



RULE-MAKING ORDER EMERGENCY RULE ONLY

CR-103E (December 2017) (Implements RCW 34.05.350 and 34.05.360)

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STATE OF WASHINGTON
FILED

DATE: June 01, 2022

TIME: 11:06 AM

WSR 22-12-095

Agency: Department of Labor & Industries (L&I)

Effective date of rule:

Emergency Rules

- Immediately upon filing.
 Later (specify) June 15, 2022

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

- Yes No If Yes, explain:

Purpose: L&I is adopting emergency rules to amend the current Outdoor Heat Exposure rules under chapter 296-62 WAC, General Occupational Health Standards, and chapter 296-307 WAC, Safety Standards for Agriculture, to protect outdoor workers from heat related illnesses due to outdoor heat exposure.

When the temperatures are at or exceed one of the three trigger temperatures in the rule, employers must:

- Have and maintain one or more areas with shade at all times while employees are present sufficient to accommodate the number of employees on a meal or rest period so they can sit in a normal posture fully in the shade. The shade shall be located as close as practicable to the areas where employees are working and not adjoining a radiant heat source. In lieu of shade, employers may use other sufficient means to reduce body temperature provided by the employer under the existing requirement to have sufficient means to reduce body temperature when employees show symptoms of heat-related illness.

When the temperatures are at or exceed 89 degrees Fahrenheit, employers must:

- Ensure that employees take mandatory cool-down rest periods of at least 10 minutes every two hours. The mandatory cool-down rest period may be provided concurrently with any other meal or rest period.
- Ensure that effective communication by voice, observation, or electronic means is maintained so that employees at the work site and their supervisor can contact each other when necessary. An electronic device, such as a cellular phone or text messaging device, may be used for this purpose only if reception in the area is reliable.
- Closely observe employees for signs and symptoms of heat-related illness by: regular communication with employees such as by radio or cellular phone; a mandatory buddy system; or other effective means of observation.

In addition, the emergency rules:

- Specify that employees must be allowed and encouraged to take a preventative cool-down rest in the shade or using another means provided by the employer to reduce body temperature when they feel the need to do so to protect themselves from overheating.
- Update the training requirements for employers and supervisors to include preventative cool-down rest periods and mandatory cool-down rest periods under the high temperature procedures.
- Define the term "shade".
- Further define the term "acclimatization" and encourage acclimatization procedures for all employees.
- Clarify that environmental factors for heat-related illness include clothing worn by employees.
- Clarify that drinking water be suitably cool in temperature.
- Clarify that time during preventative cool-down rest and mandatory cool-down rest periods must be paid unless taken during an unpaid meal break.

Citation of rules affected by this order:

New: WAC 296-62-09535, 296-62-09545, 296-62-09555, 296-307-09735, 296-307-09745, and 296-307-09755

Repealed:

Amended: WAC 296-62-09510, 296-62-09520, 296-62-09530, 296-62-09540, 296-62-09560, 296-307-09710, 296-307-09720, 296-307-09730, 296-307-09740 and 296-307-09760.

Suspended:

Statutory authority for adoption: RCW 49.17.010, RCW 49.17.040, 49.17.050, 49.17.060

Other authority:

EMERGENCY RULE

Under RCW 34.05.350 the agency for good cause finds:

- That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
- That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding: RCW 49.17.050(4) directs L&I to “provide for the promulgation of health and safety standards and the control of conditions in all work places concerning...harmful physical agents which shall set a standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity L&I to adopt feasible and necessary rules to protect the health and lives of Washington workers.” Heat-related illness ranges from relatively harmless conditions such as heat edema (swelling) and heat cramps to more serious illness such as heat syncope (fainting), rhabdomyolysis (breakdown of damaged muscles which can cause kidney damage) and heat exhaustion. The most serious and often fatal form of heat-related illness is heat stroke. However, heat exhaustion can make workers more susceptible to falls, equipment-related injuries, and other on-the-job safety hazards.

During the significant and unprecedented 2021 heat wave, L&I received a petition requesting the department adopt emergency rules to address preventative measures when there is extreme high heat. The heat wave highlighted the dangers of extreme heat, and made it clear that this was an urgent issue as the current rules only require employers to respond once a worker shows symptoms of heat-related illness, but do not affirmatively address preventative measures to avoid overheating other than access to drinking water. The hazards of heat are well documented, as is the increase in risk associated with the increase in temperature. L&I accepted the petition for emergency rules to address requirements for employers to engage in key preventative steps when the temperature increases to higher levels of risk. Emergency rules were adopted on July 9, 2021 (WSR 21-15-017) with the primary focus on extreme high heat exposures at or above 100 degrees. In August 2021 (WSR 21-17-135), L&I initiated the permanent rulemaking process in recognition of the need to reexamine the current rules, especially in light of information suggesting the occurrence of heat illnesses below the current trigger temperatures and the increasing temperatures experienced in our state since the rule was first established.

As part of the permanent rule development, L&I reviewed peer reviewed research to understand the current best evidence on heat exposures and hazard, as well as information on heat-related illness, including Washington workers’ compensation claims. Since the initial adoption of the Outdoor Heat Exposure rules in 2008, research has evaluated the relationship between occupational heat exposure and: traumatic injuries (example: fall from ladder); acute kidney injury; absorption of chemicals; pregnancy/birth outcomes; and mental health outcomes. Review of research on workers’ compensation claims showed 918 confirmed claims between 2006 and 2017, with 654 claims accepted. From 2018 through 2021, there were 203 accepted claims, with a spike in claims associated with the 2021 heat dome. Over half of the accepted workers compensation accepted claims occurred at temperatures at or above 89 degrees Fahrenheit, with a spike following the 2021 heat wave. The workers compensation data also shows that years with higher temperatures compared to the historical norms tend to have greater number of claims.

Given the research on underreporting of claims, the burden of heat exposure is likely higher. Underreporting of heat-related illness claims is also impacted due to high percentages of vulnerable workers in industries with occupational heat exposure such as agriculture and construction. Vulnerable work characteristics such as race, ethnicity, immigration status, language, class, or contingent work or other insecure or precarious employment, can lead to underreporting by workers due to a lack of understanding of their rights and fear of retaliation and discrimination.

While work on the development of the permanent rules is still ongoing, L&I determined emergency rules are needed to ensure adequate protections are in place to address gaps in the current rules to more adequately prevent heat-related illness. In addition, L&I was again petitioned to adopt emergency rules for 2022 while the permanent rulemaking was ongoing to include more preventative requirements to reduce the risk of heat-related illness.

The current rules, in effect annually from May 1 through September, apply when the temperature is at or above 89 degrees Fahrenheit with lower temperature thresholds for work in double-layer clothes or non-breathing clothes. The current Outdoor Heat Exposure rules require employers with employees working outdoors to have a written outdoor heat exposure safety program, ensure sufficient quantity of drinking water is readily accessible to employees at all times, and that employees have the opportunity to drink at least one quart of drinking water per hour, and train workers and supervisors on heat-related illness. The current rules, in effect annually from May 1 through September, apply when the temperature is at or above 89 degrees Fahrenheit with lower temperature thresholds for work in double-layer clothes or non-breathing clothes. The rules also require employees showing signs or demonstrating symptoms of heat-related illness be relieved from duty, provided with a sufficient means to reduce body temperature and must be monitored to determine whether medical attention is necessary. L&I advises that sufficient means to reduce body temperature includes shade, misting stations, or temperature controlled environments such as air-conditioned trailers. However, there are not specific requirements as to how much shade or other cooling methods are required.

The emergency rules now require access to shade or the other cooling methods sufficient to accommodate all workers on a meal or rest break at any of the three trigger temperatures under the rule. At any trigger temperature, employees must be allowed and encouraged to take a preventative cool-down rest in the shade or using another means provided by the employer to reduce body temperature when they feel the need to do so to protect themselves from overheating. At the trigger temperature of 89 degrees, the emergency rules includes requirements for: paid mandatory cool-down rest periods of at least 10 minutes every two hours and effective communication by voice, observation, or electronic means. The emergency rules also requires employers closely observe employees for signs and symptoms of heat-related illness. The current rules requires employers respond to workers showing signs and symptoms of heat-related illness and this requirement provides clarity on the expectation that employers affirmatively monitor employees to identify those showing signs and symptoms. These provisions aimed at preventing overheating will help to prevent heat-related illness.

In addition, the current rules require drinking water be "suitable to drink" and L&I has long interpreted that water suitable to drink does not include water so hot that employees do not wish to drink it.

As such, L&I has determined the requirements of the emergency rules are both feasible and necessary to protect workers. Given the heat wave and increase temperatures in the summer of 2021 due to climate change, immediate adoption of emergency rules is necessary for the preservation of the public health and safety and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest. Efforts to develop the permanent rules will continue in order to provide permanent rules by the summer of 2023.

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	___	Amended	___	Repealed	___
Federal rules or standards:	New	___	Amended	___	Repealed	___
Recently enacted state statutes:	New	___	Amended	___	Repealed	___

The number of sections adopted at the request of a nongovernmental entity:

New	<u>6</u>	Amended	<u>10</u>	Repealed	___
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The number of sections adopted on the agency's own initiative:

New	___	Amended	___	Repealed	___
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	___	Amended	___	Repealed	___
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The number of sections adopted using:

Negotiated rule making:	New	___	Amended	___	Repealed	___
Pilot rule making:	New	___	Amended	___	Repealed	___
Other alternative rule making:	New	___	Amended	___	Repealed	___

Date Adopted: June 1, 2022

Name: Joel Sacks

Title: Director

Signature:

