

WSR 24-06-069
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
[Filed March 5, 2024, 8:52 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-07-139.

Title of Rule and Other Identifying Information: Voluntary use of personal protective equipment (PPE). Chapter 296-155 WAC, Safety standards for construction work, WAC 296-155-249; chapter 296-307 WAC, Safety standards for agriculture, WAC 296-307-10030; and chapter 296-800 WAC, Safety and health core rules, WAC 296-800-16080.

Hearing Location(s): On April 23, 2024, at 1:30 p.m., at Enduris Training Center, 1610 South Technology Boulevard, Suite 100, Spokane, WA 99224. A prehearing overview will begin at 1:00 p.m. The hearing will start at 1:30 p.m. and will continue until all oral comments are received;

On April 30, 2024, at 10:30 a.m., at the Department of Labor and Industries (L&I), 12806 Gateway Drive South, Tukwila, WA 98168. A prehearing overview will begin at 10:00 a.m. The hearing will start at 10:30 a.m. and will continue until all oral comments are received; and

On May 2, 2024, at 10:30 a.m., electronically <https://lni-wa.gov.zoom.us/j/81062827834?pwd=cmh1d3pZNXFtaDRySGxIS0RUUm9kUT09>, Passcode (if prompted) VPpe@10a; or join by phone (audio only) 253-215-8782, Meeting ID 810 6282 7834, Passcode 00284359. A prehearing overview will begin at 10:00 a.m. The hearing will start at 10:30 a.m. and will continue until all oral comments are received.

Date of Intended Adoption: June 4, 2024.

Submit Written Comments to: Carmyn Shute, Administrative Regulations Analyst, L&I, Division of Occupational Safety and Health, P.O. Box 44620, Olympia, WA 98504-4620, email Carmyn.Shute@lni.wa.gov, fax 360-902-5619, by 5:00 p.m. May 17, 2024.

Assistance for Persons with Disabilities: Contact Carmyn Shute, administrative regulations analyst, phone 360-870-4525, fax 360-902-5619, email Carmyn.Shute@lni.wa.gov, by 5:00 p.m., April 15, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: L&I is proposing permanent sections in rule to allow the voluntary use of PPE when workers feel the need to protect themselves from noise, dust, or possible infectious or contagious diseases. The voluntary use of PPE must not introduce hazards to the work environment and any PPE, including facial coverings, must not interfere with an employer's security requirements.

The proposed sections in rule model RCW 49.17.485 Personal protective devices and equipment—Public health emergency, but is not limited to declared public health emergencies. In the event a public health emergency is declared, the proposed sections in rule would already be effective and no material change would be needed to comply with RCW 49.17.485.

Reasons Supporting Proposal: Allowing workers to voluntarily use appropriate and safe PPE when it is not otherwise required for the job is essential for the preservation of worker health and safety. During the COVID-19 pandemic, when a mask mandate was not in place, workers in multiple industries continued to wear masks as a means of protection and to reduce transmission of infectious or contagious disease.

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060.

Statute Being Implemented: Chapter 49.17 RCW.

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, 509-237-2372; Implementation and Enforcement: Craig Blackwood, Tumwater, Washington, 360-902-5828.

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 Carmyn Shute, Administrative Regulations Analyst, L&I, Division of Occupational Safety and Health, P.O. Box 44620, Olympia, WA 98504-4620, phone 360-870-4525, fax 360-902-5619, email Carmyn.Shute@lni.wa.gov.

Scope of exemption for rule proposal from Regulatory Fairness Act requirements:

Is not exempt.

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 proposed sections in rule only require an employer to allow their employees to use PPE. There is no cost to the employer, as they do not need to supply or maintain the PPE.

March 5, 2024

Joel Sacks

Director

OTS-4065.6

NEW SECTION

WAC 296-155-249 Voluntary use of personal protective equipment (PPE). (1) Every employer that does not require employees or contractors to wear a specific type of personal protective equipment as determined under the PPE hazard assessment, employer policy, or where otherwise required to comply with safety and health standard rules, must allow its employee's or contractor's voluntary use of PPE (PPE is an item or items used to protect the eyes, face, head, body, arms, hands, legs, and feet such as goggles, helmets, head covers, gloves, rubber slickers, disposable coveralls, safety shoes, protective shields, and barriers). This only applies when:

(a) The voluntary use of personal protective devices and equipment does not introduce hazards to the work environment and is consistent with applicable rules established by the department;

(b) The voluntary use of personal protective devices and equipment does not interfere with an employer's security requirements; and

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

(2) WAC 296-842-11005 does not apply to the voluntary use of filtering-facepiece respirators, as defined under WAC 296-842-10200, un-

der this section. Voluntary use of respirators not considered filtering-facepieces, such as elastomeric respirators, must comply with WAC 296-842-11005 and 296-842-11010.

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

(4) Employers do not have to purchase, store, maintain, or otherwise provide protective devices or equipment for voluntary use by employees under this section.

(5) RCW 49.17.485 precludes DOSH from issuing variances under RCW 49.17.080 related to voluntary personal protective devices and equipment during a public health emergency as defined in RCW 49.17.485.

OTS-4066.6

NEW SECTION

WAC 296-307-10030 Voluntary use of personal protective equipment (PPE). (1) Every employer that does not require employees or contractors to wear a specific type of personal protective equipment as determined under the PPE hazard assessment, employer policy, or where otherwise required to comply with safety and health standards rules, must allow its employee's or contractor's voluntary use of PPE (PPE is an item or items used to protect the eyes, face, head, body, arms, hands, legs, and feet such as goggles, helmets, head covers, gloves, rubber slickers, disposable coveralls, safety shoes, protective shields, and barriers). This only applies when:

(a) The voluntary use of personal protective devices and equipment does not introduce hazards to the work environment and is consistent with applicable rules established by the department;

(b) The voluntary use of personal protective devices and equipment does not interfere with an employer's security requirements; and

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

(2) WAC 296-842-11005 does not apply to the voluntary use of filtering-facepiece respirators, as defined under WAC 296-842-10200, under this section. Voluntary use of respirators not considered filtering-facepieces, such as elastomeric respirators, must comply with WAC 296-842-11005 and 296-842-11010.

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

(4) Employers do not have to purchase, store, maintain, or otherwise provide protective devices or equipment for voluntary use by employees under this section.

(5) RCW 49.17.485 precludes DOSH from issuing variances under RCW 49.17.080 related to voluntary personal protective devices and equipment during a public health emergency as defined in RCW 49.17.485.

OTS-4067.6

NEW SECTION

WAC 296-800-16080 Voluntary use of personal protective equipment (PPE). (1) Every employer that does not require employees or contractors to wear a specific type of personal protective equipment as determined under the PPE hazard assessment, employer policy, or where otherwise required to comply with safety and health standards rules, must allow its employee's or contractor's voluntary use of PPE (PPE is an item or items used to protect the eyes, face, head, body, arms, hands, legs, and feet such as goggles, helmets, head covers, gloves, rubber slickers, disposable coveralls, safety shoes, protective shields, and barriers). This only applies when:

(a) The voluntary use of personal protective devices and equipment does not introduce hazards to the work environment and is consistent with applicable rules established by the department;

(b) The voluntary use of personal protective devices and equipment does not interfere with an employer's security requirements; and

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

(2) WAC 296-842-11005 does not apply to the voluntary use of filtering-facepiece respirators, as defined under WAC 296-842-10200, under this section. Voluntary use of respirators not considered filtering-facepieces, such as elastomeric respirators, must comply with WAC 296-842-11005 and 296-842-11010.

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

(4) Employers do not have to purchase, store, maintain, or otherwise provide protective devices or equipment for voluntary use by employees under this section.

(5) RCW 49.17.485 precludes DOSH from issuing variances under RCW 49.17.080 related to voluntary personal protective devices and equipment during a public health emergency as defined in RCW 49.17.485.