



RULE-MAKING ORDER EMERGENCY RULE ONLY

CR-103E (December 2017) (Implements RCW 34.05.350 and 34.05.360)

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STATE OF WASHINGTON
FILED

DATE: January 12, 2021

TIME: 4:44 PM

WSR 21-03-034

Agency: Department of Labor & Industries (L&I)

Effective date of rule:

Emergency Rules

- Immediately upon filing.
- Later (specify)

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

- Yes
 - No
- If Yes, explain:

Purpose:

The Department of Labor & Industries (L&I) is responding to the coronavirus disease 2019 (COVID-19) pandemic by amending WAC 296-800-14035 related to prohibited business activities and compliance with conditions for operations under emergency proclamations and their amendments issued under RCW 43.06.220.

Under the emergency rule:

- Employers must not allow employees to perform work where a business activity is prohibited by an emergency proclamation.
- Employers must comply with all conditions for operation required by emergency proclamation, including Safe Start phased reopening requirements for all business and any industry specific requirements.

Citation of rules affected by this order:

New:
 Repealed:
 Amended: WAC 296-800-14035
 Suspended:

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

Other authority:

EMERGENCY RULE

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:

This emergency rulemaking supersedes the emergency rule adopted on December 31, 2020, filed as WSR 21-02-047, as conditions have changed due to a new Governor's Proclamation being in effect (Proclamation 20-25.12).

L&I is taking action to help prevent the spread of COVID-19 and respond to the Governor's Proclamations allowing a phased in reopening of businesses and establishing conditions for business operations consistent with the recommendations of medical and safety professionals as to how businesses may reopen without increasing the risk of COVID-19 spreading.

The initial March 23, 2020 Stay Home, Stay Healthy Proclamation 20-25 required residents to stay home unless they need to pursue an essential activity, closed all businesses except essential businesses, and banned all gatherings for social, spiritual and recreational purposes. The order built upon earlier orders closing schools and restricting larger gatherings. This was followed by Proclamation amendments adjusting the Stay Home Stay Healthy order and transitioning to a phased-in approach to re-opening Washington State, referred to as "Safe Start Washington". The "Safe Start" orders further build on these by continuing the Safe Start plan for county-by-county phased reopening where the subsequent "Stay Safe-Stay Healthy" orders rolled back the county-by-county phased reopening in response to a COVID-19 outbreak surge. The current "Healthy Washington – Roadmap to Recovery" order takes a regional approach to easing of the rolled back restrictions. The order identifies eight regions that are largely based on the existing emergency medical services regions used for evaluating

healthcare services given the concern for COVID-19's potential impact on the healthcare system. As the regions fall along county lines and are designed based on the available health care services in the area, there is a strong connection to the metrics for COVID-19 hospitalizations, case data, and general mobility of individuals.

The Governor's Proclamations and amendments create a systematic framework to reduce the spread of COVID from person-to-person interactions, ensuring continuity of critical functions and a phased-in reopening of businesses and activities such that the number of new cases is greatly reduced and medical facilities and providers are not overwhelmed by a spike in COVID-19 cases. Business operations and employee exposures are one component of the overall public health emergency response presented by COVID-19 and ensuring compliance with the Proclamation requirement helps to protect the safety and health of employees. In setting the phases and conditions for businesses, statewide and county level data was considered. In setting the conditions for businesses under the "Healthy Washington – Roadmap to Recovery" order, the increase in cases and hospitalizations, evidence of how the virus is spread, and factors that increase the risk for person-to-person COVID-19 transmission was considered. Under this order, the phases and conditions for business in each region are based on consideration of four metrics - two metrics that measure community disease levels and two that measure health system capacity.

The conditions of businesses reopening and operating in the Governor's orders are also consistent with the social/physical distancing and health and sanitation requirements of chapter 49.17 RCW and the Center for Disease Control and Prevention. Chapter 49.17 RCW and L&I rule require employers to provide a safe and healthy workplace free from recognized hazards, and an employer can be cited for a violation of the "safe place" rule where there are no specific rules to address the particular hazard. And, for COVID-19, lack of social distancing or failure to address symptomatic employees can be cited under the safe place standard. This emergency rule ensures clarity that restrictions and conditions on business under the emergency proclamations are also health and safety requirements under chapter 49.17 RCW and that employers can be subject to a citation and monetary penalties for violations.

This emergency rule is necessary for the preservation of public health, safety, and general welfare of all employees. Emergency rulemaking is necessary here because providing for a full notice and comment time period will allow businesses to reopen or reopen without following all conditions for re-opening, endangering employees and the public during the public comment time period. The Governor's proclamation has found that the hazards of the unnecessary spread of COVID-19 present an immediate threat to public health and safety. The Governor's Proclamation is currently in effect, and observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest and the Governor's order.

**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:

Federal statute:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Federal rules or standards:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Recently enacted state statutes:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>

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

New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
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The number of sections adopted on the agency's own initiative:

New	<u>1</u>	Amended	<u>0</u>	Repealed	<u>0</u>
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
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The number of sections adopted using:

Negotiated rule making:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Pilot rule making:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Other alternative rule making:	New	<u>0</u>	Amended	<u>1</u>	Repealed	<u>0</u>

Date Adopted: January 12, 2021

Name: Joel Sacks

Title: Director

Signature:

