

Ensuring for a Skilled and Trained Workforce in High Hazard Facilities (Engrossed Substitute House Bill 1817 (ESHB1817) & RCW 49.80)

Chapter 49.80 RCW (ESHB 1817 – Refinery Safety Through Skilled Workforce Standards) was established during the 2019 legislative session. The bill established a new wage payment requirement that workers must be paid commensurate with wages typically paid in the applicable geographic area. L&I will receive complaints and conduct investigations if workers allege a violation of the new requirement as a wage payment requirement as defined by Wage Payment Act (WPA). RCW 49.48.082. L&I will apply its longstanding practices and procedures used for WPA claims when a worker files a Workplace Rights Complaint Form alleging a violation of the new requirement.

Who is covered by the wage payment requirement?

The new wage payment requirement applies to refinery workers that meet the definition of “skilled journeyperson.” A skilled journeyperson “either graduated from an apprenticeship program... or has at least as many hours of on-the-job experience in the applicable occupation.” The new wage payment requirement does not apply to a “registered apprentice” because that term is defined in a separate provision that does not include the requirement. RCW 49.80.010(5).

What wage must employers pay to covered workers?

Employers must pay a rate that is “at least commensurate with the wages typically paid for the occupation in the applicable geographic area.” Employers may satisfy this requirement by paying prevailing wage rates, but are not required to. However, workers may not be paid at a rate less than an hourly rate at the seventh-fifth percentile in the applicable occupation and geographic area in the most recent occupation employment statistics published by the Employment Security Department (ESD).

What wage rate applies to meet the 75th Percentile requirement?

The statute does not define “geographic area.” ESD typically surveys 15 geographic areas, but for some occupations only provides statewide data. If L&I receives a complaint, L&I will apply the ESD data for a specific geographic area to determine whether a worker has received an hourly rate that is at least at the 75th Percentile of occupation employment statistics. L&I does not maintain ESD’s data, so please review ESD’s website or contact ESD if you have a question about what that rate is.

When do new wage rates become applicable after publication by ESD?

Employers must begin paying at or above the new wage rates at the beginning of the next pay period used by the employer in the normal course of business. A pay period may be daily, weekly, bi-weekly, semi-monthly, or monthly (see WAC 296-128-035.) ESD typically publishes wage rates annually in July or August.

What wage applies if there is no ESD data for a specific occupation for a given geographical area?

When there is no ESD data for a specific occupation based on the 15 geographic areas ESD typically surveys, L&I will apply the statewide rate of pay ESD provides for the 75th percentile.

May employers pay the wage rate for the general category of a worker when there are diverse wages within subcategories of a classification?

Yes, the 75th percentile wage floor applies to all potential sub-categorizations. No worker may receive less than the 75th percentile wage rate for the general classification under ESD data that applies to the worker. The bill establishes a wage floor; it is not a mandate for employers to only pay specific wage rates. Employers may offer more competitive wage rates if they choose.

How will L&I resolve questions about whether the category achieves the “applicable” threshold required under the new law?

Many disputes may be resolved by looking towards the definitions of the SOC codes used by ESD. The ESD Occupational Employment Statistics page links to the underlying SOC code definitions, maintained by the US Bureau of Labor Statistics. While some of these SOC code definitions may not be as comprehensive as a scope of work for prevailing wage, they should be descriptive enough to resolve blatant misclassification. L&I will examine disputes over classifications on a case-by-case basis.