

WISHA REGIONAL DIRECTIVE

Department of Labor and Industries

Division of Occupational Safety and Health

1.40 WISHA Jurisdiction Over DOC & Jail Inmates

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I. Background

Title 49.17 RCW, the Washington Industrial Safety and Health Act (WISHA), provides the department statutory authority to conduct safety and health inspections in certain contexts. Questions periodically arise as to whether and in what circumstances inmates of state correctional facilities (as well as local jails and other similar institutions) are "employees" for WISHA purposes.

The Washington State Department of Corrections (DOC) uses five work classifications:

1. Class I (Free Venture Industries). Under this class, inmates work for private companies and produce goods or services for sale to both the public and to private sectors. RCW 72.09.102 declares that "inmates who work in free venture industries will do so at their own choice."
2. Class II (Tax Reduction Industries). This class includes state-owned and operated work programs to reduce the cost for goods and services for tax-supported agencies and non-profit organizations. Inmate workers in this class are supervised by DOC employees. RCW 72.09.102(2) provides that inmates shall work in this class at their own choice.

The following are examples of Class II industries (not an all-inclusive list):

- *License Plate Shop*
- *Sign Shop, Furniture Shop*
- *Meat Cutting Plant, Bindery*
- *Production Farms*
- *Transportation Warehouse*

3. Class III (Institutional Support Industries). This class provides support services to the institution itself. Industries in the class are operated by the department of corrections. In applying RCW 72.64.030, DOC requires inmates not working in another class to work in a Class III industry.

The following are examples of Class III industries (not an all-inclusive list):

- *Ground Maintenance*
 - *Kitchen workers*
 - *Building Maintenance workers*
 - *Janitors*
 - *Clerical Assist*
 - *Warehouse workers*
 - *Plant Maintenance workers*
 - *McNeal Island Boat crew*
 - *Vehicle Maintenance workers*
4. Class IV (Community Work Industries). This class includes industries designed and managed by DOC to provide services to the government or non-profit organizations at a reduced cost (the most common use of these services are forest fire fighting and timber management). RCW 72.09.100 states inmates shall work in this class at their own choice.
 5. Class V (Community Service Worker Programs). This class is limited to court-ordered (and therefore involuntary) community service work performed by offenders.

Inmates participating in Class 1 (Free Venture Industries), Class II (Tax Reduction Industries), and Class IV (Community Work Industries) must be considered "employees" for WISHA purposes. Inmates participating in Class III (Institutional Support Industries) and Class V (Community Service Worker Programs) must not be considered "employees" for WISHA purposes.

In practice, this means that any hazard exposure of inmates participating in Class III and/or Class V programs does not constitute employee exposure under WISHA, nor is a complaint by or on behalf of such an inmate a worker complaint under WISHA.

II. Scope and Application

This WRD incorporates the substance of WISHA Interim Interpretive Memorandum #97-2-B, which is hereby rescinded. This WISHA Regional Directive, which will remain in effect indefinitely.

III. Special Enforcement and Consultation Protocols

1. Any L&I employee receiving a WISHA complaint from a DOC inmate should obtain the work program class from the complainant. Documentation of the complaint should include the inmate's work program classification, the location of any alleged

- hazard, and the type of work assignment. Complaints received from inmates who are employees must be handled in accordance with appropriate guidance in the DOSH Compliance Manual and elsewhere.
2. If the hazard alleged in a complaint falls outside WISHA jurisdiction because the inmate is not an employee, the inmate should be encouraged to take the complaint to the DOC safety and health program manager to be handled as an inmate grievance. *For example, a complaint received from an inmate working in the kitchen (a Class III program) would not be handled as a WISHA complaint because the inmate is not an employee. But the DOSH staff person taking the information can and should encourage the inmate to seek resolution of the issue through the DOC process.*
 3. If a complaint is made by a non-employee but the "complaint" clearly alleges hazards to which employees (either inmates in other work classifications or DOC staff) appear to be exposed, the complaint should be handled as a referral in accordance with the DOSH Compliance Manual. To the extent possible without jeopardizing the safety and health of workers covered by WISHA, the DOSH Compliance Supervisor should use the least intrusive means available in such cases. Except in rare cases -- allegations of imminent danger, for example -- such referrals should be handled via "phone and fax" through the DOC safety and health program manager.
 4. DOSH staff must protect the identity of all DOC inmates who file -- or attempt to file -- complaints pursuant to WISHA, including inmates who are not "employees" for the purposes of WISHA.
 5. DOSH staff encountering similar situations in jails and other facilities *not* administered by DOC should handle inmate complaints appropriately according to the applicable guidance above. As a general rule, if inmates are performing the work in question voluntarily, they are employees for the purposes of WISHA. DOSH supervisors and others needing further guidance in deciding whether such individuals are employees should contact the Compliance Operations Manager for assistance in making a determination.

Approved: _____
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