

Chapter 296-900 WAC

ADMINISTRATIVE RULES

WAC

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WAC 296-900-100 Scope. This chapter applies to the following requirements and information regarding administration of the Washington Industrial Safety and Health Act (WISHA), chapter 49.17 RCW:

- Employer requests for using an alternative to WISHA requirements.
- Workplace inspections conducted by WISHA.
- Citations and penalties for violations of WISHA safety and health requirements.
- How to respond to actions that WISHA may take when requirements have been violated.
- Employer correction of cited violations, and notification to WISHA when the corrections are made.
- Employer obligations to inform employees.
- Reporting alleged safety and health hazards.

- Appeal and hearing processes for employers and employees.
- Safety and health investment projects (SHIP).

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060, 49.17.210, and 2007 c 522. WSR 08-03-025, § 296-900-100, filed 1/8/08, effective 2/8/08. Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060. WSR 06-06-020, § 296-900-100, filed 2/21/06, effective 6/1/06.]

WAC 296-900-110 Variances.

Summary:

Employer responsibility:

To follow requirements on granted variances:

- Applying for a variance
WAC 296-900-11005.
- Interim orders
WAC 296-900-11010.
- Renewing a temporary variance
WAC 296-900-11015.
- Changing a variance
WAC 296-900-11020.
- Variance hearings
WAC 296-900-11025.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060. WSR 06-06-020, § 296-900-110, filed 2/21/06, effective 6/1/06.]

WAC 296-900-11005 Applying for a variance.

IMPORTANT:

• A variance provides an approved alternative to WISHA requirements to protect employees from a workplace hazard. Variances can be permanent or temporary.

• Variances will **not** be retroactive. Employers are obligated to follow WISHA requirements until the variance is granted.

You must:

• Follow steps 1-5 to apply for a variance when you wish to use an alternative to WISHA requirements as a means to protect your employees.

Step 1: Decide what type of variance is needed by reviewing the types of variances in Table 1, Requesting a Variance.

Step 2: Complete a written application for the variance, following the requirements in Table 1, Requesting a Variance.

Note:

- A form, Variance Application (F414-021-000), is available for requesting variances:
 - From any L&I office.
 - On our web site under Safety Forms, Variance Application <http://www.lni.wa.gov/FormPublications/TablesForms/Safety/SafetyHealth.asp>

Reference:

- For a list of the local L&I offices, see the resources section of the Safety and health core rules, chapter 296-800 WAC.

- Step 3: Notify employees before submitting any type of variance request by doing all of the following:
- Posting a copy of the request on your safety bulletin board.
 - Using other appropriate means for notifying employees who may not be expected to receive notices posted on the safety bulletin board. For example, provide a copy to a designated representative or the safety committee.
- Step 4: Submit the written request, using one of the following means:
- Mail to:
Assistant Director
WISHA Services
P.O. Box 44650
Olympia, WA 98504-4650
 - Fax to: 360-902-5438
 - Take to any L&I office.
- Step 5: After receiving a written decision from WISHA about your request, immediately notify affected employees of the decision by using the methods in Step 3.

You must:

- Follow the specific requirements of the variance that WISHA has granted.

- Note:**
- If employers fail to follow Steps 1-5 above, the variance cannot be granted.
 - Citations may be issued for failing to follow a variance.
 - Employers can always follow the original WISHA requirements instead of the variance requirements.
 - If your variance is no longer necessary and you decide to follow the WISHA requirements instead, please advise WISHA in writing.

**Table 1
Requesting a Variance**

For this type of variance:	Include the following on your written application:
<p>Permanent variance</p> <ul style="list-style-type: none"> - Request a permanent variance if you can show that you will be providing alternate methods of protecting employees from hazards that are as effective as those provided by the requirements from which you are requesting relief. 	<ul style="list-style-type: none"> • Employer name and address • Employer or employer representative signature • Work locations and situations that apply to the variance • Which specific requirements you want to vary from, with WAC numbers • Description of proposed alternative methods of protection, and how they will protect employees.

For this type of variance:	Include the following on your written application:
<p>Note:</p> <ul style="list-style-type: none"> • A permanent variance remains in effect unless WISHA modifies or revokes it. Examples of reasons a variance might be revoked include: <ul style="list-style-type: none"> - An employer requests the variance be revoked - Requirements that existed when the variance was approved are modified - The work location is changed 	<ul style="list-style-type: none"> • How employees will be notified: <ul style="list-style-type: none"> - About the variance request, as required in Step 2 - That they may request a hearing • The following notice on the first page of your posted application, written in large and clear enough print to be easily read: <p>"Attention Employees: Your employer is applying to WISHA for a variance from safety and health requirements. You have a right to ask WISHA for a hearing on the variance request, but you must ask for the hearing in writing by (date*). If no hearing is requested, WISHA will act on the variance request without a hearing."</p> <p>*This date must be 21 calendar days after the variance request is mailed or delivered.</p>
<p>Temporary variance</p> <p>Request a temporary variance if both of the following apply:</p> <ul style="list-style-type: none"> • New WISHA requirements can't be met for any of the following reasons: <ul style="list-style-type: none"> - Professional or technical people are not available - Materials or equipment are not available - Construction or alteration of facilities cannot be completed by the effective date of the requirements 	<ul style="list-style-type: none"> • Provide all the information required above for permanent variances • Also provide all of the following: <ul style="list-style-type: none"> - An explanation of why WISHA requirements can't be met, including documentation that supports this belief - Steps that will be taken to protect employees until WISHA requirements can be met - When WISHA requirements will be met

For this type of variance:	Include the following on your written application:
<ul style="list-style-type: none"> • You have an effective plan for meeting WISHA requirements as soon as possible. <p>Note:</p> <ul style="list-style-type: none"> • Temporary variances remain in effect: <ul style="list-style-type: none"> - Until current WISHA requirements are met - No longer than one year, unless extended 	<ul style="list-style-type: none"> - A statement that this request is from a qualified person who has first hand knowledge of the facts represented

What to expect from WISHA:

- A review of all variance requests.
 - If more information is needed to make a decision, WISHA may:
 - Contact you or others who may have the needed information.
 - Visit your workplace after contacting you to make arrangements.
 - Deny your request if you don't provide information needed to make a decision on it.
 - A decision at least twenty-one calendar days from when the request was posted for employees.
 - The twenty-one-day period allows employees time to request a hearing on your variance application. See Variance hearings, WAC 296-900-11025.
 - A written decision either granting or denying the variance.
 - If granted, the written decision will include all of the following:
 - The requirement for which the variance applies.
 - The locations where the variance applies.
 - What you must do as an alternative means of protecting employees.
 - The effective date of the variance.
 - An expiration date for the variance, if applicable.
 - The requirement to post the decision.
 - If denied, the written decision will include:
 - A brief statement with reasons for the denial.
 - The requirement to post the decision.
 - WISHA will review permanent variances periodically after they have been in effect for six months, to decide whether they are still needed or need to be changed.
- Note:** If there's an appealed WISHA citation and notice that relates to the variance request, the decision on the variance may be delayed until the appeal is resolved.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060. WSR 06-06-020, § 296-900-11005, filed 2/21/06, effective 6/1/06.]

WAC 296-900-11010 Interim orders.

Definition:

An interim order allows an employer to vary from WISHA requirements until a permanent or temporary variance is granted.

(6/9/15)

You must:

- Request an interim order if alternate methods of protecting employees are needed while waiting for a permanent or temporary variance.

Note: An interim order may be requested at the same time a permanent or temporary variance is requested, or anytime after that.

What to expect from WISHA:

- A review of the request for an interim order.
 - If more information is needed to make a decision, WISHA may:
 - Contact the employer or others who may have the needed information.
 - Visit the workplace after contacting the employer to make arrangements.
 - Deny the request if the employer doesn't provide information needed to make a decision.
 - A decision at least twenty-one calendar days from when the request was posted for employees.
 - The twenty-one-day period allows employees time to request a hearing on your temporary variance renewal. See Variance hearings, WAC 296-900-11025.
 - A written decision either granting or denying the interim order request.
 - If granted, the decision will include all of the following:
 - The requirement for which the interim order applies.
 - The locations where the interim order applies.
 - What you must do as an alternative means of protecting employees.
 - The effective date of the interim order.
 - An expiration date for the interim order.
 - The requirement to post the decision.
 - If denied, the decision will include:
 - A brief statement with reasons for the denial.
 - The requirement to post the decision.

Note:

- WISHA's decision to grant or deny an interim order request will not affect the decision on a permanent or temporary variance request.
- WISHA may choose to issue an interim order in response to a variance request, even when the interim order wasn't specifically requested.
- Interim orders are effective until they are revoked, or until the variance request is granted or denied.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060. WSR 06-06-020, § 296-900-11010, filed 2/21/06, effective 6/1/06.]

WAC 296-900-11015 Renewing a temporary variance.

IMPORTANT:

Temporary variances can be renewed up to two times, for up to one hundred eighty days each time.

You must:

- Apply for a temporary variance renewal at least ninety days before the temporary variance expires.
- Send a letter, explaining why more time is needed to fulfill the current requirements.

What to expect from WISHA:

- A review of the temporary variance renewal request.
 - If more information is needed to make a decision, WISHA may:
 - Contact you or others who may have the needed information.

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- Visit your workplace after contacting you to make arrangements.
- Deny your request if you don't provide information needed to make a decision.
 - A decision at least twenty-one calendar days from when the request was posted for employees.
 - The twenty-one-day period allows employees time to request a hearing on your temporary variance renewal. See Variance hearings, WAC 296-900-11025.
 - A written decision either granting or denying the temporary variance renewal request.
 - If granted, the written decision will include all of the following:
 - The requirements for which the temporary variance applies.
 - The locations where the temporary variance applies.
 - What you must do as an alternative means of protecting employees.
 - The effective date of the temporary variance.
 - An expiration date for the temporary variance.
 - The requirement to post the decision.
 - If denied, the written decision will include:
 - A brief statement with reasons for the denial.
 - The requirement to post the decision.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060. WSR 06-06-020, § 296-900-11015, filed 2/21/06, effective 6/1/06.]

WAC 296-900-11020 Changing a variance.

You, your employees, or their representatives may:

- Request changes to variances in writing as follows:
 - For a permanent variance only after it's been in effect for at least six months.
 - For a temporary variance, only when renewing it.

Note:

- After six months, WISHA may initiate changes to a variance if they appear to be warranted.
- Employers can decide at any time to follow the original requirement, instead of the requested variance.

What to expect from WISHA:

- A review of your request to change a variance.
- If more information is needed to make a decision, WISHA may:
 - Contact you or others who may have the needed information.
 - Visit your workplace after contacting you to make arrangements.
 - Deny your request for a change if you don't provide information needed to make a decision.
 - A decision at least twenty-one calendar days from when the request was posted for employees.
 - The twenty-one-day period allows employees time to request a hearing on your request to change a variance. See Variance hearings, WAC 296-900-11025.
 - A written decision either granting or denying the change in variance.
 - If granted, the written decision will include all of the following:
 - The requirements for which the variance applies.
 - The locations for which the variance applies.
 - What you must do as an alternative means of protecting employees.

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- The effective date of the change in variance.
- An expiration date of the variance, if applicable.
- The requirement to post the decision.
 - If denied, the written decision will include:
 - A brief statement with reasons for the denial.
 - The requirement to post the decision.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060. WSR 06-06-020, § 296-900-11020, filed 2/21/06, effective 6/1/06.]

WAC 296-900-11025 Variance hearings.

IMPORTANT:

- Employers, affected employees, or employee representatives may request a hearing on any of the following:

- Permanent or temporary variance requests.
- Changes to existing variances.

You and your affected employees must:

- Do all of the following if requesting a variance hearing:
 - Put the request in writing and sign it.
 - Make sure the request is posted or delivered to the department within twenty-one calendar days from the variance application date, or renewal request date.
 - Send the written request to WISHA, using one of the following means:

- Mail to:
 - Assistant Director
 - WISHA Services
 - P.O. Box 44650
 - Olympia, WA 98504-4650
- Fax to: 360-902-5438
- Take to any L&I office.

You must:

- Immediately do all of the following when you receive a notice of the hearing from WISHA:
 - Post a copy of the notice on the safety bulletin board.
 - Give a copy of the notice to affected employees and employee representatives.
 - Use any other appropriate means for notifying employees who may not receive notices posted on the safety bulletin board. For example, provide a copy to a designated representative or the safety committee.

What to expect from WISHA:

- WISHA will do both of the following after receiving a request for a hearing on a variance, change of variance, or temporary variance renewal:
 - Within ten days, issue a notice advising all interested parties listed on the application that they have the option to participate in the hearing.
 - Provide you with a notice of the hearing at least twenty calendar days before the hearing date.
 - A hearing for the variance or variance change will be conducted as follows:
 - A WISHA representative will explain WISHA's view of the request for a variance or any proposed change to a variance.
 - Employers, employees, or employee representatives will then have an opportunity to explain their views and provide any relevant documents or information.
 - Information gathered at the hearing will be used to make a decision about whether to grant or deny the request for a variance or change in variance.

- Note:**
- WISHA may record a variance hearing.
 - Employers, employees, or employee representatives may request copies of recordings or transcripts of variance hearings at cost.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060. WSR 06-06-020, § 296-900-11025, filed 2/21/06, effective 6/1/06.]

WAC 296-900-120 Inspections.

Summary:

- WISHA inspections
- WAC 296-900-12005.
- Inspection techniques
- WAC 296-900-12010.
- Complaints
- WAC 296-900-12015.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060. WSR 06-06-020, § 296-900-120, filed 2/21/06, effective 6/1/06.]

WAC 296-900-12005 WISHA inspections.

• WISHA conducts the following types of **programmed** inspections:

- Hazardous workplaces.

WISHA identifies hazardous workplaces using objective criteria and inspection-scheduling systems that may include any of the following factors:

- Type of industry.
- Injury and illness data that identifies hazards.
- Employer's industrial insurance experience.
- Number, type, and toxicity of contaminants in the workplace.
- Degree of exposure to hazards.
- Number of employees exposed.
- Other factors, such as history of employee complaints.

Note: WISHA periodically reviews the scheduling systems and may adjust the type or significance of each criteria.

- High hazard industries that include the following:
 - Agriculture.
 - Asbestos renovation and demolition.
 - Construction.
 - Electrical utilities and communications.
 - Logging.
 - Maritime.

• WISHA conducts the following types of **unprogrammed** inspections of workplaces that may be in violation of WISHA safety or health requirements or chapter 49.17 RCW, the Washington Industrial Safety and Health Act. These inspections may focus only on certain areas or processes in a workplace or, depending on initial findings, may be expanded to include the entire workplace. Unprogrammed inspections may occur because of:

- Complaints from current employees or employee representatives who believe they have been exposed to a hazard because of a violation.
- Referrals from anyone, including former employees, who reasonably believes that workers under WISHA jurisdiction are being, or have been, exposed to a hazard because of a violation.
- Workplace deaths, catastrophic events, or serious injury or illness.

- A reason to believe that employees may be in imminent danger of serious injury or death.

- Follow-up inspections to verify that hazards identified in a previous inspection have been corrected.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060. WSR 06-06-020, § 296-900-12005, filed 2/21/06, effective 6/1/06.]

WAC 296-900-12010 Inspection techniques.

- During an inspection, WISHA staff may:
 - Take samples, photographs, videotapes, or audiotapes.
 - Conduct tests or interviews.
 - Ask employees to wear sampling devices.
 - Privately question, on or off the worksite, any:
 - Employer.
 - Employer representative.
 - Owner.
 - Operator.
 - Employee.
 - Employee representative.
 - Employ any other reasonable investigative techniques.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060. WSR 06-06-020, § 296-900-12010, filed 2/21/06, effective 6/1/06.]

WAC 296-900-12015 Complaints.

Employees or employee representatives may:

• File a written complaint if they believe they have been exposed to a hazard that is a violation of WISHA safety and health requirements.

What to expect from WISHA:

• After receiving a written complaint from an employee or employee representative, WISHA reviews the allegations and responds according to Table 2, WISHA Responses to Employee Complaints.

