



# RULE-MAKING ORDER

## PERMANENT RULE ONLY

**CR-103P (December 2017)**  
**(Implements RCW 34.05.360)**

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER  
STATE OF WASHINGTON  
FILED

DATE: July 01, 2022

TIME: 2:29 PM

WSR 22-14-090

**Agency:** Department of Labor & Industries

**Effective date of rule:**

**Permanent Rules**

- ☐ 31 days after filing.
- ☒ Other (specify) July 1, 2022 (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

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

- ☐ Yes ☒ No If Yes, explain: This rule will go into effect immediately upon filing, allowed under RCW 34.05.380(3), because the changes made by ESHB 1097, codified in RCW 49.17.160 become effective on July 1, 2022. The rules need to be effective the same day so that any complaints alleging discrimination or retaliation are handled in alignment with the legislative intent and statutory updates.

**Purpose:** The Washington Industrial Safety and Health Act (WISHA), under chapter 49.17 RCW, protects workers from discrimination or retaliation for exercising their rights under WISHA to a safe and healthy workplace.

Engrossed Substitute House Bill 1097 (ESHB 1097), which became law in 2021, made changes to the WISHA discrimination protections under RCW 49.17.160. The Department of Labor and Industries has subsequently updated **chapter 296-360 WAC, Discrimination**, to better align with ESHB 1097. These updates include:

- Division of Occupational Safety and Health (DOSH) has the authority to issue administrative orders when investigations of discrimination complaints find sufficient evidence that an employer violated RCW 49.17.160.
- A process for issuance of citations and notices of assessments to order relief to the worker and penalties to the employer, and a process for employer and employee appeals of the citation and notice of assessment.
- The time allowed to file a safety and health discrimination complaint has changed from 30 to 90 days.
- The definition of "discrimination" has been amended for clarification.

Additionally, **chapter 296-360 WAC, Discrimination**, has also been updated to align with Washington state case law specific to "substantial factor" causation test, where a violation of RCW 49.17.160 occurs when an employee's engagement in protected activity was a substantial factor in the employer's decision for the adverse action. Previously, certain provisions within the rule were based on the Occupational Safety and Health Administration's (OSHA) interpretative rules applying federal case law to discrimination under Section 11(c) of the Occupational Safety and Health Act (OSH Act). The change to apply Washington case law is necessary to ensure that DOSH applies the appropriate standard used by Washington courts in its investigations and orders issued under ESHB 1097.

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

New: WAC 296-360-045, 296-360-175, and 296-360-180

Repealed: None

Amended: WAC 296-360-005, 296-360-010, 296-360-020, 296-360-030, 296-360-040, 296-360-050, 296-360-060, 296-360-070, 296-360-080, 296-360-090, 296-360-150, and 296-360-160

Suspended: None

**Statutory authority for adoption:** RCW 49.17.040 and 49.17.050

**Other authority:** Not Applicable

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

Adopted under notice filed as WSR 22-10-107 on May 4, 2022 (date).

Describe any changes other than editing from proposed to adopted version:

WAC 296-360-045(1) – Added the word "all" before "appropriate relief. This change was requested during formal comments, and is made to align rule language with both statute and new section, WAC 296-360-040. This makes the rule clear and consistent.

WAC 296-360-150(4) – Reorganized subsection to read more clearly and ensure employees understand when refusal of work due to a hazard or unsafe condition is protected.

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

Name:

Address:

Phone:

Fax:

TTY:

Email:

Web site:

Other:

**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	<u>3</u>	Amended	<u>12</u>	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 on the agency's own initiative:**

New	_____	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:**

Negotiated rule making:	New	_____	Amended	_____	Repealed	_____
Pilot rule making:	New	_____	Amended	_____	Repealed	_____
Other alternative rule making:	New	<u>3</u>	Amended	<u>12</u>	Repealed	_____

**Date Adopted:** July 1, 2022

**Name:** Joel Sacks

**Title:** Director

**Signature:**

