

SMALL BUSINESS ECONOMIC IMPACT STATEMENT

CHAPTER 296-857 WAC, LEAD

JUNE 17, 2016

INTRODUCTION

The Washington State Department of Labor and Industries (L&I) is proposing changes to Washington Industrial Safety and Health Act (WISHA) rules that regulate employee exposure to lead contaminants. Specifically, the department plans to propose amendments to WAC 296-155-176, Lead Rules for Construction, and WAC 296-62-07521, Lead Rules for General Industry. The requirements in these chapters are being moved to a new chapter: chapter 296-857 WAC, Lead. These changes are intended to modernize, streamline and make consistent rules pertaining to employee exposures to lead.

Language Changes with an Economic Impact

New language to WAC 296-857-40040, Showering, Changing and Eating Facilities, will create an increase in requirements for construction industry employers only. Under the existing rule, construction employers are not required to provide showers for employees exposed to lead until the initial exposure evaluation determines exposures are above the permissible exposure limit (PEL). The proposed rule, if adopted, will require construction employers to provide showers from the first day of work at each worksite where exposures to lead are reasonably expected to be above the PEL¹. For most construction employers whose employees conduct job tasks like those listed in Table 4 “Examples of Tasks Likely to Have Exposures Above the PEL” the new language will require that they have showers on site from the first day of work. Providing the showers from the first day means they will have to provide the showers earlier than they would under the existing rule. Employers are required to provide a ratio of one shower per 10 employees of each gender.

The only exception to the shower rule occurs when a competent person has determined that one of the following applies:

- Employees will perform short-duration tasks with limited lead exposure during the work shift.
- or**
- Showers with a self-contained water supply can't be located at the jobsite due to lack of space or exposure to a significant danger such as uncontrolled traffic,
- or**
- The presence of adverse environmental conditions (climate), such as freezing temperatures or high winds.²

¹ “Permissible Exposure Level” or PEL is the level of exposure where the employer is required to control exposures and protect employees (i.e. use of a respirator). For lead, the PEL is defined as employee exposures to an airborne concentration of lead of 50 micrograms per cubic meter of air, calculated as an 8-hour-time-weighted average. For work shifts longer than 8 hours, the PEL will be adjusted. For example a 10-hour shift has a PEL of 40 micrograms per cubic meter of air.

² It is believed that these circumstances are rare and therefore, for the purpose of the survey, we assumed that all employers would be required to rent, purchase or build showers to be used at work-sites.

New language to WAC 296-857-30010, Blood Testing and Medical Examinations, would create an increase in requirements for general industry employers only. With respect to blood testing and medical examinations, the existing rule requires employers to provide initial blood testing for employees with more than 30 days of exposure above the action level³ in any 12-month period, and provide blood testing for employees every 6 months after the initial blood test. The proposed rule, if adopted, will require that employers provide initial blood lead testing for all new employees with the potential for at least 1 day of exposure above the action level in any 12-month period, as well as additional blood lead tests at 2 and 4 months.

New language to WAC 296-857-30020, Medical Removal, would also increase requirements for general industry employers only. The existing rule requires that employers remove the employee from exposure above the action level when blood lead level results are confirmed at 60 ug/100g of whole blood, or for blood lead levels less than 60ug/100g of whole blood, when the average of 3 consecutive blood tests results are greater than 50 ug/100 g of whole blood. The proposed language states that if the employee has a confirmed blood lead level above 50 ug/dl of blood, then they must be immediately removed from the exposure. Employers will no longer be allowed to average the results of 3 consecutive lead tests. Once this individual is removed, the employer is required to pay their salary and benefits, but may not allow the employee to work in areas where exposures to lead are above the action level.

ECONOMIC ANALYSES REQUIREMENTS OF THE REGULATORY FAIRNESS ACT

Proposed rules and rule amendments must meet the requirements of the Regulatory Fairness Act (RFA), Chapter 19.85 RCW before adoption. The RFA is intended to ensure, if legal and feasible, that rules do not impose disproportionate economic burdens on small business. The RFA requires that a Small Business Economic Impact Statement (SBEIS) be prepared for proposed rules that impose more than minor costs on businesses in an industry.

According to the RFA, the SBEIS must contain the following:

- 1) A brief description of the reporting, record keeping and other compliance requirement of the proposed rule along with the kinds of professional services that a small business is likely to need for compliance.
- 2) An analysis of all the business compliance costs of the proposed rule.
- 3) Where reasonably applicable, a consideration of whether compliance with the rule will cause businesses to lose sales or revenues.
- 4) The compliance cost of proposed regulations on small businesses⁴ is estimated and compared to the compliance cost estimates for the largest 10 percent of businesses in an industry. These cost comparisons can be estimated as per employee business costs.

