



# PROPOSED RULE MAKING

**CR-102 (July 2022)**  
**(Implements RCW 34.05.320)**  
Do **NOT** use for expedited rule making

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STATE OF WASHINGTON  
FILED

DATE: November 22, 2022  
TIME: 8:54 AM

WSR 22-23-145

**Agency:** Department of Labor & Industries

- Original Notice**
- Supplemental Notice to WSR** \_\_\_\_\_
- Continuance of WSR** \_\_\_\_\_

- Preproposal Statement of Inquiry was filed as WSR 22-15-091 ; or**
- Expedited Rule Making--Proposed notice was filed as WSR \_\_\_\_\_; or**
- Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or**
- Proposal is exempt under RCW \_\_\_\_\_.**

**Title of rule and other identifying information:** (describe subject) Presumptive Coverage of Posttraumatic Stress Disorder (PTSD) as an Occupational Disease. WAC 296-14-300, Mental condition/mental disabilities.

**Hearing location(s):**

Date:	Time:	Location: (be specific)	Comment:
January 13, 2023	9:00am	<b>Joining electronically:</b> Join Zoom Meeting at <a href="https://lni-wa-gov.zoom.us/j/9361655337">https://lni-wa-gov.zoom.us/j/9361655337</a>  Meeting ID: 936 165 5337  <b>Join by phone:</b> +1 253 215 8782 US (Tacoma) Find your local number: <a href="https://lni-wa-gov.zoom.us/u/kdFrdfe0fg">https://lni-wa-gov.zoom.us/u/kdFrdfe0fg</a>	The virtual meeting starts at 9:00am and will continue until all oral comments are received.

**Date of intended adoption:** March 21, 2023 (Note: This is **NOT** the **effective** date)

<b>Submit written comments to:</b> Name: Jordan Ely Address: Department of Labor & Industries Insurance Services/Legal Services PO Box 44270 Olympia WA 98504-4270 Email: Jordan.Ely@Lni.wa.gov Fax: 360-902-5029 Other: By (date) <u>January 13, 2023 at 5:00pm</u>	<b>Assistance for persons with disabilities:</b> Contact <u>Nathalie Penberthy</u> Phone: 360-902-4252  Fax: 360-902-6509 TTY: 360-902-4252 Email: Nathalie.Penberthy@Lni.wa.gov Other: By (date) <u>January 6, 2023</u>
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**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** Based on legislation passed in 2018 and 2020 this rulemaking proposes to amend WAC 296-14-300, Mental condition/mental disabilities. WAC 296-14-300 provides for coverage of mental conditions or mental disabilities that specify pain primarily as a psychiatric symptom or that are characterized by excessive or abnormal thoughts, feelings, behaviors or neurological symptoms are not clinically related to occupational exposure. PTSD qualifies as such a medical condition and is covered as an occupational disease for certain industries.

Under legislation passed in 2018 and 2019, certain firefighters and law enforcement officers were added to the presumption that posttraumatic stress disorder is an occupational disease as provided by RCW 51.08.142 and RCW 51.32.185.

For public safety telecommunicators, PTSD may be considered an occupational diseases as provided by RCW 51.08.142. This rulemaking adds those specified industries and presumption into department rules on industrial insurance coverage.

**Reasons supporting proposal:** Legislation passed during the 2018 and 2020 sessions (Chapter 264, Laws of 2018, Substitute Senate Bill 6214 (SSB 6214) and Chapter 234, Laws of 2020, Substitute House Bill 2758 (SHB 2758)) resulted in updates to RCW 51.08.142 and RCW 51.32.185, and added a new section to chapter 51.08 RCW. This rulemaking proposes to amend existing rules conflicting with the law and clarify coverage of PTSD under workers' compensation. SSB 6214 provides a prima facie presumption for certain firefighters and law enforcement officers covered under worker' compensation for occupational disease PTSD. SHB 2758 added public safety telecommunicators as a job class where PTSD may be considered as an occupational disease.

