October 21, 2022

Cynthia Ireland
Department of Labor and Industries
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SENT VIA ELECTRONIC MAIL

Re: Comments on Draft Permanent Rule WAC 296-62-085

Dear Ms. Ireland:

The draft permanent rules appear more protective of workers than last year's rules, but undefined terms and vagueness continue to undermine worker protections.

Our comments are organized by subsection.

08510(2)

For all intents and purposes, delivery drivers are outdoor workers and should be treated as such by LNI's rules. Notes under this subsection indicate that exemptions from requirements to protect employees apply to delivery drivers, but do not apply to transit systems. Rather than leaving delivery drivers, among others, exposed to PMI 2.5 by exemption from the rules' protections as allowed in 08510(2)(b), LNI should also apply protections to delivery drivers who are, in most respects, similarly situated to transit workers. The same protections should apply to a city bus driver who opens the doors every two minutes, a UPS driver whose truck has no air filtration or temperature control system, and an Amazon driver who leaves the vehicle frequently to make deliveries.

Amazon, UPS, and other employers that track their employees' time down to the minute could provide LNI with data showing how many hours in the day those employees are outside of their vehicles.

08510(3)

CLS supports the use of concrete numerical boundaries for different exposure levels. However, we seek greater transparency about why LNI chose these specific exposure numbers and how it established the exposure time frames governing when employee protections are required. For example, last year's rule set the exposure exemption limit at one hour or less if the AQI was 69. In these subsections, the required AQI reading has been increased from 69 to 301, from

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				(800) 631-1323

"moderate" on the air quality scale to "hazardous." LNI has failed to make clear the scientific justification for increasing that level of exposure.

08530

The use of the phrase "periodically as needed" in this rule is vague. With this phrasing, just two exposure checks per work shift could be sufficient for compliance. To prevent employers from relying on this bare minimum, LNI should include a definition of "periodically."

The Note about employers checking the current PM 2.5 is also so vague as to be unenforceable. What is a "manner that they are able to comply with"? Who decides what that manner is?

08540(1)

CLS appreciates that this subsection is more protective than last year's rule, but there is one point that needs clarification. Under the proposal, more than two consecutive AQI readings of 69 would trigger action and just one AQI reading of 101 would trigger action. But nothing defines the interval of time between the two readings.

For an extreme example, an employer could take a reading at 8:00 am and 5:00 pm, leaving workers to work all day in a hazardous environment without ever triggering the rule's protections. Lack of clarity about the interval between readings that trigger protections makes this, or a similar scenario, possible. LNI should define the internal between the two readings.

08540(2)

The word "enabling" is added to the introductory sentence. It is not clear what *"enabling and encouraging employees to inform the employer"* means in effect. LNI's intention in including this language should be spelled out, because otherwise no part of "enabling and encouraging" is enforceable.

08540(2)(b)

It is not clear what "availability issues" means. It suggests that employees are meant to tell their employers when the employees are not getting the equipment that can protect them, which is confusing when the employer is meant to be the one providing that equipment. LNI should clarify its intent in this subsection.

08580(3)

LNI has requested stakeholder input about whether to make N95 respirator use mandatory at AQI 201 or AQI 301. The threshold should be 151.

An AQI of 301 is considered "hazardous." An AQI of 201 is considered "very unhealthy." An AQI of 150 is considered "unhealthy." The airnow.gov pamphlet on AQI exposure says: "Everyone may begin to experience health effects when AQI values are between 151 and 200. Members of sensitive groups may experience more serious health effects."

To be clear: it is unhealthy for *everyone* to be outdoors when the AQI is 150 or higher. LNI should lower the mandatory respirator use threshold to 151.

LNI must also require fit testing for N95 use. Improperly worn N95 respirators provide ineffective protection. If LNI has scientific evidence that this is not the case, it should share that evidence with the public.

The respirator requirement graphic in the draft rule indicates that not only will no fit-test be required, but no "medical eval" will be required when N95 respirator use is mandatory. WAC 296-842-14005 makes medical evaluations mandatory when respirator use is required. It appears that LNI intends to waive 842-14005's med eval requirement. It is not clear on what basis LNI has concluded that waiver is appropriate.

In 842-14005, LNI recognizes that:

> Using a respirator can create physical risks for an employee each time it is worn. The extent of these risks depends on these factors:
>
> a. Type of respirator;
> b. Environmental conditions at the worksite;
> c. Physical demands of the work;
> d. Use of the protective clothing;
> e. Employee's health status.

If waiver of medical eval is intended when N95 use is mandatory, LNI should explain how using an N95 to protect a worker from PM 2.5 will not create the risks described in 842-14005.

Appendix B:

Again, LNI should define what "periodically" means in practice and establish a threshold employers must meet to demonstrate compliance with the rule.

LNI should include a definition of "outdoor worker." Leaving "outdoor worker" undefined, may make enforcement more difficult.

Thank you for the opportunity to comment. We are available to answer any questions or clarify any suggestions.

Sincerely,

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