

Variations

WAC 296-900-110

Section Contents

EMPLOYER RESPONSIBILITY

To follow requirements on granted variations

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Variations

WAC 296-900-110

Rule

WAC 296-900-11005

Applying for a variance

IMPORTANT:

- A variance provides an approved alternative to WISHA requirements to protect employees from a workplace hazard. Variations can be permanent or temporary.
- Variations will **not** be retroactive. Employers are obligated to follow WISHA requirements until the variance is granted.

You must

- Follow steps 1-5 to apply for a variance when you wish to use an alternative to WISHA requirements as a means to protect your employees.

Step 1: Decide what type of variance is needed by reviewing the types of variations in Table 1, Requesting a Variance.

Step 2: Complete a written application for the variance, following the requirements in Table 1, Requesting a Variance.



Note:

A form, Variance Application (F414-021-000), is available for requesting variations:

- From any L&I office.
- On our web site under Safety Forms, Variance Application
<http://www.lni.wa.gov/FormPublications/TablesForms/Safety/SafetyHealth.asp>



Reference:

For a list of the local L&I offices, see the Resources section of the Safety and Health Core Rules, Chapter 296-800 WAC.

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WAC 296-900-11005

Applying for a variance (continued)

Step 3: Notify employees before submitting any type of variance request by doing all of the following:

- Posting a copy of the request on your safety bulletin board.
- Using other appropriate means for notifying employees who may not be expected to receive notices posted on the safety bulletin board. For example, provide a copy to a designated representative or the safety committee.

Step 4: Submit the written request, using one of the following means:

- Mail to:
Assistant Director
WISHA Services
P.O. Box 44650
Olympia, WA 98504-4650
- Fax to: 360-902-5438
- Take to any L&I office.

Step 5: After receiving a written decision from WISHA about your request, immediately notify affected employees of the decision by using the methods in Step 3.

You must

- Follow the specific requirements of the variance that WISHA has granted.



Note:

- If employers fail to follow Steps 1-5 above, the variance can't be granted.
- Citations may be issued for failing to follow a variance.
- Employers can always follow the original WISHA requirements instead of the variance requirements.
- If your variance is no longer necessary and you decide to follow the WISHA requirements instead, please advise WISHA in writing.

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Applying for a variance (continued)

Table 1
Requesting a Variance

For this type of variance	Include the following on your written application
<p>Permanent variance</p> <p>Request a permanent variance if you can show that you will be providing alternate methods of protecting employees from hazards that are as effective as those provided by the requirements from which you are requesting relief.</p> <p>Note: A permanent variance remains in effect unless WISHA modifies or revokes it. Examples of reasons a variance might be revoked include:</p> <ul style="list-style-type: none"> - An employer requests the variance be revoked - Requirements that existed when the variance was approved are modified - The work location is changed 	<ul style="list-style-type: none"> • Employer name and address • Employer or employer representative signature • Work location and situations that apply to the variance • Which specific requirements you want to vary from, with WAC numbers • Description of proposed alternative methods of protection, and how they will protect employees • How employees will be notified: <ul style="list-style-type: none"> - About the variance request, as required in Step 2 - That they may request a hearing • The following notice on the first page of your posted application, written in large and clear enough print to be easily read: <p style="margin-left: 20px;">"Attention Employees: Your employer is applying to WISHA for a variance from safety and health requirements. You have a right to ask WISHA for a hearing on the variance request, but you must ask for the hearing in writing by (date*). If no hearing is requested, WISHA will act on the variance request without a hearing."</p> <p style="margin-left: 20px;">* This date must be 21 calendar days after the variance request is mailed or delivered.</p>
<p>Temporary variance</p> <p>Request a temporary variance if both of the following apply:</p> <ul style="list-style-type: none"> • New WISHA requirements can't be met for any of the following reasons: <ul style="list-style-type: none"> - Professional or technical people aren't available - Materials or equipment aren't available - Construction or alteration facilities can't be completed by the effective date of the requirements • You have an effective plan for meeting WISHA requirements as soon as possible <p>Note: Temporary variances remain in effect:</p> <ul style="list-style-type: none"> - Until current WISHA requirements are met - No longer than one year, unless extended 	<ul style="list-style-type: none"> • Provide all the information required above for permanent variances • Also provide all of the following: <ul style="list-style-type: none"> - An explanation of why WISHA requirements can't be met, including documentation that supports this belief - Steps that will be taken to protect employees until WISHA requirements can be met - When WISHA requirements will be met - A statement that this request is from a qualified person who has first hand knowledge of the facts represented.



WAC 296-900-11005

Applying for a variance (continued)

What to expect from WISHA:

- A review of all variance requests.
 - If more information is needed to make a decision, WISHA may:
 - Contact you or others who may have the needed information.
 - Visit your workplace after contacting you to make arrangements.
 - Deny your request if you don't provide information needed to make a decision on it.
- A decision at least 21 calendar days from when the request was posted for employees.
 - The 21-day period allows employees time to request a hearing on your variance application. See Variance hearings, WAC 296-900-11025.
- A written decision either granting or denying the variance.
 - If granted, the written decision will include all of the following:
 - The requirement for which the variance applies.
 - The locations where the variance applies.
 - What you must do as an alternative means of protecting employees.
 - The effective date of the variance.
 - An expiration date for the variance, if applicable.
 - The requirement to post the decision.
 - If denied, the written decision will include:
 - A brief statement with reasons for the denial.
 - The requirement to post the decision.
- WISHA will review permanent variances periodically after they have been in effect for 6 months, to decide whether they are still needed or need to be changed.



Note:

If there's an appealed WISHA citation and notice that relates to the variance request, the decision on the variance may be delayed until the appeal is resolved.



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Rule

WAC 296-900-11010

Interim orders



Definition:

An interim order allows an employer to vary from WISHA requirements until a permanent or temporary variance is granted.

You must

- Request an interim order if alternate methods of protecting employees are needed while waiting for a permanent or temporary variance.



Note:

An interim order may be requested at the same time a permanent or temporary variance is requested, or anytime after that.

What to expect from WISHA:

- A review of the request for an interim order.
 - If more information is needed to make a decision, WISHA may:
 - Contact the employer or others who may have the needed information.
 - Visit the workplace after contacting the employer to make arrangements.
 - Deny the request if the employer doesn't provide information needed to make a decision.
- A decision at least 21 calendar days from when the request was posted for employees.
 - The 21-day period allows employees time to request a hearing on your temporary variance renewal. See Variance hearings, WAC 296-900-11025.

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WAC 296-900-11010

Interim orders (continued)

- A written decision either granting or denying the interim order request.
 - If granted, the decision will include all of the following:
 - The requirement for which the interim order applies.
 - The locations where the interim order applies.
 - What you must do as an alternative means of protecting employees.
 - The effective date of the interim order.
 - An expiration date for the interim order.
 - The requirement to post the decision.
 - If denied, the decision will include:
 - A brief statement with reasons for the denial.
 - The requirement to post the decision.



Note:

- WISHA's decision to grant or deny an interim order request won't affect the decision on a permanent or temporary variance request.
- WISHA may choose to issue an interim order in response to a variance request, even when the interim order wasn't specifically requested.
- Interim orders are effective until they are revoked, or until the variance request is granted or denied.



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Rule

WAC 296-900-11015

Renewing a temporary variance

IMPORTANT:

Temporary variations can be renewed up to 2 times, for up to 180 days each time.

You must

- Apply for a temporary variance renewal at least 90 days before the temporary variance expires.
- Send a letter, explaining why more time is needed to fulfill the current requirements.

