

WSR 22-17-009
EMERGENCY RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed August 4, 2022, 8:05 a.m., effective August 4, 2022, 8:05 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The department of labor and industries (L&I) continues to respond to 2021 legislation establishing employer requirements during a public health emergency for infectious and contagious diseases. The employer requirements are under SSB 5254, codified as RCW 49.17.485, regarding voluntary use of personal protective equipment (PPE) and ESSB 5115, also known as the Health Emergency Labor Standards Act (HELSA), and codified as RCW 49.17.062 and 49.17.064.

The emergency rule maintains requirements under new sections of chapter 296-62 WAC for when there is a public health emergency for an infectious or contagious disease and as such, the requirements are applicable to COVID-19.

Under the emergency rule:

- Employers with more than 50 covered employees at a workplace or worksite are required to report infectious or contagious disease outbreaks to L&I;
- Employees are not required to disclose any medical condition or diagnosis to their employer;
- Several definitions were added and/or simplified for implementation;
- Nonhealthcare employers are required to notify employees, as well as their union representative (if any), in writing of potential exposures within one business day;
- Employees and contractors must be permitted to voluntarily use personal protective equipment.

In addition, this emergency rule now applies notification requirements to health care facilities as defined in RCW 9A.50.010.

- Employers of health care facilities must notify any employee with known or suspected high-risk exposure to the infectious or contagious disease within 24 hours. With employee authorization, notification must also be sent to the employee's union representative (if any) within 24 hours.
- Period of transmission/isolation requirements have been simplified;
- Requirements for how employees are notified of potential high risk exposure are clarified.

A CR-101 Preproposal statement of inquiry was filed on May 13, 2021 (WSR 21-11-05[1]), and initiated the permanent rule-making process for rules related to infectious diseases, which will include requirements for outbreaks subject to a public health emergency under a national or state declared state of emergency. This emergency rule supersedes WSR 22-09-003 filed on April 6, 2022.

Citation of Rules Affected by this Order: New WAC 296-62-601, 296-62-602, 296-62-603, 296-62-604, 296-62-605, 296-62-606, 296-62-607, 296-62-608, and 296-62-609.

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.[0]60.

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 com-

ment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: RCW 49.17.485 became effective April 26, 2021, and RCW 49.17.062 and 49.17.064 became effective on May 11, 2021, requiring L&I to take action to implement both SSB 5254 and ESSB 5115. On February 29, 2021, Governor Inslee proclaimed a statewide state of emergency to respond to the continuing spread of COVID-19 which resulted in a global pandemic, Proclamation 20-05. Subsequent proclamations have been issued related to the pandemic response, including those with restrictions on business activities under Proclamation 20-25, et seq., initially entitled "Stay Home, Stay Healthy" and the most recent amendment titled "Washington Ready" under Proclamation 20-25.19. Washington state is still in the midst of a public health state of emergency battling the COVID-19 pandemic. In addition, President Biden continued the national emergency concerning the COVID-19 pandemic with notice published in the Federal Register on February 23, 2022 (87 F.R. 10589).

These emergency rules are necessary to further respond to and diminish the spread of COVID-19, alert public officials to workers exposure to COVID-19 to allow for adequate responses to outbreaks, and to reduce the number of outbreaks, keeping Washington workers safe.

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 9, 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 0, 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 9, Amended 0, Repealed 0.

Date Adopted: August 4, 2022.

Joel Sacks
Director

OTS-3146.9

**PUBLIC HEALTH EMERGENCY REPORTING AND NOTIFICATION REQUIREMENTS FOR
COVID-19**

NEW SECTION

WAC 296-62-601 Purpose and scope. WAC 296-62-601 through 296-62-606 provides requirements for the reporting of COVID-19 outbreaks to L&I's division of occupational safety and health (DOSH) and notification to employees of potential or high risk exposures to COVID-19 during a public health emergency as defined in WAC 296-62-602(11) and consistent with RCW 49.17.062 and 49.17.064.

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NEW SECTION

WAC 296-62-602 Definitions for WAC 296-62-601 through 296-62-606. The definitions below apply only to WAC 296-62-601 through 296-62-606.

(1) **Airborne infection isolation room (AIIR).** Means a dedicated negative pressure patient-care room with special air handling capability, which is used to isolate persons with a suspected or confirmed airborne-transmissible infectious disease. AIIRs include both permanent rooms and temporary structures (e.g., a booth, tent, or other enclosure designed to operate under negative pressure).

(2) **Clearing time.**

(a) Means the amount of time it takes for an aerosol to be removed from a room with 99.9 percent removal efficiency based on the United States Centers for Disease Control and Prevention's *Guidelines for Environmental Infection Control in Health-Care Facilities (2003)*, Appendix Table B.1, *Air changes/hour (ACH) and time required for airborne-contaminant removal by efficiency*. (See <https://www.cdc.gov/infectioncontrol/guidelines/environmental/appendix/air.html#tableb1>.)

(b) The clearing time is no more than three hours following the conclusion of an aerosol generating procedure.

(c) One hour is sufficient time for aerosols to clear following an aerosol generating procedure in clinical spaces constructed under Washington state department of health clinical facility requirements (six air exchanges per hour).

(d) Fifteen minutes is sufficient time for aerosols to clear following an aerosol generating procedure in an airborne infection isolation room (AIIR).

(3) **Covered employee.** Means any employee of an employer who is employed in the business of their employer whether by way of manual labor or otherwise and every person in this state who is engaged in the employment of or who is working under an independent contract the essence of which is their personal labor for an employer whether by manual labor or otherwise, including employees from a temporary help service, or personnel supply service if they supervise these employees on a day-to-day basis under WAC 296-27-02103(2).

(4) **Coronavirus Disease 2019 (COVID-19).** Means the respiratory disease caused by severe acute respiratory syndrome coronavirus two (SARS-CoV-2). For clarity and ease of reference, this rule also uses the term "COVID-19" when describing exposures or potential exposures to SARS-CoV-2.

(5) **Health care facility employer.** Means an employer that is a health care facility according to RCW 9A.50.010.

(6) **High risk exposure.** Applies only to health care facilities as defined by RCW 9A.50.010, and means being in any of the following situations without a fit-tested respirator and all other required personal protective equipment:

(a) Sharing the same indoor airspace as a qualifying individual for a cumulative total of 15 minutes or more over a 24-hour period during the qualifying individual's period of transmission, regardless of the qualifying individual's use of face coverings; or

(b) In the same room as a qualifying individual who is undergoing an aerosol-generating procedure. A list of what are considered aerosol-generating procedures is found in the section *Precautions During and Following Aerosol Generating and Other Procedures*, found on page 16 of the April 22, 2022, version of the Washington state department of health publication *Interim Recommendations for SARS-CoV-2 Infection Prevention and Control in Healthcare Settings* (<https://doh.wa.gov/sites/default/files/2022-06/420-391-HealthcareIPCCOVID.pdf>); or

(c) In the room where a qualifying individual underwent an aerosol-generating procedure, prior to the termination of the clearing time.

(7) **Notice of potential exposure.** Means any of the following:

(a) Notification to the employer from a public health official or licensed medical provider that an employee was exposed to a qualifying individual at the worksite; or

(b) Notification to the employer from an employee, or their emergency contact, that the employee is a qualifying individual; or

(c) Notification through a testing protocol of the employer that the employee is a qualifying individual.

(8) **Period of transmission for qualifying individuals at employers that are health care facilities.** For COVID-19, means the period of time between the following start and end points:

(a) Start - The earlier of:

(i) Two days before the qualifying individual felt sick/had symptoms; or

(ii) Two days before the day a positive test specimen was collected.

(b) End - The latest of:

(i) Ten days following the onset of symptoms (where day one is the first full day after symptoms developed), when at least 24 hours have passed since the last fever without use of fever-reducing medications, and symptoms (e.g., cough, shortness of breath) have improved; or

(ii) Ten days following the positive laboratory test for COVID-19 if the qualifying individual never developed symptoms, where day one is the first full day after the positive test specimen was collected; or

(iii) The length of the qualifying individual's isolation period, when the qualifying individual has an isolation period longer than 10 days for reasons such as illness severity, or due to immunocompromise. In such circumstances, the isolation period is not shorter than, but may be longer than, at least 24 hours beyond the last fever without use of fever-reducing medications, and symptoms (e.g., cough, shortness of breath) have improved.

(9) **Period of transmission for qualifying individuals at employers that are not health care facilities.** For COVID-19, means:

(a) The earlier of:

(i) Two days before the qualifying individual felt sick/had symptoms; or

(ii) Two days before the day a positive test specimen was collected;

(b) Until the time the qualifying individual left, or was isolated from, the worksite.

(10) **Positive laboratory test.**

(a) Means a positive or abnormal diagnostic test result for SARS-CoV-2 when the test is cleared, approved, or authorized, including in an Emergency Use Authorization (EUA), by the United States Food and Drug Administration (FDA) to detect current infection with SARS-CoV-2.

(b) Positive laboratory tests include, but are not limited to, antigen tests and molecular tests for SARS-CoV-2.

(c) Tests for current infection that are cleared, approved, or authorized by the FDA that return a positive or abnormal result are positive laboratory tests regardless of where the test sample is collected or where the test is interpreted.

(11) **Public health emergency.** Means a declaration or order concerning any infectious or contagious disease, including a pandemic and is issued as follows:

(a) The President of the United States has declared a national or regional emergency that covers every county in the state of Washington; or

(b) The governor of the state of Washington has declared a state of emergency under RCW 43.06.010(12) in every county in the state.

(12) **Qualifying individual.** Means any person who has:

(a) A positive laboratory test for COVID-19; or

(b) A positive diagnosis of COVID-19 by a licensed health care provider; or

(c) An order to isolate by a public health official related to COVID-19; or

(d) Died due to COVID-19, in the determination of a local health department.

(13) **Test-confirmed.** Means receiving a positive laboratory test for SARS-CoV-2 including, but not limited to, antigen tests and molecular tests.

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NEW SECTION

WAC 296-62-603 General guidelines. WAC 296-62-601 through 296-62-606 do not alter or eliminate any other reporting obligations an employer has under state or federal laws.

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NEW SECTION

WAC 296-62-604 Reporting requirements for outbreaks among covered employees during a public health emergency. (1) This section only applies during a public health emergency to employers with more than 50 covered employees at a workplace or worksite. For purposes of this section, workplace or worksite means any plant, yard, premises, room, or other place where an employee or employees are employed for

the performance of labor or service over which the employer has the right of access or control. This includes, but is not limited to, all workplaces covered by industrial insurance under Title 51 RCW, as now or hereafter amended.

(2) Outbreaks. Employers must report cases to L&I's division of occupational safety and health (DOSH), whether or not the test-confirmed covered employee cases are considered work-related, within 24 hours of being notified of:

(a) Ten or more test-confirmed covered employees at the workplace or worksite where the test was collected during any period of time the Washington state department of health or a local health jurisdiction communicates to the employer that there is a COVID-19 outbreak at their workplace or worksite; or

(b) Ten or more test-confirmed employees where the test was collected during any period of time between the following start and end points:

(i) Start: When any two or more test confirmed covered employee cases at the workplace or worksite occur within 14 consecutive calendar days of each other.

(ii) End: 28 consecutive calendar days have passed since the last positive test result for any covered employee at the workplace or worksite.

Notes: * Only test-confirmed covered employee cases must be counted. For the purposes of WAC 296-62-604, employers do not need to count test-confirmed cases when the positive laboratory test results are from individuals who are not covered employees.
* Employers must also report to DOSH COVID-19-related workplace deaths and hospitalizations as required by WAC 296-27-031. Different disclosure requirements for employee information apply.

(3) Employers must report to DOSH by calling 1-800-4BE-SAFE (1-800-423-7233), and use the option to report fatalities, hospitalizations, amputations, or loss of an eye.

(4) For purposes of this section, employers must not include any employee names or personal identifying information when reporting test-confirmed covered employee cases.

Exemptions: • Employers that have reported an outbreak according to this section do not need to continue reporting that outbreak to DOSH until the outbreak has ended.
• Employers in an outbreak as defined in this section that later learn intervening cases were false positives are not required to retroactively reevaluate their outbreak status and report to DOSH. They may continue to act as if they were under the same unbroken outbreak.

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NEW SECTION

WAC 296-62-605 Notification requirements related to potential exposures for employers that are not health care facilities. (1) This section only applies to employers other than health care facilities as defined in RCW 9A.50.010. For the purposes of this section, worksite means the building, store, facility, agricultural field, or other location where the qualifying individual worked. "Worksite" does not include any buildings, floors, or other locations of the employer that the qualifying individual did not enter.

(2) If an employer receives notice of potential exposure, the employer must:

(a) Within one business day of potential exposures provide written notice to all covered employees who were on the premises at the same worksite on the same day(s) as the qualifying individual when the

qualifying individual may have been infectious or contagious. Written notice must also be provided to:

- (i) The union representative, if any, of any covered employees.
 - (ii) Any temporary help service, employee-leasing service, or personnel supply service employers of a covered employee.
- (b) The notice required under this section:
- (i) Must state that the covered employee may have been exposed to COVID-19.
 - (ii) Must be made in a manner the employer normally uses to communicate employment-related information including, but not limited to, personal service, email, or text message if it can reasonably be anticipated to be received by the employee within one business day of sending.
 - (iii) Must be in both English and the language understood by the majority of the employees.
 - (iv) Must not include any employee names or personal identifying information.

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NEW SECTION

WAC 296-62-606 Notification requirements related to high risk exposures for employers that are health care facilities. (1) This section only applies to employers that are health care facilities defined by RCW 9A.50.010. For purposes of this section, worksite means the building, store, facility, agricultural field, or other location where the qualifying individual worked. "Worksite" does not include any buildings, floors, or other locations of the employer that the qualifying individual did not enter.

(2) Employers that are health care facilities must notify:

- (a) Any employee with known or suspected high risk exposure to COVID-19 within 24 hours.
 - (b) With employee authorization, the union representative, if any, of the employee's known or suspected high risk exposure to COVID-19 within 24 hours.
 - (c) Any temporary help service, employee-leasing service, or personnel supply service employers of a covered employee notified within 24 hours.
- (3) The notices required under this section:
- (a) Must be in writing; and
 - (b) Must state that the employee had a known or suspected high risk exposure to COVID-19; and
 - (c) Must include, if feasible, information about the worksite location(s) where the known or suspected high risk exposure(s) are believed to have occurred; and
 - (d) Must be made in a manner the employer normally uses to communicate employment-related information including, but not limited to, personal service, email, or text message if it can reasonably be anticipated to be received by the employee, union representative, or temporary help service, employee-leasing service, or personnel supply service employer within 24 hours of sending; and
 - (e) Must be in both English and the language understood by the majority of the employees; and

(f) Must not include any employee names or personal identifying information.

(4) A health care facility employer can meet the requirements of subsection (2)(b) of this section by creating and maintaining a written policy that:

(a) Anticipates the obligation to notify the union representative; and

(b) Ensures that prior to distributing notices to the union, employee authorization is obtained from either:

(i) The employee; or

(ii) The union, if the union has the employee's approval to represent the employee's authorization to the employer.

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PUBLIC HEALTH EMERGENCY VOLUNTARY PERSONAL PROTECTIVE EQUIPMENT USAGE

NEW SECTION

WAC 296-62-607 Purpose and scope for voluntary personal protective equipment usage. WAC 296-62-607 through 296-62-609 provide requirements for employee voluntary use of personal protective equipment during a public health emergency, consistent with RCW 49.17.485. These requirements apply to all employers in Washington state during a public health emergency.

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NEW SECTION

WAC 296-62-608 Definitions for WAC 296-62-607 through 296-62-609. The definitions below apply only to WAC 296-62-607 through 296-62-609.

(1) **Employee.** Means any employee of an employer who is employed in the business of their employer whether by way of manual labor or otherwise and every person in this state who is engaged in the employment of or who is working under an independent contract the essence of which is their personal labor for an employer whether by manual labor or otherwise, including employees from a temporary help service, employee-leasing service, or personnel supply service if they supervise these employees on a day-to-day basis under WAC 296-27-02103(2).

(2) **Public health emergency.** Means a declaration or order relating to controlling and preventing the spread of any infectious or contagious disease that covers the jurisdiction where the individual or business performs work, and is issued as follows:

(a) The President of the United States has declared a national or regional emergency;

(b) The governor has declared a state of emergency under RCW 43.06.010(12); or

(c) An order has been issued by a local health officer under RCW 70.05.070.

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NEW SECTION

WAC 296-62-609 Voluntary use of personal protective equipment requirements. (1) Every employer that does not require employees or contractors to wear a specific type of personal protective equipment must allow its employee's or contractor's voluntary use of that specific type of protective device or equipment, including gloves, goggles, face shields, and face masks, as the employee or contractor deems necessary. This only applies when:

(a) The voluntary use of these protective devices and equipment does not introduce hazards to the work environment and is consistent with the provisions of both this chapter, and related rules established by the department of labor and industries (L&I) division of occupational safety and health (DOSH); and

(b) The use of facial coverings does not interfere with an employer's security requirements; and

(c) The voluntary use of these protective devices and equipment does not conflict with standards for that specific type of equipment established by the department of health or DOSH.

(2) An employer may verify that voluntary use of personal protective equipment meets all regulatory requirements for workplace health and safety.

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