



August 15, 2022

Carmyn Shute  
Washington State Department of Labor & Industries  
[carmyn.shute@lni.wa.gov](mailto:carmyn.shute@lni.wa.gov)

RE: Outdoor Ambient Heat Exposure Rulemaking

Dear Ms. Shute,

Thank you for the opportunity to respond to the proposed rules and the short extension of time to provide comments. I am writing on behalf of the Association of Washington Business (AWB) to raise concerns with the proposed L&I Outdoor Ambient Heat Exposure draft rules. AWB continues to have concerns with L&I's rulemaking process in the last two years for this proposed rule as well as the wildfire smoke rule.

L&I issued emergency rules for two consecutive years (2021 & 2022) even though the outdoor ambient heat exposure rules failed to meet the requirements for an Emergency Rule under RCW 34.05. As a result of this misuse of the emergency rule process the Department has failed to follow the appropriate APA process.

Moreover, the failure to follow the proper rulemaking process has entirely impaired the ability to meaningfully engage with the complex issues presented by the proposed rule. As you know, L&I only released the initial draft rules on August 4 during the public meeting. Initially comments were going to be due in less than week (August 10). The extension provided three additional business days. Even with the extension this process is significantly flawed. Because of the very short timeline these comments are limited in scope. More detailed comments will be provided as our members are able to review the full impact of the proposed rules.

AWB believes these rules are "Significant Legislative Rules" as defined under RCW 34.05.328 and must include the required small business impact statement. These proposed rules plainly adopt "substantive provisions of law pursuant to delegated legislative authority, the violation of which subjects a violator of such rule to a penalty or sanction." RCW 34.05.328(5)(c)(iii)(A). Given the enormous disproportionate impact of these proposed rules on small businesses across the state, a small business economic impact statement would be required pursuant to RCW 19.85.030.

Even without the small business impacts, the Department must comply with the analysis called for by RCW 34.05.328, not only because it serves a significant and useful public purpose, but because it is required by law. Undoubtedly, in the rule-making process, options for businesses to comply will be identified, and those options will have different costs and requirements associated with them. A cost-benefit analysis will inform the agency and stakeholders on options that meet the requirements in the least disruptive manner possible.

In addition to the requirements set forth in RCW 34.05.328 AWB raises concern as to the need for these rules at all. L&I stated in the March 17, 2022, presentation that over a 15-year time period L&I had only 918 claims relating to heat exposure with only 654 claims being accepted. (Slide 42). Most industries have fewer than fifty claims in 15-years. Yet these rules impose implementation mandates that are shockingly

disproportionate to the injuries at issue. These claim numbers do not justify the significant rule being proposed.

Without L&I following the required review under RCW 34.05.328 it is impossible to provide meaningful comments. AWB looks forward to the Department's significant impact as well as the small business impact review. Now that the Department is finally prepared to go through the proper rulemaking process to adopt permanent rules, the Department must slow down and get it right. We look forward to being able to provide a more detailed response to the proposed rules.

Sincerely,



Robert Battles  
General Counsel & Director of Government Affairs  
Association of Washington Business