



Stakeholder Meeting Summary-Tukwila

October 31, 2024

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

Department of Labor & Industries (L&I), Division of Occupational Safety and Health (DOSH) Standards and Technical Staff present:

DOSH Occupational Safety and Health Specialist
DOSH Technical Services Safety Program Manager
DOSH Policy Stakeholder Engagement Advisor
DOSH Administrative Regulations Analyst

Attendees and organizations represented:

Bill Benham Consulting, LLC
Associated General Contractors (AGC) of America
Northwest, Atkinson Construction
Building Industry Association (BIA) of Washington
Associated Builders and Contractors (ABC) of Western Washington
Employer Resources Northwest (ERN)
Avista Corporation
ABC Inland Pacific, Washington Conditioning Contractors Association (ACCA)
WeatherGuard, Inc., Longview

Attendees represented a wide variety of interests; including private sector, government, agriculture and those in the longshore, stevedore and waterfront related operation industries.

Summary:

Meeting called to order at 10:00 a.m.

Discussion: DOSH staff welcomed attendees and provided a safety tip.

DOSH staff shared with attendees the purpose of this rulemaking is to align the standard with Engrossed House Bill (EHB) 2266 (Chapter 258, Laws of 2024), codified under RCW 49.17.530, which became effective June 6, 2024.

DOSH staff provided an overview of the legislation. EHB 2266 requires employers in the construction industry to provide workers performing construction activities and who menstruate or express milk the following:

- Access to an adequate portable toilet or restrooms, accessible on the worksite, or access to a permanent structure with a restroom/bathroom. Requirements include:
 - Minimum size bathroom-equivalent to a standard sized portable chemical toilet;
 - Internal latch (lock) to prevent inadvertent entry; and

- Adequate time to accommodate for multiple layers of clothing while using the bathroom.
- Adequate and convenient supply of menstrual hygiene products at no cost to workers:
 - Products must be located in all gender-neutral bathrooms and bathrooms designated for workers who menstruate, or
 - Provided in kits for each worker who needs such product.
- Reasonable accommodations to express milk after the child's birth each time such worker has need to express to include:
 - Flexible scheduling, including breaks;
 - Private dedicated space, other than a bathroom, lockable (if possible) and free from intrusion;
 - Convenient hygienic refrigeration on the worksite for the storage of milk;
 - Convenient water source in a private location near the location where milk is expressed for the worker to clean and wash hands and milk expression equipment.

EHB 2266 requires L&I's rules identify minimum reasonable accommodations for expressing milk that include alternatives for worksites of varying numbers of workers.

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.

DOSH staff provided an overview of the draft language.

Questions and answer session:

Question/comment: An attendee asked if an employer is required to provide specific size of menstrual hygiene products.

DOSH Response: No. The employer is required to provide an adequate, convenient supply of menstrual hygiene products, at no cost. RCW 49.17.530 does not require specific brands, quantities or sizes.

Question/comment: An attendee asked about citations and penalties.

DOSH Response: The legislation does not allow L&I to issue penalties until July 1, 2025. However, the department can issue a citation, and, an infraction.

The group then discussed the inspection process, citation, infractions and penalties. Some attendees were unfamiliar with the process, or, terminology used in the forms. For example, that L&I may issue a Citation that states "no infractions."

Attendees asked if, receive an infraction between now and July 1, 2025, if the issue present during another inspection, would that be considered "repeat/willful?"

DOSH Response: No, as "repeat" is for a citation to a specific WAC.

Question/comment: An attendee asked if the company truck or worker's personal vehicle could function as the dedicated space for expressing milk.

DOSH Response: Yes, both meet the requirement.

Question/comment: An attendee asked how common, and how addressed before the law? An attendee stated most likely investigated by AAG or as Human Rights issue.

Question/comment: An attendee asked how this would work from compliance perspective. How will L&I handle?

An attendee stated the employer could probably get out of it if occurred before July 1, 2025, but probably not worth it to spend the money if there were no penalties issued.

An attendee stated if receive an infraction before July 1, 2025, and, after, would this be considered a repeat and/or willful?

DOSH Response. “Repeat” is to a specific code.

Question/comment: An attendee asked the meaning of citation; and, how L&I may issue a citation, if no penalties assessed. The group again reviewed the process after an inspection, including the terminology, such as citation, infraction and penalties.

Question/comment: An attendee asked how common it is for L&I to collaborate with other agencies.

DOSH Response: Not uncommon for L&I to do education and outreach to be compliant with legislation, just less frequent.

Question/comment: An attendee asked if employers now required to provide gender neutral bathrooms.

DOSH Response: Reviewed the existing toilet requirements related to number toilets for workers/gender etc. The new state law requires menstrual hygiene products be located in all gender-neutral bathrooms and bathrooms designated for workers who menstruate, or provided in kits for each worker who needs such product.

Question/comment: An attendee stated that it was her understanding based on conversations with L&I’s Legislative Director during the legislative process that the dedicated space for expressing milk would be handled through an accommodation process. However, this did not get written into the legislation; and, does not see in the RCW or current draft language. Stressed that it should be the responsibility of the worker to bring the matter to the attention of the employer. Feels the rule needs to be made clearer, in that it is a collaboration between worker and employer, and, the employee is responsible to request an accommodation.

An attendee agreed. The worker needs to disclose the need or request from the employer. Employer needs guidance on how to talk with the worker, and, how to document the discussion.

Question/comment: An attendee asked how this relates to mobile crews as there is currently an exemption for mobile crews in WAC 296-155-140(4)(f).

Reference: WAC 296-155-140(4)(f) which reads:

The requirements of this subsection do not apply to mobile crews or to normally unattended work locations as long as employees working at these locations have transportation immediately available, within the normal course of their duties, to nearby facilities otherwise meeting the requirements of this section.

DOSH Response: As currently written, the draft language does not include an exemption for mobile crews.

Question/comment: An attendee stated that she works with HVAC companies; workers' work in private homes, states workers' ask if can use the homeowner's bathroom; or, asks employer to leave to use a bathroom off-site.

DOSH Response: Asked attendees if additional changes needed regarding mobile crews to the proposed subsections (6) and (7).

Question/comment: An attendee stated the law does not mention mobile crews. The attendee stated that if a worker has personal vehicle, could ask to leave.

Question/comment: An attendee asked if employer required to provide specific types/brands/sizes of menstrual hygiene products.

DOSH Response: No. The employer is required to provide an adequate, convenient supply of menstrual hygiene products, at no cost. RCW 49.17.530 does not require specific brands, quantities or sizes.

Question/comment: How would department handle if a worker complained the employer did not provide a specific brand?

DOSH Response: The employer is required to provide an adequate, convenient supply of menstrual hygiene products, at no cost. RCW 49.17.530 does not require specific brands, quantities or sizes. If an employer has menstrual hygiene products available, the employer is meeting the requirements. The employer is not required to purchase specific brands.

DOSH Response: Accommodations for dedicated space for expressing milk should be a collaboration between worker and employer.

Question/comment: An attendee requested clarity regarding an adequate supply of menstrual hygiene products. Should it state a minimum quantity as well as where should be stored? It is a business decision by the employer as to which product purchased. Can a worker request a specific brand?

DOSH Response: The employer is not required to purchase specific brands.

DOSH Response: See draft; WAC 296-155-140(6)(c)(i); may be stored in the bathroom facilities or employers may provide kits to each worker who needs such products.

Question/comment: An attendee expressed concern with providing tampons due to the risk of Toxic Shock Syndrome (TSS). There is a liability if not used correctly. The attendee stated that if the medical warning were kept with each individual unit (tampon), this could mitigate employer liability. However, safer to provide pads only. In addition, it may not be possible to store in an area that prevents the tampon from being exposed to humid or unhygienic locations, which would compromise workers' safety.

DOSH Response: The law and draft language does not identify a specific type of product. If additional information needed, we could add to the Reference Guide/FAQ or on the web page.

Question/comment: An attendee asked if the CDC or FDA had handouts on menstruation, similar to the handouts on breast milk provided at the meeting.

DOSH Response: Will look into whether the CDC or FDA have handouts related to menstrual hygiene and menstrual hygiene products.

Question/comment: An attendee asked if mobile crews exempt.

DOSH Response: No. As currently written, the draft language does not include an exemption for mobile crews.

DOSH Response: DOSH staff recognized there is not clarity on employer requirements for mobile crews.

Question/comment: An attendee asked, “What is adequate,” and, what about “personal preference?”

An attendee also asked if the employer is required to honor requests for workers’ personal preference.

DOSH Response: No. The employer is required to provide an adequate, convenient supply of menstrual hygiene products, at no cost. RCW 49.17.530 does not require specific brands, quantities or sizes.

If DOSH received a complaint, if employer had supply of products on hand, the employer would be in compliance.

Question/comment: An attendee stated that employers currently purchase; however, workers’ are not using the products. Yes, the employer is satisfying the requirement, however, it is a waste of money.

Question/comment: Regarding menstrual hygiene products-

An attendee stated the employer could just keep on the truck.

An attendee requested the language remain as currently written, and that specifics, such as type of product, size and quantity, not be added to the code.

An attendee asked “how far” and employer must accommodate a workers’ request for their personal preference of product.

DOSH Response: No. The employer is required to provide an adequate, convenient supply of menstrual hygiene products, at no cost. RCW 49.17.530 does not require specific brands, quantities or sizes.

If DOSH received a complaint, if employer had supply of products on hand, the employer would be in compliance.

An attendee expressed concern. The attendee stated 90% of contractors already meet the requirements; the products do not get used. Further, the attendee does not advise buying tampons unless the medical warning label is on the kit to reduce liability. Pads are safer. Although using a pad or tampon is a personal choice, as the law does not specify, recommends employers provide pads to reduce liability.

An attendee stated could provide both, and, attach labels (medical warning).

