

**WSR 25-20-096**  
**EXPEDITED RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**

[Filed September 30, 2025, 11:32 a.m.]

Title of Rule and Other Identifying Information: Chapter 296-360 WAC, Discrimination, pursuant to RCW 49.17.160; WAC 296-27-02113, 296-45-908, 296-307-09850, 296-307-10840, 296-307-14820, 296-820-850, 296-848-30030, 296-849-12030, 296-855-30030, and 296-856-30020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The division of occupational safety and health (DOSH) is proposing to update chapter 296-360 WAC and other sections in Title 296 WAC that reference safety and health discrimination protections for workers and replace the term "discrimination" with "retaliation." This is part of a plan that the department of labor and industries (L&I) developed to use more accurate terminology to describe complaints received from workers who raise workplace safety and health hazards or concerns and are subsequently retaliated against as described in RCW 49.17.160. This update does not change the underlying protections that currently exist today.

Proposed amendments:

- Removing "discrimination," "discriminate," and related terminology and replacing with "retaliation," "retaliate," and related terminology.
- Updating program name and contact information.
- Grammar and housekeeping updates in order to comply with the office of the code reviser.

Reasons Supporting Proposal: The proposed rule making is needed to more accurately describe complaints received from workers who raise workplace safety and health concerns and are retaliated against as described in RCW 49.17.160.

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

Statute Being Implemented: RCW 49.17.160.

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.

This notice meets the following criteria to use the expedited adoption process for these rules:

Corrects typographical errors, makes address or name changes, or clarifies language of a rule without changing its effect.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: This rule making is limited to interpretive and housekeeping changes with no material change to requirements.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EX-

PRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Carmyn Shute, Administrative Regulations Analyst, L&I, DOSH, P.O. Box 44620, Olympia, WA 98504-4620, phone 360-870-4525, fax 360-902-5619, email Carmyn.Shute@Lni.wa.gov, AND RECEIVED BY December 1, 2025, 5:00 p.m.

September 30, 2025

Joel Sacks

Director

### RDS-6583.1

AMENDATORY SECTION (Amending WSR 19-17-068, filed 8/20/19, effective 1/1/20)

**WAC 296-27-02113 Prohibition against ((discrimination)) retaliation.** (1) The WISH Act prohibits employers from ((discriminating)) retaliating against an employee for reporting a work-related fatality, injury or illness. It also protects the employee who files a safety and health complaint, or asks for access to chapter 296-27 WAC records, or otherwise exercises any rights afforded under this act.

(2) DOSH may not issue an injury and illness recordkeeping variance to a private sector employer. However, DOSH must recognize all recordkeeping variances issued by federal OSHA.

(3) DOSH may only grant an injury and illness recording and reporting variance to a state or local government employer within the state after obtaining approval to grant the variance from federal OSHA.

### RDS-6584.1

AMENDATORY SECTION (Amending WSR 20-12-091, filed 6/2/20, effective 10/1/20)

**WAC 296-45-908 Appendix F—Other applicable safety and health Washington administrative codes.**

Chapter 296-24 WAC, General safety and health standards;

Chapter 296-27 WAC, Recordkeeping and reporting;

Chapter 296-32 WAC, Safety standards for telecommunications;

Chapter 296-36 WAC, Safety standards—Compressed air work;

Chapter 296-37 WAC, Standards for commercial diving operations;

Chapter 296-52 WAC, Safety standards for possession, handling, and use of explosives;

Chapter 296-54 WAC, Safety standards—Logging operations;

Chapter 296-56 WAC, Safety standards—Longshore, stevedore and waterfront related operations;

Chapter 296-59 WAC, Safety standards for ski area facilities and operations;

Chapter 296-62 WAC, General occupational health standards;

Chapter 296-63 WAC, Right to know fee assessment;

Chapter 296-65 WAC, Asbestos removal and encapsulation;  
 Chapter 296-67 WAC, Safety standards for process safety management of highly hazardous chemicals;  
 Chapter 296-78 WAC, Safety standards for sawmills and woodworking operations;  
 Chapter 296-79 WAC, Safety Standards for pulp, paper, and paper-board mills and converters;  
 Chapter 296-99 WAC, Safety standards for grain handling facilities;  
 Chapter 296-115 WAC, Safety requirements for charter boats;  
 Chapter 296-155 WAC, Safety standards for construction work;  
 Chapter 296-301 WAC, Safety standards for the textile industry;  
 Chapter 296-303 WAC, Safety standards for laundry machinery and operations;  
 Chapter 296-304 WAC, Safety standards for ship repairing, shipbuilding, and shipbreaking;  
 Chapter 296-305 WAC, Safety standards for firefighters;  
 Chapter 296-307 WAC, Safety standards for agriculture;  
 Chapter 296-360 WAC, (~~Discrimination~~) Retaliation, pursuant to RCW 49.17.160;  
 Chapter 296-800 WAC, Safety and health core rules;  
 Chapter 296-802 WAC, Employee medical and exposure records;  
 Chapter 296-803 WAC, Lockout/tagout (control of hazardous energy);  
 Chapter 296-806 WAC, Machine safety;  
 Chapter 296-807 WAC, Portable power tools;  
 Chapter 296-809 WAC, Confined spaces;  
 Chapter 296-811 WAC, Fire brigades;  
 (~~Chapter 296-816 WAC, Protecting trade secrets;~~)  
 Chapter 296-817 WAC, Hearing loss prevention (noise);  
 Chapter 296-818 WAC, Abrasive blasting;  
 Chapter 296-823 WAC, Occupational exposure to bloodborne pathogens;  
 Chapter 296-824 WAC, Emergency response;  
 Chapter 296-826 WAC, Anhydrous ammonia;  
 Chapter 296-828 WAC, Hazardous chemicals in laboratories;  
 Chapter 296-829 WAC, Helicopters used as lifting machines;  
 Chapter 296-832 WAC, Late night retail worker crime prevention;  
 Chapter 296-833 WAC, Temporary housing for workers;  
 Chapter 296-835 WAC, Dipping and coating operations (dip tanks);  
 (~~Chapter 296-839 WAC, Content and distribution of material safety data sheets (MSDSs) and label information;~~)  
 Chapter 296-841 WAC, Airborne contaminants;  
 Chapter 296-842 WAC, Respirators;  
 Chapter 296-843 WAC, Hazardous waste operations;  
 Chapter 296-848 WAC, Arsenic;  
 Chapter 296-849 WAC, Benzene;  
 Chapter 296-855 WAC, Ethylene oxide;  
 Chapter 296-856 WAC, Formaldehyde;  
 Chapter 296-860 WAC, Railroad clearances and walkways in private rail yards and plants;  
 Chapter 296-863 WAC, Forklifts and other powered industrial trucks;  
 Chapter 296-864 WAC, Split (~~multi-piece~~) multipiece rim and single-piece rim wheels;  
 Chapter 296-865 WAC, Motor vehicles;  
 Chapter 296-869 WAC, Elevating work platforms;

Chapter 296-870 WAC, Powered platforms;  
Chapter 296-874 WAC, Scaffolds;  
Chapter 296-876 WAC, Ladders, portable and fixed;  
Chapter 296-878 WAC, Safety standards for window cleaning;  
Chapter 296-880 WAC, Unified safety standards for fall protection.  
Chapter 296-900 WAC, Administrative rules;  
Chapter 296-901 WAC, Globally harmonized system for hazard communication.

## RDS-6585.1

AMENDATORY SECTION (Amending WSR 25-09-064, filed 4/15/25, effective 5/16/25)

**WAC 296-307-09850 Appendix A: Protection from wildfire smoke information and training (mandatory).** (1) **The health effects and symptoms of wildfire smoke:**

(a) Although there are many hazardous chemicals in wildfire smoke, the main harmful pollutant for people who are not very close to the fire is "particulate matter," the tiny particles suspended in the air.

Particulate matter is a health risk whether you are exposed over a short period of time or a long period of time. The EPA has determined that particulate matter does cause, or likely causes cardiovascular disease, respiratory disease, cancer, and harm to the nervous system. In addition, particulate matter can irritate the eyes and lungs, causing eye irritation, phlegm, and persistent coughing. It can also cause difficulty breathing, reduced lung function, wheezing, bronchitis, worsening of asthma, heart failure, and early death.

(b) Wildfire smoke can harm your health even if you cannot see or smell the smoke or do not feel any symptoms. Even healthy people can be harmed by wildfire smoke. The wildfire smoke rule is designed to limit the harm from wildfire smoke, and it is important to consider taking action to reduce your exposure to smoke whenever the rule's protections are in effect, whether or not you have symptoms. Watch for symptoms as an additional indication to reduce exposure to smoke, and reduce work intensity.

This appendix reviews many wildfire smoke symptoms, but not every possible symptom may be mentioned, and it is a good idea to talk to your doctor or other health care provider before being exposed to wildfire smoke to have a plan for protecting yourself, including what symptoms to watch out for and how to reduce your exposure. This is especially important if you have any medical conditions; are pregnant; or have questions about the health effects or symptoms of wildfire smoke exposure.

(c) The wildfire smoke rule has additional requirements in WAC 296-307-09830 when workers experience symptoms requiring immediate medical attention. When the current PM<sub>2.5</sub> is 250.5 µg/m<sup>3</sup> or more, your employer must ensure workers experiencing such symptoms be moved to a location that ensures sufficient clean air as described in WAC

296-307-09830(3). Symptoms requiring immediate medical attention include, but are not limited to:

- Symptoms concerning for a heart attack, such as:
  - Chest pain or discomfort;
  - Feeling weak, light-headed, faint, or dizzy;
  - Pain or discomfort in the jaw, neck, or back;
  - Pain or discomfort in one or both arms or shoulders;
  - Shortness of breath, especially if accompanied by chest discomfort;
- Symptoms concerning for a stroke, such as:
  - Sudden numbness or weakness in the face, arm, or leg, especially on one side of the body;
  - Sudden confusion, trouble speaking, or difficulty understanding speech;
  - Sudden trouble seeing in one or both eyes;
  - Sudden trouble walking, dizziness, loss of balance, or lack of coordination;
  - Sudden severe headache with no known cause;
- Wheezing, difficulty breathing, or shortness of breath, particularly when accompanied by greater use of accessory muscles;
- Asthma attacks; or
- Nausea or vomiting.

(d) In addition to symptoms that under this rule require immediate medical attention, wildfire smoke can also cause other symptoms, many of which are described below. Even if a symptom is not mentioned here, you have the right under the wildfire smoke rule to seek medical attention or follow medical advice if you develop any symptoms you think may potentially be related to wildfire smoke exposure, regardless of their severity.

Regardless of whether a symptom is serious enough to require immediate medical attention, employers covered by the wildfire smoke rule are required by WAC 296-307-09830(4) to have effective provisions made in advance for prompt medical attention of employees displaying symptoms of wildfire smoke exposure.

If you develop a symptom, you should follow the advice of your doctor or health care provider, and seek medical attention if necessary. Your employer must not retaliate against you for seeking medical attention or following medical advice you have been given.

In addition to the symptoms requiring immediate medical attention according to WAC 296-307-09830, all of the following symptoms are also potentially related to wildfire smoke exposure. They may also require medical attention:

- Respiratory:
  - Cough;
  - Runny or irritated nose;
  - Sore throat;
  - Sinus pain or pressure;
  - Phlegm.
- Fast or irregular heartbeat;
- Headache;
- Scratchy or irritated eyes; or
- Fatigue or tiredness.

(e) Developing wildfire smoke symptoms, even mild ones, indicates you are being overexposed to the smoke and should report your symptoms to your employer. In response, according to WAC 296-307-09830 your employer must permit you to follow medical advice you have been given, seek medical attention if necessary, and must take appropriate steps

to reduce your exposure. This may include providing you with access to clean air according to WAC 296-307-09830(3) (your employer must ensure access to clean air when the current PM<sub>2.5</sub> is greater than 250.5 µg/m<sup>3</sup>); helping you use respiratory protection; or taking other steps to control your exposure.

(f) Sensitive groups:

L&I and the Washington state department of health consider all outdoor workers as a sensitive group at higher risk of experiencing adverse health effects from wildfire smoke exposure.<sup>1</sup>

Sensitive groups include people who are at higher risk of experiencing adverse health effects as a result of exposure to wildfire smoke, including those with preexisting health conditions; those with increased duration of exposure; and those whose work results in an increased breathing rate, including outdoor workers.<sup>1</sup> Although everyone is impacted by wildfire smoke exposure, sensitive groups are among those most likely to experience health problems from exposure to wildfire smoke.

Examples of sensitive groups include:

- Outdoor workers;
- People with lung diseases such as asthma or chronic obstructive pulmonary disease (COPD), including bronchitis and emphysema, and those who smoke;
- People with respiratory infections, such as pneumonia, acute bronchitis, bronchiolitis, colds, or flu; or those with, or recovering from COVID-19;
- People with existing heart or circulatory problems, such as irregular heartbeat, congestive heart failure, coronary artery disease, angina, and those who have had a heart attack or stroke;
- Children under 18 years old, and adults over age 65;
- People who are pregnant;
- People with diabetes;
- People with other medical or health conditions that can be worsened by exposure to wildfire smoke as determined by a physician;
- Tribal and indigenous people;
- People with low income.

<sup>1</sup> Washington Department of Health. April 2022, accessed March 14, 2024. Washington Air Quality Guide for Particle Pollution: [https://doh.wa.gov/sites/default/files/legacy/Documents/4300/waqa%20infographic\\_English.pdf?uid=64384c71c8715](https://doh.wa.gov/sites/default/files/legacy/Documents/4300/waqa%20infographic_English.pdf?uid=64384c71c8715)

**(2) The importance of informing the employer when the employee is experiencing symptoms of wildfire smoke exposure:**

Watch for symptoms of wildfire smoke exposure as a sign to reduce exposure. The particulate matter in wildfire smoke can harm your health, even at lower levels of exposure.

It is important to notify your employer when you are experiencing symptoms of wildfire smoke exposure so your employer can respond appropriately.

Your employer will have provisions made in advance for prompt medical attention for employees who are experiencing symptoms of wildfire smoke exposure.

Do not ignore your symptoms. Wildfire smoke can be hazardous even when you cannot see it or smell it. Your employer cannot retaliate against you for reporting symptoms, for seeking medical attention, or for following medical advice you have been given. This is true whenever the wildfire smoke rule's protections are in effect.

Wildfire smoke is a serious work-related hazard for outdoor workers, and you have the right to file a workers' compensation claim to have your symptoms evaluated. You may file a workers' compensation

claim whether or not you have personal health insurance. Your employer cannot prevent you from or retaliate against you for filing a workers' compensation claim.

In most cases, L&I will pay for your initial medical evaluation, even if your claim is denied. If your claim is allowed, the workers' compensation system will cover medical bills directly related to your condition and partial wage replacement benefits if you cannot work.

When the current PM<sub>2.5</sub> is 250.5 µg/m<sup>3</sup> or more, your employer must ensure workers experiencing symptoms requiring immediate medical attention be moved to a location that ensures sufficient clean air as described in WAC 296-307-09830(3).

**(3) The right to obtain medical attention without fear of reprisal:**

Employers must allow employees who show signs of injury or illness due to wildfire smoke exposure to seek medical attention or follow medical advice they have been given, and must not retaliate against affected employees for seeking such medical attention or following medical advice.

Employers must also have effective provisions made in advance for prompt medical attention of employees in the event of serious injury or illness caused by wildfire smoke exposure.

Additionally, when the current PM<sub>2.5</sub> is 250.5 µg/m<sup>3</sup> or more, employers must ensure workers experiencing symptoms requiring immediate medical attention be moved to a location that ensures sufficient clean air as described in WAC 296-307-09830(3).

For more information on your workplace safety and health rights, ((discrimination)) retaliation protections, and filing a ((discrimination)) retaliation complaint, visit ((www.Lni.wa.gov/WorkplaceDiscrimination)) www.Lni.wa.gov.

**(4) The requirements of WAC 296-307-09805 through 296-307-09860:**

The following table summarizes the key requirements of the rule. This is not an exhaustive list, and additional details are found in WAC 296-307-09805 through 296-307-09860.

| CURRENT PM <sub>2.5</sub>     | AQI     | REQUIREMENTS AT CURRENT PM <sub>2.5</sub> LEVEL   |
|-------------------------------|---------|---|
| 0.0-20.4 µg/m <sup>3</sup>    | 0-71    | <ul style="list-style-type: none"> <li>• Prepare a written wildfire smoke response plan.</li> <li>• Provide wildfire smoke training to employees.</li> <li>• Watch the PM<sub>2.5</sub> conditions and forecasts.</li> <li>• Prepare a two-way communication system.</li> <li>• Make provisions for prompt medical attention, and permit such medical attention without retaliation.</li> </ul> |
| 20.5-35.4 µg/m <sup>3</sup>   | 72-100  | All of the above and: <ul style="list-style-type: none"> <li>• Notify employees of PM<sub>2.5</sub> conditions.</li> <li>• Ensure only trained employees work outdoors.</li> <li>• Consider implementing exposure controls.</li> <li>• Consider providing voluntary use respirators.</li> </ul>   |
| 35.5-250.4 µg/m <sup>3</sup>  | 101-350 | All of the above and: <ul style="list-style-type: none"> <li>• Implement exposure controls.</li> <li>• Make N95 respirators available for voluntary use.</li> </ul>   |
| 250.5-500.3 µg/m <sup>3</sup> | 351-848 | All of the above and: <ul style="list-style-type: none"> <li>• Ensure workers experiencing symptoms requiring immediate medical attention be moved to a location that ensures sufficient clean air.</li> <li>• Directly distribute N95 respirators to employees for voluntary use.</li> </ul>   |

|                                      |         |  |
|--------------------------------------|---------|--|
| 500.4-554.9 $\mu\text{g}/\text{m}^3$ | 849-956 | All of the above and:<br><ul style="list-style-type: none"> <li>• Implement a complete required use respiratory protection program, including fit-testing, medical evaluations, requiring employees to be clean-shaven, and requiring the use of particulate respirators.</li> </ul> |
|--------------------------------------|---------|--|

|                                      |             |  |
|--------------------------------------|-------------|--|
| 555 $\mu\text{g}/\text{m}^3$ or more | 957 or more | All of the above and:<br><ul style="list-style-type: none"> <li>• Require respirators with an assigned protection factor (APF) of 25 or more.</li> </ul> |
|--------------------------------------|-------------|--|

**(5) The employer's methods of determining the current PM<sub>2.5</sub> under WAC 296-307-09815:**

The employer's methods of determining the current PM<sub>2.5</sub>: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**(6) How employees can obtain the current PM<sub>2.5</sub>, and the employer's methods to communicate the current PM<sub>2.5</sub>:**

Various government agencies monitor the air quality at locations throughout Washington and provide information to the public on the current air quality. These monitoring sites measure several harmful pollutants, but the pollutant of particular concern for wildfire smoke is the current PM<sub>2.5</sub> which is reported as the hourly average of PM<sub>2.5</sub> in  $\mu\text{g}/\text{m}^3$ . Some of these sites also report the NowCast Air Quality Index (AQI). The NowCast AQI uses the air quality data of all the pollutants from these regulatory monitors and the NowCast averaging time to attempt to provide a general index of the overall air quality.

Although these monitoring stations may measure several pollutants, WAC 296-307-09805 through 296-307-09860 only uses the hourly average of PM<sub>2.5</sub>. The NowCast AQI for PM<sub>2.5</sub> may also be used as an alternative.

One way to find the current and forecasted PM<sub>2.5</sub> is to go to [enviwa.ecology.wa.gov](http://enviwa.ecology.wa.gov) and find the nearest monitor on the map, or [fire.airnow.gov](http://fire.airnow.gov) and enter the zip code of the location where you will be working. The current PM<sub>2.5</sub> is also available from the Air Quality WA mobile app, or the AirNow mobile app.

Employees who do not have access to the internet can contact their employer for the current PM<sub>2.5</sub>. The U.S. EPA website [www.enviroflash.info](http://www.enviroflash.info) can transmit daily and forecasted air quality by email for your city or zip code.

While the requirements in this rule are based on the current PM<sub>2.5</sub>, employers may choose to use the NowCast Air Quality Index (AQI) for PM<sub>2.5</sub> to comply with this rule. Because the current PM<sub>2.5</sub> is based on a one-hour average, and the NowCast AQI averages data over a longer time, it is normal for the two values to differ over short periods of time. Your employer will tell you whether they use the current one-hour average PM<sub>2.5</sub>, or the NowCast AQI for PM<sub>2.5</sub>. The following table indicates the NowCast AQI values that may be used from the Washington state department of ecology, local clean air agency, or EPA to approximate the current PM<sub>2.5</sub>.

| CURRENT PM <sub>2.5</sub>     | NOWCAST AIR QUALITY INDEX FOR PM <sub>2.5</sub> (AQI) |
|-------------------------------|---|
| 20.5 $\mu\text{g}/\text{m}^3$ | 72  |
| 35.5 $\mu\text{g}/\text{m}^3$ | 101   |

| CURRENT PM <sub>2.5</sub> | NOWCAST AIR QUALITY INDEX FOR PM <sub>2.5</sub> (AQI) |
|---------------------------|---|
| 250.5 µg/m <sup>3</sup>   | 351   |
| 500.4 µg/m <sup>3</sup>   | 849   |
| 555 µg/m <sup>3</sup>     | 957   |

Your employer will establish a two-way communication system to communicate changing wildfire smoke conditions to you, and allowing you to communicate information to your employer such as: Worsening air quality; availability issues of exposure control measures and respirators; and any symptoms of wildfire smoke exposure. Your employer cannot retaliate or discriminate against you for raising safety concerns, or reporting symptoms.

The employer's communication system is: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**(7) The employer's response plan for wildfire smoke including methods to protect employees from wildfire smoke, and the exposure symptom response procedures:**

Your employer will provide training on the specific methods they will implement to protect you as part of their wildfire smoke response plan, and their procedures to respond when employees experience symptoms of wildfire smoke exposure.

The employer's methods to protect employees are: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

The employer's exposure symptom response procedures are: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**(8) The importance, limitations, and benefits of using a properly fitted respirator when exposed to wildfire smoke:**

Respirators can be an effective way to protect employee health by reducing exposure to wildfire smoke, when they are properly selected and worn. Respirator use can be beneficial even when the current PM<sub>2.5</sub> is less than 35.5 µg/m<sup>3</sup>.

Respirator use is not voluntary, and a complete respiratory protection program in accordance with WAC 296-307-594 through 296-307-622, *Respirators*, is required in any of the following situations:

- The employer chooses to require respirator use;
- A respiratory hazard, such as exposure to a substance over the permissible exposure limit (PEL) or hazardous exposure to an airborne biological hazard, is present.
- Work under the scope of this rule where the current PM<sub>2.5</sub> is 500.4 µg/m<sup>3</sup> (AQI 849) or higher.

If respirator use is required, you will be enrolled in a complete respiratory protection program which includes additional training, fit-testing, and medical evaluations.

To evaluate respiratory hazards in your workplace, see WAC 296-307-624 through 296-307-628, *Respiratory hazards*.

Take the following precautions to ensure the best possible protection when using N95 respirators voluntarily for protection from wildfire smoke:

(a) Employers must select respirators certified for protection against the specific air contaminants at the workplace. For PM<sub>2.5</sub>, a National Institute for Occupational Safety and Health (NIOSH) certified respirator with at least an N95 particulate filter is required. A label or statement of certification should appear on the respirator or respirator packaging.

KN95 masks, surgical masks, or other items worn over the nose and mouth such as scarves, t-shirts, and bandannas will not provide protection against wildfire smoke. A NIOSH-approved N95 filtering-facepiece respirator, shown in the image below, is the minimum level of protection for wildfire smoke.

(b) Read and follow the manufacturer's instructions on the respirator's use, maintenance, cleaning and care, along with any warnings regarding the respirator's limitations.

For the best protection, follow the manufacturer's instructions for medical evaluations, fit-testing, and shaving. Fit-testing is done to ensure that you have the correct size respirator, and that it seals properly. Without fit-testing, wildfire smoke can leak around the seal of the respirator and increase your risk of experiencing adverse health effects. Because of this, you should not rely on voluntary use respirators alone to protect you from wildfire smoke. Take action to reduce your exposure to wildfire smoke in the other ways described in the wildfire smoke rule and in subsection (10) of this appendix, ask your employer to voluntarily arrange for respirator fit-testing, or both.

(c) Tight-fitting respirators such as N95s cannot form a seal over facial hair. Small particles such as those in wildfire smoke will leak around the respirator if you are not clean-shaven. Be sure you are clean-shaven to ensure the respirator can seal to your face.

(d) Do not wear respirators in areas where the air contains contaminants for which the respirator is not designed. A respirator designed to filter particles will not protect you against gases or vapors, and it will not supply oxygen. Some filtering-facepiece respirators are equipped with a sorbent layer for absorbing "nuisance" organic vapors. These can be used for voluntary use, but are not NIOSH certified for protection against hazardous concentrations of organic vapor.

(e) Keep track of your respirator, so you do not mistakenly use someone else's respirator.

(f) If you have questions about whether it is safe for you to wear a respirator, you should talk to your doctor or other medical provider, particularly if you have a heart, lung, or other medical conditions.

**(9) The risks and limitations of using an unfitted respirator, and the risks of wearing a respirator without a medical evaluation:**

Respirators such as N95s must form a tight seal to the face to work properly. This is especially important for people at increased risk for severe disease, as exposure to wildfire smoke can worsen symptoms. A fit-test is conducted to verify that a respirator properly seals to your face so smoke does not leak around the seal.

It also ensures that the respirator be comfortable so you can wear it as long as you need. Your employer is not required to provide a fit-test for voluntary use of N95 respirators for wildfire smoke below a current  $PM_{2.5}$  of  $500.4 \mu\text{g}/\text{m}^3$  (AQI 849) unless your employer chooses to require respirator use. Even without a fit-test, you can take steps to improve the respirator seal, and to reduce your exposure to wildfire smoke by following the steps in subsection (10) of this appendix.

While wearing a respirator provides protection from wildfire smoke, it increases breathing resistance, causing you to work harder to breathe. If you have heart or lung problems, talk to your doctor or other medical provider before using a respirator. A medical evaluation is conducted as part of evaluating respirator selection and use to ensure that the wearer is healthy enough to perform work while wearing a respirator. Your employer is not required to provide a medical evaluation for voluntary use of N95 respirators for wildfire smoke below a current  $PM_{2.5}$  of  $500.4 \mu\text{g}/\text{m}^3$  (AQI 849) unless your employer chooses to require respirator use. If you have questions about whether it is safe for you to wear a respirator, you should talk to your doctor or other medical provider. This is particularly important if you have a heart or lung condition (including asthma), or if you have other medical conditions of concern. Follow your health care provider's advice if you have medical conditions that can be worsened by wildfire smoke exposure.

If, while wearing a respirator, you experience:

- Any symptoms your doctor, other health care provider, or employer has told you may limit or prevent the effective use of respirators; or
- Any respiratory (lung, breathing), cardiac (heart, circulation), or other symptoms (including, but not limited to, those listed under subsection (1) of this appendix) that may limit or prevent the effective use of respirators;

Then go to an area with clean air as described in WAC 296-307-09830(3), take off the respirator, and get help. You should also do this if you are unsure whether a symptom you are experiencing may limit or prevent the effective use of respirators.

**(10) How to properly put on, use, and maintain the respirators provided by the employer:**

A tight-fitting respirator such as an N95 will not be able to seal to your face if facial hair interferes with the seal. Make sure you are clean-shaven to allow a better seal and more reliable protection. Loose-fitting powered air-purifying respirators do not rely on a tight seal to provide protection, so they may be worn by people with facial hair.

Always inspect your respirator for damage or defects before use, and follow the manufacturer's instructions. Replace respirators that are damaged, dirty, or wet.

The proper way to put on a respirator depends on the type and model of the respirator. For those who use a filtering-facepiece respirator such as an N95 follow these steps to put on the respirator:

- (a) With clean, dry hands, inspect the respirator and straps for any damage or defect.
- (b) Hold the respirator with the straps facing you, and the metal or foam nosebridge facing up.

(c) Place the mask with the top over your nose and the bottom under your chin. Hold the mask in place with one hand.

(d) While holding the mask to your face with one hand, grab the top strap with the other hand.

(e) Pull the top strap over your head and place it so the strap goes above your ears.

(f) While continuing to hold the mask to your face, pull the bottom strap over your head and place it so the strap goes below your ears.

(g) Bend the nosepiece of the respirator over the top of the nose, so it fits securely.

(h) Perform a seal check:

(i) The mask should sit snug on your face, with the top strap above your ears, the bottom strap below.

(ii) Cover the respirator with both hands and exhale. If you feel air leaking where the respirator seals against your face, adjust the respirator and nosepiece and try again. The respirator should bulge from the face and not leak around the seal.

(iii) Next, cover the respirator with both hands and inhale. If you feel air leaking where the respirator seals against the face, adjust the respirator and nosepiece and try again. The respirator should collapse slightly and not leak around the seal.

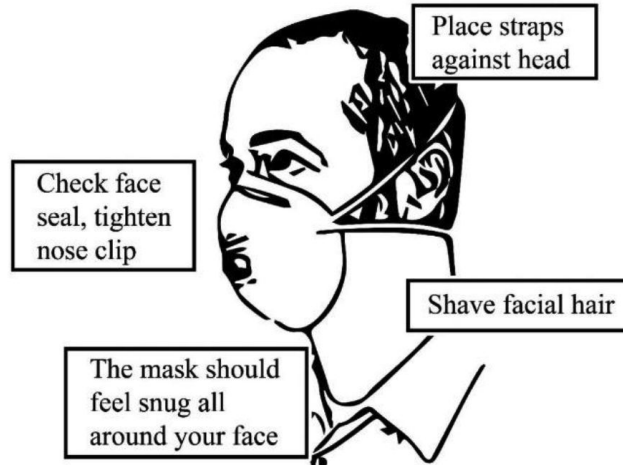
Filtering-facepiece respirators are disposable respirators that cannot be cleaned or disinfected. Best practice is to replace filtering-facepiece respirators at the beginning of each shift.

Respirator filters need to be replaced if they get damaged, deformed, dirty, or difficult to breathe through. If, while wearing a respirator, you experience:

- Any symptoms your doctor, other health care provider, or employer has told you may limit or prevent the effective use of respirators; or

- Any respiratory (lung, breathing), cardiac (heart, circulation), or other symptoms (including, but not limited to, those listed under subsection (1) of this appendix) that may limit or prevent the effective use of respirators;

Then go to an area with clean air as described in WAC 296-307-09830(3), take off the respirator, and get help. You should also do this if you are unsure whether a symptom you are experiencing may limit or prevent the effective use of respirators.



AMENDATORY SECTION (Amending WSR 19-21-169, filed 10/22/19, effective 2/3/20)

**WAC 296-307-10840 Prohibited actions—40 C.F.R., Sec. 170.315.**

No agricultural employer, commercial pesticide handler employer, or other person involved in the use of a pesticide to which this part applies, shall intimidate, threaten, coerce, or discriminate against any worker or handler for complying with or attempting to comply with this part, or because the worker or handler provided, caused to be provided or is about to provide information to the employer or the EPA or any duly authorized representative of the Washington state department of agriculture, or the department of labor and industries regarding conduct that the worker or handler reasonably believes violates this part, has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing concerning compliance with this part, or has objected to, or refused to participate in, any activity, policy, practice, or assigned task that the worker or handler reasonably believed to be in violation of this part. Any such intimidation, threat, coercion, or ~~((discrimination))~~ retaliation violates the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), Section 12 (a) (2) (G), 7 U.S.C. 136j (a) (2) (G).

AMENDATORY SECTION (Amending WSR 20-21-091, filed 10/20/20, effective 11/20/20)

**WAC 296-307-14820 Make cholinesterase testing available. (1)**

The employer must make medical monitoring available to employees who will meet the handling hour threshold of ~~((thirty))~~ 30 or more hours in any consecutive ~~((thirty))~~ 30-day period (WAC 296-307-14810) at no cost and at a reasonable time and place, as follows:

(a) Provide annual baseline red blood cell (RBC) and serum cholinesterase tests that are taken at least ~~((thirty))~~ 30 days after the

employee last handled organophosphate or N-methyl-carbamate pesticides.

(b) Provide periodic RBC and serum cholinesterase testing:

(i) Within three days after the end of each (~~(thirty)~~) 30-day period where the employee meets the handling hour threshold in WAC 296-307-14810; however, testing is not required more often than every (~~(thirty)~~) 30 days;

OR

(ii) At least every (~~(thirty)~~) 30 days for those employees who may meet the handling hour threshold in WAC 296-307-14810.

(c) Follow the recommendations of the LHCP regarding continued employee pesticide handling or removal from handling until a (~~(thirty)~~) 30-day exposure free baseline can be established.

**Exemption:** The employer does not need to provide baseline or periodic testing for those employees whose work exposure is limited to handling only N-methyl-carbamate pesticides.

**Notes:** 1. For employees who have had exposure to organophosphate or N-methyl-carbamate pesticides in the (~~(thirty)~~) 30 days prior to the test obtain a working baseline. For example, a worker who initially declines cholinesterase testing and later chooses to participate in testing would obtain a "working baseline."  
2. For new employees, the LHCP may accept previous baselines, if they are obtained according to this rule.

(2) The employer must obtain a signed declination statement from the LHCP for each employee who declines cholinesterase testing.

(a) Employees may decline cholinesterase testing only after they receive training about cholinesterase inhibiting pesticides and discuss the risks and benefits of participation with the LHCP.

(b) An employee may change his or her mind and elect to participate or decline to continue participation in the testing program at any time.

(3) The employer must make sure the employee receives a copy of the signed declination statement, either through the employer or directly through the LHCP, within five business days after the employer receives the declination statement.

**Note:** If employers discourage participation in cholinesterase monitoring, or in any way interfere with an employee's decision to continue with this program, this interference may represent unlawful (~~(discrimination)~~) retaliation under RCW 49.17.160(~~(Discrimination against employee filing, instituting proceedings, or testifying prohibited—Procedure—Remedy)~~).

**RDS-6586.2**

**Chapter 296-360 WAC**  
**(~~(DISCRIMINATION)~~) RETALIATION, PURSUANT TO RCW 49.17.160**

AMENDATORY SECTION (Amending WSR 22-14-090, filed 7/1/22, effective 7/1/22)

**WAC 296-360-020 General requirements of RCW 49.17.160 of WISHA.**

(1) No person shall discharge or in any manner discriminate against any employee because the employee has:

(a) Filed any complaint under or related to WISHA;

(b) Instituted or caused to be instituted any proceeding under or related to WISHA;

(c) Testified or is about to testify in any proceeding under or related to WISHA; or

(d) Exercised on their own behalf or on behalf of others any right afforded by WISHA.

(2) Any employee who believes they have been ~~((discriminated))~~ retaliated against in violation of RCW 49.17.160 may file a complaint alleging a violation, within 90 days after such violation.

AMENDATORY SECTION (Amending WSR 22-14-090, filed 7/1/22, effective 7/1/22)

**WAC 296-360-030 Filing a complaint of ~~((discrimination))~~ retaliation.** (1) Who may file. A complaint alleging ~~((discrimination))~~ retaliation may be filed by the employee, or by the employee's authorized representative.

(2) Nature of filing. No particular form of complaint is required.

(3) Place of filing. The complaint should be filed with the division by the following methods:

(a) Department website: ~~((https://lni.wa.gov/workers-rights/workplace-complaints/discrimination-in-the-workplace))~~ https://lni.wa.gov.

(b) In person:

Department of Labor and Industries  
DOSH-~~((Discrimination))~~ Safety and Health Retaliation Program  
7273 Linderson Way S.W.  
Tumwater, WA 98501

(c) Mail:

Department of Labor and Industries  
DOSH-~~((Discrimination))~~ Safety and Health Retaliation Program  
P.O. Box 44600  
Olympia, WA 98504-4600; or

(d) Phone: 360-902-6088 or 1-800-423-7233.

(4) Time for filing. The complaint must be filed timely as stated in WAC 296-360-020(2). Circumstances may exist that justify tolling, meaning pause, delay, or extend, the 90-day period on recognized equitable principles or because strongly extenuating circumstances exist, e.g., where the employer has concealed, or misled the employee regarding the grounds for, discharge or other adverse action; or where the ~~((discrimination))~~ retaliation is in the nature of a continuing violation. In the absence of circumstances justifying a tolling of the 90-day period, the division will not accept untimely complaints.

AMENDATORY SECTION (Amending WSR 22-14-090, filed 7/1/22, effective 7/1/22)

**WAC 296-360-040 ~~((Discrimination))~~ Retaliation, determination, and notification.** (1) The assistant director must determine if a violation of RCW 49.17.160 has occurred, or whether there was insufficient evidence to determine if a violation occurred.

(2) The assistant director will notify a complainant and their employer of the determination made under subsection (1) of this section within 90 days of receipt of the complaint. The department may

extend the 90-day period by providing advance written notice to the complainant and the employer setting forth good cause for an extension of the period, and specifying the duration of the extension.

(a) Violation occurred. If the assistant director determines that RCW 49.17.160 has been violated, the assistant director will issue a citation and notice of assessment describing the violation to the employer, ordering all appropriate relief as described in WAC 296-360-045, and may assess a civil penalty as described in WAC 296-360-175. Complainants and employers have the right to appeal the citation and notice of assessment in accordance with WAC 296-360-180.

(b) Insufficient evidence. If the assistant director finds there is insufficient evidence to determine that a violation occurred, the assistant director will issue a letter of closure and the employee may institute the action on their own behalf within 30 days of such determination as allowed in RCW 49.17.160.

(i) The complainant may file a written request for review by the director within 15 working days of receipt of the determination. The request for director review must set forth the basis for the request. The request must be filed by mail to the address in WAC 296-360-030 (3)(c) or in-person to the address in WAC 296-360-030 (3)(b).

(ii) Upon review the director may set aside the assistant director's determination and issue a citation and notice of assessment, remand the matter for further investigation, or affirm the determination of the assistant director.

(3) Every effort will be made to notify complainants of the determination using a method of mailing that can be tracked or delivery that can be confirmed.

AMENDATORY SECTION (Amending WSR 22-14-090, filed 7/1/22, effective 7/1/22)

**WAC 296-360-045 Appropriate relief for violations of RCW**

**49.17.160.** (1) A citation and notice of assessment issued for a violation of RCW 49.17.160 as required by WAC 296-360-040, must include all appropriate relief which may include, but is not limited to, the following:

(a) Restoring the complainant to the position of employment held by the complainant when the ((~~discrimination~~)) retaliation occurred, or restoring the complainant to an equivalent position with equivalent employment hours, work schedule, benefits, pay, and other terms and conditions of employment; and

(b) Ordering the employer to make payable to the complainant earnings that the complainant did not receive due to the employer's ((~~discriminatory~~)) retaliatory action, including interest of one percent per month on all earnings owed. The earnings and interest owed will be calculated from the first date earnings were owed to the employee.

(2) A civil penalty may be issued in accordance with WAC 296-360-175, Penalties for violations of RCW 49.17.160.

AMENDATORY SECTION (Amending WSR 22-14-090, filed 7/1/22, effective 7/1/22)

**WAC 296-360-060 Arbitration or other agency proceedings. (1)**

General.

(a) An employee who files a complaint under RCW 49.17.160 may pursue remedies under grievance arbitration proceedings in collective bargaining agreements, and may also resort to other agencies, such as the National Labor Relations Board, for relief. The division's jurisdiction to entertain RCW 49.17.160 complaints, to investigate, and to determine whether ~~((discrimination))~~ retaliation has occurred, is independent of the jurisdiction of other agencies or bodies. The division may file an action in superior court regardless of the pendency of other proceedings.

(b) The division favors voluntary resolution, where possible, of disputes under procedures in collective bargaining agreements. The division should defer to the jurisdiction of other forums established to resolve disputes that may also be related to RCW 49.17.160 complaints. Thus, where a complainant is pursuing remedies other than those provided by RCW 49.17.160 it may be proper to postpone the assistant director's determination whether ~~((discrimination))~~ retaliation has occurred, and defer to the results of such proceedings.

(2) Postponement of determination. Postponement of determination is justified where the rights asserted in other proceedings are substantially the same as rights under RCW 49.17.160 and those proceedings are not likely to violate the rights guaranteed by RCW 49.17.160. The factual issues in the proceedings must be substantially the same as those raised by the RCW 49.17.160 complaint, and the forum hearing the matter must have the power to determine the ultimate issue of ~~((discrimination))~~ retaliation.

(3) Deferral to outcome of other proceedings. Determinations to defer to the outcome of another proceeding initiated by a complainant must be made after careful scrutiny. It must be clear that the proceeding dealt adequately with all factual issues, that it was fair, regular, and free of procedural infirmities, and that its outcome did not violate the purpose and policy of WISHA. If another action initiated by a complainant is dismissed without an adjudicatory hearing on the merits, the division will not necessarily regard the dismissal as determinative of the merits of the RCW 49.17.160 complaint.

AMENDATORY SECTION (Amending WSR 22-14-090, filed 7/1/22, effective 7/1/22)

**WAC 296-360-070 Persons prohibited from ~~((discriminating))~~ retaliating.** RCW 49.17.160 specifically states that "no person shall discharge or in any manner ~~((discriminate))~~ retaliate against any employee" because the employee has exercised rights under WISHA. RCW 49.17.020(5), defines "person" as "one or more individuals, partnerships, associations, corporations, business trusts, legal representatives, or any organized group of persons." Consequently, the prohibitions of RCW 49.17.160 are not limited to actions taken by employers against their own employees. A person may be charged with ~~((discriminating))~~ retaliating against an employee of another person. RCW 49.17.160 extends to such entities as organizations representing employees in collective bargaining, employment agencies, or any other

person in a position to ((discriminate)) retaliate against an employee.

AMENDATORY SECTION (Amending WSR 80-17-015, filed 11/13/80)

**WAC 296-360-100 ((Discrimination)) Retaliation because of a complaint under or related to WISHA.** RCW 49.17.160 prohibits discharge of, or ((discrimination)) retaliation against, an employee because the employee has filed any complaint under or related to this act.

(1) An example of a complaint made "under" WISHA would be an employee request for inspection pursuant to section 11 (RCW 49.17.110). This is not the only type of complaint protected by RCW 49.17.160, however. The range of complaints "related to" WISHA is commensurate with the broad remedial purposes of this legislation and the sweeping scope of its application.

(2) Complaints registered with other state or federal agencies that have the authority to regulate or investigate industrial safety and health conditions are complaints "related to" WISHA.

(3) The protection offered employees by WISHA would be seriously undermined if employees were discouraged from lodging complaints about industrial safety and health matters with their employers. Complaints to employers, if made in good faith, are related to WISHA, and an employee is protected against discharge or ((discrimination)) retaliation caused by a complaint to the employer.

(4) To come within the protection of RCW 49.17.160, a complaint must relate to conditions at the work place, as distinguished from complaints touching only upon general public safety and health.

AMENDATORY SECTION (Amending WSR 80-17-015, filed 11/13/80)

**WAC 296-360-110 ((Discrimination)) Retaliation because of a proceeding under or related to the act.** (1) RCW 49.17.160 prohibits discharge of, or ((discrimination)) retaliation against, any employee because the employee has "instituted or caused to be instituted any proceeding under or related to WISHA." Proceedings that can arise specifically under WISHA include inspections of worksites under RCW 49.17.070, employee contest of an abatement date under RCW 49.17.140, employee initiation of proceedings for promulgation of an industrial safety and health standard, employee application for modification or revocation of a variance under RCW 49.17.080, employee judicial challenge of a standard, and employee appeal of board of industrial insurance appeals order under RCW 49.17.140. In determining whether a "proceeding" is "related to" WISHA, the considerations discussed in WAC 296-360-100 are also applicable.

(2) An employee need not directly institute a proceeding. It is sufficient if he or she sets into motion acts of others that result in proceedings under or related to WISHA.

AMENDATORY SECTION (Amending WSR 80-17-015, filed 11/13/80)

**WAC 296-360-120 ((Discrimination)) Retaliation because of testimony.** RCW 49.17.160 prohibits discharge of, or ((discrimination)) retaliation against, any employee because the employee "has testified or is about to testify" in proceedings under or related to WISHA. This protection is not limited to testimony in proceedings instituted or caused to be instituted by the employee, but extends to any statements given in the course of judicial, quasijudicial, and administrative proceedings, including inspections, investigations, administrative adjudications, and rules hearings.

AMENDATORY SECTION (Amending WSR 80-17-015, filed 11/13/80)

**WAC 296-360-130 ((Discrimination)) Retaliation because of exercise of any right afforded by WISHA—In general.** In addition to protecting employees who file complaints, institute proceedings, or testify in proceedings under or related to WISHA, RCW 49.17.160 also protects employees from ((discrimination)) retaliation occurring because of the exercise "of any right afforded by this chapter." Certain rights are explicitly stated in WISHA. Other rights exist by necessary implication. For example, employees may request information from the occupational safety and health administration or the department of labor and industries. Also, employees interviewed by agents of the division in the course of inspections or investigations cannot subsequently be ((discriminated)) retaliated against because of their cooperation.

AMENDATORY SECTION (Amending WSR 94-15-096, filed 7/20/94, effective 9/20/94)

**WAC 296-360-140 ((Discrimination)) Retaliation because of exercise of right afforded by WISHA—Walkaround pay.** Employee participation in walkaround inspections under RCW 49.17.100 is essential. Employees are a vital source of information to the division about work place hazards. Employees must be able freely to exercise their statutory right to participate in walkarounds without fear of economic loss, such as the denial of pay for the time spent helping WISHA inspectors during the walkaround. To ensure the unimpeded flow of information to the inspectors, and the unfettered statutory right of employees to participate in walkaround inspections, an employer's failure to pay employees for time they spend in walkaround inspections is ((discrimination)) retaliation under RCW 49.17.160. In addition, an employer's failure to pay employees for time spent in other inspection-related activities, such as answering questions of inspectors or participating in the opening and closing conferences, is ((discrimination)) retaliation under RCW 49.17.160.

AMENDATORY SECTION (Amending WSR 22-14-090, filed 7/1/22, effective 7/1/22)

**WAC 296-360-150 ((Discrimination)) Retaliation because of exercise of right afforded by WISHA—Refusal to work in an unsafe condition.** (1) Review of WISHA and examination of the legislative history discloses that, as a general matter, WISHA grants no specific right to employees to walk off the job because of potential unsafe conditions at the work place. A hazardous condition that may violate WISHA will ordinarily be corrected by the employer, once brought to its attention. If the employer does not correct a hazard, or if there is a dispute about the existence of a hazard, the employee normally can ask the division to inspect the work place pursuant to RCW 49.17.110, or can seek help from other public agencies that have responsibility for safety and health. Under such circumstances, an employer would not violate RCW 49.17.160 by disciplining an employee who refuses to work because of an alleged safety or health hazard.

(2) Occasions arise, however, when an employee is confronted with a choice between not performing assigned tasks or subjecting (~~him or herself~~) themselves to serious injury or death arising from a hazard at the work place. If the employee, with no reasonable alternative, refuses in good faith to expose (~~him or herself~~) themselves to the dangerous condition, (~~he or she is~~) they are protected against subsequent (~~discrimination~~) retaliation.

(3) An employee's refusal to work is protected if (~~he or she meets~~) they meet the following requirements:

(a) The refusal to work must be in good faith, and must not be a disguised attempt to harass the employer or disrupt the employer's business;

(b) The hazard causing the employee's apprehension of death or injury must be such that a reasonable person, under the circumstances then confronting the employee, would conclude that there is a real danger of death or serious injury; and

(c) There must be insufficient time, due to the urgency of the situation, to eliminate the danger through resort to regular statutory enforcement channels.

(4) As indicated in subsection (3) of this section, an employee's refusal to work is protected if it is a good faith response to a hazardous condition. To determine whether an employee has acted in good faith, the division will consider, among other factors, whether the employer knew that the hazard could cause serious injury, death, or that the hazard was prescribed by a specific safety standard promulgated under WISHA or any other law that relates to the safety and health of a place of employment. The division may also consider whether the employee asked the employer to correct the hazard, asked for other work, remained on the job until ordered to leave by the employer, or informed the employer that, if the hazard was not corrected, the employee would refuse to work.

The lack of one or more of these factors must not necessarily preclude a finding of good faith if other factors do establish good faith.

AMENDATORY SECTION (Amending WSR 22-14-090, filed 7/1/22, effective 7/1/22)

**WAC 296-360-160 Payment of damages to employee ((discriminated)) retaliated against.** (1) If an employer ((discriminates)) retaliates against an employee such that the employee earns less than ((he or she)) they would have earned absent the ((discrimination)) retaliation, the employer must pay the employee the difference between the wages that the employee would have earned absent the ((discrimination)) retaliation and the wages the employee actually earned after the ((discrimination)) retaliation.

(2) If an employer ((discriminates)) retaliates against an employee for a refusal to work that is protected under WAC 296-360-150, the employer need not pay the employee's wages for the time spent fixing the hazard, or that would have been spent fixing the hazard, if the employer (a) had to or would have had to shut down the job to make the repair and (b) had not other work the employee could have done.

AMENDATORY SECTION (Amending WSR 80-17-015, filed 11/13/80)

**WAC 296-360-170 Employee's refusal to comply with safety rules.** An employee who refuses to comply with industrial safety and health standards or valid safety rules implemented by the employer in furtherance of WISHA is not exercising a right afforded by WISHA. Discipline taken by employers solely in response to an employee's refusal to comply with appropriate safety rules and regulations is not ((discrimination)) retaliation prohibited by RCW 49.17.160. This situation should be distinguished from refusals to work discussed in WAC 296-360-150.

#### RDS-6587.1

AMENDATORY SECTION (Amending WSR 25-09-064, filed 4/15/25, effective 5/16/25)

**WAC 296-820-850 Appendix A: Protection from wildfire smoke information and training (mandatory).** (1) **The health effects and symptoms of wildfire smoke:**

(a) Although there are many hazardous chemicals in wildfire smoke, the main harmful pollutant for people who are not very close to the fire is "particulate matter," the tiny particles suspended in the air.

Particulate matter is a health risk whether you are exposed over a short period of time or a long period of time. The EPA has determined that particulate matter does cause, or likely causes cardiovascular disease, respiratory disease, cancer, and harm to the nervous system. In addition, particulate matter can irritate the eyes and lungs, causing eye irritation, phlegm, and persistent coughing. It can also cause difficulty breathing, reduced lung function, wheezing, bronchitis, worsening of asthma, heart failure, and early death.

(b) Wildfire smoke can harm your health even if you cannot see or smell the smoke or do not feel any symptoms. Even healthy people can be harmed by wildfire smoke. The wildfire smoke rule is designed to limit the harm from wildfire smoke, and it is important to consider taking action to reduce your exposure to smoke whenever the rule's protections are in effect, whether or not you have symptoms. Watch for symptoms as an additional indication to reduce exposure to smoke, and reduce work intensity.

This appendix reviews many wildfire smoke symptoms, but not every possible symptom may be mentioned, and it is a good idea to talk to your doctor or other health care provider before being exposed to wildfire smoke to have a plan for protecting yourself, including what symptoms to watch out for and how to reduce your exposure. This is especially important if you have any medical conditions; are pregnant; or have questions about the health effects or symptoms of wildfire smoke exposure.

(c) The wildfire smoke rule has additional requirements in WAC 296-820-830 when workers experience symptoms requiring immediate medical attention. When the current PM<sub>2.5</sub> is 250.5 µg/m<sup>3</sup> or more, your employer must ensure workers experiencing such symptoms be moved to a location that ensures sufficient clean air as described in WAC 296-820-830(3). Symptoms requiring immediate medical attention include, but are not limited to:

- Symptoms concerning for a heart attack, such as:
  - Chest pain or discomfort;
  - Feeling weak, light-headed, faint, or dizzy;
  - Pain or discomfort in the jaw, neck, or back;
  - Pain or discomfort in one or both arms or shoulders;
  - Shortness of breath, especially if accompanied by chest discomfort;
- Symptoms concerning for a stroke, such as:
  - Sudden numbness or weakness in the face, arm, or leg, especially on one side of the body;
  - Sudden confusion, trouble speaking, or difficulty understanding speech;
  - Sudden trouble seeing in one or both eyes;
  - Sudden trouble walking, dizziness, loss of balance, or lack of coordination;
  - Sudden severe headache with no known cause;
- Wheezing, difficulty breathing, or shortness of breath, particularly when accompanied by greater use of accessory muscles;
- Asthma attacks; or
- Nausea or vomiting.

(d) In addition to symptoms that under this rule require immediate medical attention, wildfire smoke can also cause other symptoms, many of which are described below. Even if a symptom is not mentioned here, you have the right under the wildfire smoke rule to seek medical attention or follow medical advice if you develop any symptoms you think may potentially be related to wildfire smoke exposure, regardless of their severity.

Regardless of whether a symptom is serious enough to require immediate medical attention, employers covered by the wildfire smoke rule are required by WAC 296-820-830(4) to have effective provisions made in advance for prompt medical attention of employees displaying symptoms of wildfire smoke exposure.

If you develop a symptom, you should follow the advice of your doctor or health care provider, and seek medical attention if necessary. Your employer must not retaliate against you for seeking medical attention or following medical advice you have been given.

In addition to the symptoms requiring immediate medical attention according to WAC 296-820-830, all of the following symptoms are also potentially related to wildfire smoke exposure. They may also require medical attention:

- Respiratory:
  - Cough;
  - Runny or irritated nose;
  - Sore throat;
  - Sinus pain or pressure;
  - Phlegm.
- Fast or irregular heartbeat;
- Headache;
- Scratchy or irritated eyes; or
- Fatigue or tiredness.

(e) Developing wildfire smoke symptoms, even mild ones, indicates you are being overexposed to the smoke and should report your symptoms to your employer. In response, according to WAC 296-820-830 your employer must permit you to follow medical advice you have been given, seek medical attention if necessary, and must take appropriate steps to reduce your exposure. This may include providing you with access to clean air according to WAC 296-820-830(3) (your employer must ensure access to clean air when the current PM<sub>2.5</sub> is greater than 250.5 µg/m<sup>3</sup>); helping you use respiratory protection; or taking other steps to control your exposure.

(f) Sensitive groups:

L&I and the Washington state department of health consider all outdoor workers as a sensitive group at higher risk of experiencing adverse health effects from wildfire smoke exposure.<sup>1</sup>

Sensitive groups include people who are at higher risk of experiencing adverse health effects as a result of exposure to wildfire smoke, including those with preexisting health conditions; those with increased duration of exposure; and those whose work results in an increased breathing rate, including outdoor workers.<sup>1</sup> Although everyone is impacted by wildfire smoke exposure, sensitive groups are among those most likely to experience health problems from exposure to wildfire smoke.

Examples of sensitive groups include:

- Outdoor workers;
- People with lung diseases such as asthma or chronic obstructive pulmonary disease (COPD), including bronchitis and emphysema, and those who smoke;
- People with respiratory infections, such as pneumonia, acute bronchitis, bronchiolitis, colds, or flu; or those with, or recovering from COVID-19;
- People with existing heart or circulatory problems, such as irregular heartbeat, congestive heart failure, coronary artery disease, angina, and those who have had a heart attack or stroke;
- Children under 18 years old, and adults over age 65;
- People who are pregnant;
- People with diabetes;
- People with other medical or health conditions that can be worsened by exposure to wildfire smoke as determined by a physician;

- Tribal and indigenous people;
- People with low income.

<sup>1</sup> Washington Department of Health. April 2022, accessed March 14, 2024. Washington Air Quality Guide for Particle Pollution: [https://doh.wa.gov/sites/default/files/legacy/Documents/4300/waqa%20infographic\\_English.pdf?uid=64384c71c8715](https://doh.wa.gov/sites/default/files/legacy/Documents/4300/waqa%20infographic_English.pdf?uid=64384c71c8715)

**(2) The importance of informing the employer when the employee is experiencing symptoms of wildfire smoke exposure:**

Watch for symptoms of wildfire smoke exposure as a sign to reduce exposure. The particulate matter in wildfire smoke can harm your health, even at lower levels of exposure.

It is important to notify your employer when you are experiencing symptoms of wildfire smoke exposure so your employer can respond appropriately.

Your employer will have provisions made in advance for prompt medical attention for employees who are experiencing symptoms of wildfire smoke exposure.

Do not ignore your symptoms. Wildfire smoke can be hazardous even when you cannot see it or smell it. Your employer cannot retaliate against you for reporting symptoms, for seeking medical attention, or for following medical advice you have been given. This is true whenever the wildfire smoke rule's protections are in effect.

Wildfire smoke is a serious work-related hazard for outdoor workers, and you have the right to file a workers' compensation claim to have your symptoms evaluated. You may file a workers' compensation claim whether or not you have personal health insurance. Your employer cannot prevent you from or retaliate against you for filing a workers' compensation claim.

In most cases, L&I will pay for your initial medical evaluation, even if your claim is denied. If your claim is allowed, the workers' compensation system will cover medical bills directly related to your condition and partial wage replacement benefits if you cannot work.

When the current PM<sub>2.5</sub> is 250.5 µg/m<sup>3</sup> or more, your employer must ensure workers experiencing symptoms requiring immediate medical attention be moved to a location that ensures sufficient clean air as described in WAC 296-820-830(3).

**(3) The right to obtain medical attention without fear of reprisal:**

Employers must allow employees who show signs of injury or illness due to wildfire smoke exposure to seek medical attention or follow medical advice they have been given, and must not retaliate against affected employees for seeking such medical attention or following medical advice.

Employers must also have effective provisions made in advance for prompt medical attention of employees in the event of serious injury or illness caused by wildfire smoke exposure.

Additionally, when the current PM<sub>2.5</sub> is 250.5 µg/m<sup>3</sup> or more, employers must ensure workers experiencing symptoms requiring immediate medical attention be moved to a location that ensures sufficient clean air as described in WAC 296-820-830(3).

For more information on your workplace safety and health rights, ~~((discrimination))~~ retaliation protections, and filing a ~~((discrimination))~~ retaliation complaint, visit ~~((www.Lni.wa.gov/WorkplaceDiscrimination))~~ www.Lni.wa.gov.

**(4) The requirements of WAC 296-820-805 through 296-820-860:**

The following table summarizes the key requirements of the rule. This is not an exhaustive list, and additional details are found in WAC 296-820-805 through 296-820-860.

| CURRENT PM <sub>2.5</sub>     | AQI         | REQUIREMENTS AT CURRENT PM <sub>2.5</sub> LEVEL   |
|-------------------------------|-------------|---|
| 0.0-20.4 µg/m <sup>3</sup>    | 0-71        | <ul style="list-style-type: none"> <li>• Prepare a written wildfire smoke response plan.</li> <li>• Provide wildfire smoke training to employees.</li> <li>• Watch the PM<sub>2.5</sub> conditions and forecasts.</li> <li>• Prepare a two-way communication system.</li> <li>• Make provisions for prompt medical attention, and permit such medical attention without retaliation.</li> </ul> |
| 20.5-35.4 µg/m <sup>3</sup>   | 72-100      | <p>All of the above and:</p> <ul style="list-style-type: none"> <li>• Notify employees of PM<sub>2.5</sub> conditions.</li> <li>• Ensure only trained employees work outdoors.</li> <li>• Consider implementing exposure controls.</li> <li>• Consider providing voluntary use respirators.</li> </ul>  |
| 35.5-250.4 µg/m <sup>3</sup>  | 101-350     | <p>All of the above and:</p> <ul style="list-style-type: none"> <li>• Implement exposure controls.</li> <li>• Make N95 respirators available for voluntary use.</li> </ul>  |
| 250.5-500.3 µg/m <sup>3</sup> | 351-848     | <p>All of the above and:</p> <ul style="list-style-type: none"> <li>• Ensure workers experiencing symptoms requiring immediate medical attention be moved to a location that ensures sufficient clean air.</li> <li>• Directly distribute N95 respirators to employees for voluntary use.</li> </ul>  |
| 500.4-554.9 µg/m <sup>3</sup> | 849-956     | <p>All of the above and:</p> <ul style="list-style-type: none"> <li>• Implement a complete required use respiratory protection program, including fit-testing, medical evaluations, requiring employees to be clean-shaven, and requiring the use of particulate respirators.</li> </ul>  |
| 555 µg/m <sup>3</sup> or more | 957 or more | <p>All of the above and:</p> <ul style="list-style-type: none"> <li>• Require respirators with an assigned protection factor (APF) of 25 or more.</li> </ul>  |

**(5) The employer's methods of determining the current PM<sub>2.5</sub> under WAC 296-820-815:**

The employer's methods of determining the current PM<sub>2.5</sub>:

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**(6) How employees can obtain the current PM<sub>2.5</sub>, and the employer's methods to communicate the current PM<sub>2.5</sub>:**

Various government agencies monitor the air quality at locations throughout Washington and provide information to the public on the current air quality. These monitoring sites measure several harmful pollutants, but the pollutant of particular concern for wildfire smoke is the current PM<sub>2.5</sub> which is reported as the hourly average of PM<sub>2.5</sub> in µg/m<sup>3</sup>. Some of these sites also report the NowCast Air Quality Index (AQI). The NowCast AQI uses the air quality data of all the pollutants from these regulatory monitors and the NowCast averaging time to attempt to provide a general index of the overall air quality.

Although these monitoring stations may measure several pollutants, this chapter only uses the hourly average of PM<sub>2.5</sub>. The NowCast AQI for PM<sub>2.5</sub> may also be used as an alternative.

One way to find the current and forecasted PM<sub>2.5</sub> is to go to [enviwa.ecology.wa.gov](http://enviwa.ecology.wa.gov) and find the nearest monitor on the map, or [fire.airnow.gov](http://fire.airnow.gov) and enter the zip code of the location where you will

be working. The current PM<sub>2.5</sub> is also available from the Air Quality WA mobile app, or the AirNow mobile app.

Employees who do not have access to the internet can contact their employer for the current PM<sub>2.5</sub>. The U.S. EPA website www.enviroflash.info can transmit daily and forecasted air quality by email for your city or zip code.

While the requirements in this rule are based on the current PM<sub>2.5</sub>, employers may choose to use the NowCast Air Quality Index (AQI) for PM<sub>2.5</sub> to comply with this rule. Because the current PM<sub>2.5</sub> is based on a one-hour average, and the NowCast AQI averages data over a longer time, it is normal for the two values to differ over short periods of time. Your employer will tell you whether they use the current one-hour average PM<sub>2.5</sub>, or the NowCast AQI for PM<sub>2.5</sub>. The following table indicates the NowCast AQI values that may be used from the Washington state department of ecology, local clean air agency, or EPA to approximate the current PM<sub>2.5</sub>.

| CURRENT PM <sub>2.5</sub> | NOWCAST AIR QUALITY INDEX FOR PM <sub>2.5</sub> (AQI) |
|---------------------------|---|
| 20.5 µg/m <sup>3</sup>    | 72  |
| 35.5 µg/m <sup>3</sup>    | 101   |
| 250.5 µg/m <sup>3</sup>   | 351   |
| 500.4 µg/m <sup>3</sup>   | 849   |
| 555 µg/m <sup>3</sup>     | 957   |

Your employer will establish a two-way communication system to communicate changing wildfire smoke conditions to you, and allowing you to communicate information to your employer such as: Worsening air quality; availability issues of exposure control measures and respirators; and any symptoms of wildfire smoke exposure. Your employer cannot retaliate or discriminate against you for raising safety concerns, or reporting symptoms.

The employer's communication system is: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**(7) The employer's response plan for wildfire smoke including methods to protect employees from wildfire smoke, and the exposure symptom response procedures:**

Your employer will provide training on the specific methods they will implement to protect you as part of their wildfire smoke response plan, and their procedures to respond when employees experience symptoms of wildfire smoke exposure.

The employer's methods to protect employees are: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The employer's exposure symptom response procedures are: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**(8) The importance, limitations, and benefits of using a properly fitted respirator when exposed to wildfire smoke:**

Respirators can be an effective way to protect employee health by reducing exposure to wildfire smoke, when they are properly selected and worn. Respirator use can be beneficial even when the current PM<sub>2.5</sub> is less than 35.5 µg/m<sup>3</sup>.

Respirator use is not voluntary, and a complete respiratory protection program in accordance with chapter 296-842 WAC, *Respirators*, is required in any of the following situations:

- The employer chooses to require respirator use;
- A respiratory hazard, such as exposure to a substance over the permissible exposure limit (PEL) or hazardous exposure to an airborne biological hazard, is present.
- Work under the scope of this rule where the current PM<sub>2.5</sub> is 500.4 µg/m<sup>3</sup> (AQI 849) or higher.

If respirator use is required, you will be enrolled in a complete respiratory protection program which includes additional training, fit-testing, and medical evaluations.

To evaluate respiratory hazards in your workplace, see chapter 296-841 WAC, *Airborne contaminants*.

Take the following precautions to ensure the best possible protection when using N95 respirators voluntarily for protection from wildfire smoke:

(a) Employers must select respirators certified for protection against the specific air contaminants at the workplace. For PM<sub>2.5</sub>, a National Institute for Occupational Safety and Health (NIOSH) certified respirator with at least an N95 particulate filter is required. A label or statement of certification should appear on the respirator or respirator packaging.

KN95 masks, surgical masks, or other items worn over the nose and mouth such as scarves, t-shirts, and bandannas will not provide protection against wildfire smoke. A NIOSH-approved N95 filtering-face-piece respirator, shown in the image below, is the minimum level of protection for wildfire smoke.

(b) Read and follow the manufacturer's instructions on the respirator's use, maintenance, cleaning and care, along with any warnings regarding the respirator's limitations.

For the best protection, follow the manufacturer's instructions for medical evaluations, fit-testing, and shaving. Fit-testing is done to ensure that you have the correct size respirator, and that it seals properly. Without fit-testing, wildfire smoke can leak around the seal of the respirator and increase your risk of experiencing adverse health effects. Because of this, you should not rely on voluntary use respirators alone to protect you from wildfire smoke. Take action to reduce your exposure to wildfire smoke in the other ways described in the wildfire smoke rule and in subsection (10) of this appendix, ask your employer to voluntarily arrange for respirator fit-testing, or both.

(c) Tight-fitting respirators such as N95s cannot form a seal over facial hair. Small particles such as those in wildfire smoke will leak around the respirator if you are not clean-shaven. Be sure you are clean-shaven to ensure the respirator can seal to your face.

(d) Do not wear respirators in areas where the air contains contaminants for which the respirator is not designed. A respirator de-

signed to filter particles will not protect you against gases or vapors, and it will not supply oxygen. Some filtering-facepiece respirators are equipped with a sorbent layer for absorbing "nuisance" organic vapors. These can be used for voluntary use, but are not NIOSH certified for protection against hazardous concentrations of organic vapor.

(e) Keep track of your respirator, so you do not mistakenly use someone else's respirator.

(f) If you have questions about whether it is safe for you to wear a respirator, you should talk to your doctor or other medical provider, particularly if you have a heart, lung, or other medical conditions.

**(9) The risks and limitations of using an unfitted respirator, and the risks of wearing a respirator without a medical evaluation:**

Respirators such as N95s must form a tight seal to the face to work properly. This is especially important for people at increased risk for severe disease, as exposure to wildfire smoke can worsen symptoms. A fit-test is conducted to verify that a respirator properly seals to your face so smoke does not leak around the seal.

It also ensures that the respirator be comfortable so you can wear it as long as you need. Your employer is not required to provide a fit-test for voluntary use of N95 respirators for wildfire smoke below a current PM<sub>2.5</sub> of 500.4 µg/m<sup>3</sup> (AQI 849) unless your employer chooses to require respirator use. Even without a fit-test, you can take steps to improve the respirator seal, and to reduce your exposure to wildfire smoke by following the steps in subsection (10) of this appendix.

While wearing a respirator provides protection from wildfire smoke, it increases breathing resistance, causing you to work harder to breathe. If you have heart or lung problems, talk to your doctor or other medical provider before using a respirator. A medical evaluation is conducted as part of evaluating respirator selection and use to ensure that the wearer is healthy enough to perform work while wearing a respirator. Your employer is not required to provide a medical evaluation for voluntary use of N95 respirators for wildfire smoke below a current PM<sub>2.5</sub> of 500.4 µg/m<sup>3</sup> (AQI 849) unless your employer chooses to require respirator use. If you have questions about whether it is safe for you to wear a respirator, you should talk to your doctor or other medical provider. This is particularly important if you have a heart or lung condition (including asthma), or if you have other medical conditions of concern. Follow your health care provider's advice if you have medical conditions that can be worsened by wildfire smoke exposure.

If, while wearing a respirator, you experience:

- Any symptoms your doctor, other health care provider, or employer has told you may limit or prevent the effective use of respirators; or
- Any respiratory (lung, breathing), cardiac (heart, circulation), or other symptoms (including, but not limited to, those listed under subsection (1) of this appendix) that may limit or prevent the effective use of respirators;

Then go to an area with clean air as described in WAC 296-820-830(3), take off the respirator, and get help. You should also do this if you are unsure whether a symptom you are experiencing may limit or prevent the effective use of respirators.

**(10) How to properly put on, use, and maintain the respirators provided by the employer:**

A tight-fitting respirator such as an N95 will not be able to seal to your face if facial hair interferes with the seal. Make sure you are clean-shaven to allow a better seal and more reliable protection. Loose-fitting powered air-purifying respirators do not rely on a tight seal to provide protection, so they may be worn by people with facial hair.

Always inspect your respirator for damage or defects before use, and follow the manufacturer's instructions. Replace respirators that are damaged, dirty, or wet.

The proper way to put on a respirator depends on the type and model of the respirator. For those who use a filtering-facepiece respirator such as an N95 follow these steps to put on the respirator:

- (a) With clean, dry hands, inspect the respirator and straps for any damage or defect.
- (b) Hold the respirator with the straps facing you, and the metal or foam nosebridge facing up.
- (c) Place the mask with the top over your nose and the bottom under your chin. Hold the mask in place with one hand.
- (d) While holding the mask to your face with one hand, grab the top strap with the other hand.
- (e) Pull the top strap over your head and place it so the strap goes above your ears.
- (f) While continuing to hold the mask to your face, pull the bottom strap over your head and place it so the strap goes below your ears.
- (g) Bend the nosepiece of the respirator over the top of the nose, so it fits securely.
- (h) Perform a seal check:
  - (i) The mask should sit snug on your face, with the top strap above your ears, the bottom strap below.
  - (ii) Cover the respirator with both hands and exhale. If you feel air leaking where the respirator seals against your face, adjust the respirator and nosepiece and try again. The respirator should bulge from the face and not leak around the seal.
  - (iii) Next, cover the respirator with both hands and inhale. If you feel air leaking where the respirator seals against the face, adjust the respirator and nosepiece and try again. The respirator should collapse slightly and not leak around the seal.

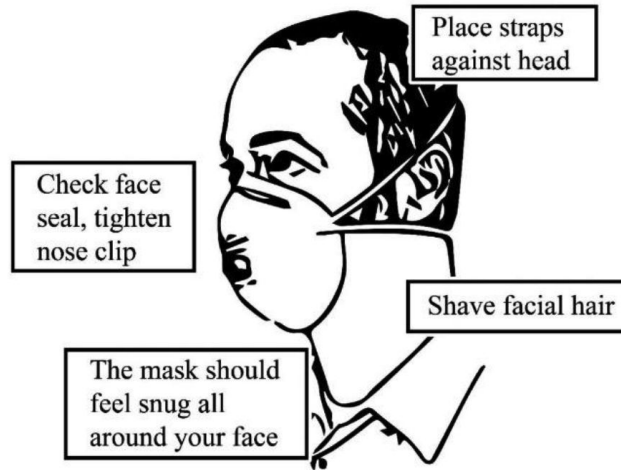
Filtering-facepiece respirators are disposable respirators that cannot be cleaned or disinfected. Best practice is to replace filtering-facepiece respirators at the beginning of each shift.

Respirator filters need to be replaced if they get damaged, deformed, dirty, or difficult to breathe through. If, while wearing a respirator, you experience:

- Any symptoms your doctor, other health care provider, or employer has told you may limit or prevent the effective use of respirators; or
- Any respiratory (lung, breathing), cardiac (heart, circulation), or other symptoms (including, but not limited to, those listed under subsection (1) of this appendix) that may limit or prevent the effective use of respirators;

Then go to an area with clean air as described in WAC 296-820-830(3), take off the respirator, and get help. You should also do this if you

are unsure whether a symptom you are experiencing may limit or prevent the effective use of respirators.



#### RDS-6589.1

AMENDATORY SECTION (Amending WSR 18-22-116, filed 11/6/18, effective 12/7/18)

#### **WAC 296-848-30030 Medical evaluations.**

**IMPORTANT:**

Medical evaluations conducted under this section will satisfy the medical evaluation requirement found in another chapter, Respirators, chapter 296-842 WAC.

(1) You must make medical evaluations available to current employees who have been, are, or will be exposed to inorganic arsenic concentrations above the AL:

(a) At least (~~thirty~~) 30 days in any (~~twelve~~) 12-month period; or

(b) A total of (~~ten~~) 10 years or more of combined employment with you or previous employers with at least (~~thirty~~) 30 days of exposure per year.

(2) You must make medical evaluations available at no cost to employees.

(3) You must pay all costs, including travel costs and wages associated with any time spent outside of the employee's normal work hours.

(4) You must make medical evaluations available at reasonable times and places.

(5) You must make medical evaluations available by completing Steps 1 through 6 of the Medical Evaluation Process for each employee covered.

**Notes:** 1. Employees who wear respirators need to be medically evaluated to make sure the respirator will not harm them, before they are assigned work in areas requiring respirators. Employees who decline to receive medical examination and testing to monitor for health effects caused by inorganic arsenic are not excluded from receiving a separate medical evaluation for a respirator use.

2. If employers discourage participation in medical monitoring for health effects caused by inorganic arsenic, or in any way interfere with an employee's decision to continue with this program, this interference may represent unlawful ~~((discrimination))~~ retaliation under RCW 49.17.160(~~(, Discrimination against employee filing, instituting proceeding, or testifying prohibited—Procedure—Remedy)~~).

**Medical Evaluation Process**

**Step 1:** Identify employees who qualify, as stated above, for medical evaluations.

**Step 2a:** Make medical evaluations available for employees identified in Step 1 at the following times:

- Initially, when employees are assigned to work in an area where exposure monitoring results are, or will likely be, above the action level for at least ~~((thirty))~~ 30 days in a ~~((twelve))~~ 12-month period.
- Periodically as specified in Table 3.
- When employment with exposure ends, if the employee has not had an evaluation within the six-month period before exposure ends. Include in these evaluations the same content as specified in Table 4 for initial evaluations, excluding a chest X-ray.

**Table 3  
Frequencies for Periodic Medical Evaluations**

| <b>For:</b>   | <b>Provide periodic medical evaluations every:</b>  |
|---|---|
| Employees less than <del>((forty-five))</del> 45 years old with less than <del>((ten))</del> 10 years of exposure above the AL                  | <del>((Twelve))</del> 12 months;  |
| Employees <del>((forty-five))</del> 45 or older;<br><b>AND</b><br>Employees with more than <del>((ten))</del> 10 years of exposure above the AL | Six months;<br><br><b>AND</b><br><del>((Twelve))</del> 12 months to obtain a <del>((fourteen))</del> 14 by <del>((seventeen))</del> 17-inch posterior-anterior chest X-ray for monitoring purposes, unless the LHCP has determined a different frequency for periodic X-rays. |

**Step 2b:** Provide appropriate medical examination and emergency treatment when an employee identified in Step 1 develops signs or symptoms commonly associated with inorganic arsenic exposure.

**Step 3:** Select a licensed health care professional (LHCP) who will conduct or supervise examinations and procedures.

**Step 4:** Make sure the LHCP receives all of the following before the medical evaluation is performed:

- A copy of this chapter.
- A description of the duties of the employee being evaluated and how these duties relate to inorganic arsenic exposure.
- The anticipated or representative exposure monitoring results for the employee being evaluated.
- A description of the personal protective equipment (PPE) each employee being evaluated uses or will use.
- Information from previous employment-related examinations when this information is not available to the examining LHCP.
- Instructions that the written opinions the LHCP provides you be limited to the following information:
  - Results from examinations and tests.

- The LHCP's opinion about whether or not medical conditions were found that would increase the employee's risk for impairment from exposure to inorganic arsenic.

- Any recommended limitations for:

- Inorganic arsenic exposure; and
- Use of respirators or other PPE.

- A statement that the employee has been informed of medical results and medical conditions caused by inorganic arsenic exposure requiring further examination or treatment.

**Step 5:** Make the medical evaluation available to the employee. Make sure it includes the content listed in Table 4, Content of Medical Evaluations.

**Step 6:** Obtain the LHCP's written opinion for the employee's medical evaluation and give a copy to the employee.

- Make sure the written opinion is limited to the information specified for written opinions in Step 4.

**Note:** If the written opinion contains specific findings or diagnoses unrelated to occupational exposure, send it back and obtain a revised version without the additional information.

