



Washington State Senate

Olympia Address:
PO Box 40442
Olympia, WA 98504-0442

Senator Doug Ericksen
42nd Legislative District

(360) 786-7682
FAX: (360) 786-1323
E-mail: Doug.Ericksen@leg.wa.gov

May 28, 2020

Governor Jay Inslee
Office of the Governor
PO Box 40002
Olympia, WA 98504-0002

Dear Governor Inslee,

The Department of Labor & Industries (L&I) recently adopted an emergency rule that will penalize people who are seeking to reopen their businesses and salvage their livelihoods. This rule sends the wrong message to the people of Washington. It is also not authorized by law.

This letter is a petition under RCW 34.05.350(3), requesting the immediate repeal of the emergency rule adopted by L&I and filed in the Washington State Register as WSR 20-12-017. I respectfully contend that the conditions of RCW 34.05.350(1) were not met, and that the rule was therefore inappropriately adopted on an emergency basis, because the legislature did not authorize L&I to adopt rules to enforce the governor's proclamations under RCW 43.06.220.

On May 26, L&I adopted an emergency rule "related to prohibited business activities and compliance with conditions for operations under emergency proclamations and their amendments issued under RCW 43.06.220."¹ The purpose of the rule is to prohibit employers from allowing the performance of any work that does not comply with the requirements of your emergency proclamations or "Safe Start" program. An employer who violates L&I's emergency rule is subject to citation and penalties.

The fundamental problem is that L&I has no authority to adopt this rule. Without proper rulemaking authority, L&I cannot adopt this rule on an emergency basis or otherwise.

First, RCW 43.06.220 contains a specific enforcement clause that does not authorize L&I to adopt enforcement rules. Instead, the statute only provides that willful violations of an emergency order could give rise to enforcement through normal prosecutorial channels.² Moreover, the maximum fine for a gross misdemeanor under RCW 43.06.220 is \$5,000, whereas L&I's emergency rules will be enforced by a fine of nearly \$10,000 or more, according to L&I.³

¹ WSR 20-12-017.

² RCW 43.06.220(5).

³ RCW 9A.20.021(2).

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There is no basis in RCW 43.06.220 for the adoption of enforcement rules by L&I, much less rules that double the statutorily established penalty for gross misdemeanors.

Second, none of the provisions of chapter 49.17 RCW cited in the rulemaking order support the adoption of rules to enforce gubernatorial proclamations. RCW 49.17.010 is a general statement of legislative purpose to enhance industrial safety, but it does not grant any rulemaking authority. RCW 49.17.040 authorizes L&I to adopt rules, but only as required to enforce chapter 49.17 RCW, not the governor's proclamations under RCW 43.06.220. RCW 49.17.050 contains a long list of specific subjects for which L&I is authorized to adopt rules, but the enforcement of your proclamations is not among these enumerated rulemaking powers. And while RCW 49.17.060 requires employers to furnish a safe workplace, the same section fails to authorize rulemaking and only provides for penalties when a rule has *not* been adopted.

There is simply no statutory foundation for L&I's emergency rule. I ask you to immediately repeal the rule, pursuant to RCW 34.05.350(3), and I look forward to receiving your prompt response to this request.

Sincerely,

A handwritten signature in black ink that reads "Doug Ericksen". The first letter "D" is significantly larger and more stylized than the rest of the name.

Senator Doug Ericksen
42nd Legislative District