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## **Final Cost-Benefit Analysis**

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### ***Chapter 296-123 WAC – Equal Pay and Opportunities***

***Produced by: Research and Data Services***

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## Acronyms

APA	The Administrative Procedure Act
SHB	Substitute House Bill
FPLS	Fraud Prevention and Labor Standards
L&I	Washington State Department of Labor & Industries
RCW	Revised Code of Washington
WAC	Washington Administrative Code

# Chapter 1: Background

## 1.1 Requirements of the Administrative Procedure Act (APA)

The Administrative Procedure Act (APA; Chapter 34.05 RCW) requires that, before adopting a significant legislative rule, the Department of Labor & Industries (L&I) must analyze the probable costs and benefits of the rule, and determine that the benefits are greater than its costs, taking into account both the qualitative and quantitative benefits and costs [RCW 34.05.328(1)(d)].

RCW 34.05.328(5)(c)(iii) defines a "significant legislative rule" as a rule, other than a procedural or interpretive rule, that:

- Adopts substantive provisions of law pursuant to delegated legislative authority, the violation of which subjects a violator of such rule to a penalty or sanction;
- Establishes, alters, or revokes any qualification or standard for the issuance, suspension, or revocation of a license or permit; or
- Adopts a new, or makes significant amendments to, a policy or regulatory program.

Under certain circumstances, a rule or rule component is exempt from this requirement. These exemption criteria are listed in RCW 34.05.328(5)(b) including:

- Emergency rules adopted under RCW 34.05.350;
- Rules relating only to internal governmental operations that are not subject to violation by a nongovernment party;
- Rules adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule;
- Rules that only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect;
- Rules the content of which is explicitly and specifically dictated by statute;

- Rules that set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

This cost-benefit analysis has been prepared in compliance with the APA for the rule amendments to Chapter 296-123 WAC that do not fall under these exemptions.

## **1.2 Description of the Adopted Rules**

L&I is adopting rules to implement Substitute House Bill 1905 (SHB 1905), Chapter 353, Laws of 2024. This bill expands existing protections against pay and promotion discrimination based on gender, as outlined in Chapter 49.58 RCW, the Equal Pay and Opportunities Act. SHB 1905 extends these protections to other protected classes including age, race, and sexual orientation.

Through the adopted rules L&I aims to clarify and implement the provisions of SHB 1905, which goes into effect on July 1, 2025. Additionally, the adopted rules provide clarity on other requirements and protections created by Chapter 49.58 RCW, including:

- The free discussion of wages and salary;
- Protection against retaliation;
- Wage and salary history privacy; and
- Disclosure of wage scale, salary range, and benefits on a job posting.

The adopted rules explain L&I's enforcement of Chapter 49.58 RCW and outline L&I's complaint investigation and resolution processes.

## **Chapter 2: Costs of Adopted Rule**

As required by the APA, L&I analyzed its adopted rules to determine whether the rules are “significant legislative rules” under RCW 34.05.328(5)(a)(i). This section describes the result of this analysis and represents only the estimated cost of complying with the portions of the adopted rules that are considered significant legislative rules. This section excludes the potential costs associated with, or originating from, current industry practices or “baseline” standards under existing laws or rules where the changes are exempt from the cost-benefit analysis. Therefore, L&I

did not analyze or factor into our estimates costs that can be attributed to or are insignificantly different from these baseline standards. This chapter evaluates each of the adopted rule components that have been flagged as significant legislative rules with potential cost implications.

## **2.1 WAC 296-123-020(1) Wage Discrimination Prohibited**

*Adopted rule language:* The adopted rule states employers may not discriminate in providing compensation between similarly employed employees based on the employee's gender, perceived gender, or membership or perceived membership in a protected class. If the employee receives less compensation due to discrimination, the employee is entitled to the remedies in RCW 49.58.060 and associated rules and RCW 49.58.070.

*Cost implication:* The adopted rule does not create an additional cost of compliance for employers. RCW 49.58.020(1) prohibits employers from discriminating based on gender or membership in a protected class. The adopted rule clarifies that employers may not discriminate based on what they believe the employee's gender or protected class to be. As employers are already prohibited from discrimination, there is no additional cost of compliance.

## **2.2 WAC 296-123-030(1) Career Advancement Opportunity**

*Adopted rule language:* The adopted rule states employers may not limit or deprive an employee of career advancement opportunities based on their gender, perceived gender, or membership or perceived membership in a protected class. "Career advancement opportunities" includes formal or informal occasions for employees to gather skills, knowledge, or experience to further their career.

*Cost implication:* The adopted rule does not create an additional cost of compliance for employers. RCW 49.58.030(2) prohibits employers from discriminating based on gender or membership in a protected class. Similar to the previous section, the adopted rule simply clarifies protections against gender- or protected class-based employer discrimination.

