

CONCISE EXPLANATORY STATEMENT

Sanitary Conditions for Construction Workers

Chapter 296-155 WAC, Safety standards for construction work,
Part B-1, Occupational Health and Environmental Control
WAC 296-155-140 Sanitation

Public Hearings: March 25 & 27, 2025

Adoption: May 20, 2025

Effective: July 1, 2025

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I. Purpose of Rulemaking

A. Background

The Division of Occupational Safety and Health (DOSH) initiated this rulemaking to update requirements in chapter 296-155 WAC, Safety standards for construction work, Part B-1, Occupational Health and Environmental Control. The adopted amendments align chapter 296-155 WAC, Safety standards for construction work, Part B-1, Occupational Health and Environmental Control, with the requirements of RCW 49.17.530 – Construction workers – Accommodations – Menstruation and expression of milk, which became effective June 6, 2024. The law established requirements for employers in the construction industry to provide workers who menstruate or express milk access to restrooms, an adequate and convenient supply of menstrual hygiene products at no cost, and reasonable accommodations to express milk after a child's birth.

B. Summary of the rulemaking activities

Prior to formal stakeholder meetings, DOSH spoke with interested parties to discuss their concerns with Engrossed House Bill (EHB) 2266. DOSH conducted three stakeholder meetings in Tukwila, Moses Lake, and virtually. Fifty-six external stakeholders attended all meetings. Prior to each meeting, DOSH staff sent a GovDelivery notice to inform the public of the upcoming meeting. At each meeting, DOSH staff provided an overview of the legislation, shared preliminary draft language and the FAQ/Reference Guide developed to assist employers in meeting the new requirements. In addition, stakeholders provided copies of several federal resources related to dedicated space for lactation, including outdoor work locations, and cleaning pump equipment.

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

There are no changes between the proposed and adopted language. The department adopted the language as proposed.

III. Comments on Proposed Rule

A. Comment Period

The comment period began February 19, 2025, 8:00 a.m. and ended April 3, 2025, 5:00 p.m.

B. Public Hearings

Date	Location	Attendees	Testified
March 25, 2025	L&I-Tukwila Location	4	0
March 27, 2025	Virtual via Zoom	9	1

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

Below is a summary of the comments L&I received, both through testimony and written comments, and the responses.

General Comments	L&I Response
Opposes the amendments to require an employer to provide menstrual hygiene products citing concerns with equality and stigma in the workplace, invasion of privacy and humiliation having to discuss with potentially male managers and foreman, quality of products if stored in Port a Potty, and inquired whether a worker may sign a waiver and "opt out."	<p>L&I reviewed all comments submitted. The comments submitted did not result in a change to the adopted language. L&I appreciates your raising concerns with the requirements. The adopted amendments align with state law RCW 49.17.530, Construction workers-Accommodations-Menstruation and expression of milk, which became effective June 6, 2024. The law does not require a worker to discuss menstruation with an employer. Rather, it requires the employer to have menstrual products available for workers who menstruate if the need arises for a worker.</p> <p>As part of this rulemaking, L&I developed a Reference Guide/Frequently Asked Questions document and Pocket Guide to assist employers in meeting these requirements, including storage of products and provide information for workers. In addition, the law requires L&I to partner with relevant labor organizations and the Office of Minority and Women's Business Enterprises to develop educational materials, and, perform outreach to educate employers</p>

	<p>regarding new employer responsibilities under the law. Following the adoption of the rules, DOSH's Education and Outreach will continue to provide support to employers in the construction industry.</p>
<p>Feels the information specific to milk expression is helpful, however, does not believe workers will feel comfortable asking for accommodations.</p>	<p>L&I reviewed all comments submitted. L&I appreciates your raising concerns with the requirements. The comments submitted did not result in a change to the adopted language. The adopted amendments align with state law RCW 49.17.530 Construction workers-Accommodations-Menstruation and expression of milk, which became effective June 6, 2024.</p> <p>As part of this rulemaking, L&I developed a Reference Guide/Frequently Asked Questions document and Pocket Guide to assist employers in meeting these requirements, and, provide information for workers. In addition, the law requires L&I to partner with relevant labor organizations and the Office of Minority and Women's Business Enterprises to develop educational materials, and, perform outreach to educate employers regarding new employer responsibilities under the law. Following the adoption of the rules, DOSH's Education and Outreach will continue to provide support to employers in the construction industry.</p>
<p>Opposes the requirements for employers in the construction industry to provide menstrual hygiene products and additional accommodations for milk expression. The attendee noted the economic burden of the amendments, and stated the burden would ultimately be passed on to ratepayers, in an area that predominantly low-income. The attendee noted the rules expand employer responsibility beyond workplace safety into personal health products. The rules "single" out the construction industry, while other industries are not facing similar requirements. The attendee noted the differences of construction job sites (remote, mobile etc.) stating it may be</p>	<p>L&I reviewed all comments submitted. We appreciate your raising concerns with the requirements. The comments submitted did not result in a change to the adopted language. The adopted amendments align with state law RCW 49.17.530, Construction workers-Accommodations-Menstruation and expression of milk, which became effective June 6, 2024. The law does not require a worker to discuss menstruation with an employer. Rather, it requires the employer to have menstrual products available if the need arises for a worker.</p>

<p>impossible to meet the requirements. Further, the attendee noted these rules might reduce hiring flexibility or limit jobsite accommodations. Lastly, feels the amendments lack clarity on compliance monitoring and enforcement, which may create confusion and administrative burdens.</p>	<p>In passing the legislation, the WA legislature recognized there are safety and health hazards faced by all construction workers, and there are safety and health issues specific to construction workers who menstruate or express milk. The legislature also passed the legislation as a part of an ongoing effort to address labor shortages in the construction industry.</p> <p>As part of this rulemaking, L&I developed a Reference Guide/Frequently Asked Questions document and Pocket Guide to assist employers in meeting these requirements, and, provide information for workers. In addition, the law requires L&I to partner with relevant labor organizations and the Office of Minority and Women's Business Enterprises to develop educational materials, and, perform outreach to educate employers regarding new employer responsibilities under the law. Following the adoption of the rules, DOSH's Education and Outreach will continue to provide support to employers in the construction industry. Further, an employer may request a consultation in order to improve understanding of an employer's responsibility, and strategies to comply with the law.</p>
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