

WAC 296-155-17623 Medical removal protection. (1) Temporary medical removal and return of an employee.

(a) **Temporary removal due to elevated blood lead level.** You must remove an employee from work having an exposure to lead at or above the action level on each occasion that a periodic and a follow-up blood sampling test conducted pursuant to WAC 296-155-176 indicate that the employee's blood lead level is at or above 50 µg/dl; and

(b) **Temporary removal due to a final medical determination.**

(i) You must remove an employee from work having an exposure to lead at or above the action level on each occasion that a final medical determination results in a medical finding, determination, or opinion that the employee has a detected medical condition which places the employee at increased risk of material impairment to health from exposure to lead.

(ii) For the purposes of WAC 296-155-176, the phrase "final medical determination" means the written medical opinion on the employees' health status by the examining physician or, where relevant, the outcome of the multiple physician review mechanism or alternate medical determination mechanism used pursuant to the medical surveillance provisions of WAC 296-155-176.

(iii) Where a final medical determination results in any recommended special protective measures for an employee, or limitations on an employee's exposure to lead, you must implement and act consistent with the recommendation.

(c) **Return of the employee to former job status.**

(i) You must return an employee to their former job status:

(A) For an employee removed due to a blood lead level at or above 50 µg/dl when two consecutive blood sampling tests indicate that the employee's blood lead level is below 40 µg/dl;

(B) For an employee removed due to a final medical determination, when a subsequent final medical determination results in a medical finding, determination, or opinion that the employee no longer has a detected medical condition which places the employee at increased risk of material impairment to health from exposure to lead.

(ii) For the purposes of WAC 296-155-176, the requirement that an employer return an employee to their former job status is not intended to expand upon or restrict any rights an employee has or would have had, absent temporary medical removal, to a specific job classification or position under the terms of a collective bargaining agreement.

(d) **Removal of other employee special protective measure or limitations.** You must remove any limitations placed on an employee or end any special protective measures provided to an employee pursuant to a final medical determination when a subsequent final medical determination indicates that the limitations or special protective measures are no longer necessary.

(e) **Employer options pending a final medical determination.** Where the multiple physician review mechanism, or alternate medical determination mechanism used pursuant to the medical surveillance provisions of WAC 296-155-176, has not yet resulted in a final medical determination with respect to an employee, you must act as follows:

(i) **Removal.** You may remove the employee from exposure to lead, provide special protective measures to the employee, or place limitations upon the employee, consistent with the medical findings, determinations, or recommendations of any of the physicians who have reviewed the employee's health status.

(ii) **Return.** You may return the employee to their former job status, end any special protective measures provided to the employee, and

remove any limitations placed upon the employee, consistent with the medical findings, determinations, or recommendations of any of the physicians who have reviewed the employee's health status, with two exceptions.

(A) If the initial removal, special protection, or limitation of the employee resulted from a final medical determination which differed from the findings, determinations, or recommendations of the initial physician or;

(B) If the employee has been on removal status for the preceding 18 months due to an elevated blood lead level, then you must await a final medical determination.

(2) **Medical removal protection benefits.**

(a) **Provision of medical removal protection benefits.** You must provide an employee up to 18 months of medical removal protection benefits on each occasion that an employee is removed from exposure to lead or otherwise limited pursuant to WAC 296-155-176.

(b) **Definition of medical removal protection benefits.** For the purposes of WAC 296-155-176, the requirement that an employer provide medical removal protection benefits means that, as long as the job the employee was removed from continues, you must maintain the total normal earnings, seniority and other employment rights and benefits of an employee, including the employee's right to their former job status as though the employee had not been medically removed from the employee's job or otherwise medically limited.

(c) **Follow-up medical surveillance during the period of employee removal or limitation.** During the period of time that an employee is medically removed from their job or otherwise medically limited, you may condition the provision of medical removal protection benefits upon the employee's participation in follow-up medical surveillance made available pursuant to WAC 296-155-176.

(d) **Workers' compensation claims.** If a removed employee files a claim for workers' compensation payments for a lead-related disability, then you must continue to provide medical removal protection benefits pending disposition of the claim. To the extent that an award is made to the employee for earnings lost during the period of removal, the employer's medical removal protection obligation must be reduced by such amount. You must receive no credit for workers' compensation payments received by the employee for treatment-related expenses.

(e) **Other credits.** The employer's obligation to provide medical removal protection benefits to a removed employee must be reduced to the extent that the employee receives compensation for earnings lost during the period of removal either from a publicly or employer-funded compensation program, or receives income from employment with another employer made possible by virtue of the employee's removal.

(f) **Voluntary removal or restriction of an employee.** Where an employer, although not required by WAC 296-155-176 to do so, removes an employee from exposure to lead or otherwise places limitations on an employee due to the effects of lead exposure on the employee's medical condition, you must provide medical removal protection benefits to the employee equal to that required by subdivisions (a) and (b) of this subsection.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060. WSR 16-09-085, § 296-155-17623, filed 4/19/16, effective 5/20/16. Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060 and chapter 49.17 RCW. WSR 12-24-071, § 296-155-17623, filed 12/4/12, effective 1/4/13. Statutory Authority: Chapter 49.17 RCW. WSR

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