

WASHINGTON

A Multi-Faceted Approach to Worker Safety and Compensation During COVID is Paying Off

Introduction

States' responses to the COVID-19 pandemic with respect to workers' compensation policy will likely prove an important factor in providing critical support to workers while protecting employers from liability.

However, state workers' compensation programs, as currently constructed, are not well-designed to protect even front-line workers who are disproportionately vulnerable to contracting, becoming ill from, or dying due to COVID-19 (see the Academy's fact sheet for more information).ⁱ Moreover, only a minority of states have taken action to make it easier for those workers – hospital and health care staff, first responders, grocery store and warehouse stockers, delivery drivers, and others – to obtain compensation if they do become sick.



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Compounding this challenge, the federal Occupational Safety and Health Administration (OSHA) has issued voluntary guidance for workplaces, but no emergency temporary standard, and it has investigated few worker complaints about COVID-19 risks. As of September 15, roughly 10,000 complaints had been filed, but since OSHA closed the vast majority with no investigation, only 24 citations were issued.ⁱⁱ

As the pandemic continues, a more effective policy response will be needed to enable essential workers to do their jobs safely and securely and to receive adequate income support and medical care coverage.

What might such a policy response look like?

Washington State, where collaboration among workers' compensation and other agencies and departments has enabled both stronger protections for workers and more rigorous enforcement, provides a promising model.

SHARP – Safety & Health Assessment & Research for Prevention program, which was created within the state's Department of Labor & Industries (L&I), is at the heart of this model. SHARP, the workers' compensation exclusive state fund, and Washington State's occupational safety and health enforcement agency all reside in L&I, enabling close collaboration.

State Actions

Policy Enhancements: Washington has responded to the new threats posed by the pandemic with policy changes that expand presumptions for front-line workers. These changes reduce the otherwise high burden of

proof that sick employees would face and make it easier for essential and front-line workers to obtain compensation for COVID-related illnesses. Indeed, as the first state to be hit by the pandemic, Governor Jay Inslee issued an executive order on March 5 that compensates health care workers and first responders who need to self-quarantine for their lost wages and covers any medical expenses they incur.ⁱⁱⁱ

The program is guided by the belief that workplace injuries and illnesses are preventable; that there is no such thing as a ‘workplace accident,’ but rather a series of preventable exposures that lead to injury and illness.”

Creation of SHARP: In 1989, the state established SHARP, “a workplace safety and health research and prevention program within Washington State’s Department of Labor & Industries (L&I). The program is guided by the belief that workplace injuries and illnesses are preventable; that there is no such thing as a ‘workplace accident,’ but rather a series of preventable exposures that lead to injury and illness.”^{iv}

Research: In response to COVID-induced new and increased workplace health hazards, SHARP is conducting research and developing resources to address the pandemic’s impact on workers. This research supports state enforcement of COVID safety measures and boosts the effectiveness of state efforts through a complementary dual focus on prevention and monitoring/enforcement.

Help from SHARP with coding case data by industry and occupation enabled the Department of Health (DOH) to produce a publication on Confirmed Cases by Occupation and Industry. This cross-agency approach to the pandemic details the industry and occupation of Washington residents who have contracted COVID-19.^v The report explores data on over 12,000 confirmed COVID cases through mid-June 2020 for which there was attached employment information coded to standard occupations and industries. This represents just under half of the nearly 27,000 confirmed cases overall, and over half of state cases of prime-aged individuals, ages 18-64 years.^{vi} In other words, while incomplete, it allows the state to home in on troubling COVID “hot-spots” and provide workers in those industries and occupations with targeted support.

The SHARP report reveals that COVID cases are overrepresented relative to the percent employed in the state in several industries:^{vii}

- *Health care and social assistance* (31% of COVID cases, 13% of workforce)
- *Manufacturing* (12% of COVID cases, 9% of workforce)
- *Agriculture, forestry, fishing, and hunting* (11% of COVID cases, 3% of workforce)

At the other end of the spectrum, the report reveals how professional services, information, and corporate management are underrepresented, with employers in those industries largely insulated from exposure to, and impacts of, the virus.

Washington also collected data on race for the vast majority of occupation-coded cases, enabling SHARP to assess the role played by race and ethnicity. Key data points include:

- Among employed Hispanics, *Agriculture, forestry, fishing, and hunting* accounts for 12% of employment and 24% of COVID-19 cases.
- Among employed Blacks, *Health care and social assistance* accounts for 21% of employment and 58% of cases.

SHARP also produces a monthly report that describes workers’ compensation claims filed for COVID-19. The October report for February through September 14, 2020 shows over 3,800 claims filed, with two-thirds of those from health care and social assistance sector workers.^{viii} Almost half of those had positive laboratory tests associated with them, but only 44 reported hospitalizations and nine deaths. The vast majority of claims from

this sector — 94% — were accepted, much higher than the acceptance rate for any other industry with COVID claims or the overall average.^{ix}

As the authors note, however, these data fail to paint a full or accurate picture of COVID's impact:

Affected workers are under-represented in workers' compensation data, particularly outside of the healthcare sector. Washington's Confirmed Cases by Occupation and Industry Report summarizes all positive cases in the state, not just those associated with workers' compensation claims, and indicates a high burden of COVID-19 in the Manufacturing and Agricultural sectors.

Resources: Utilizing established relationships with business and labor organizations, SHARP has created targeted resources for workers in some of the highest-risk industries and occupations.

- *Janitors and custodians:* SHARP's **Janitorial Workload Study**, which employs a range of sources to identify risks particular to janitors and help reduce them, has also enabled the publication of safety tip sheets for the COVID-19 context with information for workers and employers in the janitorial services industry.
- *Truck drivers:* SHARP's **Trucking Injury Reduction Emphasis (TIRES) program** also developed COVID-19 tip sheets to support essential workers in the trucking industry.^x

Cross-agency collaboration: Washington is an OSHA state plan state, and the L&I promulgates and enforces health and safety standards, advancing a more comprehensive approach to worker safety. Indeed, the changes that were enacted early in the crisis complement other L&I work, outside of workers' compensation, that reinforce safety for front-line workers. The department's resources page points to citations and closure orders issued to businesses that violated state COVID safety requirements. Moreover, in contrast to minimal federal OSHA enforcement, DOSH (the state OSHA agency) has been very active. In the current environment, all DOSH enforcement and consultation activities review compliance with COVID-19-related health and safety regulations. From March 1 through September 30, 2020, DOSH completed 2,461 on-site inspections, of which 781 were specific to COVID and 270 of which resulted in at least one violation (COVID-19 or other). In this same time period, a total of 1,009 consultations were completed, with 373 of those specific to COVID. Additionally, over 7,000 COVID-related onsite spot checks and 6,000 education outreach contacts were made from June 1 through September 30, 2020.^{xi}

As Washington's example demonstrates, states that leverage the full range of legislative and executive strategies to boost protections not only make a meaningful difference for workers, but also put themselves in a stronger position to safely reopen businesses and keep COVID under better control.

In addition to enforcing federal OSHA regulations, the department of L&I has established state standards for dozens of industries in the general, construction, and agriculture sectors.^{xii} For example, the resource page also provides links to emergency housing requirements for migrant farmworkers that advance sanitation and social distancing, which are often impossible for these very vulnerable laborers to achieve.^{xiii}

Other departments also support these efforts, including through collaboration with SHARP. And SHARP research director Dave Bonauto notes that "Several SHARP staff, specifically epidemiologists, have helped DOH improve the quality of industry and occupation data collection and to clarify methods to identify worker COVID cases in workplaces where COVID is common among staff and residents (e.g. long-term care facilities)."^{xiv}

Perhaps the strongest evidence of Washington's relative success in supporting and protecting its workers comes from a recent report issued by OxFam, *The Best and Worst States to Work in America During COVID-19*.^{xv} Using a

range of data to assess states' levels of worker protection and support during the pandemic, the report ranks Washington first of all fifty states, D.C., and Puerto Rico. With respect to worker safety – one of three categories of data used to produce the rankings – Washington is second only to California. It gets strong marks for not only its workers' compensation provisions, but also for its paid sick leave policy, which provides critically needed flexibility, and for protecting workers against the forced returns to work and retaliation that exacerbate danger for workers in other states.

Conclusion/discussion

Workers' Compensation is only one of several tools available to states to improve protection for employees and reduce liability for employers, especially in high-risk industries. With such a heightened level of risk across the country, they need to leverage as many of these tools as they can. Washington State has combined data collection and analysis with enhanced workers' compensation provisions, education, and enforcement in its approach to the pandemic. As Washington's example demonstrates, states that leverage the full range of legislative and executive strategies to boost protections not only make a meaningful difference for workers, but also put themselves in a stronger position to safely reopen businesses and keep COVID under better control.

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- i Jay Patel, *Pandemic Highlights Disparities Across States, Injuries vs. Illnesses*, National Academy of Social Insurance. May 2020. <https://www.nasi.org/research/2020/pandemic-highlights-disparities-across-states-injuries-vs>.
 - ii Zubeck, Pam. "OSHA Fields Thousands of COVID-19 Complaints From Workers But Issues Few Citations." *Colorado Springs Ind.* Sep. 23. https://www.csindy.com/news/local/osha-fields-thousands-of-covid-19-complaints-from-workers-but-issues-few-citations/article_9c0ca1fa-fd49-11ea-af13-4b4119d3cce2.html
 - iii Only a minority of states have expanded presumptions as of this report's publication, nine of them via legislative action. The press release announcing Washington's executive order notes that "While L&I [the Washington Department of Labor and Industries] is taking this step to bolster coverage for certain types of workers, the agency is also encouraging employers to continue to pay workers who are quarantined after being exposed. Time loss is partial payment and does not replace a worker's entire income. Quarantined workers who continue to be paid by their employer may not need to file a workers' compensation claim." <https://www.governor.wa.gov/news-media/inslee-announces-workers-compensation-coverage-include-quarantined-health-workersfirst>
 - iv About SHARP, <https://lni.wa.gov/safety-health/safety-research/about-sharp>
 - v https://www.doh.wa.gov/Portals/1/Documents/1600/coronavirus/OccupationIndustryReport.pdf?utm_medium=email&utm_source=gov-delivery
 - vi Specifically, the 4,968 cases among people ages 18-44 represented 58% of those employed in that age group, and the 3,724 cases among those 45-64 represented 55% of workers in that age group.
 - vii As the researchers note, findings do not necessarily indicate that occupations with higher rates of infection are higher-risk, nor that employees contracted the virus at work; some occupations, like health care and agriculture, have targeted workers for testing, making it more likely they will be identified, and it is difficult to know where any given worker contracted COVID.
 - viii https://lni.wa.gov/safety-health/safety-research/files/2020/64_20_2020_wcCOVID_Nov.pdf (accessed Nov. 20, 2020)
 - ix While lack of data from many states makes comparisons difficult, early data from California paints a different but also troubling picture. Health care workers in that state accounted for just under 40% of claims filed through July 2020, with first responders representing an additional 16%. Other essential workers had much lower rates of filing; transportation workers, who are extensively exposed, accounted for just 5% of claims, and agricultural workers a mere 2.9% (or 893 cases out of the more than 200,000 farm workers across the state. Dworsky, Michael and Bethany Saunders-Medina, "Should COVID-19 Be Covered by Workers' Compensation? Some Considerations." The RAND Blog, August 31. <https://www.rand.org/blog/2020/08/should-covid-19-be-covered-by-workers-compensation.html>
 - x SHARP has also produced a range of COVID-19 resources and strategies for other industries, available at <https://lni.wa.gov/safety-health/safety-research/covid-19#industry-resources>.
 - xi Washington State Department of Labor and Industries, Coronavirus Response Workplace Safety and Health Data Dashboard. https://lni.wa.gov/agency/_docs/covid19datadashboard.pdf (accessed Oct 8, 2020)
 - xii <https://www.osha.gov/stateplans/wa>.
 - xiii <https://lni.wa.gov/agency/outreach/novel-coronavirus-outbreak-covid-19-resources>.
 - xiv Email exchange with Elaine Weiss, September 2020.
 - xv Rabb, William, "Alabama Worst, Washington State First for Workers During Pandemic, OxFam Says." Sep. 4, 2020. *WorkComp Central*. <https://www.workcompcentral.com/news/article/id/6a24e7c141e3f2b20cdb700e705a680a4d48642>