



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: February 16, 2022

TIME: 9:18 AM

WSR 22-05-097

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.

L&I is monitoring the emergency proclamations, information including guidance from the Center for Disease Control (CDC), and data on COVID-19 and will repeal the emergency rule if no longer needed.

Citation of rules affected by this order:

New: WAC 296-800-14035
Repealed:
Amended:
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 readopts the emergency rule adopted on October 18, 2021, filed as WSR 21-21-074. L&I is taking action to help prevent the spread of COVID-19 and respond to the Governor's Proclamations establishing conditions for business operations consistent with the recommendations of medical and safety professionals as to how businesses may continue operation without increasing the risk of COVID-19 spreading. L&I filed a Preproposal Statement of Inquiry (CR-101) in accordance with 2021's Engrossed Substitute Senate Bill 5092, Section 220(8) related to infectious diseases to ensure the state has general guidelines to follow in the case of an infectious disease outbreak. This would include when there is an outbreak subject to a public health emergency under a national or state declared state of emergency. In addition, conditions have changed due the Governor's announcement that the requirement under "Washington Ready" 20-25.17 for face coverings or masks for large outdoor events with 500 or more individuals regardless of vaccination status is being removed on February 18, 2022.

There are indications based on COVID-19 case and hospitalization trends that the state is at turning point in the pandemic. While the Governor has indicated future action is possible, the requirement for face coverings or masks for customers and employees regardless of vaccination status in indoor spaces accessible to the public remains in effect under Proclamation 20-25.17 as are the prohibitions for any state agency, operator of an education setting, and operator of a health care setting

to permit workers to engage in work if the worker is not fully vaccinated against COVID-19 and provided proof of vaccination status under Proclamation 21-14.3.

The Governor's Proclamations and amendments, including 20-25.17 and 21-14.3, create a systematic framework to reduce the spread of COVID from person-to-person interactions among individuals not fully vaccinated, reduce the occurrence of breakthrough infections, safely easing some restrictions while also maintaining crucial hospital capacity, ensuring care for Washingtonians who need it, and paving the way for economic recovery. 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.

The business operating conditions in the Governor's orders are also consistent with the purpose of chapter 49.17 RCW and guidance from the Center for Disease Control and Prevention. Chapter 49.17 RCW and L&I rules 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. Lack of COVID-19 hazard controls such as 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. The Governor's Proclamations have found that the hazards of the unnecessary spread of COVID-19 present an immediate threat to public health and safety. The Governor's Proclamations are 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 orders.

L&I is monitoring the emergency proclamations, information including guidance from the Center for Disease Control (CDC), and data on COVID-19 and will repeal the emergency rule if no longer needed.

**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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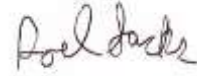
The number of sections adopted using:

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: February 16, 2022

Signature:

Name: Joel Sacks



Title: Director