Additionally, the adopted rule provides a definition for the term "career advancement opportunities." The definition provides additional guidance for employers and employees, and does not create a new requirement employers must follow.

## **2.3 WAC 296-123-050(3) Reducing Compensation after Confirming Wage or Salary History**

*Adopted rule language:* The adopted rule specifies that employers cannot reduce an offer of compensation after confirming an applicant's wage or salary history.

*Cost implication:* The adopted rule does not create an additional cost to employers. Employers do not have to take further action to comply with the rule, which requires them to pay applicants the compensation the employer has previously offered.

## **2.4 WAC 296-123-070(2) Employer Retaliation Prohibited**

*Adopted rule language:* The adopted rule prohibits employers from retaliating against an employee for exercising their rights under or in connection with Chapter 49.58 RCW or Chapter 296-123 WAC. Additionally, it also specifies that employers may not use the fact that an employee exercised a right under Chapter 49.58 RCW or Chapter 296-123 WAC as a negative factor in an employment action such as evaluation, promotion or termination.

*Cost Implication:* The adopted rule does not create an additional cost to employers. Employers do not have to take further action to comply with the rule, as the rule just prohibits the employer from retaliating against employees for exercising their rights under the chapter.

## **2.5 WAC 296-123-090(3) Investigation without Complaint**

*Adopted rule language:* The adopted rule allows L&I to open an investigation without a complaint in order to enforce Chapter 296-123 WAC. The rule also allows L&I to open an investigation when the agency otherwise has reason to believe a violation of Chapter 296-123 WAC has occurred.

*Cost Implication:* The adopted rule does not create a cost for employers as it does not create a requirement employers must follow. The adopted rule specifies actions L&I may take to enforce the chapter.

## **2.6 WAC 296-123-090(5) Inspection of Records**

*Adopted rule language:* The adopted rule stipulates that employers who fail to allow L&I to inspect records within a reasonable time period may not use those records when appealing a citation and notice of assessment issued by L&I.

*Cost Implication:* The adopted rule does not create an additional cost of compliance for employers. Employers are not required to create or retain additional records, and must simply provide records they already created to L&I when requested. The language is clarifying that employers who fail to provide the records within a reasonable time frame are not able to use those same records in future appeals.

## **2.7 WAC 296-123-090(6) Self-Audit**

*Adopted rule language:* The adopted rule bestows upon L&I the ability to request an employer perform a self-audit.

*Cost Implication:* Here the language is simply clarifying that L&I has the ability to request a self-audit be performed. Since an employer has no obligation to perform a self-audit unless L&I requests one, there's no continuous demand placed on impacted employers. As a result, there's no on-going associated costs with the adopted rule. Consequently, self-audits are intended to be a less burdensome and less costly alternative to extensive document production during investigations. In the event an employer does receive and comply with a request, the cost of a typical self-audit is expected to be minimal. If an employer conducts a self-audit during an investigation, it may actually reduce investigative timelines, and result in related time and cost savings. Thus, there is no cost associated with the adopted rule.

## **2.8 WAC 296-123-100(2) Damages under RCW 49.58.060**

*Adopted rule language:* The adopted rule specifies applicants must demonstrate compensation was lost or other damages suffered by a violation of WAC 296-123-060 to be entitled to damages under RCW 49.58.060 and WAC 296-123-100. The adopted rule also clarifies the subsection does not diminish the right of applicant to pursue a private right of action under RCW 49.58.070 and that filing a civil suit under RCW 49.58.070 shall terminate L&I's enforcement under RCW 49.58.060.

*Cost Implication:* The adopted rule does not create a cost for employers as it does not create a requirement employers must follow. The adopted rule clarifies the remedies L&I will seek under WAC 296-123-100 in the event of a violation of WAC 296-123-060.



## **2.9 WAC 296-123-100(5) Collections Authority**

*Adopted rule language:* The adopted rule allows L&I to initiate collection procedures under RCW 49.48.086 if a person or employer fails to pay an assessment under Chapter 49.58 RCW or Chapter 296-123 WAC after it has become final and binding.

*Cost Implication:* The adopted rule does not create a cost for employers as it does not create a requirement employers must follow. The adopted rules clarify the mechanisms L&I may use to collect amounts owed after an assessment becomes final and binding.

## **Chapter 3: Benefits of Adopted Rule**

This chapter provides an analysis of the probable benefits resulting from the adopted rules with a focus on those which are qualitative in nature. These probable benefits, each identified by its adopted rule section, focus on the intangible, yet impactful outcomes, such as reflecting enhancements to fairness, clarity, and efficiency in employment practices and regulatory oversight. Though difficult to quantify, these qualitative benefits capture the more nuanced and subjective improvements that may arise from the adopted rules resulting in the enhancement of overall well-being and operational efficiencies of those impacted.

### **3.1 WAC 296-123-020(1) Wage Discrimination Prohibited**

*Enhanced Clarity and Compliance:* The rule provides clearer guidance to employers, ensuring they understand that perceived gender or perceived membership in a protected class is also covered under the Equal Pay and Opportunities Act. This can help employers avoid unintentional violations.

*Increased Equity in the Workplace:* By explicitly prohibiting wage discrimination based on perception, the rule helps promote a more equitable compensation system, fostering a workplace culture of fairness and inclusion.

*Improved Employee Trust and Morale:* Employees are more likely to feel valued and respected when they perceive their compensation practices as fair and non-discriminatory, which can enhance trust and job satisfaction.

*Reduced Risk of Legal Disputes:* Clear language about perceived discrimination may reduce the risk of legal challenges for employers by providing explicit expectations, potentially saving time and resources.

### **3.2 WAC 296-123-030(1) Career Advancement Opportunity**

*Promotes Workplace Equity:* By explicitly prohibiting discrimination in career advancement opportunities, the rule fosters a fair and inclusive work environment, where employees are judged based on merit and ability rather than gender or protected class status.

*Enhances Clarity for Employers and Employees:* The definition of "career advancement opportunities" provides a clearer framework for understanding what constitutes career development, reducing ambiguity and ensuring consistent application of the rule.

*Encourages Employee Growth and Development:* Equal access to career advancement opportunities enables employees to build skills, gain experience, and grow professionally, which can improve employee satisfaction and retention.

*Supports Diversity and Inclusion Initiatives:* By addressing perceived discrimination, the rule aligns with organizational goals to create a diverse and inclusive workforce, which can enhance innovation, decision-making, and overall performance.

*Reduces Risk of Discrimination Claims:* Clear guidance on equitable access to career advancement opportunities helps employers comply with the Equal Pay and Opportunities, reducing the risk of legal disputes and associated costs.

### **3.3 WAC 296-123-050(3) Reducing Compensation after Confirming Wage or Salary History**

*Fair Hiring Practices:* By ensuring employers honor their initial compensation offers, honesty and consistency is promoted and enhanced.

*Enhanced Applicant Trust:* Job seekers can have greater confidence in the hiring process, potentially attracting higher-quality candidates.

*Reduced Disputes:* By preventing last-minute reductions in pay, the likelihood of conflicts or misunderstandings during the hiring process decreases.

### **3.4 WAC 296-123-070(2) Employer Retaliation Prohibited**

*Improved Workplace Culture:* Protecting employees from retaliation fosters an environment of respect and transparency.

*Higher Employee Engagement and Retention:* Workers who feel safe exercising their rights are more likely to remain engaged, resulting in lower turnover costs.

*Reduced Legal Risks:* Clear anti-retaliation guidelines minimize the risk of costly disputes and litigation, benefiting both employers and employees.

### **3.5 WAC 296-123-090(3) Investigation without Complaint**

*Proactive Compliance Promotion:* The potential for investigations encourages employers to maintain compliance consistently, rather than waiting for complaints.

*Level Playing Field:* Ensuring all employers are subject to the same proactive oversight helps prevent unfair competitive advantages gained through non-compliance.

*Improved Regulatory Certainty:* Employers who consistently follow the law can operate confidently, knowing that competitors who cut corners risk direct enforcement actions.

### **3.6 WAC 296-123-090(5) Inspection of Records**

*Encourages Timely Compliance:* By incentivizing employers to provide requested records promptly, the rule supports the efficient resolution of investigations and ensures that records are reviewed in a timely manner.

*Enhances Regulatory Enforcement:* The rule strengthens L&I's ability to enforce workplace laws and regulations effectively by reducing delays caused by withheld or inaccessible records.

*Promotes Accountability:* Employers are held accountable for maintaining and providing access to records they are already required to create and retain, fostering transparency in workplace practices.

*Reduces Investigative Delays:* Ensuring records are made available promptly helps streamline the investigative process, potentially leading to faster resolution of disputes or violations.

*Improves Workplace Compliance:* The rule incentivizes employers to maintain consistent compliance with record-keeping and inspection requirements, reducing the likelihood of noncompliance over time.

*Balances Fairness in Appeals:* Prohibiting the use of withheld records during an appeal ensures fairness by preventing employers from leveraging records they failed to make available when initially requested.

### **3.7 WAC 296-123-090(6) Self-Audit**

*Cost-Effective Compliance:* Self-audits let employers identify and address issues internally, often at lower costs than full investigations by the agency.

*Streamlined Processes:* By resolving potential problems early, employers may reduce the complexity and length of any regulatory inquiries resulting in a quicker resumption of regular work activities.

*Enhanced Organizational Awareness:* Regular reviews of employment practices help employers maintain up-to-date, compliant policies and procedures.

### **3.8 WAC 296-123-100(2) Damages under RCW 49.58.060**

*Clear Legal Framework:* Defining how and when damages apply provides employers with greater certainty and predictability in their operations.

*Incentive to Comply:* Knowing the criteria for damages encourages employers to adhere strictly to wage and salary rules.

*Trust and Fairness:* Transparent standards for awarding damages reinforce a fair, equitable employment environment, which can improve employer-employee relations.

### **3.9 WAC 296-123-100(5) Collections Authority**

*Timely Compliance:* Clear collection procedures encourage employers to resolve any outstanding assessments promptly, avoiding escalated penalties.

*Regulatory Consistency:* This clarity ensures all employers understand the finality of their obligations, promoting a level and predictable business climate.

*Confidence in the System:* Effective enforcement mechanisms increase overall faith in the regulatory framework, benefiting law-abiding businesses.

Collectively, these provisions enhance clarity, fairness, and consistency in employment practices and regulatory enforcement. They encourage employers to maintain high standards of compliance, improve workplace conditions, reduce the likelihood of disputes, and foster trust between employers, employees, and regulators.

## **Chapter 4: Cost-Benefit Determination**

When viewed comprehensively, the benefits of these rules exceed any negligible or contingent costs. Employers that maintain lawful and respectful employment practices will not face additional burdens. Instead, they stand to gain from increased operational certainty, better employer-employee relationships, and a more favorable public reputation. Meanwhile, the rules help establish a level playing field, discouraging non-compliant competitors from gaining unfair advantages.

In conclusion, the cost-benefit balance favors the adopted rules. By reinforcing legal norms and offering tools to streamline compliance, the rules serve the interests of employers, employees, and regulators alike. Employers benefit from reduced risks, improved workplace climates, and enhanced competitive positioning without assuming significant new costs. Thus, the net effect is decidedly positive for industries and employers, making the rules' adoption a reasonable and advantageous decision.

## **Chapter 5: Least Burdensome Analysis**

RCW 34.05.328(1)(e) requires L&I to determine whether significant legislative rules are the least burdensome alternative for those required to comply with the goals and objectives of a rule. The following sections were identified as needing to be analyzed under this requirement:

### **5.1 WAC 296-123-020(1) Wage Discrimination Prohibited**

Prohibits employers from discriminating in wages based on an employee's gender, perceived gender, or membership or perceived membership in a protected class. The rule is least burdensome as employers are not required to take additional action to comply with the rule, they are simply prohibited from discriminating based on what they believe an employee's gender or protected class to be. Employers are prohibited from discrimination based on gender or protected class by statute.

### **5.2 WAC 296-123-030(1) Career Advancement Opportunity**

Prohibits employers from discriminating in career advancement opportunities based on an employee's gender, perceived gender, or membership or perceived membership in a protected class. The rule is least burdensome as employers are not required to take additional action to comply with the rule, they are simply prohibited from discriminating based on what they believe an employee's gender or protected class to be. Employers are prohibited from discrimination based on gender or protected class by statute.

### **5.3 WAC 296-123-050(3) Reducing Compensation after Confirming Wage or Salary History**

Prohibits employers from reducing an offer of compensation after confirming an applicant's wage or salary history. The rule is least burdensome because it simply requires an employer to maintain a previous offer of compensation and does not prescribe how the employer calculates the offer.

### **5.4 WAC 296-123-070(2) Employer Retaliation Prohibited**

Prohibits employers from retaliating against an employee for exercising their rights. The rule is least burdensome because it further clarifies the requirement found in RCW 49.58.050 that employers may not otherwise discriminate against an employee for exercising a right under the chapter.

### **5.5 WAC 296-123-090(3) Investigation without Complaint**

Allows L&I to open an investigation without a complaint. This is least burdensome as it describes the actions L&I may take to enforce the chapter and does not create a new requirement for employers.

### **5.6 WAC 296-123-090(5) Inspection of Records**

Prevents employers from using records not supplied to L&I during an appeal. This is least burdensome as it requires employers to provide L&I with records they have already maintained, and does not require employers to keep new types of records.

### **5.7 WAC 296-123-090(6) Self-Audit**

Allows L&I to request employers conduct a self-audit. Self-audits are the less burdensome and costly alternative to an investigation.

### **5.8 WAC 296-123-100(2) Damages under RCW 49.58.060**

Clarifies the circumstances in which L&I will seek damages for applicants. This is least burdensome as it clarifies L&I's enforcement of the chapter and does not create a new requirement for employers.

### **5.9 WAC 296-123-100(5) Collections Authority**

Allows L&I to initiate collections procedures for unpaid assessments under the chapter. This is least burdensome as it clarifies L&I's enforcement of the chapter and does not create a new requirement for employers.