

WAC 296-900-11005 Applying for a variance.

IMPORTANT :

1. A variance provides an approved alternative to WISHA requirements to protect employees from a workplace hazard. Variances can be permanent or temporary.

2. Variances will **not** be retroactive. Employers are obligated to follow WISHA requirements until the variance is granted.

(1) You must follow steps 1-5 to apply for a variance when you wish to use an alternative to WISHA requirements as a means to protect your employees.

Step 1: Decide what type of variance is needed by reviewing the types of variances in Table 1, Requesting a Variance.

Step 2: Complete a written application for the variance, following the requirements in Table 1, Requesting a Variance.

Note: A form, Variance Application (F414-021-000), is available for requesting variances:

1. From any L&I office.

2. On our web site under Safety Forms, Variance Application <http://www.lni.wa.gov/FormPublications/TablesForms/Safety/SafetyHealth.asp>.

Reference: For a list of the local L&I offices, see the resources section of the Safety and health core rules, chapter 296-800 WAC.

Step 3: Notify employees before submitting any type of variance request by doing all of the following:

- Posting a copy of the request on your safety bulletin board.
- Using other appropriate means for notifying employees who may not be expected to receive notices posted on the safety bulletin board. For example, provide a copy to a designated representative or the safety committee.

Step 4: Submit the written request, using one of the following means:

- Mail to:
Assistant Director
WISHA Services
P.O. Box 44650
Olympia, WA 98504-4650
- Fax to: 360-902-5438
- Take to any L&I office.

Step 5: After receiving a written decision from WISHA about your request, immediately notify affected employees of the decision by using the methods in Step 3.

(2) You must follow the specific requirements of the variance that WISHA has granted.

Note: 1. If employers fail to follow Steps 1-5 above, the variance cannot be granted.

2. Citations may be issued for failing to follow a variance.

3. Employers can always follow the original WISHA requirements instead of the variance requirements.

4. If your variance is no longer necessary and you decide to follow the WISHA requirements instead, please advise WISHA in writing.

Table 1
Requesting a Variance

For this type of variance:	Include the following on your written application:
Permanent variance	

For this type of variance:	Include the following on your written application:
<ul style="list-style-type: none"> - Request a permanent variance if you can show that you will be providing alternate methods of protecting employees from hazards that are as effective as those provided by the requirements from which you are requesting relief. Note: • A permanent variance remains in effect unless WISHA modifies or revokes it. Examples of reasons a variance might be revoked include: <ul style="list-style-type: none"> - An employer requests the variance be revoked - Requirements that existed when the variance was approved are modified - The work location is changed 	<ul style="list-style-type: none"> • Employer name and address • Employer or employer representative signature • Work locations and situations that apply to the variance • Which specific requirements you want to vary from, with WAC numbers • Description of proposed alternative methods of protection, and how they will protect employees. • How employees will be notified: <ul style="list-style-type: none"> - About the variance request, as required in Step 2 - That they may request a hearing • The following notice on the first page of your posted application, written in large and clear enough print to be easily read: <p>"Attention Employees: Your employer is applying to WISHA for a variance from safety and health requirements. You have a right to ask WISHA for a hearing on the variance request, but you must ask for the hearing in writing by (date*). If no hearing is requested, WISHA will act on the variance request without a hearing."</p> <p>*This date must be 21 calendar days after the variance request is mailed or delivered.</p>
<p>Temporary variance Request a temporary variance if both of the following apply:</p> <ul style="list-style-type: none"> • New WISHA requirements cannot be met for any of the following reasons: 	<ul style="list-style-type: none"> • Provide all the information required above for permanent variances • Also provide all of the following:

For this type of variance:	Include the following on your written application:
<ul style="list-style-type: none"> - Professional or technical people are not available - Materials or equipment are not available - Construction or alteration of facilities cannot be completed by the effective date of the requirements • You have an effective plan for meeting WISHA requirements as soon as possible. <p>Note:</p> <ul style="list-style-type: none"> • Temporary variances remain in effect: <ul style="list-style-type: none"> - Until current WISHA requirements are met - No longer than one year, unless extended 	<ul style="list-style-type: none"> - An explanation of why WISHA requirements cannot be met, including documentation that supports this belief - Steps that will be taken to protect employees until WISHA requirements can be met - When WISHA requirements will be met - A statement that this request is from a qualified person who has first hand knowledge of the facts represented

What to expect from WISHA:

(3) A review of all variance requests.

If more information is needed to make a decision, WISHA may:

(a) Contact you or others who may have the needed information.

(b) Visit your workplace after contacting you to make arrangements.

(c) Deny your request if you do not provide information needed to make a decision on it.

(4) A decision at least twenty-one calendar days from when the request was posted for employees.

The twenty-one-day period allows employees time to request a hearing on your variance application. See Variance hearings, WAC 296-900-11025.

(5) A written decision either granting or denying the variance.

(a) If granted, the written decision will include all of the following:

(i) The requirement for which the variance applies.

(ii) The locations where the variance applies.

(iii) What you must do as an alternative means of protecting employees.

(iv) The effective date of the variance.

(v) An expiration date for the variance, if applicable.

(vi) The requirement to post the decision.

(b) If denied, the written decision will include:

(i) A brief statement with reasons for the denial.

(ii) The requirement to post the decision.

(6) WISHA will review permanent variances periodically after they have been in effect for six months, to decide whether they are still needed or need to be changed.

Note: If there is an appealed WISHA citation and notice that relates to the variance request, the decision on the variance may be delayed until the appeal is resolved.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060. WSR 17-18-075, § 296-900-11005, filed 9/5/17, effective 10/6/17; WSR 06-06-020, § 296-900-11005, filed 2/21/06, effective 6/1/06.]