

WSR 22-04-079

AGENDA

DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed January 31, 2022, 10:22 a.m.]

The department of labor and industries (L&I) prepares a semi-annual rules development agenda in January and July each year to inform the public of expected upcoming rule changes. Pursuant to RCW 34.05.314, the agenda is filed with the office of the code reviser for publication in the Washington State Register. This report details current and anticipated rule-making activities for L&I. This agenda is for informational purposes and the noted dates of anticipated rule-making actions are estimates. There may be additional rule-making activities not anticipated at this time, such as to implement new state laws, meet federal requirements, or other circumstances.

L&I encourages the public to be involved in the rule-making processes by attending public hearings and submitting comments regarding rules. Rule-making information is available on the agency website at <https://www.lni.wa.gov/rulemaking-activity/>. To stay informed of our progress and be notified of any changes, please sign up for email notifications <https://public.govdelivery.com/accounts/WADLI/subscriber/new>. Under General, select Rules Update.

Please contact Tracy West at 360-902-6954 or Tracy.West@lni.wa.gov if you have any questions.

KEY

CR: "Code reviser" on the rule-making forms, which are produced by the office of the code reviser for use by all state agencies.

CR-101: Preproposal statement of inquiry filed under RCW 34.05.310.

CR-102: Proposed rule-making notice filed under RCW 34.05.320 or 34.05.340.

CR-103: Rule-making order permanently adopting a rule, and filed under RCW 34.05.360 and 34.05.380.

CR-105: Expedited rule-making proposal filed under RCW 34.05.353.

RCW: Revised Code of Washington.

WAC: Washington Administrative Code.

WSR: Washington State Register official filing reference number given by the office of the code reviser when a notice is filed.

**Semi-Annual Rules Development Agenda
January 1 - June 30, 2022**

WAC CHAPTER	RULE SUBJECT	PURPOSE AND SCOPE OF RULE MAKING	Preproposal Notice (CR-101) Filing Date and WSR #	Proposed Rule (CR-102 or CR-105) Filing Date and WSR #	Permanent Rule (CR-103) Filing Date and WSR #	AGENCY CONTACT
Division: Division of Occupational Safety and Health (DOSH)						
296-36 296-155 Part Q	Compressed air (tunnels)	This rule making is in response to petitions and other requests from labor and business industry stakeholders to update the compressed air work requirements in chapters 296-36 and 296-155 WAC, Part Q.	9/18/12 12-19-075	To be determined	To be determined	Chris Miller DOSH Standards Program 360-902-5516

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296-62 296-155	Lead	This rule making is in response to a petition and a series of stakeholder meetings. This rule making was initiated to update existing lead standards in both general industry and construction in light of increasing evidence of the hazards associated with occupational lead exposure.	4/19/16 16-09-092	To be determined	To be determined	Chris Miller DOSH Standards Program 360-902-5516
296-67	Process safety management of highly hazardous chemicals for petroleum refineries	The purpose of this rule making is to amend existing sections and create several new sections in chapter 296-67 WAC, Safety standards for process safety management of highly hazardous chemicals, which will only apply to petrochemical refining facilities. The current rules are outdated, not having been updated in over 20 years and do not reflect current industry practices.	8/22/17 17-17-134	To be determined	To be determined	Chris Miller DOSH Standards Program 360-902-5516
296-52	Safety standards for possession, handling, and use of explosives	The purpose of this rule making is to update the safety standards concerning explosives in order to reflect technological advancements in explosives over the past 10 to 30 years, and better align with federal regulations. Focus areas will likely include definitions, licensing, storage, background check requirements, public disclosure, and transportation, among others sections.	1/23/18 18-03-162	To be determined	To be determined	Chris Miller DOSH Standards Program 360-902-5516
296-800	Adult entertainer safety (EHB 1756)	The purpose of this rule making is to implement the requirements of EHB 1756 (chapter 304, Laws of 2019) codified under RCW 49.17.470. Adult entertainers encounter unique workplace hazards that warrant specific occupational safety and health rules to best protect them from these hazards.	11/5/19 19-22-062	1/4/22 22-02-054	Anticipate filing 3/22/22	Chris Miller DOSH Standards Program 360-902-5516

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296-67	High hazard facilities— Workforce (ESHB 1817)	The purpose of this rule making is to implement 2019's ESHB 1817, chapter 49.80 RCW, High hazard facility workforce. Chapter 49.80 RCW requires owners of petroleum refining or petrochemical manufacturing facilities use a skilled and trained workforce when contracting for construction, alteration, demolition, installation, repair, or maintenance work. This rule will address the advanced safety-training curriculum and training provider approval requirements.	2/18/20 20-05-073	Anticipating filing March 2022	To be determined	Chris Miller DOSH Standards Program 360-902-5516
296-307	Temporary worker housing (TWH)	The purpose of this rule making, in conjunction with the department of health (DOH), is to consider permanent amendments to further protect occupants in TWH and cherry harvest camps. In February 2020, Governor Inslee proclaimed a State of Emergency in Washington state as a result of the coronavirus disease 2019 (COVID-19) outbreak, followed by proclamations and amendments. DOH and L&I also responded to the COVID-19 pandemic by adopting emergency rules (CR-103E) to protect occupants from COVID-19 hazards in licensed TWH.	9/10/20 20-19-050	To be determined	To be determined	Chris Miller DOSH Standards Program 360-902-5516
296-62	Wildfire smoke	The purpose of this rule making is to develop new workplace safety and health rules regarding wildfire smoke. Some of the issues that may be addressed include: Identification of harmful exposures; communication; training and instruction; and control of harmful exposures. L&I filed emergency rules (CR-103E) on July 16, 2021 (WSR 21-15-067) to ensure these requirements were in place during the 2021 Fire season while permanent rule making is ongoing.	10/20/20 20-21-093	To be determined	To be determined	Chris Miller DOSH Standards Program 360-902-5516

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To be determined	Occupational exposures to infectious or contagious diseases (ESSB 5092)	The purpose of this rule making is to implement the requirements of 2021's ESSB 5092, section 220(8), to establish occupational health protections related to infectious diseases to ensure the state has general guidelines to follow in the case of an infectious disease outbreak. This would include when there is an outbreak subject to a public health emergency under a national or state-declared state of emergency.	5/13/21 21-11-051	To be determined	To be determined	Chris Miller DOSH Standards Program 360-902-5516
296-155	Trenching rescue and excavation plan	The purpose of this rule making is to require employers to develop and implement a written excavation plan detailing appropriate risk analysis and rescue planning prior to beginning any work that requires a protective system (generally defined as any excavation four feet or deeper that is not in stable, solid rock).	6/22/21 21-13-140	To be determined	To be determined	Chris Miller DOSH Standards Program 360-902-5516
296-155	Cranes, rigging, and personnel lifting	The purpose of this rule making is to amend the safety standards for cranes and derricks in construction, due in part to the Occupational Safety and Health Administration (OSHA) updating their standards. This rule making is also intended to provide clarity on L&I's interpretation of requirements related to crane decertification and reinstatement. In addition, state-initiated amendments will also be considered to address other areas in chapter 296-155 WAC relating to cranes that either need to be updated based on current industry practice or clarifying some of the language to maintain safety and health protections for employees. Due to OSHA updating their standard, prior rule making preproposals regarding these subjects initiated in 2018 and 2019 were withdrawn under WSR 21-14-078 and 21-14-079.	7/6/21 21-14-080	To be determined	To be determined	Chris Miller DOSH Standards Program 360-902-5516

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296-62 296-307	Ambient heat exposure	The purpose of this rule making is to consider occupational heat exposure hazards from high ambient temperatures in all industries, including outdoor and indoor exposures. Requirements considered, but not limited to, include: Trigger temperatures or another measure of environmental conditions, stress to the human body such as the heat index or wet bulb globe temperature, time frames for when the rule is in effect, preventative measures (such as water, shade or other cooling means, and rest time/breaks), emergency response measures, training, and planning.	8/17/21 21-17-135	Anticipate filing 5/3/22	To be determined	Chris Miller DOSH Standards Program 360-902-5516
296-115	Safety requirements for charter boats	The purpose of this rule making is to better align chapter 296-115 WAC, Safety requirements for charter boats, with chapter 88.04 RCW, the Charter Boat Safety Act; chapter 49.17 RCW, the Washington Industrial Safety and Health Act; and United States Coast Guard requirements under 46 C.F.R. In addition, this rule making will address items from an audit of the charter boat program.	12/21/21 22-01-197	Anticipate filing 3/1/22	Anticipate filing 4/19/22	Chris Miller DOSH Standards Program 360-902-5516
296-360	Safety and health discrimination protections (ESHB 1097)	The purpose of this rule making is to implement 2021's ESHB 1097 related to safety and health discrimination.	1/4/22 22-02-055	Anticipate filing 3/1/22	Anticipate filing 5/3/22	Chris Miller DOSH Standards Program 360-902-5516
296-72 296-817	Hearing loss and recordkeeping	The purpose of this rule making is to update hearing loss recordkeeping requirements and housekeeping updates.	Not applicable	Anticipate filing winter 2022 (CR-105)	To be determined	Chris Miller DOSH Standards Program 360-902-5516
296-56	Longshore water operations	The purpose of this rule making is to align the standard with OSHA, address items in change log, and other eRules and housekeeping items.	Not applicable	Anticipate filing winter 2022 (CR-105)	To be determined	Chris Miller DOSH Standards Program 360-902-5516
296-304	Ship repair, shipbuilding and ship breaking	The purpose of this rule making is to address general updates to the chapter, which may include updates to eye protection to address (reference) current industry standards, such as use of auto-darkening helmets.	Not applicable	Anticipate filing winter 2022 (CR-105)	To be determined	Chris Miller DOSH Standards Program 360-902-5516
296-880	Fall protection	The purpose of this rule making is to address trigger height requirements for fall protection where OSHA deemed Washington state to be less effective than the federal standards.	Anticipate filing spring 2022	To be determined	To be determined	Chris Miller DOSH Standards Program 360-902-5516

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296-900	Daily penalties for violating an order of immediate restraint (ESHB 1097)	Rule making is anticipated to implement the provisions of 2021's ESHB 1097 related to daily penalties for violating an order of immediate restraint (OIR), including establish inspection procedures and enforcement policies related to calculating penalties when OIR and/or red tags are placed; and provide guidance on how to correctly calculate penalties arising from the placement of an OIR, or a red tag.	To be determined	To be determined	To be determined	Chris Miller DOSH Standards Program 360-902-5516
To be determined	Temporary workers in construction and manufacturing (SHB 1206)	Rule making is anticipated to implement the new requirements under 2021's SHB 1206 related to temporary workers in the construction and manufacturing.	To be determined	To be determined	To be determined	Chris Miller DOSH Standards Program 360-902-5516
296-307 Part I	Worker protection standard (pesticides) administrative changes	The purpose of this rule making is for housekeeping corrections from previous rule making to align language with the department of agriculture and add a table that is missing.	To be determined	To be determined	To be determined	Chris Miller DOSH Standards Program 360-902-5516
Division: Field Services and Public Safety						
296-150F	Factory assembled structures (FAS): Factory-built housing and commercial structures	The purpose of this rule making is to update the rules regarding factory-built housing and commercial structures, to include panelized construction. This rule making will include intent to make the rules related to E2SHB 1257 Energy efficiency, HB 1486 Delegation of authority, and SB [ESSB] 5383 Tiny homes.	7/2/19 19-14-106	To be determined	To be determined	Alicia Curry Field Services and Public Safety 360-902-6244
296-46B	Electrical board— Appeal rights and hearings	The purpose of this rule making is to amend the electrical rules governing appeals and the appeal process under WAC 296-46B-995. The state's Electrical Board petitioned L&I to amend the rules for the purpose of clarifying, simplifying, and making the procedures for appeals to the board easier to understand and navigate.	12/1/20 20-24-104	11/16/21 21-23-080	Anticipate filing 3/1/22	Alicia Curry Field Services and Public Safety 360-902-6244

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296-96	Elevator fee increase (fiscal year 2022)	<p>The purpose of this rule making is to propose a 5.79 percent fee increase for inspections of conveyances and other elevator program public safety activities.</p> <p>The amount of the increase is the office of financial management's (OFM) maximum allowable fiscal growth factor rate for fiscal year 2022. The current fee levels are not enough to cover current program expenses. A fee increase is needed to ensure the program's revenue match expenditures, otherwise, service levels may need to be reduced.</p>	10/5/21 21-20-119	11/30/21 21-24-068	Anticipate filing 2/15/22	Alicia Curry Field Services and Public Safety 360-902-6244
296-200A	Contractor registration fee increase (fiscal year 2022)	<p>The purpose of this rule making is to propose a 5.79 percent fee increase for L&I's contractor registration program. The amount of the increase is OFM's maximum allowable fiscal growth factor rate for fiscal year 2022. A fee increase is needed to ensure the program remains consistent with fee increases as required by statute and to help improve the program's fund balance.</p>	10/19/21 21-21-086	12/21/21 22-01-194	Anticipate filing 3/22/22	Alicia Curry Field Services and Public Safety 360-902-6244
296-104	Boiler fee increase (fiscal year 2023)	<p>The purpose of this rule making is to propose a 5.58 percent fee increase for boiler inspections and pressure vessel inspections and other boiler program public safety activities.</p> <p>The amount of the increase is OFM's maximum allowable fiscal growth factor rate for fiscal year 2023. A fee increase is needed to ensure the program's revenue match expenditures, otherwise, service levels may need to be reduced.</p>	10/19/21 21-21-087	12/21/21 22-01-195	Anticipate filing 4/19/22	Alicia Curry Field Services and Public Safety 360-902-6244

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296-96	Elevator rules (safety codes)	The purpose of this rule making is to consider adopting new safety codes from the 2019 edition of the American Society of Mechanic Engineers (ASME) A17.1/CSA B44 - 2019, Safety Code for Elevators and Escalators, and other related codes. The 2019 edition of ASME A17.1 would replace the current 2016 code. The elevator program is also considering updates, clarification, housekeeping, and other changes to the rules. This rule making excludes the rules with fees due to a separate rule making in progress.	10/19/21 21-21-088	Anticipate filing 6/21/22	Anticipate filing 10/4/22	Alicia Curry Field Services and Public Safety 360-902-6244
296-400A	Plumber certification rules— Phase 3	The purpose of this rule making is to consider amendments under chapter 206-400A WAC, Plumber certification rules, in order to implement the legislative changes made within 2020's Plumbing Act (chapter 153, Laws of 2020, SB 6170), updates to continuing education, training programs, and other necessary updates to all plumbing rules.	1/18/22 22-03-073	Anticipate filing 5/17/22	Anticipate filing 7/19/22	Alicia Curry Field Services and Public Safety 360-902-6244
296-96	Elevator fee increase	The purpose of this rule making is to consider a 17 percent fee increase for inspections of conveyances and other elevator program public safety activities. A fee increase is needed to fund a new conveyance management system (CMS). The CMS is the database used to provide permitting, inspection, and other information. Our current system is aging, failing, and no longer meets the service needs of our customers.	Anticipate filing 3/22/22	Anticipate filing 5/17/22	Anticipate filing 7/19/22	Alicia Curry Field Services and Public Safety 360-902-6244
296-150C 296-150F 296-150I 296-150M 296-150P 296-150T 296-150V	FAS fee increase	The purpose of this rule making is to consider a 17 percent fee increase for plan review and inspection of factory-built structures. A fee increase is needed to fund a new CMS. The new CMS is an enterprise software system that FAS will utilize to operate the program more efficiently.	To be determined	To be determined	To be determined	Alicia Curry Field Services and Public Safety 360-902-6244
296-200A	Contractor registration— Classification updates	The purpose of this rule making is to consider updates to the definitions for specialty contractor classifications.	To be determined	To be determined	To be determined	Alicia Curry Field Services and Public Safety 360-902-6244
Division: Fraud Prevention and Labor Standards						

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296-127	Prevailing wage: Ordinary maintenance	The purpose of this rule making is to consider clarifications to the definition of "ordinary maintenance."	To be determined	To be determined	To be determined	Ellen Saline Fraud Prevention and Labor Standards 360-902-4475
Division: Insurance Services						
296-17 296-17A	Employment covered by RCW 51.32.187 (Department of Energy (DOE) Hanford site contractors)	<p>The purpose of this rule making is to allow contractors of the United States DOE working at the Hanford site to have their contractors and subcontractors covered under the state fund.</p> <p>L&I filed continuances on October 27 and November 6, 2020, ultimately extending the comment period to February 1, 2021, under WSR 20-22-038 and 20-23-017.</p> <p>The CR-102 Proposal was withdrawn (WSR 21-04-019) due to the need for more stakeholder involvement and coordination. L&I will continue working with stakeholders to refine proposed rules for potential future rule making.</p>	3/3/20 20-06-060	9/22/20 20-19-132 (withdrawn)	To be determined	Jo Anne Attwood Employer Services 360-902-4777
	Montana reciprocal agreement	The purpose of this rule making is to update the Montana Reciprocal Agreement to include construction.	To be determined	To be determined	To be determined	Jo Anne Attwood Employer Services 360-902-4777
	Drywall rules rewrite	The purpose of this rule making is to rewrite the drywall rules for clarity and ease of administration for our customers.	To be determined	To be determined	To be determined	Jo Anne Attwood Employer Services 360-902-4777
296-17 296-17A	Classification and reporting amendments 2023	<p>The purpose of this rule making is to implement clear rule writing to ensure L&I staff and customers can easily understand and apply the workers' compensation insurance classifications and reporting rules.</p> <p>Classification development studied some subclassifications for potential reduction in number, and reviewed reporting rules for improvement.</p> <p>This rule making will also remove the penalty dollar amounts from two state fund rules and one self-insured rule. A reference to the new penalty statute will be added to these rules.</p> <p>Also, Classification 6510 Domestic Servant will [be] updated to add "worker" to the title.</p>	To be determined	To be determined	To be determined	Jo Anne Attwood Employer Services 360-902-4777

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296-17 296-17B	Industrial insurance premium rates 2023	The purpose of this rule making is to establish the premium rates and experience rating parameters for calendar year 2023.	To be determined	To be determined	To be determined	Jo Anne Attwood Employer Services 360-902-4777
296-23	Independent medical examinations (IMEs) (ESSB 6440)	The purpose of this rule making is to create new rules required by ESSB 6440 to address how to accommodate an injured worker if no approved IME in the specialty needed is available in a reasonably convenient location, as well as how telemedicine IMEs may be used.	10/6/20 20-20-111	To be determined	To be determined	Kristen Baldwin-Boe Health Services Analysis 360-902-6815
296-20 296-23	Medical aid rules— Conversion factors	The purpose of this rule making is to update rates for most professional health care services for injured workers, which are published annually in the medical aid rules and fee schedules.	12/21/21 22-01-196	Anticipate filing 3/1/22	Anticipate filing 5/3/22	Megan Lemon Health Services Analysis 360-902-5161
296-14	Presumptive PTSD coverage (SSB 6214)	The purpose of this rule making is to update existing rules and create new rules needed to implement SSB 6214, allowing industrial insurance coverage for posttraumatic stress disorders of law enforcement, firefighters, and emergency medical technicians.	8/21/18 18-17-151	To be determined	To be determined	Suzy Campbell Legal Services 360-902-5003
296-14	Occupational disease presumption	The purpose of this rule making is to amend existing rules that conflict with RCW 51.32.185, and clarify presumptive coverage for certain firefighters, law enforcement officers, and emergency medical technicians covered under workers' compensation. Legislation passed during the 2019 and 2018 sessions (chapter 133, Laws of 2019, HB 1913; and chapter 264, Laws of 2018, SSB 6214) resulted in updates to RCW 51.32.185.	11/19/19 19-23-081	To be determined	To be determined	Jordan Ely Legal Services 360-902-4616
296-21	Master's level therapists (MLTs) pilot	The purpose of this pilot rule making is to allow MLTs to treat injured workers. L&I decided to initiate a pilot to help determine how MLTs can best be incorporated into the workers' compensation setting. Under this pilot, these current provisions related to treatment by MLTs are waived for pilot participants only. The pilot began on January 1, 2020, and the exceptions granted are effective throughout a four-year pilot period or as otherwise specified.	12/3/19 19-24-087	To be determined	To be determined	Suzy Campbell Legal Services 360-902-5003

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296-23 296-15	IME—Case progress (ESSB 6440)	The purpose of this rule making is to define or outline criteria for "case progress" in relation to IMEs requested by L&I and self-insured employers. The rules include whether the results of IMEs requested are inconsistent with the list of reasons outlined in Title 51 RCW. ESSB 6440 was adopted into law by the legislature in 2020 requiring rules to be updated to reflect changes made to RCW 51.36.070.	5/18/21 21-11-086	12/21/21 22-01-202	Anticipate filing 2/15/22	Suzy Campbell Legal Services 360-902-5003
296-23	IME—Appeals (ESSB 6440)	The purpose of this rule making is to define how and under what circumstances an IME can be requested by L&I and self-insurers in order to resolve an appeal. ESSB 6440 was adopted into law by the legislature in 2020 requiring rules to be updated to reflect changes made to RCW 51.36.070.	8/3/21 21-16-093	12/21/21 22-01-203	Anticipate filing 2/15/22	Suzy Campbell Legal Services 360-902-5003
296-14	Pension discount rate (PDR) 2022	The purpose of this rule making is to lower the PDR to better align with the rate of return for long-term treasuries for self-insured and state fund pensions. The PDR is the interest rate used to account for the time value of money when evaluating the present value of future pension payments.	9/21/21 21-19-127	11/16/21 21-23-081	Anticipate filing 2/15/22	Suzy Campbell Legal Services 360-902-5003
296-20	Osteopathic physician assistants	The purpose of this rule making is to make language on physician assistants in the L&I medical aid rules consistent with language in SHB 2378 (chapter 80, Laws of 2020). This bill amends some sections in the DOH Title 18 RCW by deleting references to "osteopathic physician assistants" and repealing chapter 18.57A RCW, Osteopathic physician assistants. Effective July 1, 2022, all physician assistants will be regulated under chapter 18.71A RCW, Physician assistants. The following L&I definitions will need to be amended: "Practitioner or licensed health care provider" and "Treating provider."	Not applicable	To be determined (CR-105)	To be determined	Jami Lifka Office of the Medical Director Jami.Lifka@Lni.wa.gov
296-20	Medical aid rules—Definitions, treatment not authorized	The purpose of this rule making is twofold: (1) Seek to ensure that treatment is safe and effective; and (2) prevent serious harm.	To be determined	To be determined	To be determined	Jami Lifka Office of the Medical Director Jami.Lifka@Lni.wa.gov

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296-17B	Retrospective rating for workers' compensation insurance	This rule making will address extending requirements for businesses that enroll in individual retro plans and revise enrollment requirements for businesses under common majority ownership.	11/5/13 13-22-071	To be determined	To be determined	Rachelle Bohler Retrospective Rating 360-902-5967
296-17B	Retrospective rating for workers' compensation insurance— Common ownership (pilot)	This pilot rule making will consider/allow exceptions to the retroactive rating program's current common ownership rule (WAC 296-17B-770) as written.	8/5/15 15-16-132	To be determined	To be determined	Rachelle Bohler Retrospective Rating 360-902-5967
296-17A 296-17B	COVID-19-related relief option	<p>Data shows that the COVID-19 pandemic and resulting government required shutdowns disproportionately impacted employers who reported hours in 42 risk classes, thereby reducing the options to help workers return to work. This may lead to increased claim losses for businesses in the affected classes compared to other employers.</p> <p>For affected retro participants who experience increased loss ratios, they may be subject to a negative bias resulting in their refunds being reduced or additional premium assessed. Conversely, the less affected retro participants may experience a positive bias whereby they may receive enhanced refunds that they would not have otherwise received but for the pandemic's adverse impact on their peers.</p>	6/1/21 21-12-082	To be determined	To be determined	Leslie Qunell Retrospective Rating 360-902-5967
Division: Government Affairs and Policy Division						

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296-910 (new chapter)	Small employer emergency safety grant program (ESHB 1097)	The purpose of this rule making is to establish guidance for a safety grant program for small employers based on the type, scope, and time frame of a declared state [of] emergency, and criteria for how grants will be prioritized. ESHB 1097 (chapter 253, Laws 2021) provides for increased worker protections from hazards in the workplace. The bill also created a safety grant program for small employers during declared states of emergency. This law 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 measures and providing personal protective equipment to workers.	8/3/21 21-16-099	11/16/21 21-23-089	Anticipate filing 2/1/22	Tracy West Government Affairs and Policy Division 360-902-6954