



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: July 09, 2021

TIME: 9:55 AM

WSR 21-15-017

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

Effective date of rule:

Emergency Rules

- Immediately upon filing.
- Later (specify) July 13, 2021

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

- Yes
 - No
- If Yes, explain:

Purpose: L&I is adopting emergency rules to amend the current Outdoor Heat Exposure rules under chapter 296-62 WAC, General Occupational Health Standards, and chapter 296-307 WAC, Safety Standards for Agriculture, to address extreme high heat procedures. When the temperatures are at or exceed 100 degrees Fahrenheit, employers must:

- Have and maintain one or more areas with shade at all times while employees are present sufficient to accommodate the number of employees on a meal or rest period. The shade shall be located as close as practicable to the areas where employees are working. In lieu of shade, employers may use other sufficient means to reduce body temperature provided by the employer under the existing requirement to have sufficient means to reduce body temperature when employees show symptoms of heat-related illness.
- Ensure that employees take preventative cool-down rest periods of at least 10 minutes every two hours. The preventative cool-down rest period required may be provided concurrently with any other meal or rest period.

In addition, the emergency rules:

- Specify that employees are allowed and encouraged to take a preventative cool-down rest in the shade or using another means provided by the employer to reduce body temperature when they feel the need to do so to protect themselves from overheating.
- Update the training requirements for employers and supervisors to include preventative cool-down rests and preventative cool-down rest breaks under the extreme high temperature procedures.
- Define the term "shade".
- Clarify that drinking water be suitably cool in temperature.
- Clarify that time during preventative cool-down rest and preventative cool-down rest periods under the extreme high temperature procedures must be paid unless taken during an unpaid meal break.

Citation of rules affected by this order:

New: WAC 296-62-09555 and 296-307-09755
 Repealed:
 Amended: WAC 296-62-09520, 296-62-09530, 296-62-09540, 296-62-09560, 296-307-09720, 296-307-09730, 296-307-09740 and 296-307-09760.
 Suspended:

Statutory authority for adoption: RCW 49.17.010, 49.17.040, 49.17.050, 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: RCW 49.17.050(4) directs L&I to “[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 L&I to adopt feasible and necessary rules to protect the health and lives of Washington workers.” Heat-related illness ranges from relatively harmless conditions such as heat edema (swelling) and heat cramps to more serious illness such as heat syncope (fainting) and heat exhaustion. The most serious and often fatal form of heat-related illness is heat stroke. However, heat exhaustion can make workers more susceptible to falls, equipment-related injuries, and other on-the-job safety hazards.

The recent significant and unprecedented heat wave highlights the dangers of extreme heat, and makes it clear that this is an urgent issue. The current rules require employers respond once a worker shows symptoms of heat-related illness but does not affirmatively address preventative measures to avoid overheating other than access to drinking water. L&I received a petition requesting the department adopt emergency rules to address preventative measures to require access to shade, preventative cool-down breaks, and provisions to ensure the drinking water is cool, especially when there is extreme high heat. The hazards of heat are well documented, as is the increase in risk associated with the increase in temperature. L&I accepted a petition for emergency rules to address requirements for employers to engage in key preventative steps when the temperature increases to higher levels of risk. This will better prepare all parties for any further extreme heat events anticipated to continue to occur this summer.

The current Outdoor Heat Exposure rules require employers with employees working outdoors to have a written outdoor heat exposure safety program, ensure sufficient quantity of drinking water is readily accessible to employees at all times, and that employees have the opportunity to drink at least one quart of drinking water per hour, and train workers and supervisors on heat-related illness. The rules also require employees showing signs or demonstrating symptoms of heat-related illness be relieved from duty, provided with a sufficient means to reduce body temperature and must be monitored to determine whether medical attention is necessary. Sufficient means to reduce body temperature includes shade, misting stations, or temperature controlled environments such as air-conditioned trailers. The current rules, in effect annually from May 1 through September, apply when the temperature is at or above 89 degrees Fahrenheit with lower temperature thresholds for work in double-layer clothes or non-breathing clothes.

Current rules also require an employer plan for and have sufficient means to reduce body temperatures once employees show symptoms of heat-related illness – whether shade, misting stations, a temperature controlled environment such as an air conditioned trailer, or other means. The emergency rules now require access to shade or the other cooling methods provided by the employer for preventative cool-down rests when needed and for required preventative cool-down rest periods when temperatures are at or above 100 degrees. These provisions aimed at preventing overheating will help to prevent heat-related illness. California has the same requirements in its permanent occupational outdoor heat exposure rule at lower temperature thresholds. In addition, the current rules require drinking water be “suitable to drink” and L&I has long interpreted that water suitable to drink does not include water so hot that employees do not wish to drink it. California’s rule also requires water be suitably cool.

As such, L&I has determined the requirements of the emergency rules are both feasible and necessary to protect workers. Given the recent heat wave and increase temperatures due to climate change, immediate adoption of emergency rules is necessary for the preservation of the public health and safety 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.

L&I will also be initiating the permanent rulemaking process for a comprehensive reexamination of the current rules.

**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	___	Amended	___	Repealed	___
Federal rules or standards:	New	___	Amended	___	Repealed	___
Recently enacted state statutes:	New	___	Amended	___	Repealed	___

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

New	<u>2</u>	Amended	<u>8</u>	Repealed	___
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The number of sections adopted on the agency's own initiative:

New _____ Amended _____ Repealed _____

The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New _____ Amended _____ Repealed _____

The number of sections adopted using:

Negotiated rule making: New _____ Amended _____ Repealed _____
Pilot rule making: New _____ Amended _____ Repealed _____
Other alternative rule making: New _____ Amended _____ Repealed _____

Date Adopted: July 9, 2021

Name: Joel Sacks

Title: Director

Signature:

