

WSR 17-17-081
EXPEDITED RULES
WASHINGTON STATE PATROL

[Filed August 16, 2017, 1:30 p.m.]

Title of Rule and Other Identifying Information: Foreign substances, interference, and invalid samples, WAC 448-16-040.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed changes to WAC 448-16-040 will reflect the update to RCW 46.61.506 by removing the requirement that piercings be removed prior [to] conducting a breath test. (RCW 46.61.506 specifically excludes piercings as a foreign object for the purposes of an evidential breath test effective July 23, 2017.)

Reasons Supporting Proposal: The update will bring WAC in line with the new statutory requirements.

Statutory Authority for Adoption: RCW 43.61.506.

Statute Being Implemented: RCW 43.61.506.

Rule is not necessitated by federal law, federal or state court decision.

Name of Agency Personnel Responsible for Drafting: Lieutenant Rob Sharpe, 811 East Roanoke Street, Seattle, WA 98102, 206-720-3018; Implementation and Enforcement: Washington State Patrol, P.O. Box 42600, Olympia, WA 98504-2600, 360-596-4000.

This notice meets the following criteria to use the expedited adoption process for these rules:

Content is explicitly and specifically dictated by statute.

Explanation of the Reason the Agency Believes the Expedited Rule-making Process is Appropriate: RCW 46.61.506 specifically excludes piercings as foreign objects for the purposes of an evidential breath test.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Sara Staab, Washington State Patrol, P.O. Box 42600, Olympia, WA 98504-2600, phone 360-596-4017, email Sara.Staab@wsp.wa.gov, AND RECEIVED BY October 23, 2017.

August 15, 2017
 John R. Batiste
 Chief

AMENDATORY SECTION (Amending WSR 16-21-025, filed 10/10/16, effective 11/10/16)

WAC 448-16-040 Foreign substances, interference, and invalid samples. (1) A determination as to whether a subject has a foreign substance in his or her mouth will be made by either an examination of the mouth or a denial by the person that he or she has any foreign substances in their

mouth. A test mouthpiece is not considered a foreign substance for purposes of RCW 46.61.506.

~~(2) ((If a subject is wearing jewelry or ornamentation pierced through their tongue, lips, cheek, or other soft tissues in the oral cavity, they will be required to remove this prior to conducting the breath test. If the subject declines to remove the jewelry or ornamentation, they will be deemed to have a physical limitation rendering them incapable of providing a valid breath sample.~~

~~(3))~~ If during a breath test, interference is detected, this will invalidate the test. The subject will be required to repeat the test. A subject whose breath registers the presence of interference on two or more successive breaths shall be deemed to have a physical limitation rendering them incapable of providing a valid breath sample.

~~((4))~~ (3) In the event that the instrument records an "invalid sample" result at any point during the subject's test, that subject's test should be readministered, after again determining that the subject has no foreign substance in their mouth as outlined in WAC 448-16-040(1), and repeating the fifteen minute observation period.

WSR 17-17-133

EXPEDITED RULES

DEPARTMENT OF

LABOR AND INDUSTRIES

[Filed August 22, 2017, 10:11 a.m.]

Title of Rule and Other Identifying Information: WAC 296-900-17005 Appealing a citation and notice (C&N).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to update the appeal extension dates within WAC 296-900-17005 to coincide with 2017 HB 1629 (chapter 13, Laws of 2017).

When the department issues a citation for a safety and health violation, an employer may appeal the violation and penalties to the board of industrial insurance appeals. An employee or employee representative may appeal the timeline in the citation within which the hazards must be corrected. If appealed, the department has an opportunity to "reassume" jurisdiction to attempt to reach a resolution to the appeal, including a settlement. The department has thirty working days to decide these reassumption appeals. If the parties agree, the thirty day time period may be extended. HB 1629 increased the extension time period from fifteen days to an additional forty-five days.

Additional updates being made during this rule making, not affiliated with HB 1629, are adding the option to file appeals electronically; housekeeping changes, and eRules formatting. These changes do not introduce new requirements or cause any costs to employers.

Changes being proposed in this rule making to be consistent with HB 1629:

- In subsection (6)(b), change the extension time period from fifteen working days to up to forty-five working days to be consistent with HB 1629.

- In subsection (7), change the language regarding the total reassumption time period to up to seventy-five working days if all parties agree to the extension of up to forty-five working days.

Other changes being proposed in this rule making include:

- In subsections (2) and (4), add new language to allow for electronic submission via email to DOSHappeals@lni.wa.gov.
- Change bullets and dashes to letters and numbers where applicable.
- Move bold "you must" to beginning of sentence in the new numbered subsections (1) and (2) as part of eRules language reformatting.
- Move bolded phrase "Employees or their designated representatives must" to beginning of the new numbered subsections (3) and (4) as part of eRules language reformatting.
- In the definition of "reassume jurisdiction," add a period after the defined word and remove "means that" to make the definition a complete sentence.

Reasons Supporting Proposal: A reason supporting this proposal of adding an electronic option for customers to send in their appeal to a citation and notice to the division of occupational safety and health, is that we are making it easier for our customers to do business with the department.

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060.

Statute Being Implemented: Chapter 49.17 RCW, chapter 13, Laws of 2017.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of labor and industries (L&I), governmental.

Name of Agency Personnel Responsible for Drafting: Chris Miller, Tumwater, Washington, 360-902-5516; Implementation and Enforcement: Anne Soiza, Tumwater, Washington, 360-902-5090.

This notice meets the following criteria to use the expedited adoption process for these rules:

Corrects typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Content is explicitly and specifically dictated by statute.

Explanation of the Reason the Agency Believes the Expedited Rule-making Process is Appropriate: The need for this expedited rule making is to meet the January 1, 2018, effective date of the changes that were introduced in HB 1629. This fits within the parameters of RCW 34.05.353 Expedited rule making.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT

LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Chris Miller, L&I, P.O. Box 44610, Olympia, WA 98504, phone 360-902-5516, fax 360-902-5619, email christopher.miller@lni.wa.gov, AND RECEIVED BY October 24, 2017.

August 22, 2017
Joel Sacks
Director

AMENDATORY SECTION (Amending WSR 12-02-055, filed 1/3/12, effective 7/1/12)

WAC 296-900-17005 Appealing a citation and notice (C&N).

IMPORTANT:

((*) 1. Employers may appeal C&Ns.

((*) 2. Employees of the cited employer, or their designated representatives, may only appeal abatement dates.

((*) 3. The filing of an appeal does not stay the abatement date for violations classified as serious, willful, repeat serious, or failure to abate serious. Employers may request a stay of abatement date for these classifications of violations when they appeal a C&N.

~~((You must:~~

*) (1) You must, when appealing, submit a written appeal to DOSH within fifteen working days after receiving the C&N. Include the following information:

((-) (a) Business name, address, and telephone number.

((-) (b) Name, address, and telephone number of any employer representative.

((-) (c) C&N number.

((-) (d) What you believe is wrong with the C&N and any related facts.

((-) (e) What you believe should be changed, and why.

((-) (f) Requests for stay of abatement date according to WAC 296-900-17006.

((-) (g) A signature and date.

((*) (2) You must send appeals in any of the following ways:

- Mail to:

Assistant Director for DOSH Services
Attn: DOSH Appeals
P.O. Box 44604
Olympia, WA 98504-4604

- Fax to: 360-902-5581

- Electronically to: DOSHappeals@lni.wa.gov

- Take to any department service location.

Reference: See the resources section of the Safety and health core rules, chapter 296-800 WAC, for a list of the local offices.

Note: The postmark is considered the submission date of a mailed request.

~~((Employees or their designated representatives must:~~

*) (3) Employees or their designated representatives must, when appealing C&N abatement dates, submit a writ-

ten request to DOSH within fifteen working days after the C&N is received. Include the following information:

- ((-) (a) Name of employee, address, telephone number.
- ((-) (b) Name, address, and telephone number of any designated representative.
- ((-) (c) C&N number.
- ((-) (d) What is believed to be wrong with the abatement date.
- ((-) (e) A signature and date.
- ((*) (4) Employees or their designated representatives must send appeals in any of the following ways:

- Mail to:

Assistant Director for DOSH Services
Attn: DOSH Appeals
P.O. Box 44604
Olympia, WA 98504-4604

- Fax to: 360-902-5581

- Electronically to: DOSHappeals@lni.wa.gov

- Take to any L&I service location.

Reference: See the resources section of the Safety and health core rules, chapter 296-800 WAC, for a list of the local offices.

Note: The postmark is considered the submission date of a mailed request.

What to expect from DOSH:

((*) (5) After receiving an appeal, DOSH will do one of the following:

((-) (a) Reassume jurisdiction over the C&N, and notify the person who submitted the appeal.

((-) (b) Forward the appeal to the board of industrial insurance appeals. The board will send the person submitting the appeal a notice with the time and location of any board proceedings.

Definition:

Reassume jurisdiction (~~(means that)~~), DOSH has decided to provide the employer with an informal conference to discuss their appeal.

((*) (6) When reassuming jurisdiction over a C&N, DOSH has thirty working days after receiving the appeal to review it, gather more information, and decide whether to make changes to the C&N. The review period:

((-) (a) Begins the first working day after the appeal is received. For example, if an appeal is received on Friday, the thirty days will begin on the following Monday unless it's a state holiday.

((-) (b) May be extended (~~(fifteen)~~) up to forty-five additional working days, if everyone involved agrees and signs an extension agreement within the initial thirty-day period.

((-) (c) Will include an informal conference about the appeal that is an opportunity for interested parties to:

((*) (i) Briefly explain their positions.

((*) (ii) Provide any additional information they would like DOSH to consider when reviewing the C&N.

((*) (iii) Provide any additional information they would like DOSH to consider when reviewing stay of abatement date requests.

Note: DOSH might reassume jurisdiction over a C&N to do any of the following:

((*) 1. Provide an employer and affected employees an opportunity to present relevant information, facts, and opinions during an informal conference.

((*) 2. Give an employer, affected employees, and the department an opportunity to resolve appeals rapidly and without further contest, especially in routine compliance cases.

((*) 3. Educate employers about the C&N, the DOSH appeals process, and DOSH compliance.

((*) 4. Review citations, penalties, and abatement dates. Although informal, the conference is an official meeting and it may be either partially or totally recorded. Participants will be told if the conference is recorded.

((*) 5. Review requests to stay abatement dates.

((*) (7) On or before the end of the thirty working day review period, or (~~(forty-five)~~) up to seventy-five working days if everyone involved agrees to the (~~(fifteen)~~) extension of up to forty-five additional working days (~~(extension)~~), DOSH will issue a corrective notice of redetermination that:

((-) (a) Reflects any changes made to the C&N.

((-) (b) Grants or denies requests to stay abatement dates and includes the basis of the decision.

((-) (c) Is sent to the employer, employees, and employee representatives participating in the appeal process.

WSR 17-17-170

EXPEDITED RULES

PIERCE COLLEGE

[Filed August 23, 2017, 10:28 a.m.]

Title of Rule and Other Identifying Information: Repeal of WAC 132K-126-010 through 132K-126-320 and 132K-125-010 through 132K-125-430.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Repeal old sections. New rule in effect.

Reasons Supporting Proposal: New rule in place.

Statute Being Implemented: RCW 28B.50.140(13).

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Pierce College, public.

Name of Agency Personnel Responsible for Drafting and Implementation: Tami Jacobs, Dean of Student Success, Pierce College Fort Steilacoom, 253-964-6581; and Enforcement: Vice President of Learning and Student Success, Pierce College Fort Steilacoom, 253-964-6584.

This notice meets the following criteria to use the expedited repeal process for these rules:

Other rules of the agency or of another agency govern the same activity as the rule, making the rule redundant.

Explanation of the Reason the Agency Believes the Expedited Rule-making Process is Appropriate: Repeal of old sections - new rule in place.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL

ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Marie Harris, Pierce College, 1601 39th Avenue S.E., Puyallup, WA 98374, phone 253-864-3104, fax 253-864-3123, email mharris@pierce.ctc.edu, AND RECEIVED BY October 24, 2017.

August 21, 2017
Michele Johnson
Chancellor and CEO

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 132K-125-010	Title.
WAC 132K-125-020	Preamble.
WAC 132K-125-030	Procedural standards in disciplinary proceedings.
WAC 132K-125-040	Definitions.
WAC 132K-125-050	Jurisdiction.
WAC 132K-125-060	Freedom of access to higher education.
WAC 132K-125-070	Right to demand identification.
WAC 132K-125-080	Academic freedom.
WAC 132K-125-090	Freedom of expression.
WAC 132K-125-100	Freedom of assembly.
WAC 132K-125-110	Freedom of association.
WAC 132K-125-120	Distribution and posting.
WAC 132K-125-130	Off-campus speaker policy.
WAC 132K-125-140	Incidental sales.
WAC 132K-125-150	Commercial activities.
WAC 132K-125-160	Student participation in college governance.
WAC 132K-125-170	Rules and regulations.
WAC 132K-125-180	Trespass.
WAC 132K-125-190	Hazing policy.
WAC 132K-125-200	Judicial authority.
WAC 132K-125-210	Initiation of proceedings.
WAC 132K-125-220	Appeals.
WAC 132K-125-230	Summary suspension proceedings.
WAC 132K-125-240	Procedures of summary suspension hearing.
WAC 132K-125-250	Decision by the executive dean of student services.

WAC 132K-125-260	Notice of suspension.
WAC 132K-125-270	Suspension for failure to appear.
WAC 132K-125-280	Appeals from summary suspension hearing.
WAC 132K-125-290	Final decision.
WAC 132K-125-300	Purpose of disciplinary action.
WAC 132K-125-310	Disciplinary sanctions.
WAC 132K-125-320	Composition of college disciplinary committee.
WAC 132K-125-330	Hearing procedures before the college disciplinary committee.
WAC 132K-125-340	Conduct of hearings.
WAC 132K-125-350	Evidence admissible in hearings.
WAC 132K-125-360	Decision by the college disciplinary committee.
WAC 132K-125-370	Final appeal.
WAC 132K-125-380	Readmission after dismissal.
WAC 132K-125-390	Reporting, recording and maintenance of records.
WAC 132K-125-400	Interpretation and revision.
WAC 132K-125-410	Prior rules.
WAC 132K-125-420	Severability.
WAC 132K-125-430	Effective date.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 132K-126-010	Title.
WAC 132K-126-020	Preamble.
WAC 132K-126-030	Procedural standards in disciplinary proceedings.
WAC 132K-126-040	Definitions.
WAC 132K-126-050	Jurisdiction of the college.
WAC 132K-126-060	Student rights.
WAC 132K-126-070	Freedom of access to higher education.
WAC 132K-126-080	Academic freedom.
WAC 132K-126-090	Freedom of expression.
WAC 132K-126-100	Freedom of assembly.
WAC 132K-126-110	Freedom of association.
WAC 132K-126-120	Distribution and posting.
WAC 132K-126-130	Off-campus speaker policy.
WAC 132K-126-140	Incidental sales.
WAC 132K-126-150	Commercial activities.
WAC 132K-126-160	Student participation in college governance.

WAC 132K-126-170	Due process.
WAC 132K-126-180	Student responsibilities.
WAC 132K-126-190	Rules and regulations.
WAC 132K-126-200	Trespass.
WAC 132K-126-210	Hazing policy.
WAC 132K-126-220	Judicial authority.
WAC 132K-126-230	Violation of law and college discipline.
WAC 132K-126-240	Initiation of disciplinary proceedings.
WAC 132K-126-250	Sanctions.
WAC 132K-126-260	Interim sanctions.
WAC 132K-126-270	Appeal.
WAC 132K-126-280	Readmission after dismissal.
WAC 132K-126-290	Interpretation and revision.
WAC 132K-126-300	Prior rules.
WAC 132K-126-310	Severability.
WAC 132K-126-320	Effective date.