

WSR 24-19-074
PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed September 17, 2024, 8:25 a.m.]

Subject of Possible Rule Making: Sanitary conditions for construction workers; chapter 296-155 WAC, Safety standards for construction work, Part B-1, Occupational health and environmental control.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060, and 49.17.530.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The division of occupational safety and health (DOSH) is initiating rule making for chapter 296-155 WAC, Safety standards for construction work.

This rule making will implement the requirements of EHB 2266 (chapter 258, Laws of 2024), codified under RCW 49.17.530, which became effective June 6, 2024.

EHB 2266 requires employers in the construction industry to provide workers performing construction activities and who menstruate or express milk the following:

- Access to an adequate portable toilet or restrooms on the work-site or access to a permanent structure with a restroom/bathroom. Requirements include:
 - o Minimum size bathroom, equivalent to a standard sized portable chemical toilet;
 - o Internal latch (lock) to prevent inadvertent entry; and
 - o Adequate time to accommodate for multiple layers of clothing while using the bathroom.
- Adequate and convenient supply of menstrual hygiene products at no cost to employees:
 - o Products must be located in all gender-neutral bathrooms and bathrooms designated for workers who menstruate; or
 - o Provided in kits for each worker who needs such product.
- Reasonable accommodations to express milk after the child's birth each time such employee has a need to express to include:
 - o Flexible scheduling, including breaks;
 - o Private dedicated space, other than a bathroom, lockable (if possible) and free from intrusion;
 - o Convenient hygienic refrigeration on the worksite for the storage of milk; and
 - o Convenient water source in a private location near the location where milk is expressed for the worker to clean and wash hands and milk expression equipment.

EHB 2266 requires the department of labor and industries' (L&I) rules identify minimum reasonable accommodations for expressing milk that include alternatives for worksites of varying numbers of employees.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: The Washington state attorney general's office and the United States Department of Labor.

Process for Developing New Rule: DOSH will conduct stakeholder meetings to allow those affected by the rule to provide input to this rule preproposal. Parties interested in the formulation of these rules may contact the individual listed below. After L&I proposes amend-

ments, the public may also participate by giving oral testimony or submitting written comments during the public hearing process.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Cathy Coates, Administrative Regulations Analyst, L&I, DOSH, P.O. Box 44620, Olympia, WA 98504-4620, phone 360-280-2003, fax 360-902-5619, email Cathy.Coates@Lni.wa.gov.

Additional comments: For more information on L&I rule making, visit L&I's Rulemaking Activity web page at <https://www.lni.wa.gov/rulemaking-activity/>.

September 17, 2024
Joel Sacks
Director