**Table 2
WISHA Responses to Employee Complaints**

For this determination:	WISHA will take the following actions:
The complaint is within WISHA jurisdiction and an inspection doesn't appear to be needed at this time	<ul style="list-style-type: none"> • Call the employer to discuss the complaint • Set a deadline for the employer to respond in writing • Fax or mail a complaint notification letter to the employer. Before the complaint is faxed or mailed, the following names will be removed unless specific permission is given to include them: <ul style="list-style-type: none"> - The name of the person submitting the complaint - The names of any employees identified in the complaint

For this determination:	WISHA will take the following actions:
	<ul style="list-style-type: none"> • Evaluate the employer's response, and do one of the following: <ul style="list-style-type: none"> - Close the complaint because the issues have been addressed, and send a copy of the employer's response to the person filing the complaint - Inspect the workplace <p>Note:</p> <ul style="list-style-type: none"> • If the complaint is closed and additional information is received from the person filing the complaint disputing the employer's written response, WISHA may schedule an inspection • If the person who filed the original complaint requests in writing that WISHA review a decision not to conduct an inspection, WISHA will review the decision and notify the person in writing of the results • If the person requesting the review is not satisfied with the results of the review, they may request a second review by the assistant director or designee
The complaint is within WISHA jurisdiction and an inspection needs to be conducted	<ul style="list-style-type: none"> • Conduct an inspection • Issue a citation and notice that shows one of the following: <ul style="list-style-type: none"> - Violations found - No violations were found • Send a letter to the person filing the complaint with inspection results <p>Reference: For citation and notice information, turn to citation and notice, WAC 296-900-130</p>

For this determination:	WISHA will take the following actions:
The complaint is not within WISHA jurisdiction	<ul style="list-style-type: none"> • Send a written response to the person filing the complaint explaining the matter is not within WISHA jurisdiction <p>Note: WISHA may make a referral to the proper authority</p>

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060. WSR 06-06-020, § 296-900-12015, filed 2/21/06, effective 6/1/06.]

WAC 296-900-130 Citation and notice.

Summary:

Employer responsibility:

To notify employees when a citation and notice is received:

- Citation and notice
WAC 296-900-13005.
- Copies of future citations and notices
WAC 296-900-13010.
- Posting citation and notices
WAC 296-900-13015.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060. WSR 07-03-163, § 296-900-130, filed 1/24/07, effective 4/1/07; WSR 06-06-020, § 296-900-130, filed 2/21/06, effective 6/1/06.]

WAC 296-900-13005 Citation and notice.

Definition:

A citation and notice is a document issued to an employer notifying them of:

- Inspection results.
- Any specific violations of WISHA safety and health requirements.
- Any monetary penalties assessed.
- Employer certification of correction requirements.
- WISHA will mail a citation and notice to you as soon as possible but not later than six months following any inspection or investigation.
 - If violations are found, the citation and notice will include:
 - A description of violations found.
 - The amount and type of assessed penalties.
 - The length of time given to correct the violations not already corrected during the inspection.
 - If no violations are found, a notice of inspection results will be sent stating that no violations were found or penalties assessed.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060. WSR 06-06-020, § 296-900-13005, filed 2/21/06, effective 6/1/06.]

WAC 296-900-13010 Copies of future citation and notices. Employees or their representatives wishing to receive copies of citation and notices during the next twelve months must:

- Submit a request for copy of citation and notice form to the following:

Department of Labor and Industries
Standards and Information
P.O. Box 44638
Olympia, WA 98504-4638

Note:

- A request for copy of citation and notice form can be obtained by:
 - Calling 360-902-5553.
 - Contacting the local L&I office.

Reference:

- For a list of the local L&I offices, see the resources section of the Safety and health core rules, chapter 296-800 WAC.

What to expect from WISHA:

- WISHA may decide who will receive copies of the citation and notices if more than one employee or employee representative requests a copy.
- WISHA may deny a request for copies of citation and notices if the person filing the request is not an employee or employee representative.
- If WISHA grants the request for copies of citation and notices, the employee or employee representative will:
 - Receive an approval document from WISHA.
 - Receive all citation and notices issued to that employer for the next twelve months.
 - Continue receiving citation and notices for an additional twelve months if a one-year extension is requested and approved.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060. WSR 06-06-020, § 296-900-13010, filed 2/21/06, effective 6/1/06.]

WAC 296-900-13015 Posting citation and notices.

You must:

- Immediately notify employees of a citation and notice by posting it and any correspondence related to an employee complaint on the safety bulletin board for three working days or until all violations are corrected, whichever time period is longer.
- Use any other appropriate means to notify employees who may receive notices posted on the safety bulletin board.
 - Examples of other appropriate means include sending a copy by mail or electronically to any of the following:
 - A designated employee representative.
 - Safety representatives.
 - The safety committee.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060. WSR 06-06-020, § 296-900-13015, filed 2/21/06, effective 6/1/06.]

WAC 296-900-140 Monetary penalties.

Summary:

Employer responsibility:

To pay monetary penalties if assessed.

Contents:

Reasons for monetary penalties

WAC 296-900-14005.

Base penalties

WAC 296-900-14010.

Base penalty adjustments

WAC 296-900-14015.

Increases to adjusted base penalties

WAC 296-900-14020.

Definitions:

- "Base penalty" means that penalty amount calculated for a violation by considering either specific statutory penalty amounts or the gravity of the violation.
- "Division" or "DOSH" means the division of occupational safety and health, Washington state department of labor and industries.
- "Gravity" for purposes of calculating a penalty, means the amount calculated by multiplying a violation's severity rate by its probability rate.
- "Inpatient hospitalization" means formal admission to the inpatient service of a hospital or an equivalent medical facility on an emergent basis for a work-related injury, or illness.
- "Monetary penalties" are fines assessed against an employer for violations of safety and health requirements.
- "Probability" means a number that describes the likelihood that an injury, illness, or disease will occur ranging from 1 (lowest) to 3 (highest).
- "Severity" for purposes of calculating a penalty, means the most serious injury, illness, or disease that could be reasonably expected to occur, ranging from 1 (lowest) to 3 (highest), because of a hazardous condition.
- "WISHA" means the Washington Industrial Safety and Health Act.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060. WSR 15-13-049, § 296-900-140, filed 6/9/15, effective 9/1/15; WSR 06-06-020, § 296-900-140, filed 2/21/06, effective 6/1/06.]

WAC 296-900-14005 Reasons for monetary penalties.

- DOSH **may** assess monetary penalties when a citation and notice is issued for any violation of safety and health rules or statutes.
- DOSH **will** assess monetary penalties under the following conditions:
 - When a citation and notice is issued for a serious, willful, or egregious violation.
 - When civil penalties are specified by statute as described in RCW 49.17.180.

Note: In addition to penalties specified by WISHA, there are penalties specified by other statutes, such as:

- Asbestos construction projects, RCW 49.26.016.
- Right to know (RTK)—MSDS, RCW 49.70.190.
- Right to know—Penalty for late payment, RCW 49.70.177.

- The minimum civil penalties assessed by DOSH are:
 - One hundred dollars for any penalty.
 - Two thousand five hundred dollars per violation for violations contributing to a fatality.
 - Five thousand dollars per violation for all willful violations.
 - Two hundred fifty dollars per day for asbestos good faith inspection (RCW 49.26.016 and 49.26.013).

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060. WSR 15-13-049, § 296-900-14005, filed 6/9/15, effective 9/1/15; WSR 06-06-020, § 296-900-14005, filed 2/21/06, effective 6/1/06.]

WAC 296-900-14010 Base penalties.

- DOSH calculates the base penalty for a violation by considering the following:
 - Specific amounts that are dictated by statute;

OR

- By assigning a weight to a violation, called "gravity." Gravity is calculated by multiplying a violation's severity rate by its probability rate. Expressed as a formula:

$$\text{Gravity} = \text{Severity} \times \text{Probability}$$

Note: Most base penalties are calculated by the gravity method.

• Severity and probability are established in the following ways:

Severity:

- Severity rates are based on the most serious injury, illness, or disease that could be reasonably expected to occur because of a hazardous condition.

- Severity rates are expressed in whole numbers and range from 1 (lowest) to 3 (highest).

- Tables 3 and 4 are used to determine the severity rate for a violation.

**Table 3
Severity - Serious Violations**

3	<ul style="list-style-type: none"> • Death • Injuries involving permanent disability • Chronic, irreversible illness
2	<ul style="list-style-type: none"> • Disability of a limited nature • Injuries or reversible illnesses resulting in hospitalization
1	<ul style="list-style-type: none"> • Injuries or temporary, reversible illnesses resulting in serious physical harm • May require removal from exposure or supportive treatment without hospitalization for recovery

**Table 4
Severity - General Violations**

General violation
<ul style="list-style-type: none"> • Conditions that could cause injury or illness to an employee but would not result in serious physical harm

Probability:

Definition:

A probability rate is a number that describes the likelihood that an injury, illness, or disease will occur ranging from 1 (lowest) to 3 (highest). See Table 5.

- When determining probability, DOSH considers a variety of factors, depending on the situation, such as:

- Frequency and amount of exposure.
- Number of employees exposed.
- Instances, or number of times, the hazard is identified in the workplace.
- How close an employee is to the hazard, i.e., the proximity of the employee to the hazard.
- Weather and other working conditions.
- Employee skill level and training.
- Employee awareness of the hazard.
- The pace, speed, and nature of the task or work.
- Use of personal protective equipment.
- Other mitigating or contributing circumstances.

**Table 5
Probability**

3	<ul style="list-style-type: none"> • If the factors considered indicate the likelihood of injury or illness would be relatively high.
2	<ul style="list-style-type: none"> • If the factors considered indicate the likelihood of injury or illness would be moderate.
1	<ul style="list-style-type: none"> • If the factors considered indicate an injury or illness could occur, but the likelihood would be relatively low.

- Table 6 is used to determine the dollar amount for each gravity-based penalty, unless otherwise specified by statute.

**Table 6
Gravity-Based Penalty - Serious Violations
Severity x Probability = Gravity**

9 High	\$7,000
6	\$6,000
4	\$4,000
3	\$3,000
2	\$2,000
1 Low	\$1,000

The minimum penalty for a serious violation = \$100.

(A penalty is required by statute for a serious violation; where adjustments would result in a penalty below the minimum, the minimum will be applied.)

The maximum statutory penalty for a serious violation = \$7,000.

**Table 7
General Violations Penalty**

General violation (first time nonstatutory)	\$0
General violation base penalty	\$200

A penalty is not applied to first time general violations. The base penalty is used to calculate the penalty for willful, repeat, or failure to abate general violations.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060. WSR 15-13-049, § 296-900-14010, filed 6/9/15, effective 9/1/15; WSR 06-06-020, § 296-900-14010, filed 2/21/06, effective 6/1/06.]

WAC 296-900-14015 Base penalty adjustments.

• Tables 8 through 11 describe the various factors DOSH considers when adjusting a base penalty, and the effect on the fine.

- The minimum adjusted base penalty for any violation carrying a penalty is one hundred dollars.

- The minimum adjusted penalty for serious violations contributing to a fatality is two thousand five hundred dollars.

- The minimum penalty for willful violations is five thousand dollars.

- The maximum adjusted base penalty for a violation is seven thousand dollars.

• No adjustments are made to minimum penalty amounts specified by statute.

Note: Repeat, willful, egregious, or failure-to-abate (failure to correct) penalty adjustments can exceed seven thousand dollars. See Tables 12 through 14 in WAC 296-900-14020 for those penalties.

**Table 8
Employer Inspection History**

History Assessment	Penalty Adjustment
Above Average: Previous inspections with less than one serious violation on average and no willful, repeat, or failure to abate violations.	-10%
Average: No previous inspections or inspections with less than two serious violations on average.	None
Below Average: Previous inspections with willful, repeat, or failure to abate violations or inspections with two or more serious violations on average.	+10%

- History is based on the prior three years statewide.
- No reduction is given for violations classified as willful, repeat, failure to abate, or violations contributing to an inpatient hospitalization with an assigned gravity of 6 or 9 or any violations contributing to a fatality.

**Table 9
Good Faith**

Good Faith	Penalty Adjustment
Good	-20%
Average	None
Below Average	+20%

Based on:

- Evidence of an overall safety and health program, including a written accident prevention program (APP), other required written programs, training, etc.
- Efforts to fully communicate safety and health policies.
- Employees are clearly involved in the safety and health programs.
- Management's commitment at all levels is apparent.
- Employer's injury and illness rate.

No reduction is given for violations classified as willful, repeat, or failure to abate.

**Table 10
Abatement Quick-Fix Reduction**

Immediate correction of hazard provided such corrective action is substantial and not temporary or superficial	-15%
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No reduction is given for:

- Violations classified as willful, repeat, or failure to abate.
- Violations contributing to an inpatient hospitalization or fatality, or to any incidents resulting in serious injuries to employees.
- Blatant violations that are easily corrected or "abated" due to the short-term duration of work at a specific location.

**Table 11
Size of Workforce**

Number of Employees	Penalty Adjustment
1 - 10	-70%
11 - 25	-60%
26 - 100	-40%
101 - 250	-20%
251 or more	None

Based on workforce size nationwide.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060. WSR 15-13-049, § 296-900-14015, filed 6/9/15, effective 9/1/15; WSR 06-06-020, § 296-900-14015, filed 2/21/06, effective 6/1/06.]

WAC 296-900-14020 Increases to adjusted base penalties.

- Tables 12 through 14 describe circumstances where an increase may be applied by DOSH to an adjusted base penalty.

**Table 12
Repeat Violations
(increases the adjusted base penalty, after willful assessment)**

1 st time x 2
2 nd time x 5
3 rd time x 8
4 th time x 12
5 th time x 15

- History is based on the prior three years
- Maximum statutory penalty = \$70,000

Note: For repeat willful violations the repeat adjustment is applied after the willful assessment.

**Table 13
Willful Violations**

Multiply the adjusted based penalty by 10.
• No reduction is given for good faith, history, or abatement quick-fix.

Minimum statutory penalty = \$5,000
Maximum statutory penalty = \$70,000

Table 14
Failure to Abate

Increases the adjusted base penalty:
Adjusted base penalty is multiplied by the number of calendar days past the correction date, with a minimum of five days.
<ul style="list-style-type: none"> No reduction in the base penalty is given for good faith, history, or abatement quick-fix.

Maximum statutory penalty cannot exceed \$7,000 per day if violation is not corrected.

Table 15
Egregious Violation

<p>If the violation was willful and at least one of the following:</p> <ul style="list-style-type: none"> The violations resulted in worker fatalities, a worksite catastrophe, or large number of injuries or illnesses. The violation resulted in persistently high rates of worker injuries or illnesses. The employer has an extensive history of prior violations. The employer has intentionally disregarded its safety and health responsibilities. The employer's conduct taken as a whole amounts to clear bad faith in the performance of his/her duties. The employer has committed a large number of violations so as to undermine significantly the effectiveness of any safety and health program that might be in place. 	<ul style="list-style-type: none"> The adjusted base penalty may be increased as follows: With a separate penalty issued for each instance, the employer fails to follow a specific requirement.
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Table 16
Penalty Calculation Method

All penalty adjustments factors are summed.
<ul style="list-style-type: none"> History: Up to a 10% reduction Good Faith: Up to a 20% reduction Quick-Fix: Up to a 15% reduction

- Size: Up to a 70% reduction

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060. WSR 15-13-049, § 296-900-14020, filed 6/9/15, effective 9/1/15; WSR 07-03-163, § 296-900-14020, filed 1/24/07, effective 4/1/07; WSR 06-06-020, § 296-900-14020, filed 2/21/06, effective 6/1/06.]

WAC 296-900-150 Certifying violation corrections.

Summary:

Employer responsibility:

- To certify that violations to safety and health requirements have been corrected.
- To submit, if required:
 - Additional information.
 - Correction action plans.
 - Progress reports.
- To comply with correction due dates.
- To tag cited moveable equipment to warn employees of a hazard.

- To inform affected employees that each violation was corrected.

Certifying violation correction

WAC 296-900-15005.

Violation correction action plans

WAC 296-900-15010.

Progress reports

WAC 296-900-15015.

Timeliness of violation correction documents

WAC 296-900-15020.

Inform employees about violation correction

WAC 296-900-15025.

Tag moveable equipment

WAC 296-900-15030.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060. WSR 07-03-163, § 296-900-150, filed 1/24/07, effective 4/1/07; WSR 06-06-020, § 296-900-150, filed 2/21/06, effective 6/1/06.]

WAC 296-900-15005 Certifying violation correction.

Definition:

A correction date is the date by which you must meet the WISHA requirements listed on either a:

- Citation and notice (C&N);

OR

- A corrective notice of redetermination (CNR).

You must:

Certify in writing within ten calendar days following the correction date shown on the C&N that each violation has been corrected. Include the following:

- Employer name and address.
- The inspection number involved.
- The citation and item numbers which have been corrected.
- The date each violation was corrected and the method used to correct them.

- A statement that both:

■ Affected employees and their representatives were informed that each violation was corrected;

AND

■ The information submitted is accurate.

- Employer's signature or the signature of employer's designated representative.

Note: Certification is not required if the WISHA compliance officer indicates in the C&N, or a reassumption hearings officer indicates in a CNR, that they have already been corrected.

