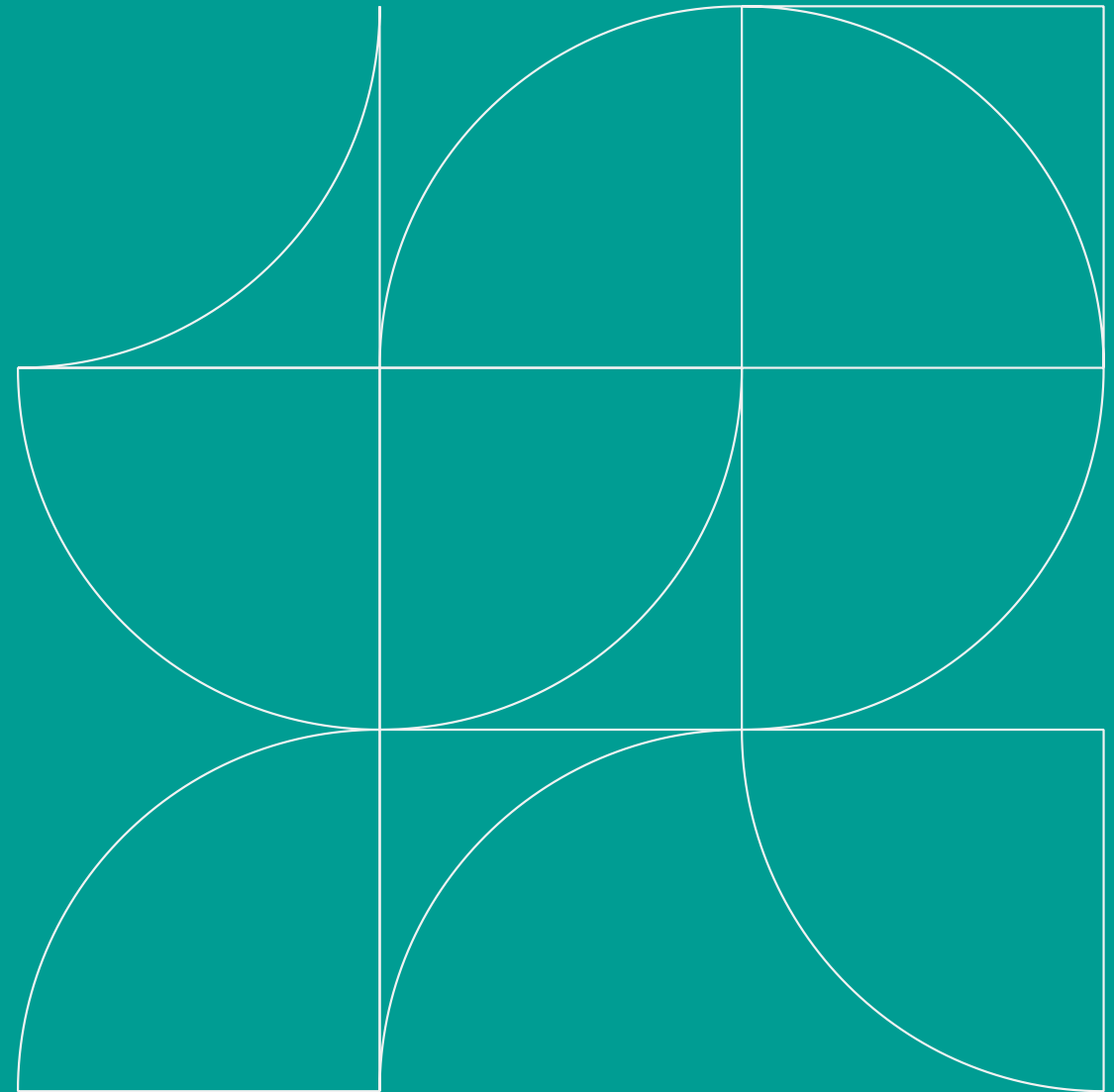
Protection of High-Risk Workers

- Proclamation 46 – Protecting High-Risk Workers
 - Issued 4/13/2020
 - Final Version (46.3) rescinded on 6/29/2021
 - Rolled into Proclamation 28.08.1 (COVID-19 Safe Workers)
 - Protects employees who
 - Received and take time off to recover from COVID-19 vaccine
 - Take time off due to personal COVID-19 issues
 - Wear a face covering

