

WSR 25-05-076
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
[Filed February 18, 2025, 10:12 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-19-074.

Title of Rule and Other Identifying Information: Sanitary conditions for construction workers; chapter 296-155 WAC, Safety standards for construction work, Part B-1, occupational health and environmental control.

Hearing Location(s): On March 25, 2025, at 10:00 a.m., at the Department of Labor and Industries (L&I), Tukwila Service Center, 12806 Gateway Drive South, Tukwila, WA 98168. A prehearing overview will begin at 9:30 a.m. The hearing will begin at 10:00 a.m. and continue until all oral comments are received; and

On March 27, 2025, at 10:00 a.m., electronically via <https://lni-wa.gov.zoom.us/j/81508197087?pwd=mxYMGbfWHcbIZO4LCmDOUrf31EILk4.1>; or join by phone (audio only) 253-205-0468 or 253-215-8782, Meeting ID 815 0819 7087, Passcode 8490406613. A prehearing overview will begin at 9:30 a.m. The hearing will begin at 10:00 a.m. and continue until all oral comments are received.

Date of Intended Adoption: May 20, 2025.

Submit Written Comments to: Cathy Coates, Administrative Regulations Analyst, L&I, Division of Occupational Safety and Health, P.O. Box 44620, Olympia, WA 98504-4620, email Cathy.Coates@lni.wa.gov, fax 360-902-5619, beginning February 19, 2025, 8:00 a.m., by April 3, 2025, 5:00 p.m.

Assistance for Persons with Disabilities: Contact Cathy Coates, administrative regulations analyst, phone 360-280-2003, fax 360-902-5619, email Cathy.Coates@lni.wa.gov, by March 14, 2025, 5:00 p.m.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule making proposal will implement the requirements of EHB 2266 (chapter 258, Laws of 2024), codified under RCW 49.17.530, which became effective June 6, 2024.

The proposed amendments implement the requirements set forth in RCW 49.17.530, which requires employers in the construction industry to provide workers performing construction activities and who menstruate or express milk the following:

Access to an adequate portable toilet or restrooms, accessible on the worksite, or access to a permanent structure with a restroom/bathroom. Requirements include:

- Minimum size bathroom—equivalent to a standard sized portable chemical toilet;
- Internal latch (lock) to prevent inadvertent entry; and
- Adequate time to accommodate for multiple layers of clothing while using the bathroom.

Adequate and convenient supply of menstrual hygiene products at no cost to employees:

- Products must be located in all gender-neutral bathrooms and bathrooms designated for workers who menstruate; or
- Provided in kits for each worker who needs such product.

Reasonable accommodations to express milk after the child's birth each time such employee has need to express to include:

- Flexible scheduling, including breaks;
- Private dedicated space, other than a bathroom, lockable (if possible) and free from intrusion;
- Convenient hygienic refrigeration on the worksite for the storage of milk; and
- Convenient water source in a private location near the location where milk is expressed for the worker to clean and wash hands and milk expression equipment.

RCW 49.17.530 requires L&I's rules identify minimum reasonable accommodations for expressing milk that include alternatives for work-sites of varying numbers of employees.

Reasons Supporting Proposal: This rule making will implement the requirements of RCW 49.17.530, which became effective June 6, 2024. Administrative code is needed for L&I to enforce the code.

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060, and 49.17.530.

Statute Being Implemented: RCW 49.17.530.

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: Thomas 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 not required under RCW 34.05.328. The rule is exempt from a cost-benefit analysis per RCW 34.05.328

(5)(b)(iii) because the rule making is proposing to adopt without material change the requirements of RCW 49.17.530 and per RCW 34.05.328 (5)(b)(iv) as this rule making proposes to clarify language without changing its effect.

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; and rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Explanation of exemptions: RCW 34.05.310 (4)(c) as the rule making is proposing to adopt without material change the requirements of RCW 49.17.530 and per RCW 34.05.310 (4)(d) as this rule making proposes to clarify language without changing its effect.

Scope of exemption for rule proposal:

Is fully exempt.

February 18, 2025
Joel Sacks

RDS-6132.2

AMENDATORY SECTION (Amending WSR 16-09-085, filed 4/19/16, effective 5/20/16)

WAC 296-155-140 Sanitation. (1) Potable water.

(a) You must provide an adequate supply of potable water in all places of employment.

(b) Portable containers used to dispense drinking water must be capable of being tightly closed and equipped with a tap. Water must not be dipped from containers.

(c) You must clearly mark any container used to distribute drinking water as to the nature of its contents and not used for any other purpose.

(d) The common drinking cup is prohibited.

(e) Where single service cups (to be used but once) are supplied, you must provide both a sanitary container for the unused cups and a receptacle for disposing of the used cups.

(f) You must thoroughly clean all water containers used to furnish drinking water at least once each week or more often as conditions require.

(g) The requirements of this subsection do not apply to mobile crews or to normally unattended work locations as long as employees working at these locations have transportation immediately available, within the normal course of their duties, to nearby facilities otherwise meeting the requirements of this section.

(h) The following definitions apply:

(i) **Mobile crew.** A work crew that routinely moves to a different work location periodically. Normally a mobile crew is not at the same location all day.

(ii) **Normally unattended work location.** An unattended site that is visited occasionally by one or more employees.

(iii) **Nearby facility.** A sanitary facility that is within three minutes travel by the transportation provided.

(iv) **Potable water.** Water that is suitable for drinking by the public and meets the requirements of chapter 246-290 or 246-291 WAC.

(2) Wash water.

(a) You must provide clean, tepid wash water, between 70 and 100 degrees Fahrenheit, at all construction sites.

(b) You must provide individual hand towels. You must provide both a sanitary container for the unused towels and a receptacle for disposal of used towels.

(c) You must provide hand soap, industrial hand cleaner or similar cleansing agents. Cleansing agents must be adequate to remove any paints, coatings, herbicides, insecticides or other contaminants.

(d) The requirements of this subsection do not apply to mobile crews or to normally unattended work locations as long as employees working at these locations have transportation immediately available, within the normal course of their duties, to nearby facilities otherwise meeting the requirements of this section.

(e) You must not use gasoline or solvents for personal cleaning.

(f) Wash water areas will be maintained in a dry condition. You must eliminate slipping or other hazards from the wash water area before it is acceptable for use.

(3) **Nonpotable water.**

(a) You must identify outlets for nonpotable water, such as water for industrial or firefighting purposes only, by signs meeting the requirements of Part E of this chapter, to indicate clearly that the water is unsafe and is not to be used for drinking, washing or cooking purposes.

(b) You must ensure that there is no cross-connection, open or potential, between a system furnishing potable water, a system furnishing nonpotable water or a system furnishing wash water.

(4) **Toilets.**

(a) The provisions of this section apply to both portable chemical toilets and to flush toilets, except where flush toilets are used the requirements of WAC 296-800-230 apply instead of (b) of this subsection.

(b) You must provide accessible toilets for employees according to the following table:

TABLE B-1

<u>Number of Employees</u>	<u>Toilets Required</u>
1 - 10	1
11 - 25	2
26 - 40	3
41 - 60	4
61 - 80	5
Over 80	one additional toilet for each additional 20 employees or any fraction thereof.

(c) When the employer provides both flush and portable chemical toilets, the number of employees allowed to be served by the flush toilets, per WAC 296-800-230 will be calculated. That number will be subtracted from the total number of employees and the employer will be required to provide an adequate number of portable chemical toilets for the number of remaining employees, as required by (b) of this subsection.

(d) You must maintain toilets in clean, sanitary and functional condition. You must provide internal latches to secure the units from inadvertent entry. Where there are 20 or more employees consisting of both sexes, you must provide facilities for each sex. Please see subsection (6) of this section for the requirements for workers who menstruate and perform construction activities. The requirements of subsection (6) of this section apply to both fixed and mobile crews.

(i) You must properly clean each unit on a routine basis.

(ii) You must maintain chemicals, toilet tissue and sanitary seat covers in a supply sufficient for use during the entire shift.

(iii) You must immediately remove any defective or inadequate unit from service.

(e) **Specifications.** The following specifications apply:

(i) A noncaustic chemical toilet (portable chemical toilet is) a self-contained unit equipped with a waste receiving chemical holding container.

(ii) Portable chemical toilets consisting of only a holding tank, commonly referred to as "elevator units" or "elevator toilets" are not acceptable. "Elevator units" may be used if they are individually located in a lockable room which affords privacy. When this type unit is used in a private individual lockable room the entire room will be considered a toilet facility, as such the room will meet all requirements of toilet facilities and be inspected in accordance with subsection (5)(b)(iii) of this section.

(iii) Rooms, buildings or shelters housing toilets must be of sound construction, easy to clean, provide shelter and provide privacy. The toilet rooms must be ventilated to the outside and adequately lighted. All openings into the toilet room must be covered with 16-mesh screen.

(iv) You must service toilets on a regular schedule. Servicing must include the use of a disinfectant for cleaning urinals and seats, removing waste from containers, recharging containers with an odor controlling chemical and installing an adequate supply of toilet tissue and seat covers.

(v) You must perform service in accordance with local codes by approved servicing organizations. You must dispose of or discharge waste in accordance with requirements of local health department regulations.

(vi) Waste containers must be fabricated from impervious materials, e.g., plastic, steel, fiberglass or their equivalent. Containers must be water tight and capable of containing the chemical waste in a sanitary manner. The container must be fitted to the building in a manner so as to prevent insects from entering from the exterior of the building. Containers must be adequate in size to be used by the number of persons, according to the schedule for minimum requirements, without filling the container to more than half of its volume before regularly scheduled servicing.

(vii) Removal of waste must be handled in a clean and sanitary manner by means of a vacuum hose and received by a leak-proof tank truck. All valves on the tank must be leak-proof.

(viii) You must make provisions so service trucks have a clear approach and convenient access to the toilets to be serviced.

(ix) Disposal of waste from tank trucks must be in accordance with local health department requirements. In the absence of provisions by local health departments, waste must be disposed of through municipal or district sanitary sewage systems. Municipal or area sanitary sewage districts must provide sewage disposal locations and facilities which are adequate and convenient for duly authorized toilet service organizations.

(f) The requirements of this subsection do not apply to mobile crews or to normally unattended work locations as long as employees working at these locations have transportation immediately available, within the normal course of their duties, to nearby facilities otherwise meeting the requirements of this section.

(5) **Employer responsibilities.**

(a) On multiemployer worksites, the prime contractor must ensure that the requirements of this section are met. Each employer is responsible for seeing that facilities for their own employees are provided.

(b) You must ensure, at the beginning of each shift, that the sanitation facilities required by this section are inspected. If any facility or unit fails to meet the following requirements, you must

take immediate corrective action. You must document and maintain such action at the site for at least 72 hours. Inspection must establish:

(i) **Potable water:** Sufficient supply of water, sufficient supply of cups, container integrity, cleanliness of unit and area, capacity of trash receptacle (empty).

(ii) **Wash water:** Sufficient supply of clean water, proper temperature, sufficient supply of towels, sufficient supply of cleansing agents, container integrity, cleanliness of unit and area without the presence of physical hazards, capacity of trash receptacle (empty).

(iii) **Toilets:** Sufficient supply of toilet tissue and sanitary seat covers, capacity and condition of chemical agent, capacity and condition of holding tank, cleanliness of unit and area without the presence of physical hazards, physical and structural condition of unit, condition of lock, condition of toilet seat and tissue holder, absence of all foreign debris.

(c) The location of the facilities required by subsections (1), (2) and (4) of this section must be as close as practical to the highest concentration of employees.

(i) On multistory structures they must be furnished on every third floor.

(ii) At all sites they must be located within 200 feet horizontally of all employees.

(iii) The requirements of subsection (5)(c)(i) and (ii) do not apply to mobile crews or to normally unattended work locations as long as employees working at these locations have transportation immediately available, within the normal course of their duties, to nearby facilities otherwise meeting the requirements of this section.

(6) **Menstruation and expression of milk.** The scope of this subsection applies to employers in the construction industry, whether a fixed or mobile location. Please see subsection (5)(a) of this section for the requirements on multiemployer worksites.

(a) Employers must provide to workers performing construction activities, who menstruate, the following:

(i) A minimum size bathroom accessible on the worksite or a permanent structure when used to meet toilet requirements for mobile crews under subsection (4)(f) of this section, that is:

(A) Equivalent to a standard size chemical toilet;

(B) Has an internal latch to prevent inadvertent entry;

(ii) Adequate time to accommodate for multiple layers of clothing;

(iii) An adequate and convenient supply of menstrual hygiene products at no cost to the workers. Menstrual hygiene products must either be located in all gender-neutral bathrooms and bathrooms designated for workers who menstruate, or provided in kits for each worker who needs such product.

(b) Upon notification from the worker, employers must provide reasonable accommodations for workers performing construction activities to express milk.

(i) This requirement applies to all worksites and employer sizes, whether a fixed or mobile location.

(ii) Reasonable accommodations must include:

(A) Flexible work schedules, including breaks that provide enough time for the expression of milk;

(B) A location that is convenient and sanitary for the worker. The location must be private and secure from entry of others and is not a bathroom or portable toilet;

(C) Convenient, hygienic refrigeration for storage of milk;

(D) Convenient source of potable water for workers to clean and wash hands and milk equipment.

(iii) Employers may have additional responsibilities and requirements under state or federal pregnancy and lactation laws.

(iv) Employees may have additional rights and protections under state or federal pregnancy and lactation accommodation laws.

(v) The department will publish on its website a list of resources to assist employers and workers in identifying the requirements as well as products that will comply with the rule taking into consideration alternative worksites and varying number of workers.

(7) **Food handling.** All employees' food service facilities and operations must meet the applicable laws, ordinances and regulations of the jurisdictions in which they are located.

~~((7))~~ (8) **Temporary sleeping quarters.** When temporary sleeping quarters are provided, they must be heated, ventilated and lighted.