You must:

- Submit additional documentation for willful or repeated violations, demonstrating that they were corrected. This documentation may include, but is not limited to:
 - Evidence of the purchase or repair of equipment.
 - Photographic or video evidence of corrections.
 - Other written records.
- Submit additional documentation for serious violations when required in the C&N or CNR.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060. WSR 06-06-020, § 296-900-15005, filed 2/21/06, effective 6/1/06.]

WAC 296-900-15010 Violation correction action plans.

You must:

- Submit a written violation correction action plan within twenty-five calendar days from the final order date when the citation and notice or corrective notice of redetermination requires it. Include all of the following in the violation correction action plan:
 - Identification of the violation.
 - The steps that will be taken to correct the violation.
 - A schedule to complete the steps.
 - A description of how employees will be protected until the corrections are completed.

What to expect from WISHA:

- WISHA will notify you in writing only if your plan is not adequate, and describe necessary changes.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060. WSR 06-06-020, § 296-900-15010, filed 2/21/06, effective 6/1/06.]

WAC 296-900-15015 Progress reports.

You must:

- Submit written progress reports on corrections when required in the citation and notice (C&N) or corrective notice of redetermination (CNR), and briefly explain the:
 - Status of each violation.
 - Action taken to correct each violation.
 - Date each action has or will be taken.

What to expect from WISHA:

- WISHA will state in the C&N or CNR if progress reports are required, including:
 - Items that require progress reports.
 - Date when an initial progress report must be submitted.
- The initial progress report is due no sooner than thirty calendar days after you submit a correction action plan.
- Whether additional progress reports are required, and the dates by which they must be submitted.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060. WSR 06-06-020, § 296-900-15015, filed 2/21/06, effective 6/1/06.]

WAC 296-900-15020 Timeliness of violation correction documents.

What to expect from WISHA:

- WISHA will determine the timeliness of violation correction documents by reviewing the following:
 - The postmark date for documents sent by mail.

(6/9/15)

- The date received by other means, such as personal delivery or fax.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060. WSR 06-06-020, § 296-900-15020, filed 2/21/06, effective 6/1/06.]

WAC 296-900-15025 Inform employees about violation correction.

You must:

- Inform employees about violation corrections by doing the following:
 - Post a copy of each violation correction document submitted to WISHA, or a summary, near the place where the violations occurred, if practical.
 - If posting near the place where the violation occurred is not practical, such as with a mobile work operation, post in a place readily accessible to affected employees or take other steps to fully communicate actions taken to affected employees or their representatives.
 - Keep violation correction information posted for at least three working days after submitting the correction documents to WISHA.
 - Give notice to employees and their representatives on or before the date you submit correction information to WISHA.
 - Make sure that all posted correction documents are not altered, defaced, or covered by other materials.

- Inform employees and their representatives of their right to examine and copy all correction documents submitted to WISHA.
 - If they ask to examine or copy documents within three working days of receiving notice that the documents were submitted to WISHA, provide access or copies no later than five days after receiving their request.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060. WSR 06-06-020, § 296-900-15025, filed 2/21/06, effective 6/1/06.]

WAC 296-900-15030 Tag moveable equipment.

You must:

- Tag moveable equipment that has been cited to warn employees if a hazard has not been corrected, as follows:
 - Attach a warning tag or a copy of the citation to the equipment's operating controls or to the cited component.
 - For hand-held equipment, tag it immediately after you receive a citation.
 - For other equipment, tag it before moving it within the worksite or between worksites.

Note: The tag should warn employees about the nature of the violation and tell them where the citation is posted.

Reference: For a sample tag that meets this requirement, go to helpful tools, sample tag for cited moveable equipment, in the resources section of this chapter.

You must:

- Make sure that the tag or copy of the citation attached to movable equipment is not altered, defaced, or covered by other materials.
 - Keep the tag or copy of the citation attached to movable equipment until one of the following occurs:
 - Violations have been corrected and all certification documents have been submitted to WISHA.
 - Cited equipment is permanently removed from service.

[Ch. 296-900 WAC p. 11]

- The final order from an appeal vacates (voids) the violation.

Note: Safety standards for construction work, chapter 296-155 WAC, has information on warning tags. You can use warning tags that meet those requirements instead of the warning tags required by this rule.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060. WSR 06-06-020, § 296-900-15030, filed 2/21/06, effective 6/1/06.]

WAC 296-900-160 More time to comply.

Summary:

Your responsibility:

To submit timely requests when more time is needed to correct violations. To post requests for more time for employees.

Requesting more time to comply

WAC 296-900-16005.

Post WISHA's response to requests for more time

WAC 296-900-16010.

Correction date hearing requests

WAC 296-900-16015.

Post WISHA's violation correction hearing notice

WAC 296-900-16020.

Violation correction hearing procedures

WAC 296-900-16025.

Post the violation correction hearing decision

WAC 296-900-16030.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060. WSR 06-06-020, § 296-900-160, filed 2/21/06, effective 6/1/06.]

WAC 296-900-16005 Requesting more time to comply.

IMPORTANT:

• Employers can request more time to correct violations if they:

- Have made a good faith effort to correct the violation.
- Have not corrected the violation because of factors beyond their control.

You must:

• Submit any requests for more time to correct violations in writing. Requests must be received or postmarked before midnight of the correction date shown on the citation and notice (C&N) or corrective notice of redetermination (CNR), and include:

- The business name.
- The address of the workplaces.
- The citation and the correction dates to be extended.
- The new correction date and length of correction period being requested.

- A description of the actions that have been, and are being, taken to meet the correction dates in the C&N or CNR.

- Factors preventing correction of violations by the date required.

- The means that will be used to protect employees while the violation is being corrected.

- Certification that the request for correction date extension has been posted, and if appropriate, certification that a copy was delivered to affected employees or their representatives.

- Employer's signature or the signature of the employer's representative.

[Ch. 296-900 WAC p. 12]

- Date.

• Submit requests by one of the following methods:

- First class mail, postage prepaid to any L&I office.

- Take to any L&I office.

- Fax to the number shown in the C&N.

Reference: For a list of the local offices, see the resources section of the Safety and health core rules, chapter 296-800 WAC.

What to expect from WISHA:

• **WISHA may:**

- Accept late requests if they are both:

■ Received within five days following the related correction date;

AND

■ Accompanied by your written statement explaining the exceptional circumstances that caused the delay.

Note: WISHA doesn't accept late requests when compliance activity has already started.

• **WISHA may:**

- Respond to telephone requests or personal conversations asking for more time to comply if timely, and followed up in writing within twenty-four hours.

- Conduct an investigation before making a decision whether to grant a request for more time.

• **WISHA will:**

- Make a decision whether or not to grant the employer more time. Once made, the decision remains in effect unless an employee or employee representative requests a hearing.

- Keep the original correction date in effect unless a notice granting more time is sent.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060. WSR 06-06-020, § 296-900-16005, filed 2/21/06, effective 6/1/06.]

WAC 296-900-16010 Post WISHA's response to requests for more time.

You must:

• Post notices from WISHA approving additional time to correct citations, with the related citation, immediately upon receipt.

• Keep the notices posted until one of the following occur:

- The correction date has passed.

- A hearing notice is requested and posted.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060. WSR 06-06-020, § 296-900-16010, filed 2/21/06, effective 6/1/06.]

WAC 296-900-16015 Correction date hearing requests.

IMPORTANT:

• Affected employees or their designated representatives may request a hearing if they disagree with WISHA's decision to grant an employer more time to correct a violation.

• Employers may request a hearing if WISHA denies their request for more time to correct a violation.

You, your employees, or their representatives must:

• Send requests for hearings, if desired, in writing no later than ten calendar days after the issue date of the notice granting more time to correct a violation to:

- Mail to:

Assistant Director for WISHA Services
Attn: WISHA Appeals
P.O. Box 44604
Olympia, WA 98504-4604

- Fax to: 360-902-5581

- Take to any department service location.

Reference: For a list of the local offices, see the resources section of the Safety and health core rules, chapter 296-800 WAC.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060. WSR 06-06-020, § 296-900-16015, filed 2/21/06, effective 6/1/06.]

WAC 296-900-16020 Post WISHA's violation correction hearing notice.

You must:

- Post WISHA's hearing notice or a complete copy until the hearing is held, along with the:
 - Citation containing the correction date for which more time was requested.
 - Department notices issued in response to the employer's request for more time.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060. WSR 06-06-020, § 296-900-16020, filed 2/21/06, effective 6/1/06.]