**Table 4**  
**Content of Medical Evaluations**

| <b>When conducting:</b>  | <b>Include:</b>  |
|--|--|
| An initial evaluation  | <ul style="list-style-type: none"> <li>• A work history and medical history including:                             <ul style="list-style-type: none"> <li>- Smoking history.</li> <li>- The presence and degree of respiratory symptoms such as breathlessness, cough, sputum production, and wheezing.</li> </ul> </li> <li>• A physical examination that includes:                             <ul style="list-style-type: none"> <li>- A <del>((fourteen))</del> 14 by <del>((seventeen))</del> 17-inch posterior-anterior chest X-ray and the International Labor Office UICC/Cincinnati (ILO U/C) rating.</li> <li>- A nasal and skin examination.</li> </ul> </li> <li>• Additional examinations the licensed health care professional (LHCP) believes appropriate based on the employee's exposure to inorganic arsenic or respirator use.</li> </ul> |
| Periodic evaluations for employees less than <del>((forty-five))</del> 45 years old with less than <del>((ten))</del> 10 years of exposure above the action level (AL) | <ul style="list-style-type: none"> <li>• The same content as specified for initial evaluations repeated every <del>((twelve))</del> 12 months.</li> </ul>  |
| Periodic evaluations for employees:<br>• <del>((Forty-five))</del> 45 or older;<br><b>OR</b>   | <ul style="list-style-type: none"> <li>• The following content repeated every six months:                             <ul style="list-style-type: none"> <li>- A work history and medical history including:                                     <ul style="list-style-type: none"> <li>■ Smoking history.</li> </ul> </li> </ul> </li> </ul>  |

| When conducting:   | Include:  |
|--|---|
| <ul style="list-style-type: none"> <li>• With more than <del>((ten))</del> <u>10</u> years of exposure above the AL</li> </ul> | <ul style="list-style-type: none"> <li>■ The presence and degree of respiratory symptoms such as breathlessness, cough, sputum production, and wheezing.</li> <li>- A physical examination that includes a nasal and skin examination.</li> <li>- Additional examinations the LHCP believes appropriate based on the employee's exposure to inorganic arsenic or respirator use.</li> <li>• A physical examination, repeated every <del>((twelve))</del> <u>12</u> months, that obtains a <del>((fourteen))</del> <u>14</u> by <del>((seventeen))</del> <u>17</u>-inch posterior-anterior chest X-ray and the International Labor Office UICC/Cincinnati (ILO U/C) rating.</li> </ul> |

**RDS-6590.1**

AMENDATORY SECTION (Amending WSR 18-22-116, filed 11/6/18, effective 12/7/18)

**WAC 296-849-12030 Medical evaluations.**

**IMPORTANT:**

Medical evaluations conducted under this section will satisfy the medical evaluation requirement found in Respirators, chapter 296-842 WAC.

(1) You must provide the relevant medical follow-up specified in Tables 4 and 5 to any employee exposed to benzene during an emergency.

(2) You must make medical evaluations available to current employees who meet the following criteria:

(a) Potential or actual exposure to benzene at or above the action level (AL) for at least ~~((thirty))~~ 30 days in any ~~((twelve))~~ 12-month period.

(b) Potential or actual exposure to benzene at or above either permissible exposure limit (PEL) for at least ~~((ten))~~ 10 days in a ~~((twelve))~~ 12-month period.

(c) Past exposure to concentrations above 10 ppm benzene for at least ~~((thirty))~~ 30 days in a ~~((twelve))~~ 12-month period before November 11, 1988.

(d) Current or past work as a tire building machine operator using solvents containing more than 0.1% benzene during tire building operations.

(3) You must make medical evaluations available at no cost to employees; paying all costs, including travel costs and wages associated with any time spent outside of the employee's normal work hours;

(4) You must make medical evaluations available at reasonable times and places;

(5) You must make medical evaluations available by completing Steps 1 through 6 of the medical evaluation process for each employee covered.

**Notes:**

- Employees who wear respirators need to be medically evaluated to make sure the respirator will not harm them, before they are assigned work in areas requiring respirators. Employees who decline to receive medical examination and testing to monitor for health effects caused by benzene are not excluded from receiving a separate medical evaluation for a respirator use.
- If employers discourage participation in medical monitoring for health effects caused by benzene, or in any way interfere with an employee's decision to continue with this program, this interference may represent unlawful ((discrimination)) retaliation under RCW 49.17.160((; Discrimination against employee filing, instituting proceeding, or testifying prohibited—Procedure—Remedy)).

**Helpful tool:**

**Declination form for nonemergency related medical evaluations.**

- You may use this optional form to document employee decisions to decline participation in the medical evaluation process for exposure to benzene.

**Medical evaluation process:**

**Step 1:** Identify employees who qualify, as stated above, for medical evaluations.

**Step 2:** Make medical evaluations available for employees identified in Step 1 at the following times:

- Initially, before the employee starts a job or task assignment where benzene exposure will occur.
- Every ((twelve)) 12 months from the initial medical evaluation.
- Whenever the employee develops signs or symptoms commonly associated with toxic benzene exposure.
- After benzene exposure from an emergency.

**Step 3:** Select a licensed health care professional (LHCP) who will conduct or supervise medical evaluations and make sure:

- Individuals who conduct pulmonary function tests have completed a training course in spirometry sponsored by an appropriate governmental, academic, or professional institution, if they are not licensed physicians;

**AND**

- Your LHCP uses an accredited laboratory, such as one accredited by a nationally or state-recognized organization, to conduct laboratory tests.

**Step 4:** Make sure the LHCP receives all of the following before the medical evaluation is performed:

- A copy of this chapter.
- A description of the duties of the employee being evaluated and how these duties relate to benzene exposure.
- The anticipated or representative exposure monitoring results for the employee being evaluated.
- A description of the personal protective equipment (PPE) each employee being evaluated uses or will use.
- Information from previous employment-related examinations when this information is not available to the examining LHCP.
- Instructions that the written opinions the LHCP provides, be **limited to** the following information:
  - Specific records, findings, or diagnosis relevant to the employee's ability to work around benzene.
  - The occupationally relevant results from examinations and tests.
  - A statement about whether or not medical conditions were found that would increase the employee's risk for impairment from exposure to benzene.
  - Any recommended limitations for benzene exposure.
  - Whether or not the employee can use respirators and any recommended limitations for respirator or other PPE use.

- A statement that the employee has been informed of medical results and medical conditions caused by benzene exposure requiring further explanation or treatment.

**Step 5:** Provide the medical evaluation to the employee. Make sure it includes the content listed in Table 4, Content of medical evaluations, and Table 5, Medical follow-up requirements.

**Step 6:** Obtain the LHCP's written opinion for each employee's medical evaluation and give a copy to the employee within ((fifteen)) 15 days of the evaluation date.

- Make sure the written opinion is limited to the information specified for written opinions in Step 4.

**Note:** If the written opinion contains specific findings or diagnoses unrelated to occupational exposure, send it back and obtain a revised version without the additional information.

**IMPORTANT:**

These tables apply when conducting medical evaluations, including medical follow-up for employees exposed to benzene during emergencies.

**Table 4  
Content of Medical Evaluations**

| When conducting       | Include   |
|-----------------------|---|
| An initial evaluation | <ul style="list-style-type: none"> <li>• A detailed history including:                             <ul style="list-style-type: none"> <li>- Past work exposure to benzene or other hematological toxins;</li> <li>- Exposure to marrow toxins outside of current employment;</li> <li>- Exposure to ionizing radiation;</li> <li>- Family history of blood dyscrasias including hematological neoplasms;</li> <li>- History of blood dyscrasias including genetic hemoglobin abnormalities, bleeding abnormalities, and abnormal function of formed blood elements;</li> <li>- History of renal or liver dysfunction;</li> <li>- History of medications routinely taken.</li> </ul> </li> <li>• A complete physical examination:                             <ul style="list-style-type: none"> <li>- Include a pulmonary function test and specific evaluation of the cardiopulmonary system <b>if</b> the employee is required to use a respirator for at least ((thirty)) <u>30</u> days a year.</li> </ul> </li> <li>• A complete blood count including a:                             <ul style="list-style-type: none"> <li>- Leukocyte count with differential;</li> </ul> </li> </ul> |

| When conducting    | Include   |
|--------------------|---|
|                    | <ul style="list-style-type: none"> <li>- Quantitative thrombocyte count;</li> <li>- Hematocrit;</li> <li>- Hemoglobin;</li> <li>- Erythrocyte count and indices (MCV, MCH, MCHC).</li> <li>• Additional tests the examining LHCP determines are necessary based on alterations in the components of the blood or other signs that may be related to benzene exposure.</li> <li>• <b>Medical follow-up as required in Table 5.</b></li> </ul>  |
| Annual evaluations | <ul style="list-style-type: none"> <li>• An updated medical history covering:                             <ul style="list-style-type: none"> <li>- Any new exposure to potential marrow toxins;</li> <li>- Changes in medication use;</li> <li>- Any physical signs associated with blood disorders.</li> </ul> </li> <li>• A complete blood count including a:                             <ul style="list-style-type: none"> <li>- Leukocyte count with differential;</li> <li>- Quantitative thrombocyte count;</li> <li>- Hematocrit;</li> <li>- Hemoglobin;</li> <li>- Erythrocyte count and indices (MCV, MCH, MCHC).</li> </ul> </li> <li>• Additional tests that the examining LHCP determines necessary, based on alterations in the components of the blood or other signs that may be related to benzene exposure.</li> <li>• A pulmonary function test and specific evaluation of the cardiopulmonary system every three years if the employee is required to use a respirator for at least <del>((thirty))</del> <u>30</u> days a year.</li> <li>• <b>Medical follow-up as required in Table 5.</b></li> </ul> |

| When conducting   | Include   |
|---|---|
| Evaluations triggered by employee signs and symptoms commonly associated with the toxic effects of benzene exposure | <ul style="list-style-type: none"> <li>• An additional medical examination that addresses elements the examining LHCP considers appropriate.</li> </ul>   |
| Evaluations triggered by employee exposure during an emergency  | <ul style="list-style-type: none"> <li>• A urinary phenol test performed on the exposed employee's urine sample within <del>((seventy-two))</del> <u>72</u> hours of sample collection.</li> <li>- The urine sample must be collected at the end of the work shift associated with the emergency;</li> <li>- The urine specific gravity must be corrected to 1.024.</li> <li>• <b>Medical follow-up as required in Table 5.</b></li> </ul> <p><b>Reference:</b><br/>Employees who are not covered by medical evaluation requirements in this chapter may be covered by medical evaluation requirements in other chapters such as Emergency response, chapter 296-824 WAC.</p> |

**Table 5  
Medical Follow-up Requirements**

| If   | Then  |
|--|---|
| <ul style="list-style-type: none"> <li>• The <b>complete blood count test</b> result is normal.</li> </ul>   | <ul style="list-style-type: none"> <li>• No further evaluation is required.</li> </ul>  |
| <ul style="list-style-type: none"> <li>• The <b>complete blood count test</b> shows any of the following abnormal conditions:                             <ul style="list-style-type: none"> <li>- A leukocyte count less than 4,000 per mm<sup>3</sup> or an abnormal differential count;</li> </ul> </li> <li style="text-align: center;"><b>OR</b></li> <li>- A thrombocyte (platelet) count that is either:</li> </ul> | <ul style="list-style-type: none"> <li>• Repeat the complete blood count within two weeks:                             <ul style="list-style-type: none"> <li>- If the abnormal condition persists, refer the employee to a hematologist or an internist for follow-up medical examination and evaluation, unless the LHCP has good reason to believe it is unnecessary;</li> <li>- The hematologist or internist will determine what follow-up tests are necessary; and</li> </ul> </li> </ul> |

| If  | Then   |
|---|--|
| <ul style="list-style-type: none"> <li>■ More than 20% below the employee's most recent values;<br/><b>OR</b></li> <li>■ Outside the normal limit (95% C.I.) according to the laboratory;<br/><b>OR</b></li> <li>- The hematocrit or hemoglobin level is either of the following, and can not be explained by other medical reasons:</li> <li>■ Below the normal limit (outside the 95% C.I.), as determined by the laboratory for the particular geographical area;<br/><b>OR</b></li> <li>■ Persistently decreasing compared to the employee's preexposure levels.</li> </ul> | <ul style="list-style-type: none"> <li>• Follow the requirements found in Medical removal, WAC 296-849-12050.</li> </ul> |
| <p>Results from the <b>urinary phenol test</b> conducted during an emergency evaluation show phenol levels less than 75 mg/L.</p>   | <ul style="list-style-type: none"> <li>• No further evaluation is required.</li> </ul>                                   |

| If   | Then  |
|--|---|
| <p>Results from the <b>urinary phenol test</b> conducted during an emergency evaluation show phenol levels equal or more than 75 mg/L.</p> | <ul style="list-style-type: none"> <li>• Provide a complete blood count monthly for three months. Include a:                             <ul style="list-style-type: none"> <li>- Leukocyte count with differential;</li> <li>- Thrombocyte count;</li> <li>- Erythrocyte count; and</li> </ul> </li> <li>• If any of the abnormal conditions previously listed in this table for complete blood count results are found:                             <ul style="list-style-type: none"> <li>- Provide the employee with periodic examinations, if directed by the LHCP; and</li> <li>- <b>Refer the employee</b> to a hematologist or an internist for follow-up medical examination and evaluation unless the LHCP has good reason to believe a referral is unnecessary; and</li> <li>- Follow the requirements found in Medical removal, WAC 296-849-12050; and</li> <li>- The hematologist or internist will determine what follow-up tests are necessary.</li> </ul> </li> </ul> |

**RDS-6591.1**

AMENDATORY SECTION (Amending WSR 18-22-116, filed 11/6/18, effective 12/7/18)

**WAC 296-855-30030 Medical evaluations.**

**IMPORTANT:**

Medical evaluations meeting all requirements of this section will fulfill the medical evaluation requirement found in another chapter, Respirators, chapter 296-842 WAC.

