

WSR 24-17-125
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed August 20, 2024, 8:46 a.m., effective October 1, 2024]

Effective Date of Rule: October 1, 2024.

Purpose: The department of labor and industries (L&I) is adopting permanent sections in rule to allow the voluntary use of personal protective equipment (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 adopted 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 adopted sections in rule would already be effective and no material change would be needed to comply with RCW 49.17.485.

The adopted rule establishes the following safety standards:

- Employers must allow workers to voluntarily use appropriate and safe PPE when it is not otherwise required for the job.
- The voluntary use of PPE must not introduce hazards to the work environment.
- The voluntary use of PPE should not interfere with an employer's security requirements.
- An employer may verify that voluntary use of PPE meets all regulatory requirements for workplace health and safety.
- Employers do not have to purchase, store, maintain, or otherwise provide protective equipment for voluntary use by employees.

Citation of Rules Affected by this Order: WAC 296-155-249, 296-307-10030, and 296-800-16080.

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

Other Authority: Chapter 49.17 RCW.

Adopted under notice filed as WSR 24-06-069 on March 5, 2024.

Changes Other than Editing from Proposed to Adopted Version: Added face masks and filtering-piece respirators to list of PPE examples and removed protective shields and barriers from the list of PPE examples to provide clarity of PPE options.

Updated the references to the current respiratory protection requirements under the new section added to chapter 296-307 WAC.

Updated the language regarding the voluntary use under this rule to the voluntary use of respirators other than considered filtering-facepiece respirators, such as elastomeric respirators, for clarity. The rule as adopted states that employers are not required to allow the voluntary use of respirators other than considered filtering-facepiece respirators, such as elastomeric respirators, under this rule and that the existing voluntary respiratory requirements under WAC 296-842-11005, 296-842-11010, 296-307-59805, and 296-307-59810 apply.

Added a new subsection to clarify that the voluntary use of PPE under this rule does not apply to situations under existing PPE rules where an employer allows employee-provided PPE to be used rather than the PPE the employer provides.

A final cost-benefit analysis is available 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, website <https://www.Lni.wa.gov/rulemaking-activity>.

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 3, 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 0, Repealed 0.

Date Adopted: August 20, 2024.

Joel Sacks
Director

OTS-4065.9

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 face masks, filtering-facepiece respirators, goggles, helmets, head covers, gloves, rubber slickers, disposable coveralls, and safety shoes). 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. 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.

(2) Employers are not required to allow the voluntary use of respirators other than filtering-facepiece respirators under this section. All voluntary use of respirators other than filtering-facepiece respirators, 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.

(6) This section does not apply to situations under WAC 296-155-200 where an employer allows employee provided personal protective equipment to be used rather than the personal protective equipment the employer provides.

OTS-4066.10

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 face masks, filtering-facepiece respirators, goggles, helmets, head covers, gloves, rubber slickers, disposable coveralls, and safety shoes). 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. WAC 296-307-59805 does not apply to the voluntary use of filtering-facepiece respirators, as defined under WAC 296-307-622, under this section.

(2) Employers are not required to allow the voluntary use of respirators other than filtering-facepiece respirators under this section. All voluntary use of respirators other than filtering-facepiece respirators, such as elastomeric respirators, must comply with WAC 296-307-59805 and 296-307-59810.

(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.

(6) This section does not apply to situations under WAC 296-307-10005 where an employer allows employee provided personal protective equipment to be used rather than the personal protective equipment the employer provides.

OTS-4067.9

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 face masks, filtering-facepiece respirators, goggles, helmets, head covers, gloves, rubber slickers, disposable coveralls, and safety shoes). 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. 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.

(2) Employers are not required to allow the voluntary use of respirators other than filtering-facepiece respirators under this section. All voluntary use of respirators other than filtering-facepiece respirators, 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.

(6) This section does not apply to situations under WAC 296-800-16045 where an employer allows employee provided personal protective equipment to be used rather than the personal protective equipment employer provides.