JAY INSLEE
Governor

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PROCLAMATION BY THE GOVERNOR AMENDING PROCLAMATIONS 20-05 and 20-25 et seq.

20-67

Food Production Workers Paid Leave

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 Washington State; 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 amendatory Proclamations 20-06 through 20-53 and 20-55 through 20-66, 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, has broadly spread throughout Washington State, significantly increasing the threat of serious associated health risks statewide; and

WHEREAS, reliability of food production and distribution systems are of vital importance to Washington state and the health of all Washingtonians; and

WHEREAS, under Proclamation 20-25 et seq. *Stay Home – Stay Healthy*, now retitled *Safe Start – Stay Healthy,* I deemed the food production industry, including food processing, and fruit, vegetable, nut, flower, grain, dairy, and livestock production essential; and

WHEREAS, tens of thousands of Washingtonians work outdoors tending and harvesting crops and livestock and are joined by tens of thousands of others who travel to Washington State to assist, and tens of thousands more work indoors packing, processing, and shipping the crops and livestock; and

WHEREAS, effective April 1, 2020, the federal Family First Coronavirus Response Act ("FFCRA") requires employers with fewer than 500 employees to provide emergency paid sick leave benefits to employees who are or may not be able to work due to impacts of COVID-19, but excludes employers with 500 or more employees; and

WHEREAS, migrant and seasonal farmworkers, and certain other workers in the food production industry are uniquely vulnerable, as the nature of their employment relationships means that any accrual of paid leave under the state's paid sick leave provisions is likely to be inaccessible or otherwise inadequate to cover a fourteen-day period of leave for isolation or recovery related to COVID-19; and

WHEREAS, many migrant and seasonal farmworkers, and certain other workers in the food production are not eligible for financial support from Unemployment Insurance or the federal Pandemic Unemployment Assistance program; and

WHEREAS, without certain and immediate access to paid sick leave for absences related to COVID-19, food production workers who may have contracted or been exposed to COVID-19 may feel compelled to work, but with certain and immediate access to paid sick leave, workers will be incentivized to remain home to reduce the potential spread of the virus among workers, promote the safety of food production workers and communities, and help protect Washingtonian's supply of locally grown food; and

WHEREAS, I created the Washington COVID-19 Food Production Paid Leave Program, allocating $3,000,000 to offset the leave expenditures mandated by this proclamation; and

WHEREAS, on June 13, 2020, there were at least 25,538 cases of COVID-19 in Washington State with 1,213 associated deaths; on July 13, 2020, there were at least 41,757 cases with 1,399 associated deaths; and now, on August 12, 2020, there are currently at least 64,702 cases of COVID-19 in Washington State with 1,724 associated deaths, demonstrating the ongoing, present, and persistent threat of this lethal disease; and

WHEREAS, the worldwide COVID-19 pandemic and its progression in Washington State continue to threaten the life and health of the people and the economy of Washington State, and remain a public disaster affecting life, health, property or the public peace; and

WHEREAS, the 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 coordinating 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 coordinating 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 Chapters 38.08, 38.52 and 43.06 RCW, do hereby proclaim and order that a State of Emergency continues to exist in all counties of Washington State, and that Proclamation 20-05 and all amendments thereto remain in effect as otherwise amended and that, to help preserve and maintain life, health, property or the public peace pursuant to RCW 43.06.220(1)(h), all provisions of Proclamations 20-25 et seq. shall remain in full force and effect, except for the specific conditions to such prohibitions set forth below, the intent of which is to provide food production workers who do not have access to other state and federal sick leave programs with paid emergency supplemental sick leave ("Paid Leave") that can be used upon hire for reasons related to the COVID-19 pandemic.

FURTHERMORE, I hereby modify those provisions of Proclamations 20-25 et seq. applicable to essential workers and workplaces to prohibit any food production employer from continuing to operate between August 18, 2020, and November 13, 2020, unless the food production employer ("Employer") provides its workers ("Covered Workers") with emergency supplemental paid sick leave ("Paid Leave") for a qualifying event subject to the following terms:

<u>Covered Employers</u>

- To the extent the Employer engages the services of any individual outside of the Employer's immediate family, Employers subject to this Proclamation include those operating
  a) Orchards, fields, and dairies;
  b) All other industries expressly identified in WAC 296-307-006, except timber tracts, Christmas tree growing, tree farms, forest nurseries, and forestry services;
  c) Fruit- and vegetable-packing warehouses, whether owned by the grower or producer or not; and
  d) Meat and seafood processors and packers, including those falling under the 3116 and 3117 NAICS industry codes.
- Employers covered by this proclamation include farm labor contractors under chapter 49.30 RCW if paying wages to a Covered Worker.

<u>Covered Workers</u>

- Covered Workers under this Proclamation are defined as food production workers who have commenced providing services to a covered Employer. Covered Workers include, but are not limited to:
  a) Domestic workers, i.e., Washington State-based workers, including those domiciled in Washington;
  b) "Seasonal or migrant workers," as defined by the federal Migrant and Seasonal Agricultural Worker Protection Act (MSPA); and
  c) Temporary foreign workers who are lawfully present in the United States to perform agricultural labor or services of a temporary or seasonal nature pursuant to Title 8 U.S.C. Sec. 1101(a)(15)(H)(ii)(a) of the immigration and nationality act.

- Workers not covered under this Proclamation include Workers who are subject to and provided leave under the FFCRA.
- Covered Workers do not have to be classified by the hiring entity of Employer as an employee to be covered.

Qualifying Events

- Covered Workers are entitled to use Paid Leave upon the occurrence of any of the following qualifying events:
    a) The Covered Worker is subject to a federal, state, or local quarantine or isolation order related to COVID-19;
    b) The Covered Worker is advised by a health care official or provider to self-quarantine or self-isolate due to concerns related to or a positive diagnosis of COVID-19;
    c) The Covered Worker is prohibited from working due to health concerns related to the potential transmission of COVID-19; or
    d) The Covered Worker is experiencing COVID-19 symptoms and is seeking a medical diagnosis.

Paid Leave

- Employers must provide Covered Workers with Paid Leave at the time of and for the duration of a qualifying event, as follows:
    a) Up to 80 hours to Covered Workers scheduled to work "full-time" or scheduled to work at least 40 hours in the preceding two weeks, except Employers must substitute such Paid Leave with any other paid sick leave provided, including leave provided to meet the agricultural employer's obligations under the Washington paid sick provisions of RCW 49.46 and associated rules, if that leave is immediately available under the same terms described here.
    b) Covered Workers scheduled to work less than "full-time" and less than 40 hours in the preceding two weeks shall receive Paid Leave equal to the total number of hours they are normally scheduled during that two-week period, or if the Covered Workers work a variable number of hours, fourteen times the average number of hours the Covered Worker worked each day in the period preceding the date the worker took Paid Leave.
    c) Each hour of the emergency supplemental paid sick leave must be compensated at a rate equal to $430 for 40 hours, up to a maximum of $860 for 80 hours.

Adverse Employment Action

- Employers shall take no retaliatory or adverse employment actions against a Covered Worker or any other employee for exercising or seeking to exercise rights under this Proclamation.

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 in the opinion of The Adjutant General to address the circumstances described above, to perform such duties as directed by competent authority of the Washington State Military Department in addressing the outbreak. Additionally, I continue to direct the Department of Health, the Washington State Military Department Emergency Management Division, and other agencies to identify and provide appropriate personnel for conducting necessary and ongoing incident related assessments.

Violators of this order may be subject to criminal penalties pursuant to RCW 43.06.220(5).

This order is in effect until the earlier of its termination or the expiration of Proclamation 20-25, as amended.

Signed and sealed with the official seal of the state of Washington on this 13th day of August, A.D., Two Thousand and Twenty at Olympia, Washington.

By:

/s/
Jay Inslee, Governor

BY THE GOVERNOR:

/s/
Secretary of State