

WSR 21-23-089
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
[Filed November 16, 2021, 3:57 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-16-099.

Title of Rule and Other Identifying Information: Chapter 296-910 WAC, Small employer emergency safety grant program.

Hearing Location(s): On January 6, 2022, at 9:00 a.m., virtual and telephonic hearing only. Please join on your computer or mobile app <https://lni-wa-gov.zoom.us/j/85457550685?pwd=cENBZVhUaDVUTzNtZE5aZkhuTVhJZz09>, Passcode L&IGrant21, or call in (audio only) 1-253-215-8782, Passcode 0485627819. The virtual/telephonic hearing starts at 9:00 a.m. and will continue until all oral comments are received.

Date of Intended Adoption: February 1, 2022.

Submit Written Comments to: Tracy West, Department of Labor and Industries (L&I), Government Affairs and Policy Division, P.O. Box 44001, Olympia, WA 98504-4001, email tracy.west@lni.wa.gov, fax 360-902-4202, by 5:00 p.m., on January 6, 2022.

Assistance for Persons with Disabilities: Contact Tracy West, phone 360-902-6954, fax 360-902-4202, email tracy.west@lni.wa.gov, by January 5, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule establishes the small employer emergency safety grant program and implements ESHB 1097, codified as RCW 51.04.180. ESHB 1097 was passed to increase worker protections from hazards in the workplace. The bill also created the safety grant program for small employers during declared states of emergency. The proposed rule:

- Includes pertinent definitions;
- Establishes how the program will be authorized which conforms with ESHB 1097;
- Defines eligibility requirements for those wishing to apply for the grant program when it is active;
- Outlines what will be on the grant program's application;
- Outlines how grants will be awarded, and how an applicant can request reconsideration of a denied grant application;
- Includes guidance on how L&I will prioritize grant applications; and lastly
- Outlines recordkeeping requirements when an applicant receives a grant.

Reasons Supporting Proposal: Rules are needed so L&I can administer the small employer emergency grant program when needed and reserve funds exist. ESHB 1097 was motivated by recognition of the COVID-19 pandemic's impact on small businesses, especially those that had difficulty affording the cost of meeting required safety and health requirements and providing personnel protective equipment to workers. Those unable to meet emergency safety and health requirements had to close. L&I was directed by ESHB 1097 to engage in rule making to establish the guidance for grants based on the type, scope, and time frame of a declared state [of] emergency, and criteria for how grants will be prioritized.

Statutory Authority for Adoption: Chapter 253, Laws of 2021; RCW 51.04.180.

Statute Being Implemented: RCW 51.04.180.

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, 360-902-6954; Implementation and Enforcement: Celia Nightingale, Tumwater, Washington, 360-742-8438.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Tracy West, L&I, Government Affairs and Policy Division, P.O. Box 44001, Olympia, WA 98504-4001, phone 360-902-6954, fax 360-902-4202, email tracy.west@lni.wa.gov.

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(3) as the rules are adopting or incorporating 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.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The rule does not impose costs on small businesses. It is a voluntary grant program meant to aid small employers during a declared state [of] emergency under RCW 43.06.010. There is only one requirement in the rule to maintain records of receipts. Recordkeeping is standard practice in businesses and this requirement is only in place for those who receive grant awards.

November 16, 2021
Joel Sacks
Director

OTS-3467.2

**Chapter 296-910 WAC
SMALL EMPLOYER EMERGENCY SAFETY GRANT PROGRAM**

NEW SECTION

WAC 296-910-001 Purpose. (1) The purpose of this chapter is to set guidance and eligibility requirements for a grant program for

small employers in need of assistance during a state of emergency declared under RCW 43.06.010.

(2) The grant program provides for one-time grants to small employers for purchases of equipment, gear, or capital costs to meet any new safety and health requirements related to the emergency that are required before the small employer is permitted to continue or resume business operations.

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NEW SECTION

WAC 296-910-003 Definitions. (1) "Department" means the department of labor and industries.

(2) "Director" means the director of the department of labor and industries.

(3) "Government" means local, state, or federal government.

(4) "Employee" means a "worker" for workers' compensation coverage purposes, as defined in RCW 51.08.180.

(5) "Employer" has the same meaning as in RCW 51.08.070.

(6) "Small employer" means:

(a) A for-profit or nonprofit employer who is not self-insured and pays workers' compensation premiums to the state fund as defined in RCW 51.08.175.

(b) An employer with a total of 25 or fewer full-time equivalent employees in all locations, and including those required to be reported under all department workers' compensation insurance subaccounts. The FTE count is to be calculated by dividing the total employee hours by 2080 hours per year.

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NEW SECTION

WAC 296-910-005 Qualifying state of emergency and program authorization. (1) The small employer emergency safety grant program will only be available when the following are met:

(a) The governor has declared a state of emergency as defined in RCW 43.06.010; and

(b) The director authorizes the use of reserve funds to activate the grant program.

(2) In order for the director to authorize the use of this grant program there must be adequate reserves in the accident fund and pension reserve fund as described in RCW 51.04.180(1).

(3) If the grant program is authorized by the director, the department will send out an announcement that the department is accepting grant applications. It will include:

(a) The new safety and health requirements that must be complied with during a declared emergency.

(b) The department may also publish a list of the types of equipment, gear, or capital improvements that could be options for meeting those requirements.

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NEW SECTION

WAC 296-910-010 Eligibility. The following must be met to be considered eligible for a small employer emergency safety grant:

(1) The applicant must be a small employer as defined in WAC 296-910-003.

(2) The applicant must have a need to purchase equipment, gear or make capital improvements to comply with new safety and health regulations or policies during a declared emergency, for use in the area of the declared emergency.

(3) The applicant must not have received funds for the same type of purchase or activity covered by another grant, government program, or insurance contract.

(4) The applicant must be in good standing with the department. If the applicant has debt with the department, there must be a payment plan in place that the applicant has been adhering to.

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NEW SECTION

WAC 296-910-015 Grant application. (1) Eligible employers must apply for a small employer emergency safety grant using the department's grant application process.

(2) The application information will include, but not be limited to:

(a) Name of employer;

(b) For businesses, name and contact information of owner(s); for other organizations, name and contact information of executive leader(s);

(c) Industry or type of business or organization;

(d) Employer address, including the address within the area of the declared emergency where employees work;

(e) Employer's federal employer identification number;

(f) Employer's Washington unified business identifier (UBI) number;

(g) Employer's workers' compensation account number;

(h) Number of FTEs;

(i) Amount of funds requested;

(j) Purpose of requested funds, including detail of the equipment, gear, or capital improvement they intend to purchase to comply with new safety and health requirements;

(k) Whether other funding has been received, is anticipated, or is being applied for from another grant, government program, or insurance contract.

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NEW SECTION

WAC 296-910-020 Grant awards and reconsideration. (1) The department will announce when small employer emergency grant applications are being accepted and the eligible region, based on the declared state of emergency.

(2) If an eligible employer purchased qualified safety items during a declared emergency and the grant application process later opens, the employer may apply for a grant to reimburse the costs.

(3) The department retains the option of requiring matching funding by employers in a grant funding round for certain types of expenses.

(4) Small employer emergency grants will only be available for the duration of a declared state of emergency.

(5) The grant application period may be limited in time, so grants may not be available for the full duration of the emergency.

(6) Grant amounts awarded may be less than requested by an eligible applicant.

(7) Grant amounts will be determined based on:

(a) Funds available to the department according to RCW 51.04.180;

(b) Number of eligible applicants;

(c) Amount of funds requested by applicants;

(d) Impact of the disaster or event causing the declared emergency, e.g., size of event, number of counties included in declared emergency, affiliated safety and health requirements, etc.;

(e) Type and number of employers affected; and

(f) Other important factors announced by the department.

(8) The department will notify a grant applicant whether a grant has been awarded or declined.

(9) If an application for grant funding is declined, the applicant may make a request to the department for reconsideration of their application for funding.

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NEW SECTION

WAC 296-910-025 Grant award prioritization. The factors the department will consider in prioritizing grant awards include, but are not limited to:

(1) Total number of employees;

(2) Total number of employees affected;

(3) Whether an employer provides critical goods or services to the affected community;

(4) Level of impact from the disaster (e.g., proximity, degree of exposure, etc.);

(5) Equipment, gear, or capital improvements that are required;

(6) Amount requested.

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NEW SECTION

WAC 296-910-030 Recordkeeping. (1) Grant recipients must keep records and receipts related to an awarded small employer emergency safety grant for six years. These records must be made available for inspection upon request by the department.

(2) Upon request, grant recipients must allow the department on-site to view the purchased equipment, nondisposable gear, or capital improvements during or after the emergency, and to verify emergency use through interviews with employees.

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