



# RULE-MAKING ORDER

## CR-103 (June 2004) (Implements RCW 34.05.360)

**Agency:** Department of Labor and Industries

- Permanent Rule  
 Emergency Rule

**Effective date of rule:**

**Permanent Rules**

- 31 days after filing.  
 Other (specify) \_\_\_\_\_ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

**Effective date of rule:**

**Emergency Rules**

- Immediately upon filing.  
 Later (specify): June 18, 2007

**Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?**

- Yes  No If Yes, explain:

**Purpose:**

See Attachment 1

**Citation of existing rules affected by this order:**

Repealed: n/a  
 Amended: n/a  
 Suspended: n/a

**Statutory authority for adoption:** RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060

**Other authority :** None

**PERMANENT RULE ONLY (Including Expedited Rule Making)**

Adopted under notice filed as WSR \_\_\_\_\_ on \_\_\_\_\_ (date).  
 Describe any changes other than editing from proposed to adopted version:

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name: \_\_\_\_\_ phone ( ) \_\_\_\_\_  
 Address: \_\_\_\_\_ fax ( ) \_\_\_\_\_  
 e-mail \_\_\_\_\_

**EMERGENCY RULE ONLY**

Under RCW 34.05.350 the agency for good cause finds:

- That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.  
 That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding:

See Attachment 1

**Date adopted:** June 5, 2007

**NAME (TYPE OR PRINT)**  
 Judy Schurke

**SIGNATURE**

**TITLE**  
 Director

**CODE REVISER USE ONLY**

OFFICE OF THE CODE REVISER  
 STATE OF WASHINGTON  
 FILED

DATE: June 05, 2007  
 TIME: 4:19 PM

**WSR 07-12-086**

(COMPLETE REVERSE SIDE)

**Note: If any category is left blank, it will be calculated as zero.  
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.  
A section may be counted in more than one category.**

**The number of sections adopted in order to comply with:**

<b>Federal statute:</b>	New	_____	Amended	_____	Repealed	_____
<b>Federal rules or standards:</b>	New	_____	Amended	_____	Repealed	_____
<b>Recently enacted state statutes:</b>	New	_____	Amended	_____	Repealed	_____

**The number of sections adopted at the request of a nongovernmental entity:**

New	_____	Amended	_____	Repealed	_____
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**The number of sections adopted in the agency's own initiative:**

New	<u>8</u>	Amended	_____	Repealed	_____
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**The number of sections adopted in order to clarify, streamline, or reform agency procedures:**

New	_____	Amended	_____	Repealed	_____
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**The number of sections adopted using:**

<b>Negotiated rule making:</b>	New	_____	Amended	_____	Repealed	_____
<b>Pilot rule making:</b>	New	_____	Amended	_____	Repealed	_____
<b>Other alternative rule making:</b>	New	<u>8</u>	Amended	_____	Repealed	_____

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**Purpose:**

The Washington State Constitution mandates that “The legislature shall pass laws for the protection of persons working in mines, factories, and other employments dangerous to life or deleterious to health.”<sup>1</sup> In enacting Chapter 49.17 RCW, Washington Industrial Safety and Health Act (WISHA), the Washington Legislature found “that personal injuries and illnesses arising out of conditions of employment impose a substantial burden upon employers and employees in terms of lost production, wage loss, medical expenses, and payment of benefits under the industrial insurance act. Therefore, in the public interest for welfare of the people of the state of Washington and in order to assure, insofar as may be reasonably possible, safe and healthful working conditions for every man and woman working in the state of Washington, the legislature...in keeping with the mandates of Article II, section 35 of the state Constitution, declares its purpose by the provisions of this chapter to create, maintain, continue, and enhance the industrial safety and health program of the state...”<sup>2</sup>

WISHA mandates that the Director of L&I shall “[p]rovide for the promulgation of health and safety standards and the control of conditions in all work places concerning...harmful physical agents which shall set a standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity.”<sup>3</sup>

On July 18, 2005, a farm worker collapsed while cutting weeds with a machete in hop fields near Yakima. He died, and the coroner ruled that the cause of death was heat-related illness. L&I investigated the death and later cited and fined the company for an inadequate safety program, not providing drinking water, and lack of training for workers. The safety program should have included a plan to prevent heat-related illness by providing rest breaks, shade, worker hydration and administrative controls such as a work-rest regimen.

The citation was issued December 23, 2005, and the subsequent appeal was affirmed with a negotiated penalty of \$3,000. L&I did not seek criminal sanctions since the violations cited were not considered willful (a prerequisite for a referral to a county prosecuting attorney).

Immediately following this workplace death, L&I heard from farm worker advocates that they were very concerned about this fatality and that they wanted an emergency rule issued similar to California’s emergency heat-stress rule. L&I responded by issuing a hazard alert to the agriculture industry, and then proceeded with a study to determine what was needed to protect workers for the 2006 summer season.

L&I reviewed the workers’ compensation injury and illness claims for the past 10 years and found that one other person had died from heat-related illness in Washington (also in the Yakima area in a lawn-service business). L&I also found approximately 450 workers’ compensation claims for heat-related illness during that same time.

Based on this information, L&I evaluated its existing rules to determine if they adequately addressed heat-related illness. After this evaluation, L&I believed that these fatalities and illnesses may have been

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<sup>1</sup> Wash. Const. art. 2 § 35.

<sup>2</sup> RCW 49.17.010.

<sup>3</sup> RCW 49.17.050(4).

prevented with rules that are more protective of workers. In *Rios v. Dept. of L&I*, the Washington Supreme Court concluded that L&I must consider rulemaking for recognized work place hazards.<sup>4</sup>

Prior to the summer of 2006, L&I held extensive meetings with business and labor representatives and worker advocates, and began developing an awareness and education campaign that would occur during the summer regardless of the final decision.

After considering the available options, L&I concluded that the best approach was to adopt an emergency rule that extends an existing rule on indoor work in hot temperatures to include outdoor work. The emergency rule was effective June 1, 2006 through September 27, 2006.

The emergency rule amended a current rule to clarify that every employer must evaluate their workplace and have procedures in place if their employees will be at risk from heat-related illnesses. Employers were required to look at things such as adequate water and shade, how to recognize heat-related illness, and what to do about it.

In addition, L&I conducted a coordinated hazard-awareness campaign with business and labor organizations and, as part of regularly scheduled inspections and consultations in affected industries, L&I staff visited farms and other employers all summer to make sure they were protecting their workers from heat stress.

Some worker advocate groups felt very strongly about the heat-related illness issue and didn't believe the emergency rule was specific enough. On the other hand, some employers wanted no rule at all.

Last summer, Washington State suffered the loss of 2 employees due to heat-related illness.

- On May 18, 2006 an employee passed away as a result of heat-related illness he developed on July 12, 2004. The employee was a roofer and collapsed while working. He arrived at the emergency room with a core temperature of 108°F. The employee did return to consciousness but never fully recovered. At the time of his death, he was awaiting a liver transplant. The claim cost was \$216,000 before pension.
- On June 26, 2006 at approximately 2:30 p.m., a laborer/pipefitter became ill on an excavation project in Carson, WA. The crew had been working since 8:30 a.m., and the ambient temperature rose throughout the day to over 100 degrees. This employee was in and out of a 4-foot-deep trench laying, cutting and joining water pipe. The employer, other employees and a PUD inspector on the site state that the deceased neither showed nor complained of signs or symptoms of heat-related illness. He drank 4-1/2 bottles of water during the day and ate his lunch. None of the crew took formal breaks, but they were allowed to if they wanted. He wore lightweight clothes, and had no medical condition that the employer knew of. The employer provided on-scene first aid until emergency medical help arrived. He was transported to Emmanuel Hospital in Portland, OR, where he died five days later, on July 1, 2006.

After the expiration of the 2006 emergency rule, L&I consulted with DOSH compliance and consultation staff and held a stakeholder meeting to discuss the experiences with the emergency rule and pre-proposal draft issues. In addition, on January 26, 2007, L&I received a petition for rulemaking from Columbia Legal Services with specific recommendations for rule requirements and content. Based on this input, L&I developed a draft rule that was significantly different from the emergency rule language

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<sup>4</sup> Hillis, 131 Wn.2d at 383.

**CR 103 RULE-MAKING ORDER (RCW 34.05.360)**

Department of Labor and Industries  
Division of Occupational Safety and Health  
Hearing Date: n/a  
CR-103 Filing Date: June 5, 2007  
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**Attachment 1**  
(Purpose Statement)

adopted last summer. This language clearly communicates the Department's expectations while allowing employers the ability to create heat-related illness procedures that will be most effective for their worksites. The draft rule was sent to stakeholders for a review process. L&I also held a stakeholder meeting. The emergency rule language is a result of this process.

While L&I plans to continue development of a permanent heat-related illness rule, it is important to have a rule that provides clear expectations to employers in place during the summer of 2007. This rule is intended to reduce or eliminate the number of serious incidents and fatalities by increasing worker protection from heat-related illness while the department continues the permanent rulemaking process. An emergency rule is necessary to ensure protection of workers during the summer months when there is a greater risk for heat-related illness. In addition, L&I will provide awareness training for employers over the summer.