



PROPOSED RULE MAKING

CR-102 (June 2024) (Implements RCW 34.05.320) Do NOT use for expedited rule making

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STATE OF WASHINGTON
FILED

DATE: July 02, 2024

TIME: 8:55 AM

WSR 24-14-113

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

Original Notice

Supplemental Notice to WSR _____

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR _____ ; or

Expedited Rule Making--Proposed notice was filed as WSR 24-06-070; or

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or

Proposal is exempt under RCW _____.

Title of rule and other identifying information: (describe subject) Prevailing Wage: 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.

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
August 15, 2024	10:30 a.m.	Virtual/telephonic hearing: Join electronically (online): https://lni-wa.gov.zoom.us/j/88023479907?pwd=fas9AVSEnvezNT0PB2kCBL7RpdxJCM.1 Or, join by phone (audio only): 253-215-8782 Meeting ID: 880 2347 9907 Passcode: *326610851#	The virtual/telephonic hearing will start at 10:30 a.m. and will continue until all oral/spoken comments are received.

Date of intended adoption: September 17, 2024 (Note: This is **NOT** the effective date)

Submit written comments to:

Name Reasa Pearson
Address Department of Labor & Industries, Prevailing Wage Program, PO Box 44540, Olympia, WA 98504-4540
Email PrevailingWageRules@Lni.wa.gov

Fax

Other

Beginning (date and time) July 3, 2024; 8:00 a.m.

By (date and time) August 15, 2024; 5:00 p.m.

Assistance for persons with disabilities:

Contact Reasa Pearson

Phone 360-999-7226

Fax

TTY 1-800-833-6388

Email Reasa.pearson@Lni.wa.gov

Other

By (date) August 1, 2024

Purpose of the proposal and its anticipated effects, including any changes in existing rules: 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 amend one rule section to align with current 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).

Reasons supporting proposal: HB 1743, Chapter 29, Laws of 2019, created a new section in law, RCW 39.12.017, regarding residential construction. WAC 296-127-010 must be updated to adopt the language of the statute.

SB 5088, Chapter 88, Laws of 2023, amended RCW 39.12.065 regarding the timeline for a complaint concerning nonpayment of the prevailing rate of wage. WAC 296-127-140 incorporates the statutory language that was amended and must be updated to match the amended language of the statute.

ESSB 5035, Chapter 242, Laws of 2019, created a new section in law, RCW 39.12.120, regarding payroll records and recordkeeping obligations. WAC 296-127-320 incorporates the statutory language.

L&I recommends updating WAC 296-127-160 to match current internal government operations, which have reduced waste by eliminating unnecessary copies of the request for hearing documents. The update would also benefit filers.

Statutory authority for adoption: Chapter 39.12 RCW

Statute being implemented:

Is rule necessary because of a:

- | | | |
|-------------------------|------------------------------|--|
| Federal Law? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| Federal Court Decision? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| State Court Decision? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

If yes, CITATION:

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:

Name of proponent: (person or organization) Department of Labor and Industries

Type of proponent: Private. Public. Governmental.

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting	Reasa Pearson	Tumwater, WA	360-999-7226
Implementation	Catherine Kuffner	Tumwater, WA	360-902-4550
Enforcement	Catherine Kuffner	Tumwater, WA	360-902-4550

Is a school district fiscal impact statement required under [RCW 28A.305.135](#)? Yes No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

- Name
- Address
- Phone
- Fax
- TTY
- Email
- Other

Is a cost-benefit analysis required under [RCW 34.05.328](#)?

Yes: A preliminary cost-benefit analysis may be obtained by contacting:

Name

Address
Phone
Fax
TTY
Email
Other

No: Please explain: This rulemaking is exempt from preparing a cost-benefit analysis under RCW 34.05.328(5)(b)(iii) because proposed amendments adopt language without material change a Washington statute, and under RCW 34.05.328(5)(b)(ii) as an amendment relates only to internal governmental operations that are not subject to violation by a person.

Regulatory Fairness Act and Small Business Economic Impact Statement

Note: The [Governor's Office for Regulatory Innovation and Assistance \(ORIA\)](#) provides support in completing this part.

(1) Identification of exemptions:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see [chapter 19.85 RCW](#)). For additional information on exemptions, consult the [exemption guide published by ORIA](#). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.061](#) because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by [RCW 34.05.313](#) before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of [RCW 15.65.570\(2\)](#) because it was adopted by a referendum.

This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.025\(3\)](#). Check all that apply:

[RCW 34.05.310](#) (4)(b)
(Internal government operations)

[RCW 34.05.310](#) (4)(e)
(Dictated by statute)

[RCW 34.05.310](#) (4)(c)
(Incorporation by reference)

[RCW 34.05.310](#) (4)(f)
(Set or adjust fees)

[RCW 34.05.310](#) (4)(d)
(Correct or clarify language)

[RCW 34.05.310](#) (4)(g)
((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit)

This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.025\(4\)](#). (Does not affect small businesses).

This rule proposal, or portions of the proposal, is exempt under RCW _____.

Explanation of how the above exemption(s) applies to the proposed rule:

(2) Scope of exemptions: *Check one.*

The rule proposal: Is fully exempt. (*Skip section 3.*) Exemptions identified above apply to all portions of the rule proposal.

The rule proposal: Is partially exempt. (*Complete section 3.*) The exemptions identified above apply to portions of the rule proposal, but less than the entire rule proposal. Provide details here (consider using [this template from ORIA](#)):

The rule proposal: Is not exempt. (*Complete section 3.*) No exemptions were identified above.

(3) Small business economic impact statement: *Complete this section if any portion is not exempt.*

If any portion of the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

No Briefly summarize the agency's minor cost analysis and how the agency determined the proposed rule did not impose more-than-minor costs. _____

Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses and a small business economic impact statement is required. Insert the required small business economic impact statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

Name

Address
Phone
Fax
TTY
Email
Other

Date: July 2, 2024

Name: Joel Sacks

Title: Director

Signature:

