



PRESS RELEASE

Biden Administration Seeks to Throw Out WA Worker Comp Law That Helps Hanford Workers Get Compensation

US Justice Dept. [Appeals Ninth Circuit Decision](#) Upholding WA State Law

“A Shame and a Disgrace,” says Hanford Challenge

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Seattle, WA: The U.S. Department of Justice has appealed a Ninth Circuit decision upholding a Washington law that provides the most comprehensive legislation designed to provide Hanford nuclear site workers one of the best medical compensation programs in the nation.

“We are appalled that President Biden’s U.S. Department of Justice is seeking to dismantle Washington State’s law that was passed to improve the standards that Hanford nuclear site workers must meet in order to receive worker compensation benefits,” said Tom Carpenter, Executive Director of Hanford Challenge, a non-profit organization that works to protect Hanford workers and the public from Hanford’s chemical and radiological contamination.

“In 2018, Washington State recognized the often terrible price Hanford workers on the front lines of nuclear production and cleanup have to pay for their service to the nation,” said Carpenter, “and the law removes the unfair barriers that prevent workers from qualifying for worker compensation, despite working at the most contaminated and hazardous site in the nation.”

House Bill 1723 was introduced in the WA Legislature in 2018, and created a "presumption of causation" in Washington's Labor & Industries law for Hanford workers seeking compensation for illnesses and injuries due to work exposures. The law cleared the legislature and was signed into law by Governor Jay Inslee in March 2018. It took effect in June 2018.

The law’s passage was in part motivated by the testimony of numerous Hanford workers who had become sickened with serious and long-term illnesses resulting from exposure to toxic vapors from Hanford’s nuclear waste tanks. A recently-conducted survey of Hanford workers by the WA State Commerce Department found that over half of the workers who responded to the survey had been exposed to toxic vapors.

The toxic vapor exposures were made worse by Hanford’s continued refusal to provide adequate respiratory protection to tank farm workers, even as hundreds of workers were sent for medical

evaluation and hospitalized. In 2014, Hanford Challenge, along with UA Local 598 and the WA State Attorney General’s office filed a federal court action. That case was settled in September 2018. Recently, Hanford has been once again reducing the respiratory protection requirements, resulting in new tank farm exposures.

In December 2018, the U.S. Department of Justice (DOJ) sued Washington State, seeking to declare the law unconstitutional. A U.S. District Court, in an opinion¹ issued in June 2019, rebuffed that effort and upheld the law.

In August 2019, the US DOJ appealed the case to the Ninth Circuit Court of Appeals. In an opinion by a three-judge appeals panel in August 2020, the court once again upheld Washington’s law. The appeal to the U.S. Supreme Court was filed on September 8, 2021.

The Justice Department has argued that the Washington law runs afoul of the Supremacy Clause of the U.S. Constitution. However, the courts below disagreed, pointing out that Congress had enacted a statute (Title 40 of the US Code, section 3172) that allowed individual states the ability to institute worker comp laws at federal facilities in their states, finding that –

“By removing federal jurisdiction as a barrier to application of state workers’ compensation laws to those who work on federal land located in the State, Section 3172 authorizes the State to apply to such land the authority it has over workers’ compensation in its exclusive jurisdiction. Subject to constitutional constraints, the States possess broad authority to enact laws that are reasonably deemed to be necessary to promote the health, safety, and general welfare of those in its jurisdiction, including workers’ compensation laws.”²

“Thus, HB 1723 falls within the scope of Section 3172’s waiver and does not violate the doctrine of intergovernmental immunity.” (Ninth Circuit decision, at 20).

The Washington State law, enacted as House Bill (HB) 1723, relieves Hanford workers of having to show the exact chemical or toxin that they may have been exposed to while working at Hanford that caused an illness, including respiratory, heart, neurological diseases, and certain cancers.

Other provisions of HB 1723 include:

- workers, and families of workers who have died, and been denied compensation in the past can refile a claim under the new standards;
- any Hanford worker who has worked a single 8-hour shift on the site itself is covered;

¹ *United States v. State of Washington*, No. 18-cv-5189 (June 13, 2019).

² *United States Court of Appeals (9th Cir.), United States v. State of Washington*, 971 F.3d 856 (Aug. 19, 2020) (initial panel opinion), at p. 19.

- the law allows claims to be filed any time within the lifetime of the worker, without regard to the law's date of passage, acknowledging the long latency periods for exposure to many toxins such as asbestos, beryllium and radiation. In other words, a condition that develops from an exposure that occurred years ago would still be covered;
- Once a worker establishes a prima facie case of causation, the employer's rebuttal must be proved by clear and convincing evidence.

National studies have also documented the higher rates of cancer and other diseases among DOE nuclear site workers.

“Hanford workers deserve the kind of legislative reform they received that will help enable them to get that compensation and medical care resulting from illnesses caused by working at Hanford,” said Carpenter. “It is heart-breaking that the Biden Administration is continuing the Trump Administration assault on this law, which is providing much-needed compensation and medical care to workers sickened from exposure to Hanford’s deadly toxins.”

The U.S. Supreme Court will decide in the next few weeks whether to accept the Department of Justice’s appeal. If it does, it will set a briefing schedule and set up an oral argument for the case sometime next year. If the court does not accept the case, then the Ninth Circuit’s decision is the final word on the case.

Background

The Hanford nuclear site operated for 45 years to make plutonium, the highly radioactive fuel that is the engine for nuclear weapons. The site was a giant industrial concern, hosting nine nuclear production reactors, five chemical reprocessing facilities, and employing thousands. It was also operated under strict secrecy, with no outside oversight.

Hanford generated millions of tons of radioactive and chemical contaminants, many of them poorly understood from a health perspective. The national security mission made health and safety a backseat concern. Tens of thousands of workers were exposed to a vast array of highly toxic and radioactive materials, often with zero monitoring or documentation.

Even after Hanford shuttered its plutonium-making mission in 1989, a new era of cleanup began. New generations of workers continued to be exposed to a toxic soup of known cancer-causing, disease-inducing substances. More workers continue to get sick. Hanford cleanup will last decades, and is entering even more dangerous phases as demolition proceeds and work to treat Hanford’s high-level tank waste ramps up.

- Hanford workers’ claims are denied at five times the rate of other self-insured employers (averaged over the past 5 years).
- Hanford workers are forced to go to Independent Medical Exams that violate state standards.

- Hanford workers who contest the denial of their claims are met with aggressive DOE legal tactics that interfere with objective claims management and create an uneven playing field.
- Hanford's workers' compensation program is fraught with opportunities for DOE interference.

Read the Washington State Office of the Attorney General press release, [here](#).
Read the U.S. Department of Justice Appeal [here](#).

www.hanfordchallenge.org