

CONCISE EXPLANATORY STATEMENT
Chapter 296-880 WAC Unified Safety Standards for Fall Protection

Public Hearings: August 9, 11, 15 and 23, 2022

Adoption: September 20, 2022

Effective Date: November 1, 2022

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I. Purpose of Rulemaking

In August 2021, the Division of Occupational Safety and Health (DOSH) received notification from the Federal Occupational Safety and Health Administration (OSHA) relating to DOSH's fall protection standard. The notification advised L&I amend our fall protection rule in chapter 296-880 WAC in order to be at least as effective as those administered by OSHA, as required by the Washington State Plan.

A. Background

The focus of OSHA's position was residential construction which has both high fatality and hospitalization rates due to falls from elevation. OSHA is concerned that our fall protection residential construction standards differ significantly from their policies and standards. Their policy issues focused on the following areas: Roofing activities including leading edge work, work performed on a low or flat pitched roof, ski area facilities and operations, and use of the safety watch system.

During our last update to fall protection in the year 2020, the rule had widespread support with the state from business and labor. These partner organizations invested a significant amount of time and effort into creating and adopting what we considered to be some of the most protective and up-to-date worker safety requirements in the nation. In moving forward to address the issues brought forward by OSHA, the department felt strongly that we needed to reach out once again to these same stakeholders and partner organizations.

B. Summary of the rulemaking activities

On May 17, 2022 a CR-101 (pre-proposal) was filed letting the public know we were considering rulemaking. On March 21, and again on March 23, 2022, we held virtual public stakeholder meetings via Zoom. The March 21, 2022, meeting had an average of 95 stakeholders present, and on March 23, 2022 the average attendance was 31 people.

Erich Smith, Construction Technical Specialist, discussed the proposed rule changes at multiple Associated General Contractors (AGC) membership meetings as well as the Construction Advisory Committee meeting held on March 24, 2022.

The department sent out several notices via the GovDelivery system informing potentially affected stakeholders about the proposed rule along with information on how to obtain a copy of the proposed draft from the agency website. Each GovDelivery notice was sent to 10,951 recipients with an average 93.2% delivery rate.

II. Changes to the Rules (Proposed rule versus rule adopted):

WAC 296-880-095 Definitions are numbered in order to provide ability to cross-reference. This change is not substantive in nature.

III. Summary of Comments Received and Department Response

Public Hearings: Four public hearings were held, two in-person and two virtually via Zoom. Twenty-three people attended the hearings. Only one attendee provided verbal testimony. An additional two written comments were received from industry representatives. Below is a summary of the comments the department received.

General Comments	Department Response
<p>I also don't agree with the 4' rule, it makes no sense to have so many different trigger heights. A 6' across the board would be in line with OSHA and be easier for employees to comply with especially when we work in multiple states. Providing fall protection at four feet can create more hazards and can we really stop the fall that quick. If we are ok with 10' on scaffolding why would 6' be that bad. I would really encourage you to go with the 6'.</p>	<p>Thank you for your comment and your participation in this rulemaking effort.</p> <p>The adopted rule provides employers with clarity on the fall protection options they can use at their worksites. These options already exist and many have been successfully implemented at construction sites and other workplaces across the state.</p> <p>Employers who need assistance complying with this rule, or any other DOSH occupational safety and health requirement can contact the DOSH Consultation Program for free on-site assistance.</p>
<p>I just want to make comment on or get my thought across on the 4-foot rule for trigger height. I don't see the sense in having a 4-foot trigger height that makes it more or less difficult, window dressing, in a sense, for having a fall protection system in place when it's almost impossible in a lot of scenarios to prevent someone, from their free fall and arresting distance, to actually not hit the ground at 4 feet. Assuming that you can create an anchor point high enough to prevent that free fall and arresting distance, I just don't see the sense in it. I'd much rather try to stay more consistent across the board with less trigger heights and stay consistent with what OSHA has with 6 feet and we still maintain our 10 feet trigger heights for those scenarios that make sense. I mean that is</p>	<p>Thank you for your comment and your participation in this rulemaking effort.</p> <p>The adopted rule provides employers with clarity on the fall protection options they can use at their worksites. These options already exist and many have been successfully implemented at construction sites and other workplaces across the state.</p> <p>Employers who need assistance complying with this rule, or any other DOSH occupational safety and health requirement can</p>

<p>the same thought process resulting in working from structural members. We presented the scenario where, or at least testimony from people that showed that it would be near impossible to create an anchor point with an access for someone to free fall and have arresting force without hitting the ground from a structural member if you were to fall. And we want to have fall-protection rules that are in place that are not only easy to follow but also make sense. I have a hard time with the 4-foot rule, in not every scenario but in majority of scenarios. It has to make sense. Also, trying to keep consistency I think is important.</p>	<p>contact the DOSH Consultation Program for free on-site assistance.</p>
<p>The way that I interpret the OSHA standard for fall protection when constructing a leading edge (1926.501(b)(2)(i)) is that an infeasibility clause may be applied where employers can create a fall protection work plan that states how they will protect workers without the use of fall protection equipment. This creates an exception where traditional fall protection at 6 feet is not required. If the main drive to put this rule in place in Washington is to maintain compliance with OSHA’s minimum standard, then why can’t we include the same infeasibility exemption and use similar fall protection plan requirements to the ones found in 1926.502(k)?</p> <p>A specific example of when infeasibility may occur would be while installing the initial decking for a leading edge which is less than 10 feet. When you take into consideration that fall arrest systems could only be used at foot level and the height of a worker might be 6 ft, that creates a major compliance issue for creating a leading edge. Once some decking has been installed, then anchor points for fall <i>restraint</i> devices become available, but before that initial decking is applied, fall <i>arrest</i> is the only option – but this is no option at all at less than 10 feet when you take into account the height of the average worker, d ring offset, and a safety factor. Previously, the state of Washington had the walking working surface standard where surfaces less than so many inches were exempt</p>	<p>Thank you for your comment and participation in this rulemaking effort.</p> <p>Under the adopted language, the Washington Administrative Code will require fall protection at six feet or more for leading edge work. This is in accordance with the OSHA 1926 standard.</p> <p>This rulemaking is not addressing the infeasibility language currently used by OSHA. Employers who need assistance complying with this rule, or any other DOSH occupational safety and health requirement can contact the DOSH Consultation Program for free on-site assistance.</p>

from some fall protection standards, this previous language would have eliminated this infeasibility but that language no longer exists.	
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