

WSR 24-20-114
EXPEDITED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
[Filed October 1, 2024, 9:25 a.m.]

Title of Rule and Other Identifying Information: New chapter 296-830 WAC, Workplace violence in health care.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this expedited proposal is to create new chapter 296-830 WAC, Workplace violence in health care, to adopt into rule statutory requirements under chapter 49.19 RCW, Safety—Health care settings; chapter 72.23 RCW, Public and private facilities for mentally ill; and chapter 49.95 RCW, Long-term care workers. The requirements under these existing statutes require employers in covered health care settings to establish a program to address workplace violence and abusive behavior in health care settings, which includes creating policies, providing training to employees, and recording incidents. Prior to this rule making, the department of labor and industries' (L&I) division of occupational safety and health (DOSH) has addressed enforcement of the requirements under chapters 49.19 and 72.23 RCW, and through DOSH Directive 5.07.

Reasons Supporting Proposal: This proposal adds the statutory requirements into rule, providing additional clarity to employers and employees in these health care settings on the requirements, and provide additional transparency to identify and track violations.

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060; chapters 49.19, 49.95, and 72.23 RCW.

Statute Being Implemented: Chapters 49.17, 49.19, 49.95, and 72.23 RCW.

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

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Tracy West, Tumwater, Washington, 509-237-2372; Implementation and Enforcement: Craig Blackwood, Tumwater, Washington, 360-902-5828.

This notice meets the following criteria to use the expedited adoption process for these rules:

Adopts or incorporates by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: The proposed language adopts without material change the workplace violence prevention requirements described under chapters 49.19, 49.95, and 72.23 RCW.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU

OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Tari Enos, Administrative Regulations Analyst, L&I, DOSH, P.O. Box 44620, Olympia, WA 98504-4620, phone 360-902-5541, fax 360-902-5619, email Tari.Enos@Lni.wa.gov, BEGINNING October 2, 2024, 8:00 a.m., AND RECEIVED BY December 2, 2024, 5:00 p.m.

October 1, 2024
Joel Sacks
Director

OTS-5653.2

**Chapter 296-830 WAC
WORKPLACE VIOLENCE IN HEALTH CARE**

NEW SECTION

WAC 296-830-100 Scope and application. (1) The purpose of this section is to establish requirements for employers to have a basic, proactive program to address workplace violence and abusive conduct in the workplace, including setting policies, providing training and tracking incidents as required in chapters 49.19 and 49.95 RCW and RCW 72.23.400.

(2) This section applies to employers with the following workplaces:

- (a) Hospitals as defined in RCW 70.41.020;
- (b) Evaluation and treatment facilities as defined in RCW 71.05.020;
- (c) Behavioral health programs as defined in RCW 71.24.025;
- (d) Ambulatory surgical facilities as defined in RCW 70.230.010;
- (e) State hospitals, including child study and treatment centers, operated and maintained by the state of Washington for the care of the mentally ill; and
- (f) Homes serviced by home care employers:
 - (i) A consumer directed employer as defined in RCW 74.39A.009;
 - and
 - (ii) A home care agency as defined in RCW 70.127.010.

(3) Individual care recipients are not employers for the purpose of this section.

(4) Workplace violence and abusive conduct is a hazard in other health care facilities. Those facilities will be considered in compliance with WISHA rules if following this rule. Other rules applicable to violence in the workplace include:

- (a) WAC 296-800-140, accident prevention program (APP);
- (b) WAC 296-800-130, safety committees and safety meetings;
- (c) WAC 296-800-110, employer responsibilities: Safe workplace;
- (d) WAC 296-800-160, personal protective equipment (PPE); and
- (e) Chapter 296-27 WAC, recordkeeping and reporting.

NEW SECTION

WAC 296-830-200 Definitions. (1) **Abusive conduct.** Conduct in a work setting that qualifies as workplace aggression, workplace violence, aggravated workplace violence, physical sexual aggression, rape, attempted rape, sexual contact, sexual harassment, workplace physical aggression, workplace verbal aggression, or inappropriate sexual behavior. For service recipients, behavior that meets the definition of challenging behavior as defined in subsection (3) of this section is not considered abusive conduct for the purposes of this chapter if expressly exempted from the applicable definition.

(2) **Aggravated workplace violence, aggravated violence, or aggravated violent act.** Assault or physically threatening behavior involving the use of a lethal weapon or a common object used as a lethal weapon, regardless of whether the use of a lethal weapon resulted in injury.

(3) **Challenging behavior.** Behavior by a service recipient that is specifically caused by or related to a disability that might be experienced by a long-term care worker as offensive or presenting a safety risk.

(4) **Department.** The department of labor and industries.

(5) **Discrimination.** Employment discrimination prohibited by chapter 49.60 RCW, including discriminatory harassment. It does not constitute discrimination for a recipient of personal care services as defined in RCW 74.39A.009 to refuse to hire or terminate an employment relationship with an employee based on gender preferences.

(6) **Discriminatory harassment.** Unwelcome conduct that is based on a protected class listed in RCW 49.60.030(1) where the conduct is enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive. "Discriminatory harassment" includes sexual harassment. For service recipients, behavior that meets the definition of challenging behavior of this section is not considered discriminatory harassment for purposes of this chapter.

(7) **Inappropriate sexual behavior.** Nonphysical acts of a sexual nature that a reasonable person would consider offensive or intimidating, such as sexual comments, unwanted requests for dates or sexual favors, or leaving sexually explicit material in view. An act may be considered inappropriate sexual behavior independent of whether the act is severe or pervasive enough to be considered sexual harassment. For service recipients, behavior that meets the definition of challenging behavior is not considered inappropriate sexual behavior for purposes of this chapter.

(8) **Must** means mandatory.

(9) **Physical sexual aggression.** Any type of sexual contact or behavior, other than rape or attempted rape, that occurs without the explicit consent of the recipient. For service recipients, behavior that meets the definition of challenging behavior defined in subsection (3) of this section is not considered physical sexual aggression for the purposes of this chapter.

(10) **Rape or attempted rape.** As defined in RCW 9A.44.040, 9A.44.050, and 9A.44.060.

(11) **Sexual harassment.** As defined in RCW 28A.640.020. For service recipients, behavior that meets the definition of challenging behavior is not considered sexual harassment for purposes of this chapter.

(12) **Trauma-informed care.** Strength-based service delivery approach that:

(a) Is grounded in the understanding of and responsiveness to the impact of trauma;

(b) Emphasizes physical, psychological, and emotional safety for both providers and survivors; and

(c) Creates opportunities for survivors to rebuild a sense of control and empowerment.

(13) **Workplace physical aggression.** An occurrence of physically threatening behavior in a work setting, including threats of physical harm, or an occurrence of slapping, biting, or intentionally bumping. For service recipients, behavior that meets the definition of challenging behavior is not considered workplace physical aggression for purposes of this chapter.

(14) **Workplace verbal aggression.** Acts of nonphysical hostility or threats of violence in the work setting. "Workplace verbal aggression" includes verbal aggression such as insulting or belittling an individual. For service recipients, behavior that meets the definition of challenging behavior is not considered workplace verbal aggression.

(15) **Workplace violence, violence, or violent act.** Any physical assault or verbal threat of physical assault against an employee of a health care setting on the property of the health care setting. "Workplace violence," "violence," or "violent act" includes any physical assault or verbal threat of physical assault involving the use of a weapon, including a firearm as defined in RCW 9.41.010, or a common object used as a weapon, regardless of whether the use of a weapon resulted in an injury.

NEW SECTION

WAC 296-830-300 Workplace violence plan. (Worksites other than home care.)

(1) Employers must develop and implement a plan to prevent and protect employees from violence at each health care facility or group of facilities and workplaces that have common management. Employers with a safety committee for the facility or workplaces covered by the plan must work with the safety committee to develop, implement, and monitor progress on the plan. If there is no safety committee, the plan must be reviewed at safety meetings.

(2) The plan developed under subsection (1) of this section must outline strategies aimed at addressing security considerations and factors that may contribute to, or prevent the risk of violence including, but not limited to, the following:

(a) The physical attributes of the health care setting, including security systems, alarms, emergency response, and security personnel available;

(b) Staffing, including staffing patterns, patient classifications, and procedures to mitigate employee's time spent alone working in areas at high risk for workplace violence;

(c) Job design, equipment, and facilities;

(d) First-aid and emergency procedures;

(e) The reporting of violent acts;

(f) Employee education and training requirements and implementation strategy;

(g) Security risks associated with specific units, areas of the facility with uncontrolled access, late night or early morning shifts,

and employee security in areas surrounding the facility such as employee parking areas; and

(h) Processes and expected interventions to provide assistance to an employee directly affected by a violent act.

(3) Each employer must annually review the frequency of incidents of workplace violence including identification of the causes for and consequences of, violent acts at the setting, and any emerging issues that contribute to workplace violence. For workplaces without a safety committee, the results of the review must be presented to workers at a safety meeting.

(4) The employer must adjust the plan developed under subsection (1) of this section as necessary based on the annual review in coordination with the safety committee, or taking input at a safety meeting when there is no safety committee.

(5) In developing the plan required by subsection (1) of this section, the health care setting must consider any guidelines on violence in the workplace or in health care settings issued by the Washington state department of health, the department of social and health services, the department of labor and industries, the federal occupational safety and health administration, medicare, and health care setting accrediting organizations.

NEW SECTION

WAC 296-830-310 Workplace violence training. (Worksites other than home care.)

(1) The employer must provide violence prevention training to all applicable employees, volunteers, and contracted security personnel.

(2) Initial training must occur within 90 days of the employee's initial hiring date. Temporary employees and employees of other employers at the worksite may be trained by their direct employer or the facility.

(3) The method and frequency of training may vary according to the information and strategies identified in the facility workplace violence plan. Trainings may include, but are not limited to, classes that provide an opportunity for interactive questions and answers, hands-on training, video training, brochures, verbal training, or other verbal or written training that is determined to be appropriate under the plan. Trainings must address the following topics, as appropriate to the particular setting and to the duties and responsibilities of the particular employee being trained, based upon the hazards identified in the plan required under WAC 296-830-300:

(a) The health care facilities workplace violence prevention plan;

(b) General safety procedures;

(c) Violence predicting behaviors and factors;

(d) The violence escalation cycle;

(e) De-escalation techniques to minimize violent behavior;

(f) Strategies to prevent physical harm with hands-on practice or role play;

(g) Response team processes;

(h) Proper application and use of restraints, both physical and chemical restraints;

(i) Documentation and reporting incidents;

(j) The debrief process for affected employees following violent acts; and

(k) Resources available to employees for coping with the effects of violence.

NEW SECTION

WAC 296-830-320 Records of violent acts. (Worksites other than home care.)

Employers must keep a record of any violent act against an employee, a patient, or a visitor occurring at the setting. Each record must be kept for at least five years following the act reported, during which time it must be available for inspection by the department upon request. At a minimum, the record must include:

- (1) The health care setting's name and address;
- (2) The date, time, and specific location at the health care setting where the act occurred;
- (3) The name, job title, department or ward assignment, and staff identification or Social Security number of the victim if an employee;
- (4) A description of the person against whom the act was committed as:
 - (a) A patient;
 - (b) A visitor;
 - (c) An employee; or
 - (d) Other;
- (5) A description of the person committing the act as:
 - (a) A patient;
 - (b) A visitor;
 - (c) An employee; or
 - (d) Other;
- (6) A description of the type of violent act as a:
 - (a) Threat of assault with no physical contact;
 - (b) Physical assault with contact but no physical injury;
 - (c) Physical assault with mild soreness, surface abrasions, scratches, or small bruises;
 - (d) Physical assault with major soreness, cuts, or large bruises;
 - (e) Physical assault with severe lacerations, a bone fracture, or a head injury; or
 - (f) Physical assault with loss of limb or death;
- (7) An identification of any body part injured;
- (8) A description of any weapon used;
- (9) The number of employees in the vicinity of the act when it occurred; and
- (10) A description of actions taken by employees and the health care setting in response to the act.

