



RULE-MAKING ORDER PERMANENT RULE ONLY

CR-103P (December 2017) (Implements RCW 34.05.360)

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: June 27, 2023

TIME: 8:25 AM

WSR 23-14-042

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

Effective date of rule:

Permanent Rules

- 31 days after filing.
- Other (specify) July 17, 2023 (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

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

- Yes No If Yes, explain: This rule will become effective July 17, 2023 to ensure outdoor workers are adequately protected from the hazards associated with exposure to high ambient outdoor temperatures, and is necessary for the preservation of public health, safety, and welfare.

Purpose: On June 28, 2021, L&I received a petition for rulemaking requesting changes to L&I’s rules to include more specific requirements to prevent heat-related illness and injury. The petition for rulemaking was accepted recognizing 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 in 2008.

L&I filed emergency rules related to outdoor ambient heat in the summer of 2021 and 2022 to protect outdoor workers from heat-related illnesses due to outdoor heat exposure. The current rules do not affirmatively address preventative measures to avoid overheating other than access to drinking water. The hazards of heat are well documented and research suggests the occurrence of heat-related illnesses below the current trigger temperatures. Research also documents increased temperatures in Washington since the rule was first established.

WAC 296-62-09510 and 296-307-09710 Outdoor heat exposure. Sets scope of the rule to apply to all outdoor work environments year-around rather than May through September. Removed redundant WAC citations. Scope no longer supplements or applies to chapter 296-305 WAC, Safety standards for firefighters.

WAC 296-62-09520 and 296-307-09720 Definitions. All definitions were numerated to aid in cross-referencing.

- o Broadened definition of “acclimatization” to include period of time required to become acclimatized and when acclimatization can be lost.
- o Added definition for “buddy system”.
- o Removed definition for “double-layer woven clothing” as it is no longer a key in trigger temperature table.
- o Clarified definition of “drinking water” to be suitably cool in temperature.
- o Clarified definition of “engineering controls” to be devices used to reduce heat exposure and aid in cooling, not including wearable items.
- o Removed definition for “Environmental factors for heat-related illness”.
- o Removed sentence in “Outdoor environment” definition regarding construction activity that may be contradictory.
- o Added definition for “Risk factors for heat-related illness”.
- o Added definition for “Shade”.
- o In “Vapor barrier clothing” definition replaced “nonbreathing” with “nonbreathable”.

WAC 296-62-09530 and 296-307-09730 Employer and employee responsibility. Adds prescriptive requirements for the Outdoor Heat Exposure Safety Plan. Adds requirement for preventative cool-down rest periods when employees begin to feel overheated. Adds Table 1 with trigger temperatures of 52° and 80° Fahrenheit depending on clothing worn and PPE used. Specifies 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. Finally, adds employee requirement to take preventative cool-down rest periods when they begin to feel overheated.

WAC 296-62-09535 and 296-307-09735 Access to shade. (NEW) Adds requirement to provide one or more areas of shade for employees that is large enough to accommodate all employees during a meal or rest period that is not otherwise required

to be compensated. The provided shade must also be as close as practicable to areas where employees are working. The rule also provides alternatives employers may use in lieu of shade.

WAC 296-62-09540 and 296-307-09740 Drinking water. Adds clarification that drinking water must be suitably cool in temperature which has been standard under DOSH Directive 10.15.

WAC 296-62-09545 and 296-307-09745 Acclimatization. (NEW) Adds requirement for observation for up to 14 days for newly assigned employees to ensure employees become accustomed to working at various temperatures. Adds definition of "heat wave" and adds requirement for close observation during the heat wave. Provides a "Note" that employers may consider additional acclimatization procedures recommended by NIOSH.

WAC 296-62-09547 and 296-307-09747 High heat procedures. (NEW) Adds requirement for rest periods when temperatures exceed 90 degrees or 100 degrees Fahrenheit according to new Table 2. Adds requirement to closely observe employees for signs and symptoms of heat-related illness at and above 90 degrees Fahrenheit. Provides exclusion for emergency response operations from mandatory cool-down rest periods in Table 2 when restoring or maintaining critical infrastructure at risk.

WAC 296-62-09550 and 296-307-09750 Responding to signs and symptoms of heat-related illness. Adds requirement for employers to ensure there is means for effective communication between employees and supervisors.

WAC 296-62-09560 and 296-307-09760 Information and training. Adds requirement for training to be effective and performed prior to outdoor work when occupational exposure to heat might occur. Adds defined environmental factors and other work conditions that may contribute to heat-related illness. Adds physical fitness, previous heat-related illness and pregnancy as conditions that may contribute to heat-related illness. Removed caffeine use and nicotine use as contributors to heat-related illness.

Adds the importance of acclimatization and considerations for cool-down rest periods, gradual increase of work in the heat and importance that employees are unable to build tolerance to working in the heat. Adds the importance of taking preventative cool-down rest periods, and mandatory rest periods when temperatures exceed 90 degrees Fahrenheit. Adds training requirement for procedures for shade or other means to reduce body temperature, and employer's procedures for close observation of employees. Finally, adds the importance of considering the use of engineering or administrative controls to reduce exposure.

Citation of rules affected by this order:

New: WAC 296-62-09535, 296-62-09545, 296-62-09547, 296-307-09735, 296-307-09745, and 296-307-09747

Repealed:

Amended: WAC 296-62-09510, 296-62-09520, 296-62-09530, 296-62-09540, 296-62-09550, 296-62-09560, 296-307-09710, 296-307-09720, 296-307-09730, 296-307-09740, 296-307-09750, and 296-307-09760

Suspended:

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

Other authority: Chapter 49.17 RCW

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 23-07-123 on March 21, 2023 (date).

Describe any changes other than editing from proposed to adopted version:

WAC 296-62-09510 and 296-307-09710 Outdoor heat exposure. Scope no longer supplements or applies to chapter 296-305 WAC, Safety standards for firefighters.

WAC 296-62-09520 and 296-307-09720 Definitions. Definition of "Engineering controls" now clarifies this does not include wearable items.

WAC 296-62-09530 and 296-307-09730 Employer and employee responsibility. Clarified the preventative cool-down rest period must be paid unless taken during a meal period that is not otherwise required to be compensated.

WAC 296-62-09547 and 296-307-09747 High heat procedures. Provides an exemption for emergency response operations from mandatory cool-down rest periods in Table 2 when aiding firefighting, protecting public health and safety, or restoring or maintaining critical infrastructure at risk. Employees under this exemption must still be permitted to take preventative cool-down rest periods when they think they need to. Clarified the mandatory cool-down rest period must be paid unless taken during a meal period that is not otherwise required to be compensated.

WAC 296-62-09560 and 296-307-09760 Information and training. Added training must include appropriate first aid as well as emergency response procedures.

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name: Carmyn Shute, Administrative Regulations Analyst

Address: Department of Labor & Industries

Division of Occupational Safety and Health
PO Box 44620
Olympia, WA 98504-4620

Phone: 360-870-4525

Fax: 360-902-5619

TTY:

Email: Carmyn.Shute@Lni.wa.gov

Web site: <https://lni.wa.gov/safety-health/safety-rules/rulemaking-stakeholder-information/ambient-heat-exposure-rulemaking>

Other:

**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	___	Amended	___	Repealed	___
-----	-----	---------	-----	----------	-----

The number of sections adopted on the agency's own initiative:

New	<u>6</u>	Amended	<u>12</u>	Repealed	___
-----	----------	---------	-----------	----------	-----

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

New	___	Amended	___	Repealed	___
-----	-----	---------	-----	----------	-----

The number of sections adopted using:

Negotiated rule making:	New	<u>6</u>	Amended	<u>12</u>	Repealed	___
Pilot rule making:	New	___	Amended	___	Repealed	___
Other alternative rule making:	New	___	Amended	___	Repealed	___

Date Adopted: June 27, 2023

Name: Joel Sacks

Title: Director

Signature:

