



RULE-MAKING ORDER PERMANENT RULE ONLY

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

CODE REVISER USE ONLY

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STATE OF WASHINGTON
FILED

DATE: January 16, 2025
TIME: 3:32 PM

WSR 25-03-091

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

Effective date of rule:

Permanent Rules

- 31 days after filing.
- Other (specify) February 17, 2025 (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:

Purpose: The Division of Occupational Safety and Health (DOSH) initiated this rulemaking to update how base penalties are calculated in order to make penalties more effective and address concerns raised through the Occupational Safety and Health Administration (OSHA) State Activities Mandated Measures (SAMM) report that Washington penalties continue to be below the national average. OSHA uses the SAMM report to determine whether State Plans are as effective as OSHA.

The adopted rule includes the following changes:

- The base penalty rate will be adjusted for inflation every year based on the Consumer Price Index for all Urban Consumers (CPI-U).
- The base penalty amount may also be increased by an additional 2 percent if DOSH is not within 25 percent of the national penalty average determined by OSHA.
- Numbering definitions to aid in education and research.
- Removing the terms “you” and “we” and replacing with “employee” and “employer” to provide clarity.
- Removing the term “Washington Industrial Safety and Health Act” or “WISHA” and replacing with “DOSH” where the term is meant to refer to DOSH.
- Removing outdated fax number information.
- Updating USPS mail and email resources for contacting L&I.

Citation of rules affected by this order:

New:

Repealed:

Amended: WAC 296-900-099, 296-900-100, 296-900-110, 296-900-11005, 296-900-11010, 296-900-11015, 296-900-11020, 296-900-11025, 296-900-120, 296-900-12005, 296-900-12010, 296-900-12015, 296-900-130, 296-900-13005, 296-900-13010, 296-900-13015, 296-900-140, 296-900-14005, 296-900-14010, 296-900-14015, 296-900-14020, 296-900-150, 296-900-15005, 296-900-15010, 296-900-15015, 296-900-15020, 296-900-15025, 296-900-15030, 296-900-160, 296-900-16005, 296-900-16010, 296-900-16015, 296-900-16020, 296-900-16025, 296-900-16030, 296-900-170, 296-900-17005, 296-900-17010, 296-900-17015, 296-900-17505, 296-900-17520, 296-900-17525 and 296-900-17535.

Suspended:

Statutory authority for adoption: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060, 49.17.180 and 49.17.190.

Other authority: Chapter 49.17.RCW

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 24-18-095 on September 3, 2024 (date).

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

- Reverted to current language regarding one way base penalties are calculated using “specific amounts that are dictated in statute” rather than the proposed language “specific factors that are dictated by statute”.
- Removed the language regarding the base penalty rate adjustments from the beginning of the section.
- Removed the word “note” before the language on the base penalty rate adjustment following the Gravity Based Penalty Table 6.
- A definition for “inflation factor” was added to this section to provide clarity for employers on exactly how the calculation is factored.

- Added clarification that the base penalty amount may also be increased by an additional two percent if DOSH is not within 25 percent of the national penalty average as determined by OSHA is based on the OSHA determination for the federal fiscal year preceding the date of the adjustment.

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

Name:
 Address:
 Phone:
 Fax:
 TTY:
 Email:
 Web site:
 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	<u>1</u>	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	___
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The number of sections adopted on the agency's own initiative:

New	___	Amended	<u>42</u>	Repealed	___
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	___	Amended	___	Repealed	___
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The number of sections adopted using:

Negotiated rule making:	New	___	Amended	___	Repealed	___
Pilot rule making:	New	___	Amended	___	Repealed	___
Other alternative rule making:	New	___	Amended	___	Repealed	___

Date Adopted: January 16, 2025

Name: Joel Sacks

Title: Director

Signature:

