

WSR 23-18-075
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
[Filed September 5, 2023, 8:31 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-15-090.

Title of Rule and Other Identifying Information: Presumptive coverage of posttraumatic stress disorder (PTSD) as an occupational disease for direct care registered nurses; WAC 296-14-300 Mental condition/mental disabilities.

Hearing Location(s): On October 17, 2023, at 10:00 a.m., at the Department of Labor and Industries (L&I), 7273 Linderson Way S.W., Tumwater, WA 98501; or join electronically <https://lni-wa.gov.zoom.us/j/9361655337>, Meeting ID 936 165 5337; or join by phone 253-215-8782 US (Tacoma). Find your local number <https://lni-wa.gov.zoom.us/j/9361655337>. The in-person and virtual/telephonic meeting starts at 10:00 a.m. and will continue until all oral comments are received.

Date of Intended Adoption: December 19, 2023.

Submit Written Comments to: Jordan Ely, L&I, Insurance Services, Legal Services, P.O. Box 44270, Olympia, WA 98504-4270, email Jordan.Ely@lni.wa.gov, fax 360-902-5029, by October 17, 2023, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact Cristina Gaffoglio, phone 360-902-4252, fax 360-902-6509, TTY 360-902-4252, email Cristina.Gaffoglio@lni.wa.gov, by October 10, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Based on legislation passed in 2023, this rule making proposes to amend WAC 296-14-300 Mental condition/mental disabilities, to add direct care registered nurses to the presumption that PTSD is an occupational disease as provided by 2SSB 5454, chapter 370, Laws of 2023.

Reasons Supporting Proposal: 2SSB 5454, chapter 370, Laws of 2023, resulted in updates to RCW 51.08.142 and added a new section to chapter 51.32 RCW. This rule making proposes to amend an existing rule to conform to the updated law regarding PTSD under workers' compensation. The bill provides a *prima facie* presumption for direct care registered nurses covered under workers' compensation that occupational PTSD is caused by their work.

Statutory Authority for Adoption: RCW 51.04.020, 51.04.030, and 51.08.142.

Statute Being Implemented: 2SSB 5454, chapter 370, Laws of 2023.

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: Jordan Ely, Tumwater, Washington, 360-902-4616; Implementation: Debra Hatzialexiou, Tumwater, Washington, 360-902-6695; Enforcement: Mike Ratko, Tumwater, Washington, 360-902-4997.

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

A cost-benefit analysis is not required under RCW 34.05.328. This rule making is exempt under RCW 34.05.328 (5)(b)(iii) because the rule is adopting, without material change, language from 2SSB 5454, chapter 370, Laws of 2023.

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.

Explanation of exemptions: The rule making is fully exempt under RCW 34.05.310 (4) (c) because the rule proposes to adopt, without material change, language from 2SSB 5454, chapter 370, Laws of 2023.

Scope of exemption for rule proposal:

Is fully exempt.

September 5, 2023
Joel Sacks
Director

OTS-4758.1

AMENDATORY SECTION (Amending WSR 23-08-063, filed 4/4/23, effective 5/5/23)

WAC 296-14-300 Mental condition/mental disabilities. (1) Claims based on mental conditions or mental disabilities caused by stress do not fall within the definition of an occupational disease.

Examples of mental conditions or mental disabilities caused by stress that do not fall within occupational disease shall include, but are not limited to, those conditions and disabilities resulting from:

- (a) Change of employment duties;
- (b) Conflicts with a supervisor;
- (c) Actual or perceived threat of loss of a job, demotion, or disciplinary action;
- (d) Relationships with supervisors, coworkers, or the public;
- (e) Specific or general job dissatisfaction;
- (f) Work load pressures;
- (g) Subjective perceptions of employment conditions or environment;
- (h) Loss of job or demotion for whatever reason;
- (i) Fear of exposure to chemicals, radiation biohazards, or other perceived hazards;
- (j) Objective or subjective stresses of employment;
- (k) Personnel decisions;
- (l) Actual, perceived, or anticipated financial reversals or difficulties occurring to the businesses of self-employed individuals or corporate officers.

(2) (a) Stress resulting from exposure to a single traumatic event will be adjudicated as an industrial injury. See RCW 51.08.100.

(b) Examples of single traumatic events include: Actual or threatened death, actual or threatened physical assault, actual or threatened sexual assault, and life-threatening traumatic injury.

(c) These exposures must occur in one of the following ways:

(i) Directly experiencing the traumatic event;

(ii) Witnessing, in person, the event as it occurred to others;

or

(iii) Extreme exposure to aversive details of the traumatic event.

(d) Repeated exposure to traumatic events, none of which are a single traumatic event as defined in subsection (2)(b) and (c) of this section, is not an industrial injury (see RCW 51.08.100) or an occupational disease (see RCW 51.08.142). A single traumatic event as defined in subsection (2)(b) and (c) of this section that occurs within a series of exposures will be adjudicated as an industrial injury (see RCW 51.08.100).

(3) For certain firefighters (~~and~~), law enforcement officers, and direct care registered nurses there is a presumption that post-traumatic stress disorder (PTSD) is an occupational disease as provided by RCW 51.08.142 (~~and~~), 51.32.185, and RCW 51.32.--- (section 2, chapter 370, Laws of 2023).

(4) For public safety telecommunicators, PTSD may be considered an occupational disease as provided by RCW 51.08.142.

(5) Mental conditions or mental disabilities that specify pain primarily as a psychiatric symptom (e.g., somatic symptom disorder, with predominant pain), or that are characterized by excessive or abnormal thoughts, feelings, behaviors or neurological symptoms (e.g., conversion disorder, factitious disorder) are not clinically related to occupational exposure.

[Statutory Authority: RCW 51.04.020, 51.08.142, and 51.32.185. WSR 23-08-063, § 296-14-300, filed 4/4/23, effective 5/5/23. Statutory Authority: RCW 51.04.020, 51.04.030, and 51.08.142. WSR 15-19-139, § 296-14-300, filed 9/22/15, effective 10/23/15. Statutory Authority: Chapters 51.08 and 51.32 RCW. WSR 88-14-011 (Order 88-13), § 296-14-300, filed 6/24/88.]