Health Emergency Labor Standards Act (HELSEA)

- 2021 ESSB 5115 - **Effective May 11, 2021**
 - Frontline workers who contract an infectious or contagious disease are entitled to workers' compensation presumption.
 - Employers with more than 50 employees must notify L&I if they have ten or more employees who test positive for an infectious or contagious disease.
 - Employee notification required for potential exposure to an infectious or contagious disease.
 - Notification to union and subcontractors as well.
 - Anti-retaliation and protections for high-risk employees.

Seattle Independent Contractor Protections Ordinance



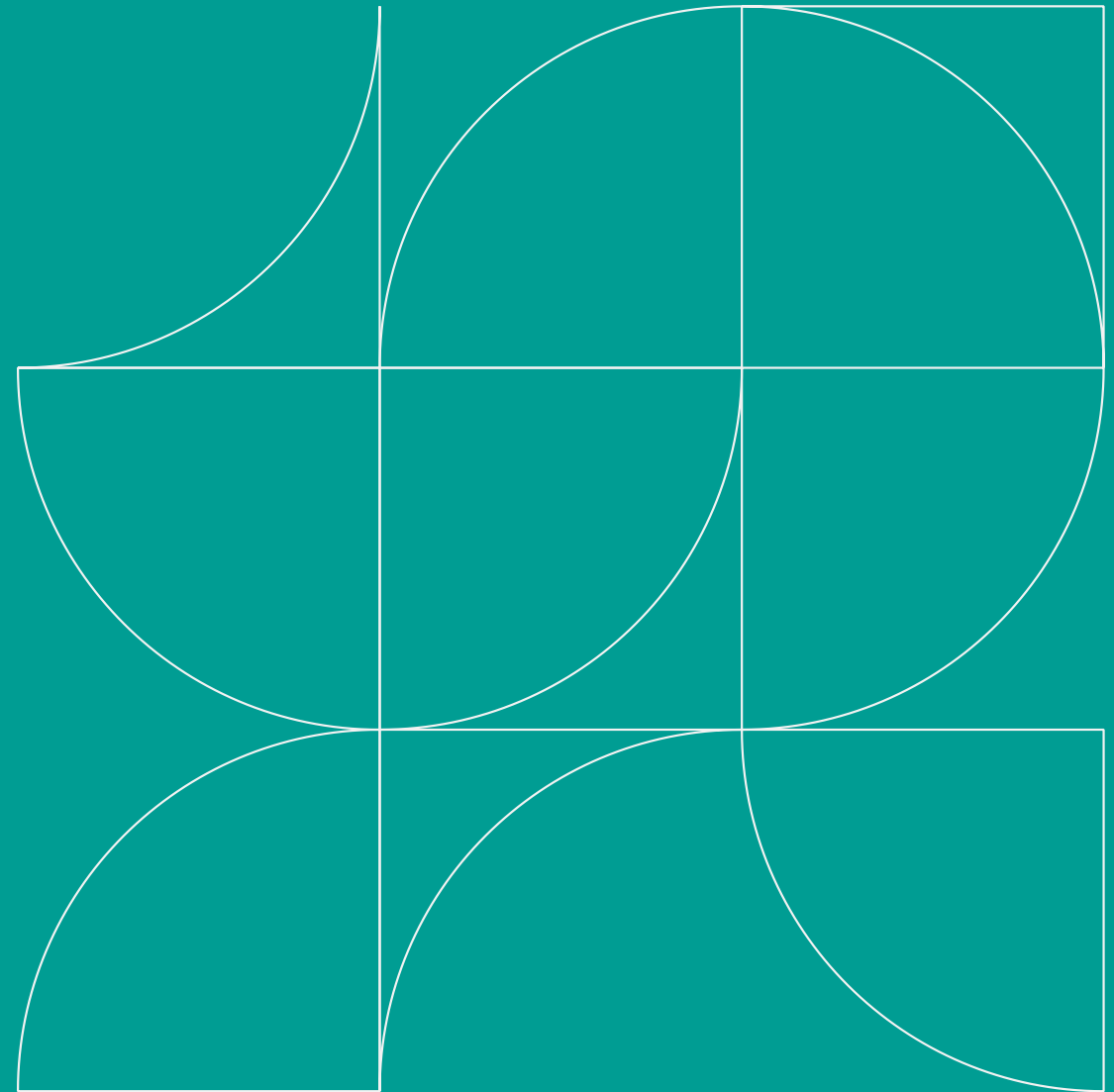
Seattle Independent Contractor Protections Ordinance – SMC 14.34