NEW SECTION

WAC 296-830-330 Written policy requirement for home care settings. (1) Employers must adopt and maintain a comprehensive written policy concerning how the employer addresses instances of discrimination, abusive conduct, and challenging behavior, and resolve issues impacting the provision of personal care.

(2) Provide the comprehensive written policy to each employee at the beginning of employment, annually, and on the issuance of any substantive update to the comprehensive written policy.

(3) Make the policy available in plain English and in each of the three languages spoken most by long-term care workers in the state.

(4) Review and update the adopted policy annually.

(5) Ensure that all employees are aware of the current policy and the changes from the previous policy.

(6) At a minimum, the comprehensive written policy must include:

(a) A definition of discrimination, harassment, abusive conduct, and challenging behavior;

(b) A description of the types of discrimination and abusive conduct covered by the policy, with examples relevant to the long-term care workforce;

(c) The identification of multiple persons to whom an employee may report discrimination, abusive conduct, and challenging behavior;

(d) Stated permission and a process for allowing workers to leave situations where they feel their safety is at immediate risk. This process must include a requirement to notify the employer and applicable third parties, such as department of social and health services case managers, emergency services, or service recipient decision makers as soon as possible. The process must not authorize abandonment as defined in RCW 74.34.020, unless the worker has called the phone number provided by the employer for emergency assistance and has a reasonable fear of imminent bodily harm;

(e) A stated prohibition against retaliation for actions related to disclosing, challenging, reporting, testifying, or assisting in an investigation regarding allegations of discrimination, abusive conduct, or challenging behavior, and a description of how the employer will protect employees against retaliation;

(f) A list of resources about discrimination and harassment for long-term care workers to utilize. At a minimum, the resources must include contact information of the equal employment opportunity commission, the Washington state human rights commission, and local advocacy groups focused on preventing harassment and discrimination and providing support for survivors; and

(g) Any additional components recommended by the work group established in RCW 49.95.060 for the purpose of preventing discrimination and abusive conduct and responding to challenging behavior.

NEW SECTION

WAC 296-830-340 Abusive conduct, challenging behavior prevention and assistance plan for home care settings. (1) The employer must implement a plan to prevent and protect employees from abusive conduct, to assist employees working in environments with challenging behavior, and work to resolve issues impacting the provision of personal care.

(2) This plan must be reviewed and updated as necessary and at least once every three years.

(3) The plan must be developed and monitored by the workplace safety committee. The members of the workplace safety committee must consist of individuals that are employee-elected, employer-selected, and include at least one service recipient representative. The number of employee-elected members must equal or exceed the number of employer-selected members. A labor management committee established by a

collective bargaining agreement that receives formal input from representatives of service recipients who wish to participate in the committee's deliberations is sufficient to fulfill the requirement for a workplace safety committee in this chapter.

(4) The plan developed under subsection (1) of this section, at a minimum, must include:

(a) Processes for intervening and providing assistance to an employee directly affected by challenging behavior including accessing technical assistance or similar resources, if available, to assist employees when challenging behavior occurs;

(b) The employer's processes to engage appropriate members of the care team, such as case managers or health professionals when allegations of discrimination, abusive conduct, or challenging behaviors occur;

(c) The development of processes for reporting, intervening, and providing assistance to an employee directly affected by abusive conduct; and

(d) The employer's processes to engage the service recipient in problem resolution with the goal of ending abusive or discriminatory conduct while working to address issues impacting the provision of personal care.

(5) Each employer and workplace safety committee must annually review the frequency of incidents of discrimination and abusive conduct in the home care setting, including identification of the causes for, and consequences of, abusive conduct and any emerging issues that contribute to abusive conduct. As part of its annual review, the workplace safety committee must also review the number of miscategorizations in aggregate. The employer must adjust the plan developed under subsection (1) of this section as necessary based on this annual review.

