

DOSH DIRECTIVE

Department of Labor and Industries
Division of Occupational Safety and Health
Keep Washington Safe and Working

5.98

Bathroom and Toilet Facility Access

Date: November 20, 2019

I. Purpose

This Directive provides DOSH enforcement guidance, and clarifies that employers are required to make toilet facilities available, so that employees can use them when needed.

II. Scope and Application

This Directive applies to all DOSH enforcement and consultation activities involving the enforcement of WAC 296-800-230 and other referenced industry specific sanitation standards. It does not create employer requirements not found in the applicable standards.

This Directive has been reviewed for applicability, and remains effective with a new issue date of November 20, 2019.

III. References

- WAC 296-800-23020, Provide bathrooms for your employees (Core Rules)
- WAC 296-155-140, Sanitation, (Construction Work)
- WAC 296-307-09518, What toilet facilities must an employer provide? (Agriculture)
- WAC 296-307-240, Sanitation for fixed, indoor workplaces (Agriculture)
- WAC 296-115-050(9), Toilet facilities and drinking water (Charter Boats)
- WAC 296-36-160, Personnel facilities (Compressed Air Work)
- OSHA Interpretation of 29 CFR 1910.141(c)(1)(i): Toilet Facilities, 4/6/1998

IV. Background

Sanitation standards are intended to ensure that employers provide employees with available toilet facilities, so that employees will not suffer the adverse health effects that can result if appropriate facilities are not available when needed.

Medical studies have identified adverse health effects that may result if employees are prevented from using the bathroom, or if toilets are not available when needed. The hazards can include urinary tract infections (UTIs), bladder obstruction and, in rare situations, kidney damage. Health problems, including constipation, abdominal pain, hemorrhoids, and intestinal tract inflammation can result if individuals delay defecation.

V. Definitions

- **Bathroom** means a room maintained within or on the premises of any place of employment, containing toilets that flush for use by employees.
- **Toilet** means a fixed or portable facility designed for the purpose of adequate collection and containment of both defecation and urination. "Toilet" includes biological, chemical, flush, and combustion toilets, or sanitary outhouses.

VI. Application Guidance

1. Sanitation standards require that bathrooms or toilet facilities be provided in every workplace. CSHO's shall assess that each workplace has the required number of toilets per number and gender of employees, and that all other applicable conditions (e.g. the provision of toilet paper) are met. Whenever possible, the CSHO shall inspect bathrooms and toilet facilities and obtain photographic documentation of violations.
2. The CSHO must evaluate whether the requisite number of toilets are available in accordance with the applicable standard.

The employer is responsible for providing bathrooms or toilet facilities to employees. The most basic meaning of *provide* is *to supply or make available (something wanted or needed)*, according to Webster's New World College Dictionary, Fifth Edition (2018). Toilets that employees are not allowed to use for extended periods are not considered to be "available" to those employees.

In situations where fixed workplaces do not contain bathroom or toilet facilities, the provision requirement may be met by providing access to facilities in an adjoining building, as long as employees have unobstructed free access to the facilities.

3. The employer must not impose unreasonable restrictions on employee use of bathrooms or toilet facilities.

DOSH standards require employers to provide reasonable access to bathrooms and toilet facilities. In most work settings this means that the employer may not impose unreasonable restrictions on accessing bathrooms or toilet facilities, including time use restrictions. It is recognized that many work situations do not allow for immediate use of bathrooms and toilet facilities. In these situations the employer must have procedures in place (e.g., providing a temporary replacement) to provide access within a reasonable time frame.

CSHO's must evaluate the nature of any restriction, including the length of time that employees are required to delay bathroom use, and the employer's explanation for the restriction. In addition, the investigation should examine whether restrictions are general policy or arise only in particular circumstances or with particular supervisors, whether the employer policy recognizes individual medical needs, whether employees have reported adverse health effects, and the frequency with which employees are denied permission to use the facilities.

4. Bathroom facilities are required to be maintained in a clean and sanitary condition. Failure to do so may result in transmission of infectious diseases, and/or cause employees to avoid using the facilities.

It is possible that a CSHO may inspect a bathroom or toilet facility just prior to scheduled maintenance or after an incident that results in soilage, lack of toilet paper or a mechanism to dry hands, or plumbing difficulties.

The CSHO must:

- Evaluate the employer's maintenance schedule and documentation of maintenance.
 - Interview employees to determine whether toilet facilities are being routinely maintained in a clean and functioning condition.
5. The General Industry and Construction standards provide exemptions for mobile crews. The standards exempt employers from providing fixed bathrooms or toilet facilities as long as transportation is immediately available to bathrooms that meet the requirements of the standards. Clear access restrictions (e.g. prohibition from using a company vehicle or bathroom) shall be cited.

The CSHO must evaluate whether:

- The employer has informed employees of their right to access nearby facilities
 - Transportation is made available
 - Access is unreasonably hindered
6. The CSHO must make a referral to the L&I Employment Standards Program in instances where employers interfere with employees' required break and meal times.

VII. Citation Policy

1. Employee complaints of restrictions on bathroom or toilet facility use should be evaluated to determine whether the restrictions are reasonable. Careful consideration must be given to the nature of the restriction, including the length of time that employees are required to delay bathroom use, and the employer's explanation for the restriction. For example, some retail establishments require key access to bathrooms in order to control public use. As long as this policy does not hinder employee access it would not be considered unreasonable.

The CSHO must evaluate whether:

- Restrictions are general policy or arise only in particular circumstances or with particular supervisors
- The employer's policy recognizes individual medical needs
- Employee reports of adverse health effects caused by delayed bathroom access, are due to a single incident for valid work issues, or based on the employers system (formal or informal, overt or covert).

- 2. Lack of the required number and installation of toilets as described under WAC 296-800-23020(1) must be cited as general, unless deficiencies are causing unreasonable delays in employee access, then cite as serious.

Sample Alleged Violation Description (AVD) Language: *The employer did not provide the appropriate number of toilets as described under WAC 296-800-23020(1). [DESCRIBE DEFICIENCY, E.G. TOILETS AVAILABLE FOR NUMBER AND/OR GENDER OF EMPLOYEES]. The employer must identify additional bathroom facilities that employees may access if necessary.*

- 3. Denial or restriction (rigid use times, e.g. only during scheduled breaks) of bathroom or toilet facility use shall be cited as serious.

Sample Alleged Violation Description (AVD) Language: *WAC 296-800-23020 requires employers to provide bathrooms for employee use. The employer did not allow employees to use bathroom facilities when needed to relieve themselves. [DESCRIBE THE NATURE OF RESTRICTION]. Employees could suffer adverse health effects or injuries if they are prevented from using the toilet or if the toilets are not available when needed.*

- 4. Maintenance and cleanliness deficiencies (including maintain facilities in working order) required under WAC 296-800-23020 (2), (3), & (4) shall be cited as general, unless these are repeatedly noted or long standing hazards (e.g. employees have notified the employer on more than one occasion and no actions were taken to correct the hazards). If long standing deficiencies can be documented, then cite as serious.

Sample Alleged Violation Description (AVD) Language: *WAC 296-800-23020(3) requires employers to make sure that bathrooms are maintained in a clean and sanitary condition. The employer did not provide clean and sanitary bathroom facilities. [DESCRIBE CONDITIONS]. Not maintaining bathroom facilities in clean and sanitary conditions has resulted in employees delaying relieving themselves until they can access appropriate facilities outside of the workplace.*

VIII. Point of Contact

If DOSH staff have questions or need additional guidance or interpretive assistance, they are encouraged to contact DOSH Technical Services.

IX. Review and Cancellation

DOSH will review this Directive within two years from the issue date, and it will remain effective until superseded or canceled.

Approved: 
 Anne F. Soiza, L&I Assistant Director
 Division of Occupational Safety and Health