

WSR 22-07-054
EMERGENCY RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed March 15, 2022, 3:01 p.m., effective March 15, 2022, 3:01 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 [an] emergency proclamation.

L&I is monitoring the emergency proclamations, information including guidance from the Centers 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 February 16, 2022, filed as WSR 22-05-097. Conditions have changed due to the updated Proclamation 20-25.19, Washington Ready rescinding the face covering requirement in most settings. 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. L&I filed a Preproposal statement of inquiry (CR-101) in accordance with 2021's ESSB 5092, section 220(8) 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.

As discussed in Proclamation 20-25.19, face covering requirements in most settings was rescinded due to the continued reduction in COVID-19 cases and hospitalizations in the state. Under Proclamation 20-25.19, face coverings continue to be required in health care settings, long-term care settings, and correctional and jail facilities for both employees and visitors. For these settings, employees who are verified as vaccinated do not have to wear a face covering at the employer's work site in indoor areas not generally assessable [accessible] to the public only if the employer has verified they are fully vaccinated. The prohibitions for any state agency, operator of an education setting, and operator of a health care setting to permit workers to engage in work if the worker is not fully vaccinated against

COVID-19 and provided proof of vaccination status under Proclamation 21-14.3 are also still in effect.

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 CDC. 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.

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

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: March 15, 2022.

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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