(6) In developing the plan required by subsection (1) of this section, the employer must consider any guidelines on violence in the workplace or in health care settings issued by the department of health, the department of social and health services, the department of labor and industries, the federal occupational safety and health administration, and the work group created in RCW 49.95.060.

(7) Nothing in this chapter requires an individual recipient of services to develop or implement the plan required by this section.

NEW SECTION

WAC 296-830-350 Employer duty to inform home care workers. (1)

Employers must inform an employee of instances of discrimination and abusive conduct occurring in or around the service recipient's home care setting prior to assigning the employee to that service recipient, and throughout the duration of service, if those instances are:

(a) Documented by the employer; or

(b) Documented by the department of social and health services and communicated to the employer.

(2) Employers must inform an employee, prior to assigning the employee to a service recipient, of a service recipient's challenging behavior that is documented:

(a) In the service recipient's care plan;

(b) By the employer; or

(c) By the department of social and health services and communicated to the employer.

(3) Communication of the information in subsection (1) of this section must be tailored to respect the privacy of service recipients in accordance with the federal Health Insurance Portability and Accountability Act of 1996. Upon request of the service recipient, employers must provide a copy of the information the employer communicated to the employee under subsection (1) of this section.

(4) If an employer miscategorizes an instance as discrimination or abusive conduct that should have been categorized as challenging behavior, or if an employer miscategorizes an instance as challenging behavior that should have been categorized as discrimination or abusive conduct, the employer must correct the categorization, correct how the instance was reported under RCW 49.95.050, and comply with any provisions under this chapter applicable to addressing the behavior or conduct.

(5) An employer may not terminate an employee, reduce the pay of an employee, or not offer future assignments to an employee for requesting reassignment due to alleged discrimination, abusive conduct, or challenging behavior.

(6) Nothing in this section prevents an employer from:

(a) Disciplining or terminating an employee if an allegation or request for reassignment was reasonably determined to be false or not made in good faith;

(b) Terminating an employee or reducing hours due to lack of suitable work; or

(c) Disciplining or terminating an employee for lawful reasons unrelated to their request for reassignment.

(7) Nothing in this section requires an individual recipient of services to provide information required by this section to an employee. Nothing in this chapter limits the rights of a recipient of services under chapter 74.39A RCW to select, dismiss, assign hours, and supervise the work of individual providers as in RCW 74.39A.500

(1) (b).

NEW SECTION

WAC 296-830-360 Required records of incidents reported in home care settings. (1) Employers are required to keep a record of any reported incidents of discrimination or abusive conduct experienced by an employee during the provision of paid personal care services. The records must be kept for at least five years following the reported act and must be made available for inspection by the department or its agents upon request. If the employer makes its records available to the exclusive bargaining representative representing the employer's employees, the exclusive bargaining representative may assess whether the employer is meeting the data collection requirements in this section. The department must take into consideration the exclusive bargaining representative's assessment when determining whether an employer is in compliance with this section.

(2) The retained records must include:

(a) The employer's name and address;

(b) The date, time, and location of where the act occurred;

(c) The reporting method;

(d) The name of the person who experienced the act;

- (e) A description of the person committing the act as:
 - (i) A service recipient;
 - (ii) Another resident of the home care setting;
 - (iii) A visitor to the home care setting;
 - (iv) Another employee;
 - (v) A manager or supervisor; or
 - (vi) Other;
 - (f) A description of the type of act as one or more of the following:
 - (i) Discrimination, including discriminatory harassment;
 - (ii) Sexual harassment, inappropriate sexual behavior, or sexual contact;
 - (iii) Physical sexual aggression;
 - (iv) Rape or attempted rape;
 - (v) Workplace verbal aggression;
 - (vi) Workplace violence;
 - (vii) Workplace physical aggression; or
 - (viii) Aggravated workplace violence;
 - (g) A description of the actions taken by the employee and the employer in response to the act; and
 - (h) A description of how the incident was resolved.
- (3) Nothing in this section requires an individual recipient of services to keep, collect, or provide any data required by this section to the department.
- (4) Communication of the information in this section must be tailored to respect the privacy of service recipients in accordance with the federal Health Insurance Portability and Accountability Act of 1996.