DOSH Response: It would be like first aid kits. L&I does not specify what brand of Band-Aids etc.

Question/comment: An attendee stated does not want more specificity to the language. The attendee also asked what if there are not females on the job site. Is the employer required to have items, just in case?

Question/comment: An attendee requested clarification in code or reference guide as the dedicated space for expressing milk is an accommodation.

Question/comment: An attendee asked what triggers WAC 296-155-140(7), is the onus on the worker?

An attendee stated an employer could put in the Accident Prevention Plan or include in new worker orientation.

An attendee stated there needs to be a “trigger” so the employer knows it must provide; or, is the employer required to always have on hand, and, potentially it never be used? The attendee suggested putting in the APP as long as it covers what the worker must do (how to request), and we will discuss. Recommends adding to the code. In addition, the attendee referenced the definition of reasonable accommodations, and that an accommodation means for someone asking for something (ADA). The attendee suggested adding the definition of “accommodation.” The attendee re-stated that it was her understanding from L&I’s Legislative Director during the legislative process that the dedicated space for expressing milk would be handled through an accommodation process. However, this did not get written into the legislation; and, does not see in the RCW or current draft language. Stressed that it should be the responsibility of the worker to bring the matter to the attention of the employer. Feels the rule needs to be made clearer, in that it is a collaboration between worker and employer, and, the employer is responsible to request an accommodation.

DOSH Response: Suggested adding to APP, or, cover during new-hire training.

Question/comment: An attendee stated that in order for an employer to know, and, make available, the worker is responsible of notifying the employer of the need.

An attendee mentioned “kits” available that may be used to sterilize pump parts. The items can be placed in the bag and sterilized in the microwave. The bags are reusable.

Question/comment: An attendee asked if a worker may use their own personal cooler/bag etc. Is the employer required to force the worker to use an employer issued cooler?

DOSH Response: Yes, a worker may use personal cooler. The legislation does not preclude a worker from using a personal cooler for refrigeration. Recommend Employer discuss with worker and develop plan; and, document the discussion.

Employer required to ensure it is available (employer or worker provide).

Question/comment: An attendee stated “reasonable accommodations” referenced in subsection (7) is a gray area Suggests defining “reasonable accommodations.” The attendee stated it must be clear and easy, so all comfortable, and, it is a positive experience to work there.

Review of the draft language concluded.

DOSH staff provided an overview of the following supplemental materials:

- Reference Guide and Frequently Asked Questions, English and Spanish (L&I)
- House to Keep Your Breast Pump Kit Clean, English and Spanish (Centers for Disease Control and Prevention [CDC])
- Storage and Preparation of Breast Milk, English and Spanish (CDC)

- Outdoor Job Sites (U.S. Department of Health & Human Services, Office on Women’s Health (OASH))

Question/comment: An attendee suggested addressing the issues during new hire orientation.

Question/comment: An attendee stated there is increased employer liability with where it was put into law; this should not be the employer’s responsibility.

Question/comment: Is employer required to provide these documents?

DOSH Response: Could use as a safety topic as means to provide training to workers.

Question/comment: An attendee stated there is a “gap” in how new mothers receiving information they need. Suggested talking with Department of Health, Hospitals, OB/GYN as way for L&I to communicate this information so that workers have the information.

DOSH Response: 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.

Currently, the Attorney General’s Office investigates complaints under RCW 43.10.005.

Question/comment: An attendee stated he does not recommend further specificity in the rule language.

An attendee asked if this rulemaking will be discussed at upcoming Construction Advisory Committee (CAC) Meeting, November 6, 2024.

DOSH Response: Yes, updates on this rulemaking will be provide at the upcoming CAC Meeting.

Question/comment: An attendee suggested L&I develop a Webinar/training that employers could provide to new hires to educate new workers on these issues, and, worker responsibility to request accommodations for space to express milk.

There needs to be a path so that worker gets what they need; and, employer is not fined.

Question/comment: Attendees asked if the department had, information on the number of citations issued related to bathroom access and/or dedicated space for lactation.

DOSH Response: Do not have information. Will run query to identify.

Discussion of supplemental materials concluded.

Following the presentation of draft language, meeting materials and Q&A session, DOSH staff provided a review of the rulemaking timeline and next steps.

Meeting concluded at 11:52 a.m.

Key Summary of Comments:

- 1) Feasibility concerns with mobile crews. DOSH staff informed attendees, as currently written, there is not

an exemption for mobile crews.

- 2) Concerns with an employer providing tampons, unless medical advisory regarding Toxic Shock Syndrome provided with each individual unit.
- 3) Would like to see something in either the code or reference guide to address the need for the worker to initiate the conversation if/when have a need for dedicated space for lactation (worker responsibility). As workers may work for a temporary agency, be sent by the Union, be on job-site for a couple of hours only; or, for small employers-collaboration between worker and employer is critical.
- 4) Overall, attendees supported the draft language and did not feel the language required further specificity, on specific type, size, brand or quantities of menstrual hygiene products.