



PROPOSED RULE MAKING

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

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FILED

DATE: January 21, 2025
TIME: 3:58 PM

WSR 25-03-133

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 24-16-133 ; or**
- Expedited Rule Making--Proposed notice was filed as WSR _____; 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) Chapter 296-123 WAC, Equal Pay and Opportunities Act. New chapter under title 296 WAC, Department of Labor and Industries.

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
March 4, 2025	3:30 p.m.	Virtual/telephonic hearing: Join electronically: https://lni-wa.gov.zoom.us/j/82405652366?pwd=iSmCMZae4zCuHOIWAKvfqO1grTKich.1 Passcode: EPOA2025! Or join by phone (audio only): US: 253-205-0468 Meeting ID: 824 0565 2366 Passcode:746514953	A pre-hearing overview will begin at 3:00 p.m. The hearing will start at 3:30 p.m. and will continue until all oral comments are received.
March 6, 2025	10:30 a.m.	In-person: Department of Labor & Industries 7273 Linderson Way SW Tumwater, WA 98501	A pre-hearing overview will begin at 10:00 a.m. The hearing will start at 10:30 a.m. and will continue until all oral comments are received

Date of intended adoption: May 21, 2025 (Note: This is **NOT** the effective date)

Submit written comments to: Name Reed Simock Address Department of Labor & Industries Fraud Prevention & Labor Standards/Employment Standards PO Box 44510 Olympia, WA 98504-4510 Email ESRules@Lni.wa.gov Fax 360-902-5300 Other Beginning (date and time) January 21, 2025, at 8am By (date and time) March 19, 2025, at 5pm	Assistance for persons with disabilities: Contact Reed Simock Phone 360-480-3237 Fax 360-902-5300 TTY Email ESRules@Lni.wa.gov Other By (date) February 27, 2025, at 5pm
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Purpose of the proposal and its anticipated effects, including any changes in existing rules: L&I is proposing rules to implement Substitute House Bill 1905 (SHB 1905), Chapter 353, Laws of 2024. The bill expands existing protections against pay and promotion discrimination based on gender found in Chapter 49.58 RCW, the Equal Pay and Opportunities Act. SHB 1905 extends the protections to additional protected classes including but not limited to age, race, and sexual orientation. L&I is proposing rules to clarify and implement the provisions of SHB 1905.

L&I is also proposing rules to clarify other requirements created by Chapter 49.58 RCW, including:

- The free discussion of wages and salary;
- Protection against retaliation;
- Wage and salary history privacy; and
- Disclosure of wage scale, salary range, and benefits on a job posting.

The proposed rules explain L&I's enforcement of Chapter 49.58 RCW. The proposed rules also describe L&I's complaint investigation and resolution processes.

SHB 1905 goes into effect on July 1, 2025. L&I does not currently have rules under Chapter 49.58 RCW.

Reasons supporting proposal: Rules are necessary to clarify and enforce Chapter 49.58 RCW and implement the requirements of SHB 1905.

Statutory authority for adoption: RCW 49.58.090

Statute being implemented: RCW 49.58.010, 49.58.020, 49.58.030, 49.58.040, 49.58.050, and 49.58.060

Is rule necessary because of a:

Federal Law? Yes No

Federal Court Decision? Yes No

State Court Decision? Yes 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	Reed Simock	Tumwater, WA	360-480-3237
Implementation	Bryan Templeton	Tumwater, WA	360-902-5310
Enforcement	Bryan Templeton	Tumwater, WA	360-902-5310

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 Reed Simock
Address Department of Labor & Industries
Fraud Prevention & Labor Standards/Employment Standards
PO Box 44510
Olympia, WA 98504-4510
Phone 360-480-3237
Fax 360-902-5300
TTY
Email ESRules@Lni.wa.gov
Other

No: Please explain:

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)(c) (Incorporation by reference)
- [RCW 34.05.310](#) (4)(d) (Correct or clarify language)
- [RCW 34.05.310](#) (4)(e) (Dictated by statute)
- [RCW 34.05.310](#) (4)(f) (Set or adjust fees)
- [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 portions of proposed rules listed in the section below are not exempt.

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. L&I determined that the proposed rules do not impose additional cost on businesses. The proposed rules do not create additional requirements that employers must meet.

WAC 296-123-010(1), (2), (4), (7), (8), (11), (12), (13), and (14)	These definitions are explanatory and provide L&I's interpretation for terms used in chapter 49.58 RCW and throughout the proposed rule. The definitions do not independently impose a penalty or sanction an employer.
WAC 296-123-020(1) and WAC 296-123-030(1)	<p>These subsections describe how L&I will enforce the requirements in RCW 49.58.020(1) and RCW 49.58.030(2) that employers cannot discriminate based on a person's gender or membership in a protected class. RCW 49.58.010(6) defines "protected class" using characteristics that are in turn defined in RCW 49.60.040. "Perceived" is included in the definition of several of the characteristics in RCW 49.60.040. By including "perceived" in WAC 396-123-020(1), L&I is making it easier to follow the requirements of RCW 49.58.020, RCW 49.58.010, and RCW 49.60.040.</p> <p>The subsections do not create an additional cost of compliance for employers. The statute prohibits employers from discriminating based on gender or membership in a protected class. The proposed rule clarifies that employers may not discriminate based on what they believe the employee's gender or protected class to be. As employers are already prohibited from discrimination, there is no additional cost of compliance.</p>

WAC 296-123-030(5)	This subsection provides a definition for the term “pattern of violations” found in RCW 49.58.030(4)(a). The section is explanatory and has limited impact beyond providing L&I’s interpretation of the statute. The subsection does not independently impose a penalty or sanction on a person or entity.
WAC 296-123-040(2)	This subsection provides L&I’s interpretation of 49.58.040(2). The section further clarifies the statute by providing examples of protected activities. The subsection does not independently impose a penalty or sanction on a person or entity.
WAC 296-123-050(1)	This subsection provides L&I’s interpretation of RCW 49.58.100(1). The subsection clarifies that the prohibition against employer inquiry into wage or salary history includes optional questions. The subsection does not independently impose a penalty or sanction on a person or entity.
WAC 296-123-050(3)	This subsection provides L&I’s interpretation of RCW 49.58.100(2). This provision of the rule does not independently impose a penalty or sanction on a person or entity. The subsection does not create an additional cost of compliance for employers, as employers do not have to take additional action to comply with the rule.
WAC 296-123-060(2), (3), and (5)	The subsections are interpretive and provide L&I’s definitions for terms used in the statute. The definitions do not independently impose a penalty or sanction an employer
WAC 296-123-070(2)	This subsection provides L&I’s interpretation of RCW 49.58.050. The rule could impose a penalty on an establishment. RCW 49.58.060 allows the department to enforce retaliation violations under the provisions of the chapter and any applicable rules. The section does not create an additional cost of compliance for employers, as payments are only required in the event of a violation. The employer also does not have to take additional action to comply with the rule.
WAC 296-123-090(1), (4), and (7)	These subsections provide L&I’s interpretation of RCW 49.58.060. These subsections do not independently impose a penalty or sanction on a person or entity.
WAC 296-123-090(3)	This subsection provides L&I’s interpretation of RCW 49.58.060. The subsection does not independently impose a penalty or sanction on a person or entity, as payments are only required in the event of a violation.
WAC 296-123-090(5)	This section provides L&I’s interpretation of RCW 49.58.060. The section does not independently impose a penalty or sanction on a person or entity. The section does not create an additional cost of compliance for employers. Employers are not required to create or retain additional records and must simply provide records they already created to L&I when requested.
WAC 296-123-090(6)	This subsection provides L&I’s interpretation of RCW 49.58.060. The subsection does not come with a corresponding obligation to perform the self-audit, and since there’s no certainty that it will be requested, there’s no continuous demand placed on impacted employers. As a result, there’s no on-going associated costs with the proposed rule. Consequently, self-audits are intended to be a less burdensome and less costly alternative to extensive document production during investigations.
WAC 296-123-100(1)	This subsection provides L&I’s interpretation of RCW 49.58.060(2). The section further clarifies the actions L&I may order in the event the agency issues a notice of assessment. The rule does not independently impose a penalty or sanction on a person or entity
WAC 296-123-100(2)	This subsection provides L&I’s interpretation of RCW 49.58.060. The subsection clarifies the enforcement methods L&I will pursue for violations of WAC 296-123-060. The subsection does not create an additional cost of compliance for employers, as payments are only required in the event of a violation. The subsection clarifies L&I enforcement of the chapter and does not create an additional requirement employers must meet.
WAC 296-123-100(5)	This subsection provides L&I’s interpretation of RCW 49.58.060. This rule clarifies the methods L&I may use to collect on unpaid assessments. The subsection does not create an additional cost of compliance for employers, as payments are only required in the event of a violation. The subsection clarifies L&I enforcement of the chapter and does not create an additional requirement employers must meet.
WAC 296-123-120(1)	This section describes L&I’s ability to enforce the rules if a portion of the rules is found to be invalid and does not impose any requirements.

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 Reed Simock
Address Department of Labor & Industries
Fraud Prevention & Labor Standards/Employment Standards
PO Box 44510
Olympia, WA 98504-4510
Phone 360-480-3237
Fax 360-902-5300
TTY
Email ESRules@Lni.wa.gov
Other

Date: January 21, 2025

Name: Joel Sacks

Title: Director

Signature:

