



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: August 20, 2019

TIME: 10:16 AM

WSR 19-17-068

Agency: Department of Labor & Industries

Effective date of rule:

Permanent Rules

- 31 days after filing.
- Other (specify) January 1, 2020 (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:

Purpose: The Department of Labor & Industries (L&I) is adopting updates to certain sections of Chapter 296-27 WAC, Recordkeeping and Reporting, to make sure we are at least as effective as the Occupational Safety and Health Administration (OSHA). Over the past few years, Federal OSHA made multiple updates, with the latest changes occurring in January 2019. OSHA's multiple rulemaking projects impacted these specific sections:

- 29 CFR 1904.35 Employee Involvement. (WAC 296-27-02111)
- 29 CFR 1904.36 Prohibition against discrimination. (WAC 296-27-02113)
- 29 CFR 1904.40 Providing records to government representatives. (WAC 296-27-03101)
- 29 CFR 1904.41 Annual Electronic Submission of occupational injury and illness records; which now applies to all state plan states. (WAC 296-27-03103)

One of the most significant changes Federal OSHA made was to now require all establishments/employers operating in state plan states (and who meet the specified criteria) to comply with the annual electronic records submission requirements. Other housekeeping amendments were also adopted in this chapter. Please see below for what was adopted in this rulemaking:

AMENDED SECTIONS

WAC 296-27-01103 through WAC 296-27-03101.

- Housekeeping changes through the chapter that did not change the effect of the rule. These changes included updating "you", "you are" or "you have" to "the employer", "the employer is" or "the employer has" where applicable for consistency purposes across all WACs, as well as clarification for users of this chapter.

WAC 296-27-01101 Recording criteria.

- The adoption corrected an inadvertent error from past rulemaking that references recordkeeping criteria under WAC 296-27-01109 through 296-27-01115 for specific cases related to needlestick and sharps injuries, medical removal cases, occupational hearing loss cases, and work-related tuberculous cases. The adopted rule updated the reference to "musculoskeletal disorder" with the correct reference to "tuberculosis" in subsection (2).

WAC 296-27-02111 Employee involvement.

- Revised the existing requirement that employers establish procedures for employees to report occupational injuries and illness, to clarify that these procedures must be "reasonable" and not deter or discourage reporting.
- Required employers to inform employees of their right to report work-related injuries and illnesses free from retaliation.
- Incorporated the existing statutory prohibition on retaliating against employees for reporting work-related injuries or illnesses
- Updated existing language to clarify the rights of employees and their representatives to access the injury and illness records.

WAC 296-27-02113 Prohibition against discrimination.

- Updated the existing language to clarify that the WISH Act, prohibits employers from discriminating against an employee for reporting a work-related fatality, injury or illness, as well as protects the employee who files a safety and health complaint, or asks for access to the chapter 296-27 WAC records, or otherwise exercises any rights afforded under the WISH Act.

WAC 296-27-03103 Annual OSHA injury and illness survey.

- Updated title of this WAC section to “Electronic submission of injury and illness records to OSHA.”
- Added new note at the beginning of the section that reads: Note: The information required by this section is reported and tracked by OSHA for their own injury and illness data analysis. DOSH is not notified when employers submit this information to OSHA.
- Updated existing requirements requiring certain employers to submit injury and illness data to OSHA to address electronic submission. Removed all original language from this section and replaced it with new language from OSHA, in a new format, outlining the requirements of electronic submission. The latest OSHA updates from January 2019 are represented in our updates. The new language will be at least as effective as OSHA.

NEW SECTIONS

WAC 296-27-001 Definitions.

- Moved the definitions section from the end of the chapter to the beginning for clarification purposes, as well as to align with the changes being made for the eRules rulemaking project.

WAC 296-27-071 Appendix B Annual Electronic Submission of OSHA Form 300A; Table 3: Designated Industries.

- Added an OSHA identical table to this new section. Please see the adopted language for Table 3.

REPEALED SECTIONS

WAC 296-27-051 Definitions

WAC 296-27-05101 Definitions

Citation of rules affected by this order:

New: WAC 296-27-001 and WAC 296-27-071

Repealed: WAC 296-27-051 and WAC 296-27-05101

Amended: WAC 296-27-01101; 296-27-01103; 296-27-01105; 296-27-01107; 296-27-01109; 296-27-01111; 296-27-01113; 296-27-01115; 296-27-01119; 296-27-02101; 296-27-02103; 296-27-02105; 296-27-02107; 296-27-02111; 296-27-02113; 296-27-02117; 296-27-031; 296-27-03101; 296-27-03103.

Suspended:

Statutory authority for adoption: RCW 49.17.010, 49.17.040, and 49.17.050

Other authority:

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 19-10-062 on April 30, 2019 (date).

Describe any changes other than editing from proposed to adopted version: No changes were made; the language is being adopted as proposed.

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	<u>2</u>	Amended	<u>19</u>	Repealed	<u>2</u>
Recently enacted state statutes:	New	_____	Amended	_____	Repealed	_____

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

New	_____	Amended	_____	Repealed	_____
-----	-------	---------	-------	----------	-------

The number of sections adopted on the agency's own initiative:

New	<u>2</u>	Amended	<u>19</u>	Repealed	<u>2</u>
-----	----------	---------	-----------	----------	----------

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

New	<u>2</u>	Amended	<u>19</u>	Repealed	<u>2</u>
-----	----------	---------	-----------	----------	----------

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: August 20, 2019

Name: Joel Sacks

Title: Director

Signature:

