



# RULE-MAKING ORDER EMERGENCY RULE ONLY

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

CODE REVISER USE ONLY

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STATE OF WASHINGTON  
FILED

DATE: August 04, 2022

TIME: 8:05 AM

WSR 22-17-009

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

**Effective date of rule:**

**Emergency Rules**

- Immediately upon filing.
- Later (specify) \_\_\_\_\_

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

- Yes
  - No
- If Yes, explain:

**Purpose:** The Department of Labor & Industries (L&I) continues to respond to 2021 legislation establishing employer requirements during a public health emergency for infectious and contagious diseases. The employer requirements are under Substitute Senate Bill 5254 (SSB 5254), codified as RCW 49.17.485, regarding voluntary use of personal protective equipment (PPE) and Engrossed Substitute Senate Bill 5115 (ESSB 5115), also known as the Health Emergency Labor Standards Act (HELSA) and codified as RCWs 49.17.062 and 49.17.064.

The emergency rule maintains requirements under new sections of chapter 296-62 WAC for when there is a public health emergency for an infectious or contagious disease and as such, the requirements are applicable to COVID-19.

Under the emergency rule:

- \* Employers with more than 50 covered employees at a workplace or worksite are required to report infectious or contagious disease outbreaks to L&I;
- \* Employees are not required to disclose any medical condition or diagnosis to their employer;
- \* Several definitions were added and/or simplified for implementation;
- \* Non-healthcare employers, are required to notify employees, as well as their union representative (if any), in writing of potential exposures within one business day;
- \* Employees and contractors must be permitted to voluntarily use personal protective equipment.

In addition, this emergency rule now applies notification requirements to health care facilities as defined in RCW 9A.50.010.

\* Employers of health care facilities must notify any employee with known or suspected high-risk exposure to the infectious or contagious disease within 24 hours. With employee authorization, notification must also be sent to the employee's union representative (if any) within 24 hours.

- \* Period of transmission/isolation requirements have been simplified;
- \* Requirements for how employees are notified of potential high risk exposure are clarified.

A CR-101 Preproposal Statement of Inquiry was filed on May 13, 2021 (WSR 21-11-05) and initiated the permanent rulemaking process for rules related to infectious diseases, which will include requirements for outbreaks subject to a public health emergency under a national or state declared state of emergency. This emergency rule supersedes WSR 22-09-003 filed on April 6, 2022.

**Citation of rules affected by this order:**

New: WAC 296-62-601, 602, 603, 604, 605, 606, 607, 608 and 609  
 Repealed:  
 Amended:  
 Suspended:

**Statutory authority for adoption:** RCW 49.17.010, RCW 49.17.040, RCW 49.17.050 and RCW 49.17.60

**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 49.17.485 became effective April 26, 2021 and RCWs 49.17.062 and 49.17.064 became effective on May 11, 2021 requiring L&I to take action to implement both SSB 5254 and ESSB 5115. On February 29, 2021, Governor Inslee proclaimed a statewide state of emergency to respond to the continuing spread of COVID-19 which resulted in a global pandemic, Proclamation 20-05. Subsequent proclamations have been issued related to the pandemic response, including those with restrictions on business activities under Proclamation 20-25, et. Seq., initially entitled "Stay Home, Stay Healthy" and the most recent amendment titled "Washington Ready" under Proclamation 20-25.19. Washington state is still in the midst of a public health state of emergency battling the COVID-19 pandemic. In addition, President Biden continued the national emergency concerning the COVID-19 pandemic with notice published in the Federal Register on February 23, 2022 (87 FR 10589).

These emergency rules are necessary to further respond to and diminish the spread of COVID-19, alert public officials to workers exposure to COVID-19 to allow for adequate responses to outbreaks, and to reduce the number of outbreaks, keeping Washington workers safe.

**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	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Federal rules or standards:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Recently enacted state statutes:	New	9	Amended	<u>0</u>	Repealed	<u>0</u>

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

New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
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**The number of sections adopted on the agency's own initiative:**

New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
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**The number of sections adopted in order to clarify, streamline, or reform agency procedures:**

New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
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**The number of sections adopted using:**

Negotiated rule making:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Pilot rule making:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Other alternative rule making:	New	9	Amended	<u>0</u>	Repealed	<u>0</u>

**Date Adopted:** August 4, 2022

**Name:** Joel Sacks

**Title:** Director

**Signature:**