Employees who wear respirators need to be medically evaluated to make sure the respirator will not harm them, before they are assigned work in areas requiring respirators.

(1) You must make medical evaluations available to current employees:

(a) Who have been, are, or may be exposed above the action level (AL) for at least ~~((thirty))~~ 30 days in any ~~((twelve))~~ 12-month period.

(b) Exposed to EtO during an emergency situation.

(c) Wanting medical advice on EtO exposure and reproductive health.

(d) Whenever the employee develops signs and symptoms commonly associated with ethylene oxide.

(e) At no cost including travel costs and wages associated with any time spent obtaining the medical evaluation.

(f) At reasonable times and places.

(2) You must complete Steps one through four of the medical evaluation process at the following times:

(a) Initially, when employees are assigned to work in an area where exposure monitoring results are, or will likely be, above the action level (AL) for at least ~~((thirty))~~ 30 days in a ~~((twelve))~~ 12-month period.

(b) Every ~~((twelve))~~ 12 months for employees exposed above the AL for at least ~~((thirty))~~ 30 days in the preceding year unless the examining physician determines that they should be provided more frequently.

(c) When employment with exposure ends, if the employee has not had an evaluation within the six-month period before exposure ends.

**Notes:**

1. Employees who decline to receive medical examination and testing to monitor for health effects caused by EtO are not excluded from receiving a separate medical evaluation for respirator use.
2. If employers discourage participation in medical monitoring for health effects caused by EtO, or in any way interfere with an employee's decision to continue with this program, this interference may represent unlawful ~~((discrimination))~~ retaliation under RCW 49.17.160(~~(7)~~ Discrimination against employee filing complaint, instituting proceedings, or testifying prohibited—Procedure—Remedy)).

**Medical evaluation process**

**Step one:** Select an appropriate licensed health care professional (LHCP) who will conduct or supervise examinations and procedures.

- If the LHCP is not a licensed physician, make sure individuals who conduct pulmonary function tests have completed a training course in spirometry sponsored by an appropriate governmental, academic, or professional institution.

**Step two:** Make sure the LHCP receives all of the following information before the medical evaluation is performed:

- A copy of:
  - This chapter.
  - The following information found in the General occupational health standards, chapter 296-62 WAC:
    - The Substance safety data sheet, WAC 296-62-07383(1) Appendix A.
    - The Substance technical guidelines, WAC 296-62-07385(2) Appendix B.
    - Medical surveillance guidelines, WAC 296-62-07387(3) Appendix C.

- A description of the duties of the employee being evaluated and how these duties relate to EtO exposure.
- The anticipated or representative exposure monitoring results for the employee being evaluated.
- A description of the personal protective equipment (PPE) and respirators each employee being evaluated uses or will use.
- Information from previous employment-related examinations when this information is not available to the examining LHCP.
- Instructions that the written opinions the LHCP provides you be limited to the following information:
  - Whether or not medical conditions were found that would increase the employee's risk for impairment from exposure to EtO.
  - Any recommended limitations for EtO exposure and use of respirators or other PPE.
  - A statement that the employee has been informed of medical results and medical conditions caused by EtO exposure requiring further examination or treatment.

**Step three:** Make medical evaluations available to the employee. Make sure they include the content listed in Table 3, Content of Medical Evaluations.

**Step four:** Obtain the LHCP's written opinion for the employee's medical evaluation and make sure the employee receives a copy within five business days after you receive the written opinion.

- Make sure the written opinion is limited to the information specified for written opinions in Step two.

**Note:** • If the written opinion contains specific findings or diagnoses unrelated to occupational exposure, send it back and obtain a revised version without the additional information.

**Table 3  
Content of Medical Evaluations**

| <b>When conducting:</b>          | <b>Include:</b>  |
|----------------------------------|--|
| An initial and annual evaluation | <ul style="list-style-type: none"> <li>• A work history and medical history that includes emphasis on:                             <ul style="list-style-type: none"> <li>- Pulmonary, hematological, neurological, reproductive systems;</li> </ul> </li> <li><b>AND</b></li> <li>- The eyes and skin.</li> <li>• A physical examination that includes emphasis on:                             <ul style="list-style-type: none"> <li>- Pulmonary, hematological, neurological, and reproductive systems;</li> </ul> </li> <li><b>AND</b></li> </ul> |

| When conducting:   | Include:  |
|--|---|
|  | <ul style="list-style-type: none"> <li>- The skin and eyes.</li> <li>• A complete blood count including a:                             <ul style="list-style-type: none"> <li>- White cell count with differential</li> <li>- Red cell count</li> <li>- Hematocrit</li> <li>- Hemoglobin.</li> </ul> </li> <li>• Additional examinations the licensed health care professional (LHCP) believes appropriate based on the employee's exposure to ethylene oxide (EtO) or respirator use.</li> <li>• Additional testing:                             <ul style="list-style-type: none"> <li>- Pregnancy test, and laboratory evaluation for fertility if requested by employee and approved by evaluating LHCP.</li> </ul> </li> </ul> |
| Evaluations due to termination of employment   | <ul style="list-style-type: none"> <li>• The same content as specified for initial and annual evaluations.</li> </ul>   |
| Evaluations due to reassignment to an area where EtO exposure is below the AL  | <ul style="list-style-type: none"> <li>• The same content as specified for initial and annual evaluations.</li> <li>• As determined by the LHCP.</li> </ul>   |
| Evaluations due to exposure during an emergency  | <ul style="list-style-type: none"> <li>• The same content as specified for initial and annual evaluations.</li> </ul>   |
| Evaluations triggered by employee signs and symptoms commonly associated with overexposure to EtO or a request for reproductive advice | <ul style="list-style-type: none"> <li>• The content of medical examinations and consultations will be determined by the examining LHCP.</li> <li>- Pregnancy test, and laboratory evaluation for fertility if requested by employee and approved by evaluating LHCP.</li> </ul>  |
| Evaluations determined necessary by LHCP for exposed employees   | <ul style="list-style-type: none"> <li>• The content of medical examinations and consultations will be determined by the examining LHCP.</li> </ul>   |

RDS-6592.1

AMENDATORY SECTION (Amending WSR 18-22-116, filed 11/6/18, effective 12/7/18)

**WAC 296-856-30020 Medical and emergency evaluations.**

**IMPORTANT:**

• Medical evaluations completed to meet the respirator use requirements of this section also need to meet the requirements found in a separate chapter, Respirators, medical evaluations, WAC 296-842-140.

(1) You must make medical evaluations available to current employees who:

(a) Are exposed to formaldehyde concentrations above the action level (AL) or short-term exposure limit (STEL).

(b) Are exposed to formaldehyde during an emergency situation.

(c) Develops signs and symptoms commonly associated with formaldehyde exposure.

(2) You must make medical examinations available to current employees as deemed necessary by the LHCP after reviewing the medical disease questionnaire for employees that are presently not required to wear a respirator.

(3) You must complete Steps 1 through 4 of the medical evaluation process at the following times:

(a) Initially, when employees are assigned to work in an area where exposure monitoring results are above the action level (AL) or above the STEL.

(b) At least every (~~twelve~~) 12 months from the initial medical evaluation for employees exposed to formaldehyde above the action level (AL) or the STEL.

(c) Whenever the employee develops signs and symptoms commonly associated with formaldehyde.

**Note:** Signs and symptoms are rarely associated with formaldehyde concentrations in air less than 0.1 parts per million (ppm), and in materials at concentration levels less than 0.1 percent.

(4) You must make medical evaluations available:

(a) At no cost to employees, including travel costs and wages associated with any time spent obtaining the medical evaluation.

(b) At reasonable times and places.

**Notes:**

- Employees who decline to receive a medical evaluation to monitor for health effects caused by formaldehyde are not excluded from receiving a separate medical evaluation for respirator use.
- If employers discourage participation in medical monitoring for health effects caused by formaldehyde, or in any way interferes with an employee's decision to continue with this program, this interference may represent unlawful (~~discrimination~~) retaliation under RCW 49.17.160(~~(Discrimination against employee filing complaint, instituting proceedings, or testifying prohibited—Procedure—Remedy)~~).

**Medical evaluation process:**

**Step 1:** Select a licensed health care professional (LHCP) who will conduct or supervise examinations and procedures.

- If the LHCP is not a licensed physician, make sure individuals who conduct pulmonary function tests, have completed a training course in spirometry, sponsored by an appropriate governmental, academic, or professional institution.

**Note:** The LHCP must be a licensed physician or supervised by a physician.

**Step 2:** Make sure the LHCP receives all of the following information before the medical evaluation is performed:

- A copy of this chapter.

- The helpful tools: *Substance Technical Guideline for Formalin, Medical Surveillance, and Medical Disease Questionnaire*.

- A description of the duties of the employee being evaluated and how these duties relate to formaldehyde exposure.

- The anticipated or representative exposure monitoring results for the employee being evaluated.

- A description of the personal protective equipment (PPE) and respiratory protection each employee being evaluated uses or will use.

- Information in your possession from previous employment-related examinations when this information is not available to the examining LHCP.

- A description of the emergency and the exposure, when an examination is provided due to an exposure received during an emergency.

- Instructions that the written opinions the LHCP provides to you, does **not** include any diagnosis or other personal medical information, **and** is limited to the following information:

■ The LHCP's opinion about whether or not medical conditions were found that would increase the employee's risk for impairment from exposure to formaldehyde.

■ Any recommended limitations for formaldehyde exposure and use of respirators or other PPE.

■ A statement that the employee has been informed of medical results and medical conditions caused by formaldehyde exposure requiring further examination or treatment.

**Step 3:** Make a medical evaluation available to the employee. Make sure it includes the content listed in Table 3, Content of Medical Evaluations.

**Step 4:** Obtain the LHCP's written opinion for the employee's medical evaluation and make sure the employee receives a copy within five business days after you receive the written opinion.

- Make sure the written opinion is limited to the information specified for written opinions in Step 2.

**Note:** If the written opinion contains specific findings or diagnoses unrelated to occupational exposure, send it back and obtain a revised version without the additional information.

**Table 3  
Content of Medical Evaluations**

| <b>When conducting an</b>                  | <b>Include</b>   |
|--|--|
| Initial<br><br>OR<br><br>Annual evaluation | <ul style="list-style-type: none"> <li>• A medical disease questionnaire that provides a work and medical history with emphasis on:                             <ul style="list-style-type: none"> <li>- Upper or lower respiratory problems</li> <li>- Allergic skin conditions or dermatitis</li> <li>- Hyper reactive airway diseases</li> <li>- Eyes, nose, and throat irritation</li> </ul> </li> <li>• Physical examinations deemed necessary by the LHCP, that include at a minimum:                             <ul style="list-style-type: none"> <li>- Examinations with emphasis on evidence of irritation or sensitization of skin, eyes, and respiratory systems, and shortness of breath</li> <li>- Counseling, provided by the LHCP to the employee as part of the medical examination if the LHCP determines that the employee has a medical condition that may be aggravated by formaldehyde exposure</li> </ul> </li> <li>• Pulmonary function tests for respirator users, that include at a minimum:</li> </ul> |

| <b>When conducting an</b>                 | <b>Include</b>   |
|---|--|
|   | <ul style="list-style-type: none"> <li>- Forced vital capacity (FVC)</li> <li>- Forced expiratory volume in one second (FEV1)</li> <li>- Forced expiratory flow (FEF)</li> </ul>   |
| Emergency exposure evaluation             | <ul style="list-style-type: none"> <li>• A medical examination that includes a work history with emphasis on evidence of upper or lower respiratory problems, allergic conditions, skin reaction or hypersensitivity, and any evidence of eye, nose, or throat irritation</li> <li>• Additional examinations the licensed health care professional (LHCP) believes appropriate, based on the employee's exposure to formaldehyde</li> </ul>  |
| Evaluation of reported signs and symptoms | <ul style="list-style-type: none"> <li>• A medical disease questionnaire that provides a work and medical history with emphasis on:                             <ul style="list-style-type: none"> <li>- Upper or lower respiratory problems</li> <li>- Allergic skin conditions or dermatitis</li> <li>- Hyper reactive airway diseases</li> <li>- Eyes, nose, and throat irritation</li> </ul> </li> <li>• A physical examination if considered necessary by the LHCP that includes at a minimum:                             <ul style="list-style-type: none"> <li>- Examinations with emphasis on evidence of irritation or sensitization of skin, eyes, respiratory systems, and shortness of breath</li> <li>- Counseling if the LHCP determines that the employee has a medical condition that may be aggravated or caused by formaldehyde exposure</li> </ul> </li> </ul> |