- Passed on June 14, 2021; **effective date September 1, 2022**
- Applies to any IC working within the geographic limits of the city
- IC defined broadly as “a person or entity composed of no more than one person, regardless of corporate form or method of organizing the person’s business that is hired by a hiring entity as a self-employed person or entity to provide services in exchange for compensation.”
- If:
 - 1) The work is performed in whole or part in Seattle;
 - 2) The hiring entity knows or has reason to know that the work is performed in whole or part in Seattle, and
 - 3) The hiring entity hires the independent contractor for services in the course of the hiring entity’s business or commercial activity.
- Expected compensation will be at least \$600
- Current exemptions: (1) Lawyers; (2) ICs where relationship with hiring entity is limited to a property rental agreement (hair stylist renting a booth at a salon); and (3) Others to be defined

Seattle Independent Contractor Protections Ordinance – SMC 14.34

- Disclosure requirements – prior to beginning work, prior to any change, and at the time of payment – **but not to Uber/Lyft**
- Must provide a **Notice of Rights** to the IC
- Timely payment requirements – per terms of K, within 30 days of completion
- Must maintain certain records for three years
- Offers ICs protection from retaliation
- **Rebuttable presumptions in favor of ICs**
 - **If there is an adverse action taken within 90 days of the exercise of rights (including asking about their rights under the ordinance), there is a rebuttable presumption of retaliation**
- OLS has authority to investigate, issue penalties
- Also provides a private right of action to the IC

Other Bills



Determining monthly wages for workers' compensation (SSB 5701)

- Governor signed on March 11; **effective date June 9, 2022**
- Adds method for computation of wages for workers' compensation purposes for inmates in correctional facilities.
- The monthly wage for workers' compensation purposes for any resident, inmate, or patient of a state, county, or municipal correctional, detention, treatment or rehabilitative institution must be computed on the basis of the usual wage paid other employees engaged in like or similar occupations where the wages are fixed.

Concerning ethics in public service rules governing certain legislative activity (HB 2046)

- Governor signed on March 11; **effective date June 9, 2022**
- Adds exemption to election year freeze law, allowing legislators and candidates to post certain information to their legislative website.
- Coordinates election year freeze timeline for legislative websites, social media sites, and mailers.

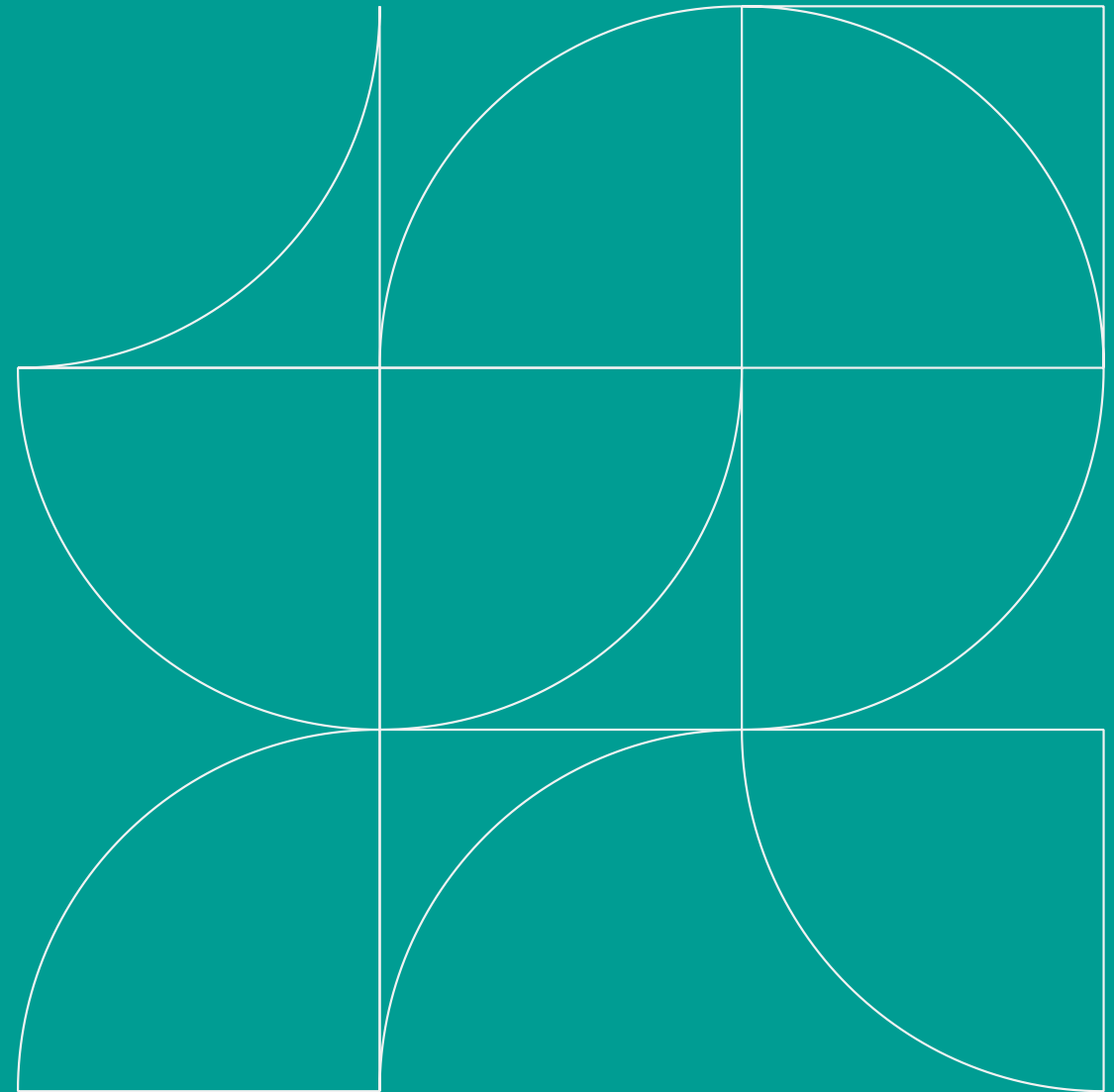
Concerning unemployment insurance, family leave, and medical leave premiums (SB 5873)

- Governor signed on March 11, 2022; **effective date March 11, 2022**
- This law decreases the premiums that employers need to make into the Unemployment Insurance.

SB 5875 - Delivered to Governor Inslee on March 7

- Adds employees employed by the Department of Licensing who are assigned to review, process, approve, and issue driver's licenses to the definition of "frontline employees" under the health emergency labor standards act (HELSA)
 - Provides protections associated with HELSA
 - a presumption of occupational disease for diseases covered by HELSA
 - Not on 3/17/2022 Bill Action Schedule

Questions?



Thank You

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