³ “Action Level” or AL for lead is defined as a level of employee exposure that requires action be taken by the employer. For lead, this level is an airborne concentration of 30 micrograms per cubic meter of air, calculated as an 8-hour-time-weighted average.

⁴ The RFA defines “Small Business” as any business entity, including a sole proprietorship, corporation, partnership or other legal entity, that is owned and operated independently from all other businesses, and that has fifty or fewer employees. In this analysis, the number of “employees” is calculated by using full-time equivalents, of 2,080 worker hours annually as the indicator of the number of employees.

- 5) A statement of the steps taken by the agency to reduce the costs of the rule on small businesses as required by RCW 19.85.030(2), or reasonable justification for not doing so, addressing the options listed in RCW 19.85.030(2).
- 6) A description of how the agency will involve small businesses in the development of the rule.
- 7) A list of industries that will be required to comply with the rule. However, this shall not be construed to preclude application of the rule to any business or industry to which it would otherwise apply.

Details on the proposed rules that require small business economic impact analysis are as follows:

ASSESSING COMPLIANCE COSTS

A cover letter and compliance cost survey were sent to firms believed likely to be affected by the proposed rules. Because proposed changes to the showering, changing and eating facilities section will, if adopted, impact only construction industry employers, and proposed changes to the blood testing and medical removal sections will, if adopted, impact only general industry employers, separate survey instruments, addressing the pertinent rule language, were created for each type of employer.

A survey pertaining to WAC 296-857-40040, Showering, Changing, and Eating Facilities were sent to all Washington State construction employers in the following SIC codes:

- 1622 Bridge, Tunnel and Highway Construction
- 1721 Painting and Paper Hanging
- 1795 Wrecking and Demolition Work

A survey pertaining to WAC 296-857-30010, Blood Testing and Medical Examinations and WAC 296-857-30020, Medical Removal was sent to all Washington State general industry employers in the following SIC codes:

- 3211 Flat Glass Manufacturing
- 3229 Pressed and Blown Glass and Glassware
- 3321 Gray and Ductile Iron Foundries
- 3364 Nonferrous Die-Castings, Except Aluminum
- 3691 Storage Batteries
- 3721 Aircraft
- 3731 Ship Building and Repair
- 5093 Scrap and Waste Metals
- 7539 Automotive Repair (Surveys for this SIC were sent only to radiator repair firms.)

In total, 492 surveys were sent to construction firms. Of these surveys, 64 were undeliverable, reducing the assumed population size to 428. Of the 428 deliverable surveys, 115 were returned, for a response rate of 27%.

In total, 615 surveys were sent to general industry firms. Of these surveys, 123 were undeliverable, reducing the assumed population size to 492. Of the 492 deliverable surveys, 108 were returned for a response rate of 22%.

Respondents were asked a series of question intended to determine the size of the responding firms, whether their operations are presently in compliance with the rule, and, if not, what their expected compliance costs would be if the proposed rules were adopted. Results from these questions were used to assess the probable costs of the rule and are explained in the following sections.

ECONOMIC IMPACT OF PROPOSED CHANGES TO WAC 296-857-40040, SHOWERING, CHANGING, AND EATING FACILITIES

In order to determine the probable costs of this section, survey respondents were asked to answer one to seven questions intended to determine the following:

- 1) Whether a firm's employees are exposed to lead in the course of their work. If they are not, the firm is not subject to the rule.
- 2) If their employees are exposed to lead, whether their operations were already in compliance with the proposed rule. In order to be in compliance with the proposed rule, they must have answered yes to the question: "Do you presently provide showers, from the first day of work, on all work sites where employees are reasonably expected to be exposed to lead above the PEL?"
- 3) If they were not already in compliance with the rule, how many showers would they be required to purchase or rent in order to comply with the rule?

The results obtained from the survey are as follows:

Of the 115 surveys received, 19 or \cong 17% stated that their employees were exposed to lead in the course of their work. Among these 19 firms, 15 or \cong 79% do not presently provide showers from the first day of work on job sites where exposures to lead could reasonably be expected to be above the PEL. Responses from these 15 firms, which represent 13% of the sample size, are the basis of the cost evaluation for this rule. They reported the following:

- 4 or \cong 21% of firms reported that they were large firms (defined as having more than 50 employees). Among these firms, 1 is presently in compliance in that they provide showers from the very first day on jobs where the exposure is reasonably expected to be above the PEL. Of the remaining 3 firms, the total number of showers required to bring their operations into compliance with the proposed language is 50. The total cost for these showers is \$30,750. The total number of individuals employed by affected firms is 360, making the cost for employee for large firms, \$85.32.
- 15 or \cong 79% of firms reported that they were small firms (defined as having 50 or fewer employees). Among these firms, 1 is presently in compliance in that they provide showers from the very first day on jobs where the exposure is reasonably expected to be above the PEL. Of the remaining 14 firms, the total number of showers required to bring their operations into compliance with the proposed language is 100. The total cost for these showers is \$61,500. The total number of individuals employed by affected firms is 350, making the cost for employee for small firms, \$211.75.

ECONOMIC IMPACT OF PROPOSED CHANGES TO WAC 296-857-30010, BLOOD TESTING AND MEDICAL EVALUATIONS, AND CHANGES TO WAC 296-857-30020, MEDICAL REMOVAL

In order to determine the probable costs of these sections, survey respondents were asked to answer one to seven questions intended to determine the following:

- 1) Whether a firm's employees are exposed to lead in the course of their work. If they are not, the firm is not subject to the rules.
- 2) Whether the firm presently provides initial blood tests for new employees with follow-up blood tests at 2 and 4 months for all employees exposed to lead above the action level for at least 30 days. If they do, they are presently in compliance with the proposed language.

- 3) If they do not presently provide the blood tests required by the proposed language, they were asked to report the number of employees hired in 2004 that had the potential to be exposed, for at least 1 day and greater than 30 days, to lead at or above the action level.
- 4) The number of employee's test results that showed a blood lead level above 50 ug/dl, and above 60ug/dl. Under the new rule, if an employee's blood test showed a blood lead level over 50ug/dl, the employer is required to remove an employee from exposure at that point instead of waiting until tests confirmed a blood lead level at 60 ug/dl of whole blood OR when 3 consecutive tests showed a blood lead level greater than 50 ug/dl.

The results obtained from the survey are as follows:

Of the 123 surveys received, 19 or \cong 15% reported that their employees are exposed to lead in the course of their work. They reported the following:

- 4 or \cong 21% of firms reported that they were large firms (defined as having more than 50 employees). Among these firms, one reported that they already provide the required blood testing, while one other firm reported that they presently provide the initial blood test and not the follow up tests. When totaled, these large firms reported that they would be required to provide initial blood for 25 employees and follow up blood tests for 5 employees. The total cost for these blood tests is \$3,504. $((25 \times \$116.8^5) + (5 \times \$116.8))$ The total number of individuals employed by these firms is 270, making the cost for employee for large firms, \$12.98.
- 15 or \cong 79% of firms reported that they were small firms (defined as having 50 or fewer employees). Among these 15 firms, 10 reported that they do presently provide all blood testing required by the proposed rule. Those firms reporting that they are not presently in compliance, reported that they would be required to provide initial exams for 25 employees and follow up exams for 20 employees. The total cost for these blood tests is \$5,256. $((25 \times \$116.8) + (20 \times \$116.8))$ The total number of individuals employed by these firms is 183, making the cost per employee for small firms, \$28.68.
- Only 1 firm reported that some number of their employee's blood lead test results showed a blood lead level above 50 μ g/dl. The costs to this firm are all salary costs for this individual and any loss of productivity during the removal period. This single firm reported that they had fewer than 50 employees, and is, therefore considered a small firm. No large firms reported that this requirement will impact them in any way.

CONCLUSION

Since it can be assumed that the distribution of costs given in this analysis is a reasonable approximation of the distribution of industry-wide costs, the department has concluded that all proposed language will result in costs that fall disproportionately on small business.

Given the disproportionate impact, the department will do all the following to mitigate the impact to small business:

- Delay enforcement of this rule to allow employers 7 months to comply with the new requirements;
- Provide education to employers;
- Develop a Helpful Tool in the Resource section of the rule to help employers develop a blood lead testing program;

⁵ This cost is the average statewide cost given by a survey of firms that provide blood lead testing plus the cost of 2.5 hours of employee time required to obtain the tests at \$28.5 per hour.

- Prioritize consultations to employers that are implementing changes to their businesses as a result of this rulemaking.