The Firehouse Lawyer

Volume 23, Number 1

January 2025

Be sure to visit firehouselawyer.com to get a glimpse of our various practice areas pertaining to public agencies, which include labor and employment law, public disclosure law, mergers and consolidations, financing methods, risk management, and many other practice areas!!!

Eric T. Quinn, Editor

Joseph F. Quinn, Staff Writer

The law firm of Eric T. Quinn, P.S. is legal counsel to more than 40 Fire Departments in the State of Washington.

Our office is located at:

7403 Lakewood Drive West, Suite #11
Lakewood, WA 98499-7951

Mailing Address: See above
Office Telephone: 253-590-6628
Joe Quinn: 253 576-3232

Email Joe at joequinn@firehouselawyer.com
Email Eric at ericquinn@firehouselawyer2.com

Access and Subscribe to this Newsletter at:
firehouselawyer.com

Inside this Issue

.

CHANGES COMING FOR AMBULANCE BILLING

For those fire departments that charge patients for ambulance transports, there may be some significant changes in the offing. House Bill 1187 has only two sections, but this new law—if adopted and signed by the Governor—would modify billing practices on and after January 1, 2026.[1]

Section 2 of the bill would add a new section to RCW 43.70, requiring the State Department of Health (DOH) to develop a standard consumer notice, educating the public on the different types of insurance that may cover a motor vehicle accident (MVA). The DOH shall consult, to develop the form of notice, with the insurance commissioner, ambulance services, health carriers, insurers and consumers. At a minimum, the notice must also include "the order in which the different types of insurance are applied to ambulance services, the insured's rights, and other information that would assist a person who has received an ambulance bill" following an MVA.

Section 1 of the bill would add a new section to chapter 18.73 RCW, requiring each ambulance service to "attempt to collect" insurance information from patients involved in MVAs. Also, at the time of transport the ambulance

[1] https://lawfilesext.leg.wa.gov/biennium/2025-26/Pdf/Bills/House%20Bills/1187.pdf?q=20250107123506

service shall attempt to provide the patient with the consumer notice mentioned above in the discussion of Section 2 of the bill. Section 1 is also made effective on January 1, 2026.

Finally, within 60 days after the transport, the ambulance service must provide the required notice if it has not done that already, and must bill the patient within that period as well.

The obvious purpose of this bill is to eliminate any chance of a surprise bill or a delayed bill, charging patients for ambulance transports. By its terms the law would be applicable to both private and public ambulance services.

BALANCE BILLING PROTECTION ACT CHANGES EFFECTIVE NOW

Unlike the above proposed bill, the law discussed here is *already* in effect, as of January 1, 2025. The Balance Billing Protection Act, adopted in 2019 to protect consumers form surprise medical bills, was amended to add RCW 48.49.200.[2]

This new section of the law provides that, effective January 1, 2025, ground ambulance services organizations (GASOs) may not "balance bill" insured patients for any covered ground ambulance services. This means that the ambulance service may only bill for the insured portion of the cost.

It is a bit confusing due to RCW 48.49.200(8), which provides that GASOs are not considered "providers" for purposes of chapter 48.49 RCW. That subsection also provides that four sections of the chapter do **not** apply to GASOs either: RCW 48.49.020, -.030, -.040 and -.160. It is interesting to note, however, that the GASOs are NOT excluded from the terms of RCW 48.49.060, which requires the state of Washington Commissioner of Insurance to develop standard template language for a consumer notice, notifying consumers of their rights regarding balance billing, The third subsection of RCW 48.49.060 states that the commissioner will determine "when and in what format" GASOs and others will provide the notice.

Meanwhile, the office of the Insurance Commissioner has already issued its guidance on the matter of notice.[3] The form of notice is included on the web site of the Insurance Commissioner and specifically refers to both ground and air ambulance billing in its discussion of "emergency services." Therefore, as of January 1, 2025, if your agency is a GASO and it charges patients for ambulance transports, the new section of RCW 48.49 seems to require giving the patient such a notice.

To be clear, this notice is only required if the GASO employs more than 50 employees.[4] The notice must be posted on the GASO's website—if the GASO maintains one—in a prominent location; and the notice must be communicated to the patient within 72 hours of emergency services, pursuant to WAC 284-43B-050 (2)(b)(i).

---

2 https://app.leg.wa.gov/RCW/default.aspx?cite=48.49.200

3 https://www.insurance.wa.gov/sites/default/files/documents/consumer-notice-surprise-billing-2024-FINAL.pdf

4 https://app.leg.wa.gov/WAC/default.aspx?cite=284-43B-050

ANOTHER STATUTORY CHANGE TO BE AWARE FOR EMPLOYERS

RCW 49.46.210, relating to paid sick leave, was also amended, effective January 1, 2025.[5] This important change affects how employers should approve or disapprove sick leave requests by employees needing to provide care for a family member with an illness, injury or health condition necessitating medical services.

There is a wide broadening of the definition of "family member" in this amended law. The language of concern is found in the new version of RCW 49.46.210(2)(a) primarily. The new definition includes not only the traditional relationships to the employee (such as child, grandchild, grandparent, etc.) but also now includes "any individual who regularly resides in the employee's home or where the relationship creates an expectation that the employee care for the person and that individual depends on the employee for care."

Now let's explore some ambiguities in this language and see if we can discern any dilemmas for the employer in this new language. First, it appears that the sick person need not regularly reside in the employee's home, as that language is written in the disjunctive ("or"). Thus, the individual may only have an "expectation" that the employee will provide such care if needed, regardless of residency. The law is unclear about how the employer is supposed to know or determine what the sick individual's expectation of care is!

But it gets trickier than that: the language also requires (it says "and") that the individual does in fact "depend" on the employee for care. Indeed, in the last sentence of the subsection, the statute provides that the term "family member" does not include someone who simply resides in the home of the employee but does not have any expectation of care by the employee. Does the employer have the right to inquire as to the expectations of the individual, when that person is not an employee of the employer? That seems tenuous at best. But shouldn't the employer be able to adopt a sick leave policy that requires the employee to aver, by affidavit or declaration under penalty of perjury, that the sick individual relies on them for such care?

We are still examining the statute to learn of any other nuances that are new and different, but the above discussion will do for now. Suffice it to say that all public employers need to review their sick leave policies and maybe even their collective bargaining agreements to see if they are still consistent with the state law.

REMINDER ABOUT JOB POSTINGS

We were reminded recently about RCW 49.58.110,[6] a statute that requires all postings of job openings to disclose the wage scale or policy range, and a general description of benefits and other compensation. This law, applicable to all employers with 15 or more employees, applies to job postings done directly by the employer or through a third party. Before 2022, the law only required employers to provide such information once an offer of employment was made.

---

5 https://app.leg.wa.gov/RCW/default.aspx?cite=49.46.210

6 https://app.leg.wa.gov/RCW/default.aspx?cite=49.58.110

Firehouse Lawyer

Volume 23, Number 1 January 2025

THE FEDERAL FLAG CODE

The following article is a lightly edited reprinted article that appeared in the *Firehouse Lawyer* about 18 years ago, in June 2007:

A recent client question, which may be interesting to many fire departments around the nation, relates to when it is appropriate (or legal) to lower the U.S. flag at the station to half-staff. Specifically, the facts are that a former chief of the department, who led that district in the 1970's, recently passed away. Many of the senior volunteer members of the department felt it would be appropriate to honor his memory by flying the flag at half-staff, so they asked the Fire Chief and he called me. I admitted that no one had ever asked the question of me in more than 20 years of focusing on the legal aspects of the fire service, but I would perform some research. The Chief said he had already done some "web surfing" and found the Federal Flag Code. I took it from there.

Prior to Flag Day, June 14, 1923, there were no federal or state regulations governing display of the U.S. Flag. The National Flag Code was adopted on that date, but it was not until 1942 that the Congress passed a joint resolution. Codified in the U.S. Code at 36 U.S.C. Sections 171-178, the Flag Code now includes rules for use and display of the flag as well as associated sections related to conduct during the playing of the National Anthem, the Pledge of Allegiance to the Flag, and Manner of Delivery of the flag.

These statutory sections do not include any civil or criminal penalties for non-compliance with the Federal Flag Code, so the rules are essentially guidelines. Congress has adopted some criminal laws relative to the flag but they have sometimes not fared well in the courts. In Texas v. Johnson, 491 U.S. 397 (1989), the Supreme Court ruled unconstitutional the criminal sanctions. The Flag Protection Act of 1989 prohibited knowingly mutilating, defacing, physically defiling, maintaining on the floor or trampling upon any U.S. flag, but the Supreme Court struck that law down in United States v. Eichman, 496 U.S. 310 (1990). Thus, essentially the First Amendment rights of free speech override any such federal criminal laws. Nevertheless, the Flag Code does provide us with considerable guidance on the use, treatment, display, and showing of respect for our national symbol.

Section 7 (m) of the Flag Code addresses the question of flying the flag at half-staff, but does not directly answer the question posed by my client. Procedurally, that section specifies that the flag, when flown at half-staff, should be first hoisted to the peak for an instant and then lowered to the half-staff position. The flag should be again raised to the peak before it is lowered for the day. (Please note that section 6(a) states that, while it is customary to display the flag only from sunrise to sunset, when a "patriotic effect" is desired, the flag may be displayed 24 hours a day if properly illuminated during the hours of darkness.)

Substantively, section 7(m) also tells us when and how long to fly the flag at half-staff. On Memorial Day, the flag should be displayed at half-staff until noon only, then raised to the top of the staff. By Presidential order, the flag shall be flown at half-staff upon the death of principal figures of the U.S. Government and the Governor of a State, territory, or possession of the U.S. In the event of the death of other officials or foreign dignitaries, the flag is to be displayed at half-staff according to Presidential instructions or orders, "or in accordance with recognized customs or practices not inconsistent with law."

Having given some thought to that last clause or phrase, I recommended to my client that a fire district, in my opinion, could adopt a resolution declaring its custom or practice to honor the memory of "officials" such as present or former commissioners or Fire Chiefs. I believe some cities have done the same thing, either by resolution or ordinance, delegating to the Mayor the power to determine when flying the flag at half-staff is appropriate and for how long. My client representatives and I prepared a resolution, the draft of which includes line of duty firefighter (and other active member) deaths in the list of precipitating events. We recommended flying the flag in that manner on the day of death (or notification thereof) and on the day of any service honoring the person's memory.

Since virtually every public fire station displays the U.S. flag, we would recommend that all fire departments familiarize themselves with the rules, in order that proper respect for the flag is shown at all times.

IS DEI DEAD AT THIS POINT?

We have written in this newsletter before about programs or policies designed to foster, diversity, equity, and inclusion (DEI).[7] Of course, most of our concern is with DEI in public employment contexts. The question now arises, after President Trump signed an Executive Order this month aimed at eradicating DEI programs throughout the federal government, whether DEI programs created in Washington State by public agencies are viable any longer.[8] Or is the executive order only applicable in the federal government agencies?

It is our opinion that DEI policies of local governments, including fire districts and regional fire authorities, are unaffected by this change in federal policy, despite how controversial this subject may be.

Historically in Washington, it has sometimes been difficult to recruit women and minorities into the fire service. To us, it might make sense in rural communities that have very small minority populations, that diverse recruiting would yield small returns. But recruiting women should be at about the same degree of difficulty in both rural and urban environments.

Washington law has not changed on this topic. The Washington Law Against Discrimination still tends to foster diversity, as it bans discrimination (inter alia) in employment against women and minorities, as well as persons with disabilities.

---

7 https://www.firehouselawyer.com/Newsletters/August2020FINAL.pdf

8 https://www.whitehouse.gov/presidential-actions/2025/01/ending-illegal-discrimination-and-restoring-merit-based-opportunity/

https://www.whitehouse.gov/presidential-actions/2025/01/ending-radical-and-wasteful-government-dei-programs-and-preferencing/