

WSR 21-21-074
EMERGENCY RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed October 18, 2021, 12:33 p.m., effective October 18, 2021, 12:33 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The department of labor and industries (L&I) is responding to the coronavirus disease 2019 (COVID-19) pandemic by amending WAC 296-800-14035 related to prohibited business activities and compliance with conditions for operations under emergency proclamations and their amendments issued under RCW 43.06.220.

Under the emergency rule:

- Employers must not allow employees to perform work where a business activity is prohibited by an emergency proclamation.
- Employers must comply with all conditions for operation required by emergency proclamation.

L&I is monitoring the emergency proclamations, information including guidance from the Center for Disease Control (CDC), and data on COVID-19 and will repeal the emergency rule if no longer needed.

Citation of Rules Affected by this Order: New WAC 296-800-14035.

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This emergency rule making supersedes the emergency rule adopted on September 20, 2021, filed as WSR 21-19-118, as conditions have changed due to the vaccination requirements under the Governor's Proclamation 21-14.2 being in effect as of October 18, 2021.

L&I is taking action to help prevent the spread of COVID-19 and respond to the governor's proclamations establishing conditions for business operations consistent with the recommendations of medical and safety professionals as to how businesses may continue operation without increasing the risk of COVID-19 spreading.

The initial March 23, 2020, Stay Home, Stay Healthy Proclamation 20-25 required residents to stay home unless they need to pursue an essential activity, closed all businesses except essential businesses, and banned all gatherings for social, spiritual, and recreational purposes. The order built upon earlier orders closing schools and restricting larger gatherings. This was followed by proclamation amendments adjusting the Stay Home, Stay Healthy order and transitioning to a phased-in approach to reopening Washington state, referred to as "Safe Start Washington." The "Safe Start" orders further build on these by continuing the Safe Start plan for county-by-county phased reopening where the subsequent "Stay Safe-Stay Healthy" orders rolled back the county-by-county phased reopening in response to a COVID-19 outbreak surge and the following amendments under the "Health [Healthy] Washington - Roadmap to Recovery" took a regional approach to easing of the rolled back restrictions and aligning with CDC guidance on fully vaccinated individuals. Under the July 2021 "Washington Ready" order, Proclamation 20-25.14, some restrictions remained for

large indoor gatherings and mask use is required for unvaccinated employees when indoors. The current "Washington Ready" Proclamation 20-25.17 addresses the increase in COVID-19 cases and hospitalizations in many parts of the state and the need to decrease the spread of the highly contagious Delta variant. Proclamation 20-25.17 continues the requirements under 20-25.15 for face coverings or masks for customers and employees regardless of vaccination status in indoor spaces accessible to the public and requires face coverings or masks for large outdoor events with 500 or more individuals, regardless of vaccination status. In setting the conditions for businesses under the "Washington Ready" 20-25.17 order considerations included statewide and county level data, the percentage of the state population who are fully vaccinated, the number of counties with high or substantial transmission rates, and critical knowledge gained regarding the spread of COVID-19, including a better understanding of the risks associated with certain activities and the measures that can be taken to reduce those risks.

Proclamation 21-14.2 prohibits any state agency, operator of an education setting, and operator of a health care setting from permitting workers to engage in work after October 18, 2021, if the worker is not fully vaccinated against COVID-19 and provided proof of vaccination status. Under Proclamation 21-14.2, "worker" includes employees and on-site contractors. Operators of health care settings are also prohibited from permitting a health care provider to engage in work for the operator as an employee, contractor, or volunteer in their capacity as a health care provider after October 18, 2021, if the health care provider has not been fully vaccinated against COVID-19 and provided proof of vaccination. Vaccination is not required for workers and health care providers who are provided a disability or religious accommodation in accordance with Proclamation 21-14.2. In issuing Proclamation 21-14.2, consideration included the following: Vaccines are effective in reducing infection and serious disease, and widespread vaccination is the primary means we have as a state to protect everyone; health care workers face COVID-19 exposures in a variety of health care settings, with those involving direct patient care likely at higher risk; increasing vaccination rates at educational settings is the strongest protective measure against COVID-19 available and, together with masking, is vital to providing in-person instruction in as safe a manner as possible; the sharp increase in COVID-19 cases and hospitalizations, primarily among unvaccinated populations but also in breakthrough infections in some fully vaccinated individuals, makes it vital to expand the vaccination requirement to workers in educational setting[s]; and that it is the duty of every employer to protect the health and safety of employees by establishing and maintaining a healthy and safe work environment and by requiring all employees to comply with health and safety measures.

The governor's proclamations and amendments, including 20-25.17 and 21-14.2, create a systematic framework to reduce the spread of COVID[-19] from person-to-person interactions among individuals not fully vaccinated, reduce the occurrence of breakthrough infections, safely easing some restrictions while also maintaining crucial hospital capacity, ensuring care for Washingtonians who need it, and paving the way for economic recovery. Business operations and employee exposures are one component of the overall public health emergency response presented by COVID-19 and ensuring compliance with the proclamation requirement helps to protect the safety and health of employees.

The business operating conditions in the governor's orders are also consistent with the purpose of chapter 49.17 RCW and guidance from the Center for Disease Control and Prevention. Chapter 49.17 RCW and L&I rules require employers to provide a safe and healthy workplace free from recognized hazards, and an employer can be cited for a violation of the "safe place" rule where there are no specific rules to address the particular hazard. Lack of COVID-19 hazard controls such as failure to address symptomatic employees can be cited under the safe place standard. This emergency rule ensures clarity that restrictions and conditions on business under the emergency proclamations are also health and safety requirements under chapter 49.17 RCW and that employers can be subject to a citation and monetary penalties for violations.

This emergency rule is necessary for the preservation of public health, safety, and general welfare of all employees. The governor's proclamations have found that the hazards of the unnecessary spread of COVID-19 present an immediate threat to public health and safety. The governor's proclamations are currently in effect, and observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest and the governor's orders.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: October 18, 2021.

Joel Sacks
Director

OTS-2313.6

NEW SECTION

WAC 296-800-14035 2019 Novel coronavirus prohibited business activities and compliance with conditions for operations. (1) Where a business activity is prohibited by an emergency proclamation an employer shall not allow employees to perform work.

(2) Employers must comply with all conditions for operation required by emergency proclamation issued under RCW 43.06.220.

(3) An "emergency proclamation" means a proclamation that is in effect, including proclamation amendments and conditions, and issued under RCW 43.06.220 and is in effect at the time the emergency rule was adopted.

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