WAC 296-900-16025 Violation correction hearing procedures. What to expect from WISHA:

- After receiving a hearing request, the assistant director for WISHA services will appoint someone from WISHA to act as a hearings officer.
 - The hearings officer:
 - Will send a hearing notice to the employer and employee at least twenty days before the hearing date that includes all of the following:
 - A statement that all interested parties can participate in the hearing.
 - The time, date, and place of the hearing.
 - A short and clear explanation why a hearing was requested.
 - The nature of the proceeding, including the specific sections of the statute or rule involved.
 - The legal authority and jurisdiction under which the hearing will be held.
 - May discuss the material to be presented to determine how the hearing will proceed.
 - An assistant attorney general may be present at the hearing to give legal advice to the hearings officer.
 - The hearing will be conducted by either:
 - The hearings officer;
- OR**
- The assistant attorney general, if requested by the hearings officer.
 - After the hearing, WISHA will issue an order that either affirms or modifies the correction date that caused the hearing.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060. WSR 06-06-020, § 296-900-16025, filed 2/21/06, effective 6/1/06.]

(6/9/15)

WAC 296-900-16030 Post the violation correction hearing decision.

You must:

- Post a complete, unedited copy of the order affirming or modifying the correction date as soon as it is received, along with the applicable citation.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060. WSR 06-06-020, § 296-900-16030, filed 2/21/06, effective 6/1/06.]

WAC 296-900-170 Appeals.

Summary:

Employer responsibility:

To post information regarding appeals in a conspicuous area where notices to employees are normally posted:

Appealing a citation and notice (C&N)

WAC 296-900-17005.

Stay of abatement date request

WAC 296-900-17006.

Appealing a corrective notice of redetermination (CNR)

WAC 296-900-17010.

Posting appeals

WAC 296-900-17015.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060 and 2011 c 91. WSR 12-02-055, § 296-900-170, filed 1/3/12, effective 7/1/12. Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060. WSR 06-06-020, § 296-900-170, filed 2/21/06, effective 6/1/06.]

WAC 296-900-17005 Appealing a citation and notice (C&N).

IMPORTANT:

- Employers may appeal C&Ns.
- Employees of the cited employer, or their designated representatives, may only appeal abatement dates.
 - The filing of an appeal does not stay the abatement date for violations classified as serious, willful, repeat serious, or failure to abate serious. Employers may request a stay of abatement date for these classifications of violations when they appeal a C&N.

You must:

- When appealing, submit a written appeal to DOSH within fifteen working days after receiving the C&N. Include the following information:
 - Business name, address, and telephone number.
 - Name, address, and telephone number of any employer representative.
 - C&N number.
 - What you believe is wrong with the C&N and any related facts.
 - What you believe should be changed, and why.
 - Requests for stay of abatement date according to WAC 296-900-17006.
 - A signature and date.
- Send appeals in any of the following ways:
 - Mail to:
 - Assistant Director for DOSH Services
 - Attn: DOSH Appeals
 - P.O. Box 44604
 - Olympia, WA 98504-4604
 - Fax to: 360-902-5581
 - Take to any department service location.

[Ch. 296-900 WAC p. 13]

Reference: See the resources section of the Safety and health core rules, chapter 296-800 WAC, for a list of the local offices.

Note: The postmark is considered the submission date of a mailed request.

Employees or their designated representatives must:

- When appealing C&N abatement dates, submit a written request to DOSH within fifteen working days after the C&N is received. Include the following information:

- Name of employee, address, telephone number.
- Name, address, and telephone number of any designated representative.

- C&N number.

- What is believed to be wrong with the abatement date.

- A signature and date.

- Send appeals in any of the following ways:

- Mail to:

Assistant Director for DOSH Services

Attn: DOSH Appeals

P.O. Box 44604

Olympia, WA 98504-4604

- Fax to: 360-902-5581

- Take to any L&I service location.

Reference: See the resources section of the Safety and health core rules, chapter 296-800 WAC, for a list of the local offices.

Note: The postmark is considered the submission date of a mailed request.

What to expect from DOSH:

- After receiving an appeal, DOSH will do one of the following:

- Reassume jurisdiction over the C&N, and notify the person who submitted the appeal.

- Forward the appeal to the board of industrial insurance appeals. The board will send the person submitting the appeal a notice with the time and location of any board proceedings.

Definition:

Reassume jurisdiction means that DOSH has decided to provide the employer with an informal conference to discuss their appeal.

- When reassuming jurisdiction over a C&N, DOSH has thirty working days after receiving the appeal to review it, gather more information, and decide whether to make changes to the C&N. The review period:

- Begins the first working day after the appeal is received. For example, if an appeal is received on Friday, the thirty days will begin on the following Monday unless it's a state holiday.

- May be extended fifteen additional working days, if everyone involved agrees and signs an extension agreement within the initial thirty-day period.

- Will include an informal conference about the appeal that is an opportunity for interested parties to:

- Briefly explain their positions.

- Provide any additional information they would like DOSH to consider when reviewing the C&N.

- Provide any additional information they would like DOSH to consider when reviewing stay of abatement date requests.

[Ch. 296-900 WAC p. 14]

Note: DOSH might reassume jurisdiction over a C&N to do any of the following:

- Provide an employer and affected employees an opportunity to present relevant information, facts, and opinions during an informal conference.

- Give an employer, affected employees, and the department an opportunity to resolve appeals rapidly and without further contest, especially in routine compliance cases.

- Educate employers about the C&N, the DOSH appeals process, and DOSH compliance.

- Review citations, penalties, and abatement dates. Although informal, the conference is an official meeting and it may be either partially or totally recorded. Participants will be told if the conference is recorded.

- Review requests to stay abatement dates.

- On or before the end of the thirty working day review period, or forty-five working days if everyone involved agrees to the fifteen additional working day extension, DOSH will issue a corrective notice of redetermination that:

- Reflects any changes made to the C&N.

- Grants or denies requests to stay abatement dates and includes the basis of the decision.

- Is sent to the employer, employees, and employee representatives participating in the appeal process.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060 and 2011 c 91. WSR 12-02-055, § 296-900-17005, filed 1/3/12, effective 7/1/12. Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060. WSR 06-06-020, § 296-900-17005, filed 2/21/06, effective 6/1/06.]

WAC 296-900-17006 Stay of abatement date request.

(1) Employers may request stay of abatement dates for any violation classified as serious, willful, repeat serious, or failure to abate serious. Stay requests must be made in the notice of appeal under WAC 296-900-17005.

(2) Stay requests must include:

(a) Each violation and item number for which a stay is requested.

(b) The reason for the stay request.

(3) DOSH will review requests for stay of abatement dates for each violation requested. DOSH will stay the abatement date when an appeal is filed for any serious, willful, repeat serious, or failure to abate serious violation where DOSH cannot determine that the preliminary evidence shows a substantial probability of death or serious physical harm to workers.

(4) The basis for decisions on stay requests will be in the CNR.

(5) If a stay of abatement date is granted in the CNR and the employer appeals the CNR, the stay will remain in place until there is a final order on the appeal.

(6) If a stay of abatement date is denied in the CNR and the employer appeals the CNR further, the request for a stay of abatement date must be renewed according to WAC 296-900-17010.

(7) There is no requirement to abate a violation for which a stay request is pending.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060 and 2011 c 91. WSR 12-02-055, § 296-900-17006, filed 1/3/12, effective 7/1/12.]

WAC 296-900-17010 Appealing a corrective notice of redetermination (CNR).**IMPORTANT:**

- Employers may appeal CNRs.
- Employees who could be affected by a CNR, or their designated representatives, may appeal abatement dates.
- Employers must renew requests to stay abatement dates if a stay request is denied when they appeal CNRs.

You must:

- Appeal a CNR, if desired, in writing within fifteen working days after it was received to the:

Board of Industrial Insurance Appeals
2430 Chandler Court S.W.
P.O. Box 42401
Olympia, WA 98504-2401

- Send a copy of the appeal to the CNR to the:

Assistant Director for DOSH Services
Attn: DOSH Appeals
P.O. Box 44604
Olympia, WA 98504-4604
- Fax to: 360-902-5581
- Take to any department service location.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060 and 2011 c 91. WSR 12-02-055, § 296-900-17010, filed 1/3/12, effective 7/1/12. Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060. WSR 06-06-020, § 296-900-17010, filed 2/21/06, effective 6/1/06.]

WAC 296-900-17015 Posting appeals.**You must:**

- Immediately post notices and information related to any appeal or stay of abatement date request in the same place where DOSH citation and notices (C&Ns) are posted. These notices and information include:
 - The notice of appeal, until the appeal is resolved.
 - Notices about DOSH reassuming jurisdiction, and any extension of the review period until the end of review period.
 - A notice of an informal conference until after the conference is held.
 - A corrective notice of redetermination for as long as C&Ns are to be posted.

Reference: For C&N posting requirements, see Posting citation and notices, WAC 296-900-13015.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060 and 2011 c 91. WSR 12-02-055, § 296-900-17015, filed 1/3/12, effective 7/1/12. Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060. WSR 06-06-020, § 296-900-17015, filed 2/21/06, effective 6/1/06.]

WAC 296-900-175 Safety and health investment projects.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060, 49.17.210, and 2007 c 522. WSR 08-03-025, § 296-900-175, filed 1/8/08, effective 2/8/08.]

WAC 296-900-17505 Scope and purpose. (1) The program for safety and health investment projects (SHIP) was established during the 2011 legislative session to provide funding for safety and health projects for workplaces insured for workers' compensation through the department's state fund. The purpose of these projects shall be to: Prevent workplace injuries, illnesses, and fatalities; create early return to

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work programs; and reduce long-term disability through the cooperation of employers and employees or their representatives.

(2) Funds for awards shall be distributed as follows:

- At least twenty-five percent for projects designed to develop and implement innovative and effective return-to-work programs for injured workers;
- At least twenty-five percent for projects that specifically address the needs of small businesses; and
- At least fifty percent for projects that foster workplace injury and illness prevention by addressing priorities identified by the department in cooperation with the Washington Industrial Safety and Health Act advisory committee and the workers' compensation advisory committee.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060, and 2011 c 37. WSR 12-03-090, § 296-900-17505, filed 1/17/12, effective 3/1/12. Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060, 49.17.210, and 2007 c 522. WSR 08-03-025, § 296-900-17505, filed 1/8/08, effective 2/8/08.]

WAC 296-900-17510 Definitions. (1) **Applicant** means the entity submitting an application and formal proposal for a safety and health investment projects award.

(2) **Department** means the department of labor and industries.

(3) **Funding cycle** means how frequently safety and health investment project awards are given.

(4) **Medical aid fund** refers to industrial insurance funds established in chapter 51.44 RCW.

(5) **Milestones** means critical points of achievement for the safety and health investment projects, showing progress toward project completion. Milestones are interim accomplishments that define project progress.

(6) **Product** means any of the following that are developed as the result of a safety and health investment project: Written materials; manufactured materials; designs; equipment; programs; services; workplace changes; or other results of any kind, tangible or intangible.

(7) **Recipient** means an agency, firm, organization, individual or other legal entity receiving project award funds from the safety and health investment projects.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060, and 2011 c 37. WSR 12-03-090, § 296-900-17510, filed 1/17/12, effective 3/1/12. Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060, 49.17.210, and 2007 c 522. WSR 08-03-025, § 296-900-17510, filed 1/8/08, effective 2/8/08.]

WAC 296-900-17515 Eligibility. (1) All projects must address the needs of employers and employees covered by the department's state fund.

(2) Projects must have clearly identified:

- (a) Objectives and work plan;
- (b) Products; and
- (c) Criteria for evaluating the success of the project.

(3) Awards may be granted to any agency, firm, organization, individual or other legal entity such as, but not limited to, the following:

- (a) Trade associations;
- (b) Business associations;
- (c) Employers (including but not limited to private, public, nonprofit, or self-insured employers if collaborating with medical aid fund employers);

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- (d) Employees;
 - (e) Labor unions;
 - (f) Employee organizations;
 - (g) Joint labor and management groups;
 - (h) Educational institutions in collaboration with state fund employer and employee representatives;
 - (i) Others deemed appropriate by L&I.
- (4) SHIP funds may not be used for:
- (a) Lobbying or political activities;
 - (b) Supporting, opposing, or developing legislative or regulatory initiatives;
 - (c) Any activity not designed to reduce workplace injuries, illnesses, or fatalities; or
 - (d) Reimbursing employers for the normal costs of complying with safety and health rules.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060, and 2011 c 37. WSR 12-03-090, § 296-900-17515, filed 1/17/12, effective 3/1/12. Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060, 49.17.210, and 2007 c 522. WSR 08-03-025, § 296-900-17515, filed 1/8/08, effective 2/8/08.]

WAC 296-900-17520 Advisory committee. (1) The department will create a SHIP advisory committee (SAC) that will be a subcommittee of the WISHA advisory committee and will advise the department on program policy issues and participate in the grant application review process. The SAC will have eight to ten members, including equal numbers of employer and employee representatives, and others with relevant experience and expertise. Members will be appointed to serve three-year renewable terms by the assistant director of the division of occupational safety and health (DOSH). The initial term for half of the first group of appointees will be eighteen months. SAC membership will include:

- (a) At least one employer representative from the WISHA advisory committee or an employer representative recommended by the WISHA advisory committee employer representatives; and
- (b) At least one employee representative from the WISHA advisory committee or an employee representative recommended by the WISHA advisory committee employee representatives.

(2) The SAC will be supplemented by ad hoc grant review committees consisting of selected members of the SAC together with other individuals with experience and expertise in the specific topic areas under review. Members of such ad hoc grant review committees will be appointed by the assistant director for DOSH, taking into consideration recommendations from the SAC and WISHA advisory committee.

(3) All meetings of the SAC will be convened and chaired by the assistant director for DOSH or designee.

(4) The SAC will provide the following assistance:

- (a) Advice on SHIP policy issues to DOSH and the WISHA advisory committee;
- (b) Make recommendations to DOSH and the WISHA advisory committee regarding funding priority areas;
- (c) Review and comment on funding recommendations made by grant review committees to the assistant director of DOSH;
- (d) Keep records of the SACs decisions;

(e) Develop and maintain communication networks in the community.

(5) SAC and grant review committee members will disclose to the department any potential conflicts of interest with specific project applications, whether direct or indirect. The department will determine whether a member's connection to a project should result in recusal from voting on the project. The department's decision and reasons supporting the decision will be documented in the meeting minutes.

(6) SAC and grant review committee members will not disclose any information about applications to anyone not authorized access to the information by law or regulation.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060, and 2011 c 37. WSR 12-03-090, § 296-900-17520, filed 1/17/12, effective 3/1/12. Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060, 49.17.210, and 2007 c 522. WSR 08-03-025, § 296-900-17520, filed 1/8/08, effective 2/8/08.]

WAC 296-900-17525 Application. (1) The department will periodically prepare grant application packets that will be available on the department's web site.

(2) Applicants must complete the entire application to be considered for project funding. Incomplete applications or those submitted after a posted deadline will not be considered for funding.

(3) Some funding cycles may include limitations on the maximum amount that will be awarded for any proposal. Limitations, if any, will be posted on the department's web site or in current application packets.

(4) All products developed as a result of an approved SHIP project belong in the public domain and their dissemination and use shall not be restricted in any way. Such products may not be copyrighted, patented, claimed as trade secrets, or otherwise restricted in any other way. The department retains the right to publish or otherwise disseminate these products as the department in its sole discretion deems appropriate.

(5) The department will not use information contained in submitted application packets as the basis for the initiation of compliance inspections or the issuance of citations and/or penalties to applicants, under WISHA, chapter 49.17 RCW. However, employers are not exempt from compliance inspections initiated for other reasons because they submitted an application packet.

(6) Projects may include, but are not limited to:

- (a) The development and implementation of innovative and effective return-to-work programs for injured workers;
- (b) The development of technical innovation and engineering controls for the recognition and control of workplace hazards;
- (c) Best practices for workplace safety and health programs;
- (d) Education and training;
- (e) Efforts that address the needs of small businesses;
- (f) Priorities identified by DOSH in cooperation with the WISHA advisory committee and the workers' compensation advisory committee;
- (g) Initiatives intended to build organizational capacity in workplace safety and health; and

(h) Other projects that foster injury and illness prevention through cooperation between employers and employees or their representatives.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060, and 2011 c 37. WSR 12-03-090, § 296-900-17525, filed 1/17/12, effective 3/1/12. Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060, 49.17.210, and 2007 c 522. WSR 08-03-025, § 296-900-17525, filed 1/8/08, effective 2/8/08.]

WAC 296-900-17530 Review and approval of proposals. (1) DOSH staff will:

(a) Review applications to make sure they meet application criteria;

(b) Conduct a substantive evaluation of eligible applications;

(c) Forward applications along with scored evaluations and funding recommendations to the assistant director for DOSH and a designated grant-review committee.

