

CONCISE EXPLANATORY STATEMENT

Prevailing Wage Housekeeping Amendments

WAC 296-127-010(9), Definitions for chapter 296-127 WAC

WAC 296-127-140, Investigation of complaint

WAC 296-127-160, Appeal of notice of violation

WAC 296-127-320, Payroll

Public Hearing: August 15, 2024

Adoption: October 17, 2024

Effective: November 17, 2024

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I. Purpose of Rulemaking

The purpose of this rulemaking is to amend three rule sections to bring them into alignment with amendments made to the underlying statutes they help to interpret and enforce, and to amend one rule section to align with current Department of Labor & Industries (L&I) practice. The changes reflect requirements in law and do not affect the purpose of the rule sections.

This proposal includes amending the following sections in rule:

- WAC 296-127-010 Definitions for chapter 296-127 WAC: Update the “residential construction” definition to align with the definition for “residential construction” in RCW 39.12.017, which was created with the passage of House Bill 1743 (HB 1743).
- WAC 296-127-140 Investigation of complaint: Update language related to L&I’s acceptance timeline of a complaint concerning the nonpayment of the prevailing rate of wage. Change the acceptance date from 30 to 60 days for public works projects. This change aligns the section with RCW 39.12.065, which was amended with the passage of Senate Bill 5088 (SB 5088).
- WAC 296-127-160 Appeal of notice of violation: Eliminate the need to submit four copies of the request for a hearing. This aligns with current L&I practice and reduces paperwork.
- WAC 296-127-320 Payroll: Update language to align with RCW 39.12.120, which requires weekly certified payroll records be filed at least once a month using L&I’s online system. RCW 39.12.120 was created with the passage of Engrossed Substitute Senate Bill 5035 (ESSB 5035).

A. Background

The purpose of this rulemaking is to amend three rule sections to bring them into alignment with the statutes on which they are based, and to amend one to align with current L&I internal practice and reduce paperwork. The four sections were identified through the agency rule review process.

B. Summary of the rulemaking activities

This rulemaking was originally filed as expedited but an objection was timely received. The Housing Development Consortium filed an objection to the expedited rulemaking process as to WAC 296-127-010. The objector stated that their member organizations believe that further stakeholder engagement is needed, to recognize the intent of the changes to RCW 39.12.017 made under HB 1743, to understand the implications of this change, and to ensure that there are no further unintended consequences. Therefore, the expedited rulemaking transitioned to a regular rulemaking process.

Note: The objection concerned one of the four WAC sections in the expedited rulemaking. However, to avoid confusion, all four sections moved to the regular rulemaking process, rather than parsing out one section.

II. Changes to the Rules (Proposed rule versus rule adopted)

There will be no changes to the proposed rule – the rule amendments will be adopted as proposed.

III. Comments on Proposed Rule

The purpose of this section is to respond to the oral and written comments received through the public comment period and at the public hearing.

A. Comment Period

The public comment period for this rulemaking began on July 3, 2024, and ended August 15, 2024. L&I received two written comments and one oral comment during a public hearing.

B. Public Hearing

FPLS held one public hearing. Additional information about the hearing is provided in the table below.

Location	Number Attended	Number Testified
August 15, 2024 – Virtual	6	1

C. Summary of Comments Received and L&I’s Responses

L&I analyzed all of the comments received on the proposed rules in detail and responds to these comments in the chart below. L&I responded to the substance of the comments it received. Final rule language was not changed as a result of comments.

Below is a summary of the comments L&I received and the responses.

Comments	L&I Response
WAC 296-136-010 Definitions	
Propose and update the language found in RCW 39.12.017 instead of aligning the rule to an incorrect definition. "Residential construction" should generally include all types of residential construction where people live. The proposed language incorrectly narrows the definition of residential to only include 3 very narrow categories: affordable housing, rehab of low income housing and homeless shelters. This means if this language is added, all other types of houses,	The Washington State Legislature passed House Bill 1743 in 2019 which created RCW 39.12.017. Within this RCW section, a definition of “residential construction” is provided in the context of how the industrial statistician will establish prevailing wage rates for residential construction. The purpose of this rulemaking is to update and align the definition for “residential construction” found in WAC 296-

<p>apartments, mansions, condos would no longer fall under the definition of residential construction.</p>	<p>127-010, Definitions for chapter 296-127 WAC, with the definition for “residential construction” in RCW 39.12.017.</p> <p>L&I does not have authority to change the statutory definition of “residential construction”. L&I will continue to evaluate how the updated rule and statutory definitions apply to mixed-use projects. L&I will also evaluate the need for additional guidance on the topic.</p>
<p>Would like the phrase: “<i>when used solely as permanent residences</i>” kept in the rule, WAC 296-127-010(9), even though the passing of HB 1743 and the language change in the statute, RCW 39.12.017 does not contain the language. The removal of this language could cause mixed-used buildings to be built using residential construction wage rates. It could also cause issues with health, safety and licensing laws.</p>	<p>The purpose of this rulemaking is to update and align the definition for “residential construction” found in WAC 296-127-010, Definitions for chapter 296-127 WAC, with the definition for “residential construction” in RCW 39.12.017.</p> <p>L&I does not have authority to change the statutory definition of “residential construction”. L&I will continue to evaluate how the updated rule and statutory definitions apply to mixed-use projects. L&I will also evaluate the need for additional guidance on the topic.</p> <p>L&I did not add back in “...when used solely as permanent residences,” to the rule language because this would cause a conflict with the definition in statute. It would also exclude homeless shelters, domestic violence shelters and transitional housing as defined by the law.</p> <p>The prevailing wage law, chapter 39.12 RCW and the rules associated, does not control any aspect of health, safety or licensing laws or the rules associated with them. The prevailing wage law does not regulate who may perform the work (only the wage for the work).</p>

<p>Request that L&I change the prevailing wage law and rule definition for “residential construction” to be changed to 6 stories and under and instead of the current 4 stories and under. The prevailing wage law, RCW 39.12.017 and rule, WAC 296-127-010(9) containing the definition for “residential construction” is in conflict with the Electrical Licensing rule, WAC 296-46B-920, Section 2A. The changes in the electrical licensing law was based upon the National Electric Code as written by the National Fire Protection Agency. Not changing the prevailing wage law, would not allow 02 electricians to work on buildings more than 4 stories high.</p>	<p>The purpose of this rulemaking is to update and align the definition for “residential construction” found in WAC 296-127-010, Definitions for chapter 296-127 WAC, with the definition for “residential construction” in RCW 39.12.017.</p> <p>L&I does not have authority to change the statutory definition of “residential construction”. The prevailing wage law, chapter 39.12 RCW and associated rules, do not control any aspect of the electrical licensing law, chapter 19.28 RCW or associated rules.</p> <p>While both prevailing wage and electrical licensing statutes and rules use similar or identical terminology, they are distinct regulations. Each of these regulations have their own origin, evolution and application. Prevailing wage laws and rules pertain to the rates of pay required on prevailing wage projects. Electrical licensing laws and rules regulate licensing requirements for electricians.</p> <p>Updating rules for one area does not impact the other. The prevailing wage law does not regulate who may perform the work (only the wage for the work).</p> <p>Their use of similar or identical terminology makes thinking separately about those distinct regulations vital to the correct understanding and use of each standard.</p>
<p>WAC 296-127-140 Investigation of complaint</p>	
<p>Do not extend investigation of complaint timeline from 30 days to 60 days.</p>	<p>The updates to this rule do not concern the approval and release of L&I’s claim on retainage for the purposes of</p>

<p>L&I is already taking a long time to release retention after a project is complete and this just extends the timeline 1 more month. Please don't extend the timelines any longer.</p> <p>Perhaps you can propose a rule that 60 days after a project is complete L&I must either accept the public work paperwork or issue a written statement of what items are incomplete for the contractor to respond to?</p>	<p>Industrial Insurance premiums under title 51 RCW, as per RCW 60.28.011.</p> <p>The purpose of this rulemaking is to update and align the language in WAC 296-127-140 Investigation of complaint, with the language in RCW 39.12.065, which was amended with the passage of Senate Bill 5088.</p> <p>Both the statute and updated rules pertain to the timeline of when complaints concerning nonpayment of prevailing wage may be filed with L&I.</p> <p>L&I does not have authority to change the complaint filing timeline in statute. Changes to an RCW must be done by the legislature.</p>
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