

Tri-City Herald

Hanford ill worker compensation case appealed to U.S. Supreme Court

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The U.S. Department of Justice has filed an [appeal with the U.S. Supreme Court](#), continuing challenges to Washington state's law making it easier for ill Hanford workers to be compensated.

The Supreme Court is expected to decide in the next few weeks whether to accept the Department of Justice appeal.

If it does not, the Department of Justice will be out of options to appeal the law and it will stand.

The Trump administration had fought the law, losing the case it brought in U.S District Court in Eastern Washington and an appeal to the Ninth Circuit Court of Appeals.

Now the Biden administration also is fighting the law passed by the Washington state Legislature in 2018.

“This lawsuit angered me when the Trump administration filed it — and it continues to anger me now that the Biden administration is continuing it,” said Bob Ferguson, Washington state attorney general.

He called for the Biden administration to withdraw the appeal immediately, saying he could not believe that Biden, as a long-time champion of American workers, had been consulted on the appeal.

“President Biden must agree that Hanford workers should be able to access the benefits they earned, including workers' compensation,” he said.

The Washington state law makes it easier for ill Hanford workers to qualify for state worker compensation benefits.

It requires the Washington state Department of Labor and Industries to presume that radiological or chemical exposures at Hanford caused any neurological diseases or respiratory illnesses claimed by past or current employees of Hanford contractors.

Many types of cancer also are presumed to be caused by working at Hanford, plus some limited heart problems, under the new law.

Workers no longer have to prove that not only that their illness was not caused by something else in their lives, but that an exposure to a specific chemical caused their illness. Some 1,500 different volatile gases have been found in waste in Hanford's underground tanks.

Most other workers in Washington state bear the burden of proof to show that their injury or illness was a direct result of a specific workplace incident in order for them to be paid workers' comp.

"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," said Tom Carpenter, executive director of Hanford Challenge, a Seattle-based worker advocacy group.

[Hanford in Eastern Washington](#) was used during World War II and the Cold War to produce plutonium for the nation's nuclear weapons program. Now about 11,000 workers are employed there to cleanup up radioactive and other hazardous chemical contamination and waste.

[Previous Hanford rulings](#)

"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," Carpenter said.

In June 2019, U.S. Judge Stanley Bastian found that the new law does not violate the Supremacy Clause because Congress has authorized several states to regulate workers' compensation on federal land to the same extent that they can regulate non-federal land.

He found that the state of Washington [can create workers' compensation laws](#) to address particular risks to employees in the state.

Firefighters in the state also have different workers' compensation rules, although the rules are more restrictive than for Hanford contractor employees.

The Department of Justice appealed the ruling to the 9th Circuit Court of Appeals, which ruled unanimously in August 2020 that the state has a right to create [laws that make it easier for ill workers at the Hanford site](#) to get workers compensation.

The ruling by the three judges on the panel considering the case was unanimous.

As the Legislature was considering easing workers' compensation requirements for Hanford contractor employees, workers and union supporters testified that Hanford workers are often subjected to hazardous exposures, with no one, including DOE officials, knowing which chemicals a particular worker may have been exposed to.

A [survey of Hanford workers](#) by the Washington State Commerce Department recently found that over half of the workers who responded to the survey had been exposed to toxic vapors.

The [Department of Justice has argued](#) that the description of covered illnesses in the state's Hanford law is so vague that it could cover hundreds of commonly occurring illnesses, including asthma, chronic bronchitis, Parkinson's disease, Alzheimer's disease and strokes, the Department of Justice said.

Rather than having two years to file a claim with the state like most employees in Washington, Hanford workers who spend a minimum of one eight-hour shift at Hanford work areas could file throughout their lifetime under the new law. Or their survivors could file after their death, the Department of Justice has argued.

Federal compensation program

Hanford workers and their survivors also may apply for a [federal compensation program](#) administered by the U.S. Department of Labor. It has paid out \$1.9 billion in compensation and medical reimbursement to ill Hanford workers and their survivors.

Workers can learn more about state and federal compensation programs and how to apply for them at the Hanford Workforce Engagement Center at 309 Bradley Blvd., Suite 120, in Richland. The center can be reached at 509-376-4932.