(2) The designated grant-review committee will:

(a) Review project applications and the accompanying DOSH evaluations and recommendations;

(b) Evaluate each project application and provide concurrence or dissension with DOSH evaluation and funding recommendations;

(c) Prioritize and select, by a majority vote of the eligible voting members, those projects recommended for funding;

(d) Forward funding recommendations to the SAC and the assistant director of DOSH.

(3) The assistant director of DOSH, after consulting with the SAC, will make a final decision on project approval and funding.

(a) Safety and health projects, regardless of size, will be based on the ability of the project to foster accident prevention through cooperation between employers and employees or their representatives; the likelihood of reducing workplace injuries, illnesses, or fatalities; and the ability of the applicant to achieve project goals. Assessment will be based on an objective scoring method developed by the department.

(b) Return-to-work project approval, regardless of size, will be based on the ability of the project to foster return-to-work through cooperation between employers and employees or their representatives, the likelihood of increasing return-to-work, and the ability of the applicant to achieve project goals. Assessment will be based on an objective scoring method developed by the department.

(c) If the assistant director rejects an application the grant-review committee has recommended for funding or approves an application the grant-review committee recommended for denial, the assistant director will provide a written explanation to the SAC. The SAC may request reconsideration of such decision by a majority vote of the voting members, with a minority report allowed. The assistant director will reconsider the decision in consultation with the director.

(4) Applicants will be notified in writing when their application is approved or not approved for funding.

(5) Upon approval of an application and before project activities begin, the department and the applicant will enter into a written agreement. The agreement will:

(a) Include the approved application packet in its entirety, which will outline the project scope and timeline, activities, work plan, milestones, and products; and

(b) Spell out the terms and conditions governing the project, project participants, and the products resulting from the project.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060, and 2011 c 37. WSR 12-03-090, § 296-900-17530, filed 1/17/12, effective 3/1/12. Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060, 49.17.210, and 2007 c 522. WSR 08-03-025, § 296-900-17530, filed 1/8/08, effective 2/8/08.]

WAC 296-900-17535 Monitoring. DOSH staff will monitor projects for compliance with award terms and achievement of approved project milestones and/or outcomes.

(1) Milestones are intermediate targets or goals that are defined in the project applications. Ongoing funding will be tied to the achievement of approved milestones (including but not limited to accounting for grant funds).

(2) Outcomes are the final products that will be produced by the project.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060, and 2011 c 37. WSR 12-03-090, § 296-900-17535, filed 1/17/12, effective 3/1/12. Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060, 49.17.210, and 2007 c 522. WSR 08-03-025, § 296-900-17535, filed 1/8/08, effective 2/8/08.]

WAC 296-900-17540 Suspension or revocation of funding. (1) The assistant director of DOSH may suspend or revoke funding for a project if advised by the SHIP program staff or the SAC that:

(a) The recipient is not in compliance with project award terms;

(b) There are unapproved funding expenditures; or

(c) There are compelling and substantive reasons.

(2) Any suspension or revocation will:

(a) Be in writing and delivered by either personal service or certified mail. The suspension or revocation will be effective upon service or five days after being mailed by certified mail;

(b) Include the reasons for suspension or revocation; and

(c) Be subject to appeal as described in chapter 34.05 RCW, the Administrative Procedure Act and contain an explanation of how to appeal the department's decision.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060, and 2011 c 37. WSR 12-03-090, § 296-900-17540, filed 1/17/12, effective 3/1/12. Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060, 49.17.210, and 2007 c 522. WSR 08-03-025, § 296-900-17540, filed 1/8/08, effective 2/8/08.]

WAC 296-900-180 Definitions.

Affected employees

Employees who could be one of the following:

- Exposed to unsafe conditions or practices.
- Affected by a request for, or change in, a variance from WISHA requirements.

Assistant director

The assistant director for the division of occupational safety and health (DOSH) at the department of labor and industries or his/her designated representative.

Base penalty

The penalty amount calculated for a violation by considering either specific statutory penalty amounts or the gravity of the violation.

Board

The board of industrial insurance appeals.

Certification

An employer's written statement describing when and how a citation violation was corrected.

Citation

See citation and notice.

Citation and notice

Issued to an employer for any violation of WISHA safety and health requirements. Also known as a citation and notice of assessment, or simply citation.

Correction action plans

Your written plans for correcting a WISHA violation.

Correction date

The date by which you must meet the WISHA requirements listed on either a:

- Citation and notice (C&N);

OR

- A Corrective notice of redetermination (CNR).

Corrective notice of redetermination (CNR)

Issued by WISHA after WISHA has reassumed jurisdiction over an appealed citation and notice.

Designated representative

Any of the following:

- Any individual or organization to which an employee gives written authorization.
- A recognized or certified collective bargaining agent without regard to written employee authorization.
- The legal representative of a deceased or legally incapacitated employee.

Division or DOSH

The division of occupational safety and health, Washington state department of labor and industries.

Documentation

Material that an employer submits to prove that a correction is completed. Documentation includes, but is not limited to, photographs, receipts for materials and labor.

Failure to abate (FTA)

A violation that was cited previously which the employer has not fixed.

Final order

Any of the following (unless an employer or other party files a timely appeal):

- Citation and notice.
- Corrective notice of redetermination.
- Decision and order from the board of industrial insurance appeals.
- Denial of petition for review from the board of industrial insurance appeals.
- Decision from a Washington state superior court, court of appeals, or the state supreme court.

Final order date

The date a final order is issued.

Gravity

For purposes of calculating a penalty means the amount calculated by multiplying a violation's severity rate by its probability rate.

Hazard

Any condition, potential or inherent, which can cause injury, death, or occupational disease.

Imminent danger violation

Any violation resulting from conditions or practices in any place of employment, which are such that a danger exists which could reasonably be expected to cause death or serious physical harm, immediately or before such danger can be eliminated through the enforcement procedures otherwise provided by the Washington Industrial Safety and Health Act.

Inpatient hospitalization

Formal admission to the inpatient service of a hospital or an equivalent medical facility on an emergent basis for a work-related injury, or illness.

Interim order

An order allowing an employer to vary from WISHA requirements until a permanent or temporary variance is granted.

Monetary penalties

Fines assessed against an employer for violations of safety and health requirements.

Movable equipment

A hand-held or nonhand-held machine or device that:

- Is powered or nonpowered.
- Can be moved within or between worksites.

Must

Means mandatory.

Permanent variance

Allows an employer to vary from WISHA requirements when an alternate means, that provides equal protection to workers, is used.

Probability

A number that describes the likelihood of an injury, illness, or disease occurring, ranging from 1 (lowest) to 3 (highest).

Reassume jurisdiction

WISHA has decided to provide the employer with an informal conference to discuss their appeal.

Repeat violation

A violation where the employer has been cited one or more times previously for a substantially similar hazard, and the prior violation has become a final order no more than three years prior to the employer committing the violation being cited.

Serious violation

When there is a substantial probability that death or serious physical harm could result from one of the following in the workplace:

- A condition that exists.
- One or more practices, means, methods, operations, or processes that have been adopted or are in use.

Severity

For purposes of calculating a penalty means the most serious injury, illness, or disease that could be reasonably expected to occur, ranging from 1 (lowest) to 3 (highest), because of a hazardous condition.

Temporary variance

Allows an employer to vary from WISHA requirements under certain circumstances.

Variance

Provides an approved alternative to WISHA requirements to protect employees from a workplace hazard. Variances can be permanent or temporary.

WAC

An acronym for Washington Administrative Code, which are rules developed to address state law.

WISHA

This is an acronym for the Washington Industrial Safety and Health Act.

You

An employer.

Sample Tag for Cited Moveable Equipment

<p>WARNING: EQUIPMENT HAZARD</p> <p>Cited by the Department of Labor and Industries</p>	Equipment cited:
	Hazard cited:
	For detailed information, see L&I citation posted at:
<p>WARNING: EQUIPMENT HAZARD</p> <p>See reverse side</p>	<p>This tag or similar tag or a copy of the citation must remain attached to this equipment until the criteria for removal in WAC 296-900-15035 are met.</p> <p>The tag/citation copy must not be altered, defaced, or covered by other material.</p>

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060. WSR 15-13-049, § 296-900-180, filed 6/9/15, effective 9/1/15; WSR 06-06-020, § 296-900-180, filed 2/21/06, effective 6/1/06.]