

**WSR 22-21-119**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**  
[Filed October 18, 2022, 9:52 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-13-149.

Title of Rule and Other Identifying Information: Verification for presumptive coverage of frontline workers and health care workers. Chapter 296-14 WAC, Industrial insurance.

Hearing Location(s): On November 28, 2022, at 9:00 a.m., electronically. Join Zoom meeting at <https://lni-wa-gov.zoom.us/j/9361655337>, Meeting ID 936 165 5337, join by phone +1 253-215-8782 US (Tacoma). Find your local number <https://lni-wa-gov.zoom.us/j/kdFrdfe0fg>. The virtual meeting starts at 9:00 a.m. and will continue until all oral comments are received.

Date of Intended Adoption: January 31, 2023.

Submit Written Comments to: Jordan Ely, Department of Labor and Industries (L&I), Insurance Services, Legal Services, P.O. Box 44270, Olympia, WA 98504-4270, email [Jordan.Ely@lni.wa.gov](mailto:Jordan.Ely@lni.wa.gov), fax 360-902-5029, by November 28, 2022, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact Nathalie Penberthy, phone 360-902-4252, fax 360-902-6509, TTY 360-902-4252, email [Nathalie.Penberthy@lni.wa.gov](mailto:Nathalie.Penberthy@lni.wa.gov), by November 21, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Based on the legislation passed in 2021, which included language that the department must create rules to explain the verification required by frontline and health care workers documenting the contraction of the infectious or contagious disease and quarantine criteria for health care workers, this rule making proposes to create these new WAC:

WAC 296-14-340 Frontline workers—Verification for contraction of an infectious or contagious disease that is the subject of a public health emergency—RCW 51.32.181. This rule defines what is required to verify that an infectious or contagious disease that is the subject of a public health emergency has been contracted.

WAC 296-14-341 Health care workers—Verification for contraction or quarantine due to an infectious or contagious disease that is the subject of a public health emergency—RCW 51.32.090. This rule defines what is required to verify contraction or quarantine due to an infectious or contagious disease that is the subject of a public health emergency.

Reasons Supporting Proposal: Legislation passed during the 2021 session (chapter 251, Laws of 2021, ESSB 5190, and chapter 252, Laws of 2021, ESSB 5115) resulted in the creation of RCW 51.32.181 and 51.32.390. This rule making is necessary to implement these bills which establish presumptive coverage for frontline workers subject to a public health emergency. This rule making proposes to create rules to clarify what is and is not verification of contraction of an infectious or contagious disease for frontline workers that is the subject of a public health emergency.

Statutory Authority for Adoption: RCW 51.04.020, 51.32.181, 51.32.390.

Statute Being Implemented: RCW 51.32.181, 51.32.390.

Rule is not necessitated by federal law, federal or state court decision.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Jordan Ely, Tumwater, Washington, 360-902-4616; Implementation: Debra Hatzialexiou, Tumwater, Washington, 360-902-6695; and Enforcement: Mike Ratko, Tumwater, Washington, 360-902-4997.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. This rule making is exempt from preparing a cost-benefit analysis under RCW 34.05.328 (5)(c)(ii) because the rule making is proposing to adopt language that does not subject a person to a penalty or sanction that sets forth the agency's interpretation of statutory provisions it administers by establishing verification criteria.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: This rule making is exempt from preparing a cost-benefit analysis under RCW 34.05.328 (5)(c)(ii) because the rule making is proposing to adopt language that does not subject a person to a penalty or sanction that sets forth the agency's interpretation of statutory provisions it administers by establishing verification criteria that a worker must have to receive a presumption under RCW 51.32.181 and 51.32.390.

Scope of exemption for rule proposal:

Is fully exempt.

October 18, 2022  
Joel Sacks  
Director

**OTS-4020.2**

NEW SECTION

**WAC 296-14-340 Frontline workers—Verification for contraction of an infectious or contagious disease that is the subject of a public health emergency—RCW 51.32.181.** (1) Verification that an infectious or contagious disease has been contracted requires:

(a) A diagnosis from a medical provider made by examination; or  
(b) A positive test administered by a medical facility, testing facility, pharmacy, or the employer.

(2) The following cannot be used as verification that a worker has contracted an infectious or contagious disease:

(a) Symptoms only self-reported by the worker;  
(b) A report from a medical provider that solely relies on a worker's self-reported positive test results; or  
(c) Results from tests administered by the worker and not confirmed by the employer or medical provider.

[]

NEW SECTION

**WAC 296-14-341 Health care workers—Verification for contraction or quarantine due to an infectious or contagious disease that is the subject of a public health emergency—RCW 51.32.390.** (1) Verification that an infectious or contagious disease has been contracted requires:

- (a) A diagnosis from a medical provider made by examination; or
- (b) A positive test administered by a medical facility, testing facility, pharmacy, or the employer.

(2) The following cannot be used as verification that a worker has contracted an infectious or contagious disease:

- (a) Symptoms only self-reported by the worker;
- (b) A report from a medical provider that solely relies on a worker's self-reported positive test results; or
- (c) Results from tests administered by the worker and not confirmed by the employer or medical provider.

(3) Verification that a worker has been quarantined due to exposure to the infectious or contagious disease that is the subject of a public health emergency requires:

- (a) Written evidence from a medical provider or public health official indicating the worker should remain away from work for a period of time after exposure; or

- (b) Confirmation from the employer that it asked the worker to remain away from work for a period of time after exposure.

(4) Quarantine does not include:

- (a) Self-quarantine by a worker without direction from a medical provider, public health official, or their employer;
- (b) Quarantine, without exposure; or
- (c) Quarantine after exposure for a length of time exceeding accepted public safety and health guidelines.

[]