What to expect from WISHA:

- A review of the temporary variance renewal request.
 - If more information is needed to make a decision, WISHA may:
 - Contact you or others who may have the needed information.
 - Visit your workplace after contacting you to make arrangements.
 - Deny your request if you don't provide information needed to make a decision.
- A decision at least 21 calendar days from when the request was posted for employees.
 - The 21-day period allows employees time to request a hearing on your temporary variance renewal. See Variance hearings, WAC 296-900-11025.
- A written decision either granting or denying the temporary variance renewal request.
 - If granted, the written decision will include all of the following:
 - The requirements for which the temporary variance applies.
 - The locations where the temporary variance applies.
 - What you must do as an alternative means of protecting employees.
 - The effective date of the temporary variance.
 - An expiration date for the temporary variance.
 - The requirement to post the decision.
 - If denied, the written decision will include:
 - A brief statement with reasons for the denial.
 - The requirement to post the decision.



WAC 296-900-11020

Changing a variance

You, your employees, or their representatives may:

- Request changes to variations in writing as follows:
 - For a permanent variance only after it's been in effect for at least 6 months.
 - For a temporary variance, only when renewing it.



Note:

- After 6 months, WISHA may initiate changes to a variance if they appear to be warranted.
- Employers can decide at any time to follow the original requirement, instead of the requested variance.

What to expect from WISHA:

- A review of your request to change a variance.
 - If more information is needed to make a decision, WISHA may:
 - Contact you or others who may have the needed information.
 - Visit your workplace after contacting you to make arrangements.
 - Deny your request for a change if you don't provide information needed to make a decision.
- A decision at least 21 calendar days from when the request was posted for employees.
 - The 21-day period allows employees time to request a hearing on your request to change a variance. See Variance hearings, WAC 296-900-11025.
- A written decision either granting or denying the change in variance.
 - If granted, the written decision will include all of the following:
 - The requirements for which the variance applies.
 - The locations for which the variance applies.
 - What you must do as an alternative means of protecting employees.
 - The effective date of the change in variance.
 - An expiration date of the variance, if applicable.
 - The requirement to post the decision.
 - If denied, the written decision will include:
 - A brief statement with reasons for the denial.
 - The requirement to post the decision.



Variations

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Rule

WAC 296-900-11025

Variance hearings

IMPORTANT:

Employers, affected employees, or employee representatives may request a hearing on any of the following:

- Permanent or temporary variance requests.
- Changes to existing variances.

You and your affected employees must:

- Do all of the following if requesting a variance hearing:
 - Put the request in writing and sign it.
 - Make sure the request is posted or delivered to the department within 21 calendar days from the variance application date, or renewal request date.
 - Send the written request to WISHA, using one of the following means:
 - Mail to:
Assistant Director
WISHA Services
P.O. Box 44650
Olympia, WA 98504-4650
 - Fax to: 360-902-5438
 - Take to any L&I office.

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WAC 296-900-11025

Variance hearings (continued)

You must

- Immediately do all of the following when you receive a notice of the hearing from WISHA:
 - Post a copy of the notice on the safety bulletin board.
 - Give a copy of the notice to affected employees and employee representatives.
 - Use any other appropriate means for notifying employees who may not receive notices posted on the safety bulletin board. For example, provide a copy to a designated representative or the safety committee.

What to expect from WISHA:

- WISHA will do both of the following after receiving a request for a hearing on a variance, change of variance, or temporary variance renewal:
 - Within 10 days, issue a notice advising all interested parties listed on the application that they have the option to participate in the hearing.
 - Provide you with a notice of the hearing at least 21 calendar days before the hearing date.
- A hearing for the variance or variance change will be conducted as follows:
 - A WISHA representative will explain WISHA's view of the request for a variance or any proposed change to a variance.
 - Employers, employees, or employee representatives will then have an opportunity to explain their views and provide any relevant documents or information.
- Information gathered at the hearing will be used to make a decision about whether to grant or deny the request for a variance or change in variance.



Note:

- WISHA may record a variance hearing.
- Employers, employees, or employee representatives may request copies of recordings or transcripts of variance hearings at cost.



Notes