**Statutory authority for adoption:** RCW 51.04.020, RCW 51.04.030, RCW 51.08.142, RCW 51.32.185

**Statute being implemented:** RCW 51.08.142, RCW 51.32.185

**Is rule necessary because of a:**

Federal Law?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Federal Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
State Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

If yes, CITATION:

**Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:** None

**Type of proponent:**  Private  Public  Governmental

**Name of proponent:** (person or organization) Department of Labor & Industries

**Name of agency personnel responsible for:**

	Name	Office Location	Phone
Drafting:	Jordan Ely	Tumwater, Washington	360-902-4616
Implementation:	Debra Hatzialexiou	Tumwater, Washington	360-902-6695
Enforcement:	Mike Ratko	Tumwater, Washington	360-902-4997

**Is a school district fiscal impact statement required under [RCW 28A.305.135](#)?**  Yes  No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

- Name:
- Address:
- Phone:
- Fax:
- TTY:
- Email:
- Other:

**Is a cost-benefit analysis required under [RCW 34.05.328](#)?**

Yes: A preliminary cost-benefit analysis may be obtained by contacting:

- Name:
- Address:
- Phone:
- Fax:
- TTY:
- Email:
- Other:

No: Please explain: This rulemaking is exempt under RCW 34.05.328(5)(b)(iii) because the rule is adopting without material change language from RCW 51.08.142 and RCW 51.32.185 as amended by SSB 6214 (2018) and SHB 2758 (2020).

**Regulatory Fairness Act and Small Business Economic Impact Statement**

Note: The [Governor's Office for Regulatory Innovation and Assistance \(ORIA\)](#) provides support in completing this part.

**(1) Identification of exemptions:**

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see [chapter 19.85 RCW](#)). For additional information on exemptions, consult the [exemption guide published by ORIA](#). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.061](#) because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by [RCW 34.05.313](#) before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of [RCW 15.65.570\(2\)](#) because it was adopted by a referendum.

This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.025\(3\)](#). Check all that apply:

- |  |  |
|--|--|
| <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(b)<br>(Internal government operations)        | <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(e)<br>(Dictated by statute)   |
| <input checked="" type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(c)<br>(Incorporation by reference) | <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(f)<br>(Set or adjust fees)  |
| <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(d)<br>(Correct or clarify language)           | <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(g)<br>((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit) |

This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.025\(4\)](#) (does not affect small businesses).

This rule proposal, or portions of the proposal, is exempt under RCW \_\_\_\_\_.

Explanation of how the above exemption(s) applies to the proposed rule: The rulemaking is fully exempt from analysis under this section because the rule proposes to adopt without material change language from RCWs 51.08.142 and 51.32.185 as amended by SSB 6214 (2018) and SHB 2758 (2020) under RCW 34.05.310(4)(c).

**(2) Scope of exemptions:** *Check one.*

The rule proposal is fully exempt (*skip section 3*). Exemptions identified above apply to all portions of the rule proposal.

The rule proposal is partially exempt (*complete section 3*). The exemptions identified above apply to portions of the rule proposal, but less than the entire rule proposal. Provide details here (consider using [this template from ORIA](#)):

The rule proposal is not exempt (*complete section 3*). No exemptions were identified above.

**(3) Small business economic impact statement:** *Complete this section if any portion is not exempt.*

If any portion of the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

No Briefly summarize the agency's minor cost analysis and how the agency determined the proposed rule did not impose more-than-minor costs. \_\_\_\_\_

Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses and a small business economic impact statement is required. Insert the required small business economic impact statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

- Name:
- Address:
- Phone:
- Fax:
- TTY:
- Email:
- Other:

**Date:** November 22, 2022

**Name:** Joel Sacks

**Title:** Director

**Signature:**

A handwritten signature in black ink that reads "Joel Sacks". The signature is written in a cursive style with a large initial 'J' and 'S'.