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NO. 73943-3-I

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**COURT OF APPEALS, DIVISION I  
OF THE STATE OF WASHINGTON**

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HOWARD S. WRIGHT CONSTRUCTORS, LP,

Appellant,

v.

DEPARTMENT OF LABOR AND INDUSTRIES OF THE STATE OF  
WASHINGTON,

Respondent.

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**BRIEF OF RESPONDENT  
DEPARTMENT OF LABOR AND INDUSTRIES**

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## I. INTRODUCTION

The Washington Industrial Safety and Health Act (WISHA) imposes on general contractors a duty to establish, supervise, and enforce a safe and healthful working environment for all workers on its jobsite. General contractor Howard S. Wright Constructors failed in this duty when it provided no guardrail or equivalent to protect workers welding on a narrow edge outside of a guardrail. This perilous work exposed the employees of its subcontractor, Corona Steel, Inc., to a five to seven foot fall, which could have caused broken bones or hospitalization. Because Wright violated its duty as a general contractor under WISHA to establish and enforce a safe worksite for workers on its jobsite, the Department of Labor and Industries correctly cited Wright for a serious safety violation and properly assessed a \$250 penalty.

A WISHA regulation requires employers to provide a guardrail or equivalent to protect workers on a "walking/working surface" above a four foot drop if the surface's dimensions exceed 45 inches in all directions. The Board of Industrial Insurance Appeals found that Corona's workers were exposed to a four foot drop and worked on a surface with dimensions exceeding 45 inches in all directions. Nevertheless, it vacated the Department's citation because it concluded that the existing guardrail, which did not protect the workers welding on the outside of the guardrail,

changed the “nature” of the surface. As the superior court correctly determined, the Board misinterpreted the regulation.

The plain language of the regulation does not support the Board’s interpretation, which leads to the absurd result of giving greater WISHA protection to workers on the inside, rather than on the outside, of the guardrail. The Board also applied an incorrect legal standard when it determined that a fall from five to seven feet could not cause serious physical harm. The superior court correctly rejected the Board’s decision, and this Court should affirm.

## **II. ASSIGNMENTS OF ERROR**

1. The Board erred in entering finding of fact 3 because the only evidence in the record about the harm that would result from a fall from five to seven feet was that it would cause serious physical harm, such as broken bones and hospitalization.
2. The Board erred in entering finding of fact 4 and conclusion of law 2 that the Department did not make a prima facie case establishing that Howard S. Wright Constructors violated WAC 296-155-100(1)(a) because the Department proved all the elements of the violation.<sup>1</sup>
3. The Board erred in entering the part of conclusion of law 3 that vacated the Department’s citation and penalty.

## **III. ISSUES**

1. Where the Board found that two workers worked four feet above the ground without any fall protection on a surface

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<sup>1</sup> Thus, the Department assigns error to the finding that each element of the prima facie case as outlined below in Part VI.A. was not met.

that was part of a larger area that was more than 45 inches in all dimensions, did the Board misinterpret the definition of “walking/working surface” in former WAC 296-155-24503 (2012), which requires that an employer provide a guardrail or equivalent when these circumstances are present?<sup>2</sup>

2. Where the only evidence in the record was that a fall from a height of five to seven feet could cause broken bones or hospitalization, did the Board make an incorrect legal determination when it concluded that a fall from that height would not create a substantial probability that Corona workers would be injured?

#### **IV. STATEMENT OF THE CASE**

##### **A. Wright Was the General Contractor With Control Over the Health and Safety for All Workers on the Jobsite**

In September 2012, Wright was hired as the general contractor to construct a four-story administrative building for the Experience Music Project. BR Schoenle 12; BR Spencer 51-52; Ex. 13 at 4. Under WISHA, general contractors must establish, supervise, and enforce a safe and healthful working environment for all workers on its jobsite, including the employees of subcontractors, in a manner that is effective in practice.<sup>3</sup>

Wright hired Corona as the subcontractor to install precast concrete lintels, a type of horizontal structure, on the building. Ex. 1,

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<sup>2</sup> All citations to regulations in WAC 296-155 are to the regulations in effect on March 15, 2013, the date of the violation. The Department adopted new regulations on April 1, 2013. For ease of reading, this brief only uses “former” the first time the specific former regulation is cited. A copy of the applicable regulations appears in Appendix A.

<sup>3</sup> WAC 296-155-100(1)(a); *Stute v. P.B.M.C., Inc.*, 114 Wn.2d 454, 456, 788 P.2d 545 (1990).

Appendix B; Ex. 13 at 4; BR Schoenle 12-13. Corona workers attached the lintels by welding steel on the top part of the lintels to steel embedded in the building columns. BR Muniz 12; BR Schoenle 16-17, 31-32; BR Spencer 103-04.

As the general contractor, Wright was in charge of the Experience Music Project job site. BR Spencer 70. Wright's contract with Corona stated that it would monitor Corona for safety and health violations. Ex. 1, Appendix B; BR Hydzik 117. Wright developed a site specific safety plan for the construction project, which applied to subcontractors. Ex. 3; Ex. 13 at 5; BR Spencer 51, 63, 64. The plan required a "standard railing, or equivalent" for every open-sided floor, platform, or surface that was more than four feet above the ground or an adjacent floor. Ex. 3 at 10; BR Spencer 74.

Wright's safety resource manual states that "one of the most frequent and potentially life threatening hazards found on construction sites is falls." Ex. 2 at 27. The manual states that all workers, including subcontractor employees, on any Wright jobsite "must use fall protection" when "exposed to a hazard of falling from a location 6 feet or more . . . ." Ex. 2 at 27.

Wright had supervisory authority to correct any unsafe conditions on site. BR Spencer 68. Spencer, project engineer Jim Hydzik, and the

three to four on-site foremen each had authority to correct unsafe conditions. BR Spencer 68; BR Hydzik 114-16, 123.

**B. Safety Inspectors Observed Two Workers Outside of a Guardrail Without Fall Protection Where a Fall Could Have Caused Broken Bones or Required Hospitalization**

In March 2013, two safety inspectors from the Department of Labor and Industries, Ryan Olsen and Randy Paddock, drove by the construction site. BR Olsen 124, 126-27, 130. From the road, they observed two Corona workers, Raymond Muniz and Rob Woodruff, standing outside of a guardrail. BR Muniz 12; BR Schoenle 20; BR Olsen 127, 129; Ex. 13 at 5. The inspectors could see both workers plainly from the road they were driving on. BR Olsen 129.

The wooden guardrail, which is visible in Exhibit 9, was on a concrete slab that was the building's first floor. Ex. 9; BR Spencer 90. The concrete slab extended underneath the guardrail. Ex. 9; BR Olsen 153-54. According to Spencer, because the first floor was "a heavily trafficked area" that workers used to go from one part of the building to another, the guardrail was needed to "keep people away from the edge of the building." BR Spencer 55-56, 90-91. Wright was concerned that workers, including employees of its subcontractors, could fall off the edge, anywhere along the surface. BR Spencer 55-56, 79.

While still in the car, Olsen photographed Muniz while he worked.

Ex. 5; BR Olsen 127-28, 150; BR Muniz 12-13. Muniz was working outside of the guardrail, welding the precast concrete lintel to the building column. Ex. 5; BR Muniz 12-13; BR Olsen 127-28; BR Spencer 104.

Muniz wore no fall protection. BR 3, 26. The distance outside the guardrail where Muniz worked was less than three feet. BR Muniz 13; BR Spencer 106. Using a tape measure, the inspectors determined it was about five and a half feet from where Muniz sat to the ground. Ex. 6; BR Olsen 135.

Muniz testified that there were two ways that workers could access the area outside of the guardrail: "You could either jump up from the ground level from outside of the building, or you could cross through the guardrail." BR Muniz 14. On that particular day, he thought he jumped up from the outside. BR Muniz 14.

The inspectors parked the car and took an additional photograph. Ex. 7; BR Olsen 128, 151. The photograph showed Muniz and Woodruff standing outside of the guardrail. Ex. 7; BR Muniz 12-15; BR Schoenle 19-20. They had noticed the inspectors taking pictures and were looking in their direction. BR Muniz 15. The inspectors measured the distance from where Woodruff was standing to the ground and determined it was 85 inches, or just over seven feet. Ex. 8; BR Olsen 136. The distance to the ground is greater where Woodruff stood because the street is on a slope.

BR Spencer 107.

**C. The Department Inspectors Cited Wright for a Serious Violation of WAC 296-155-100(1)(a) Because It Failed To Establish A Safe Workplace for the Workers on Its Jobsite**

Olsen testified that Muniz and Woodruff were exposed to the hazard of falling off the edge of the walking/working surface. BR Olsen 137, 141. Olsen testified that they could have fallen off the surface. BR Olsen 141. The guardrails did not protect either man because they were outside of the guardrail. BR Olsen 141. Because men had been working on the surface, Olsen considered it a working surface. BR Olsen 141. He recommended the violation because the walking/working surface was over four feet in height. BR Olsen 137.

The Department cited Corona for a serious fall protection violation. BR Olsen 142. Corona appealed the citation but eventually settled the case. BR Schoenle 22.

The Department cited Wright for a serious violation of WAC 296-155-100(1)(a), a WISHA regulation providing that management must “establish, supervise, and enforce, in a manner which is effective in practice: (a) A safe and healthful working environment.” BR 22. The final penalty was \$250. BR Olsen 145. The citation was issued as a serious violation because a fall from the heights where the men worked could result in injuries that required more than first aid, including hospitalization

and broken bones. *See* BR Olsen 136-37, 141-45. Olsen testified that it was likely that the workers would break bones if they fell. BR Olsen 143. Wright appealed the citation to the Board. BR 44.

**D. The Board Vacated the Citation Because It Concluded That the Guardrail Changed the “Nature” of the Walking/Working Surface, but the Superior Court Reversed and Affirmed the Citation**

At the Board hearing, Corona’s safety administrator Greg Schoenle agreed that the concrete surface inside of the guardrail was more than 45 inches in all directions. BR Schoenle 11, 38-39. He agreed that if a walking/working surface was more than four feet off the ground, he would have a guardrail in place. BR Schoenle 43-44. But he testified that he did not consider the area *outside* the guardrail to be a walking/working surface because the distance between the precast lintel and the guardrail was less than 45 inches. BR Schoenle 33-34.

Construction superintendent Spencer testified that Wright put up the guardrail to keep workers from falling off the edge of the concrete slab because it was an open-sided floor. BR Spencer 55-56, 78-80, 91. He agreed that workers walked and worked on that concrete surface. BR Spencer 107-08. He agreed that the guardrail did not change the nature of the surface, stating “[i]t’s always going to be gray; it’s always going to be concrete.” BR Spencer 78; *see also* BR Spencer 76. He agreed that there

was an edge next to the guardrail and that someone could fall off the edge. BR Spencer 79. And he agreed that Muniz's feet were on that surface while he was working. BR Spencer 108. But Spencer testified that if he and other Wright foremen and engineers observed the two workers standing outside of the guardrail as they appeared in Exhibit 7, he would not have directed his foremen to tell the workers to use fall protection. BR Spencer 83-84.

Spencer agreed that there are several fall protection systems that could be used when someone is working on an open-sided surface higher than four feet, including guardrails, scaffolding, and catch platforms. BR Spencer 113. He testified that scaffolding would not be practical. BR Spencer 113-14. Nor would a second guardrail be practical because "there just wasn't the room." BR Spencer 105.

Hydzik testified that if he had seen the situation depicted in Exhibit 5, he would not think the worker would need fall protection. BR Hydzik 118. That is because the worker was "below the ten-foot limit." BR Hydzik 118. He then clarified that because Wright had a six-foot limit, he would see no problem with what the workers in Exhibits 5 and 7 were doing assuming they were working between four and six feet off the ground. BR Hydzik 121-23. In that situation, he would not take any sort of corrective action. BR Hydzik 123.

After considering the testimony, the industrial appeals judge vacated the citation. *See* BR 27. She determined that because the surface did not meet the definition of a “walking/working surface” in WAC 296-155-25403, Wright did not violate its obligation under WAC 296-155-100(1)(a) to effectively establish, supervise, and enforce a safe and healthful working environment. BR 23.

The hearings judge noted that the surface where Muniz was working in Exhibit 5 and where Muniz and Woodruff were standing in Exhibit 7 was part of a larger area that “was 45 inches or more in each direction.” BR 24. She also found that the part of the area outside the guardrail was less than 45 inches. BR 26. Then, despite stating that Wright’s position “that the guardrail changed the nature of the surface from a walking/working surface to one that did not require fall protection initially seemed illogical,” the judge determined that the fact that the area between the guardrail and the edge was less than 45 inches wide was dispositive because the “guardrail . . . changed the nature of the surface.” BR 24-25. Therefore, she entered a finding that the Department did not present a prima facie case establishing that Wright violated WAC 296-155-100(1)(a). BR 26.

The judge vacated the citation and entered the following findings of fact:

2. On March 15, 2013, Corona Steel employees, Ray Muniz and Rob Woodruff, were installing lintels on a building being constructed at 120 Sixth Avenue North in Seattle. The surface where they were working was more than four feet off the ground, and no fall protection system was installed. The surface was part of a larger area that was more than 45 inches in all dimensions, but a guardrail had been placed parallel to the edge, so that the area between the guardrail and the edge was less than 45 inches wide.

3. No substantial probability existed that the Corona employees exposed to the risk of falling described in Finding of Fact No. 2 above would be injured, or, if harm resulted, that it would be serious physical harm, including the possibility of fractures, paralysis, or death.

4. The Department did not present a prima facie case establishing that Howard S. Wright Constructors violated WAC 296-155-100(1)(a).

BR 26. The judge also entered a conclusion of law that read in part:

3. [Wright] presented evidence that Ed Spencer, James Hydzik, and others regularly walked through the jobsite and looked for dangerous conditions.

BR 27. The Department petitioned for review of the judge's decision, but the three-member Board affirmed this decision. BR 3, 5-17.

The Department appealed to superior court. CP 92. The superior court reversed the Board and affirmed the citation against Wright and the \$250 penalty. CP 93. Wright now appeals. CP 96.

## V. STANDARD OF REVIEW

Wright assigns error to several of the superior court's findings and conclusions. App. Br. 1-2. But in a WISHA appeal, this Court reviews a

decision by the Board directly based on the record before the agency. *J.E. Dunn Nw., Inc. v. Dep't of Labor & Indus.*, 139 Wn. App. 35, 42, 156 P.3d 250 (2007); see also *Martinez Melgoza & Assocs., Inc. v. Dep't of Labor & Indus.*, 125 Wn. App. 843, 847, 106 P.3d 776 (2005).

The Board's findings of fact are conclusive if substantial evidence supports them. *Elder Demolition, Inc. v. Dep't of Labor & Indus.*, 149 Wn. App. 799, 806, 207 P.3d 453 (2009); RCW 49.17.150(1). Unchallenged findings of fact are verities on appeal. *Mid Mountain Contractors, Inc. v. Dep't of Labor & Indus.*, 136 Wn. App. 1, 4, 146 P.3d 1212 (2006). The Board's conclusions of law must flow from the findings. See *Ruse v. Dep't of Labor & Indus.*, 138 Wn.2d 1, 5, 977 P.2d 570 (1999).

This Court reviews questions of law, including an agency's construction of a regulation, de novo. *Pilchuck Contractors, Inc. v. Dep't of Labor & Indus.*, 170 Wn. App. 514, 517, 286 P.3d 383 (2012). This Court gives substantial weight to an agency's interpretation of a regulation. *Id.* A regulation should not be construed in a manner that is strained or leads to absurd results. *Overlake Hosp. Ass'n v. Dep't of Health*, 170 Wn.2d 43, 52, 239 P.3d 1095 (2010). This Court's paramount concern is to ensure that the regulation is interpreted in a manner that is consistent with the underlying policy of the statute. *Id.*

The court construes WISHA statutes and regulations “liberally to achieve their purpose of providing safe working conditions for workers in Washington.” *Frank Coluccio Constr. Co. v. Dep’t of Labor & Indus.*, 181 Wn. App. 25, 36, 329 P.3d 91 (2014); RCW 49.17.010.

## VI. ARGUMENT

As a general contractor under WISHA, Wright must establish, supervise, and enforce a safe and healthful working environment for all workers on its jobsite, including the employees of subcontractors, in a manner that is effective in practice. WAC 296-155-100(1)(a); *Stute v. P.B.M.C., Inc.*, 114 Wn.2d 454, 456, 788 P.2d 545 (1990). Wright failed in its duty because it allowed Corona workers to weld on a narrow concrete edge that was part of a walking/working surface that dropped five to seven feet to the ground with no guardrail or equivalent to prevent them from falling.

Wright styles this case, incorrectly, as one of substantial evidence, but it largely involves the interpretation of “walking/working surface” under WAC 296-155-24503, a legal question. The Department does not dispute the Board’s factual finding about the dimensions of the concrete surface (finding of fact 2), only the Board’s and Wright’s legally incorrect determination of what flows from that finding. A wooden guardrail placed on a concrete walking/working surface that workers can climb over or

clamber through does not change the surface's dimensions. Because the surface's length and width are unchanged, the regulation applies.

Wright's position is not only legally incorrect; it also defies common sense. Wright erected the guardrail precisely to prevent workers from accidentally falling off the edge of the concrete surface. Wright has no rational explanation for why workers on the inside of the guardrail should receive greater protection under WISHA than those who work in a tight space outside of a guardrail. WISHA regulations must be liberally construed to protect workers, and Wright's and the Board's strained interpretation of WAC 296-155-24503 violates this core principle, abandons common sense, and gives no deference to the Department's interpretation of its own regulation.

**A. The Department Proved All Elements Necessary To Show a Serious Violation of WISHA**

The Department established a serious WISHA violation. To do so, the Department had to prove each of the following elements: (1) the cited standard applies; (2) the requirements of the standard were not met; (3) employees were exposed to, or had access to, the violative condition; (4) the employer knew or, through the exercise of reasonable diligence, could have known of the violative condition; and (5) there is a substantial probability that death or serious physical harm could result from the

violative condition. *SuperValu, Inc. v. Dep't of Labor & Indus.*, 158 Wn.2d 422, 433, 144 P.3d 1160 (2006); *Express Constr. Co. v. Dep't of Labor & Indus.*, 151 Wn. App. 589, 597-98, 215 P.3d 951 (2009); RCW 49.17.120. The Department also had to show that Wright did not meet the requirement under WAC 296-155-100(1)(a) to establish, supervise, and enforce a safe work environment in a manner which is effective in practice. *Express Constr. Co.*, 151 Wn. App. at 598.

The Department proved each of these elements. First, because the four-foot walking/working surface standard applied to the edge where Corona workers welded, Wright had a duty as the general contractor to ensure compliance with that standard in order to establish, supervise, and enforce a safe working environment that was effective in practice. *See Kamla v. Space Needle Corp.*, 147 Wn.2d 114, 122, 52 P.3d 472 (2002); *Stute*, 114 Wn.2d at 464. (Wright contests the Department's interpretation of the standard.)

Second, Wright did not comply with the standard because it did not provide a railing or its equivalent to protect Corona's workers. (Wright does not appear to contest that if the Department's interpretation is correct, they did not meet the standard.)

Third, at least two workers, Muniz and Woodruff, were exposed to the dangerous condition. (Wright did not assign error to the Board's

finding that the workers were above four feet without any fall protection, and does not appear to contest that if the Department's interpretation of the rule is correct, the workers were exposed.)

Fourth, Wright had constructive knowledge of the violation because it occurred in plain view from a city street. (Wright did not contest that the violation was in plain view, and so has not claimed it did not have knowledge, assuming there was a violation.<sup>4</sup>)

Fifth, because a fall from five to seven feet can break bones or require hospitalization, there was a substantial probability of serious physical harm. (Wright contests this.)

Finally, Wright did not establish or enforce a safe work environment because, despite its inspection and supervision of the worksite, it did not believe the workers on the edge needed to be protected from falls, ignoring the four-foot rule's clear application to the jobsite. (Wright contests this.)

As noted, the elements that Wright challenges are the first regarding the regulation's meaning, the fifth that there was a substantial

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<sup>4</sup> Constructive knowledge may be proved through evidence that a violation was in "plain view." *BD Roofing, Inc. v. Dep't of Labor & Indus.*, 139 Wn. App. 98, 109-10, 161 P.3d 387 (2007). As this Court has explained, knowledge is established where the violation was "readily observable or in a conspicuous location in the area of the employer's crews." *Erection Co., Inc. v. Dep't of Labor & Indus.*, 160 Wn. App. 194, 207, 248 P.3d 1085 (2011). The inspectors saw Muniz and Woodruff working on the edge outside of the guardrail with no protection while driving on a city street. *See* BR Olsen 127, 129; BR Schoenle 20. Because the violation was in plain view, Wright had knowledge.

probability of serious harm, and finally that it did not establish a safe work place effective in practice. *See* App. Br. 11-12, 17, 19, 24.<sup>5</sup>

**B. Because Corona Workers Worked Over Four Feet Off the Ground on a Walking/Working Surface With Dimensions Exceeding 45 Inches In All Directions, Wright Had To Provide a Guardrail or Equivalent Fall Protection, Which It Did Not**

The Department has proven the first element of the test for a serious violation because the Department's interpretation of the regulation applies. This Court should reject Wright's strained and absurd interpretation.

**1. Under the Regulation's Plain Language, the Relevant Inquiry Is Whether the "Dimensions" of the Surface Where Work Is Performed Exceed 45 Inches, Which They Did Here**

The interpretation of the definition of "walking/working surface" is a legal question. Contrary to Wright's suggestions, the dispute about the walking/working surface rule does not concern whether substantial evidence supports the Board's finding of fact 2. *See* App. Br. 1, 10. The parties agree that substantial evidence supports that finding in its entirety. *See* App. Br. 10. Muniz and Woodruff were installing lintels on the buildings. BR 3, 26; BR Muniz 12; BR Schoenle 20. They were working more than four feet off the ground. BR 3, 26; Exs. 5-9; BR Olsen 135-36.

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<sup>5</sup> Wright may not now raise new arguments regarding these elements because the court does not consider arguments raised and argued for the first time in the reply brief. *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992).

No fall protection system was installed. BR 3, 26; Exs. 5, 7; BR Spencer 83-84; BR Hydzik 118. The surface where they worked “was more than 45 inches in all dimensions.” BR 3, 26; BR Schoenle 38-40. And Wright had placed a guardrail parallel to the edge such that “the area between the guardrail and the edge was less than 45 inches wide.” BR 3, 26; BR Schoenle 33; BR Spencer 106.

What is disputed is the legal effect of the Board’s finding that the area between the guardrail and edge was less than 45 inches wide. The Board concluded that this meant that the edge was no longer a “walking/working surface.” *See* BR 3, 26. The Board was legally incorrect because a “walking/working surface” is any area “whose dimensions” exceed 45 inches in all directions, through which workers pass or conduct work. WAC 296-155-24503. The guardrail did not change the dimensions of the underlying concrete surface. Additionally, Corona workers could pass through the guardrail to work on the edge so the Board’s conclusion that the “nature” of the surface had changed makes no sense. *See* BR Muniz 14.

Corona’s underlying violation of the four-foot walking/working surface rule in former WAC 296-155-505(6)(a) (2012) formed the basis for Wright’s violation of WAC 296-155-100(1)(a). The four-foot walking/working surface rule applies to temporary conditions “where

there is danger of employees or materials falling . . . from . . . open sided floors, open sides of structures . . . or other open sided walking or working surfaces.” WAC 296-155-505(1). Under the four-foot rule, “[e]very open sided floor, platform or surface four feet or more above adjacent floor or ground level shall be guarded by a standard railing, or the equivalent . . . on all open sides . . .” WAC 296-155-505(6)(a). A “platform” is “a walking/working surface for persons, elevated above the surrounding floor or ground . . .” Former WAC 296-155-500 (2012).

Key in this case, a “walking/working surface” is “any area whose dimensions are forty-five inches or greater in all directions, through which workers pass or conduct work.” WAC 296-155-24503.<sup>6</sup>

Read together, these regulations required Wright to use guardrails or the equivalent to protect all workers on its jobsite from falls of four feet or more when they passed through or conducted work on a walking/working surface with *dimensions* exceeding 45 inches in all directions. WAC 296-155-500, -505(6)(a), -24503.

The Board ignored the word “dimensions” in the regulation, instead accepting Wright’s argument that the guardrail changed the “nature” of the surface. BR 25. But the regulation does not use the vague

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<sup>6</sup> Wright incorrectly asserts that this regulation involves a surface that has “any area whose directions are forty-five inches or greater . . .” App. Br. 13. This is not what the regulation says. It says “dimensions,” not “directions.” WAC 296-155-24503.

term “nature”; it uses the concrete term “dimensions.” “Dimension” means a “measure in a single line (as length, breadth, height, thickness, or circumference).” *Webster’s Third New Int’l Dictionary of The English Language* 634 (2002). Both the length and width of the surface of the concrete slab, measured in a single line and visible in Exhibit 9, exceeded 45 inches. Ex. 9; BR Schoenle 38-40. The Board’s finding that the surface where Muniz and Woodruff worked “was more than 45 inches in all dimensions” is not in dispute. BR 3, 26. When Wright installed the guardrail, the length and width of the concrete slab did not change. Corona’s workers could and did pass through the guardrail to access the edge. BR Muniz 15. Because the plain language of the regulation applied to the concrete slab, Wright had to ensure the use of a railing or other equivalent to protect workers on the edge.<sup>7</sup>

Wright repeatedly mischaracterizes the Board’s finding of fact 2 to obfuscate the conclusion that should flow from that finding. The Board did not find, as Wright suggests, that “the *surface* where Mr. Muniz and Mr. Woodruff were working was less than 45 inches wide.” App. Br. 10

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<sup>7</sup> Wright argues that it was not feasible to put a second guardrail up. App. Br. 16-17; BR Spencer 105. This misses the point because in none of Wright’s testimony did it explain why the guardrail location fell short of the edge where it could have protected Corona’s workers. Nor did it explain why it could not have provided an alternative method of protection, equivalent to a guardrail. *See* WAC 296-155-505(6)(a). The burden is on the employer to prove the affirmative defense of infeasibility. *See Frank Coluccio Const. Co.*, 181 Wn. App. at 37. Wright did not assert this defense at the Board as required by RCW 49.17.150. This Court should disregard Wright’s arguments about the practicality of a second guardrail.

(emphasis added); *see also* App. Br. 18. Rather, the Board found only that “the area between the guardrail and the edge” was less than 45 inches wide. BR 3, 26. But that fact is legally meaningless because the guardrail did not change the slab’s dimensions, which is the relevant term in the regulation. Accordingly, this Court should reject Wright’s arguments that this finding “is deemed conclusive” and that the four-foot rule did not apply “[a]s a matter of law.” App. Br. 10, 18.

Consistent with the undisputed testimony, Wright admits that employees could pass through the guardrail. App. Br. 5; BR Muniz 15. The regulation specifically describes the surface as one “through which workers pass or conduct work.” WAC 296-155-24503. Thus, the working surface outside of the guardrail is the same as the working surface on the inside of the guardrail. Workers pass through the surface to the outside of the guardrail, and they could work on both sides. Accordingly, the Court should reject Wright’s analogy to a wall. *See* App. Br. 18. Unlike a wall, the guardrail did not divide the surface into multiple surfaces of different dimensions.

2. **Although the Regulation Is Plain and Needs No Construction, If Ambiguous, It Must Be Liberally Construed To Further Worker Safety by Protecting Workers Balanced on an Edge of a Working Surface**

None of the terms in the “walking/working surface” definition in

WAC 296-155-24503 is ambiguous. But even if this Court found any ambiguity, liberal construction supports the Department's interpretation here. WISHA regulations must be liberally construed in light of WISHA's stated purpose of ensuring safe and healthful working conditions for all Washington workers. *Adkins v. Aluminum Co. of Am.*, 110 Wn.2d 128, 146, 750 P.2d 1257, 756 P.2d 142 (1988). They must be construed to "protect not only an employer's own employees, but *all* employees who may be harmed by the employer's violation of the regulations." *Goucher v. J.R. Simplot Co.*, 104 Wn.2d 662, 672, 709 P.2d 774 (1985).

Wright's interpretation disregards liberal construction and fails to protect workers. Under Wright's interpretation, it needed to provide no protection to Corona's workers even though the uncontroverted testimony established that they could break bones or be hospitalized if they fell from where they were working. The hazard that the four-foot walking/working surface regulation protects against is falling off the edge of the concrete surface. That is why Wright erected the guardrail in the first place. By liberally interpreting the regulation, this Court would ensure that Wright had to protect against this hazard for all its workers, not just those on the inside of the guardrail.

Moreover, this Court should defer to the Department's interpretation. *See Pilchuck Contractors, Inc.*, 170 Wn. App. at 517. The

Department interprets “walking/working surfaces” to include areas of the surface between the guardrail and the surface’s hazardous edge as long as the surface’s dimensions exceed 45 inches in all directions. Given the Department’s unique expertise on worker safety matters, this interpretation should be given deference.

Wright is incorrect to suggest that this Court should defer to the Board, not the Department, because the Board adjudicates WISHA violations. *See* App. Br. 12. This Court defers to the executive agency that administers the statute, not to the adjudicating agency. *Dep’t of Labor & Indus. v. Slauch*, 177 Wn. App. 439, 452, 312 P.3d 676 (2013) (citing *Port of Seattle v. Pollution Control Hearings Bd.*, 151 Wn.2d 568, 594, 90 P.3d 659 (2004)). Thus, this Court defers to the Department, not the Board. *See Slauch*, 177 Wn. App. at 452.

Wright’s strained interpretation also leads to absurd results. It means that workers on its jobsite are protected from falls unequally depending on whether they are inside or outside of the guardrail. In its view, those on the inside have the protection of the four-foot rule but those on the outside are only protected by the 10-foot rule in former WAC 296-155-24510 (2012), which does not apply here since the drop is less than 10 feet. App. Br. 13-14. It is incongruous and illogical that the workers closer to the hazardous edge are entitled to less fall protection than the workers

who are kept further away from the edge by the guardrail. Wright's position that workers on the edge are entitled to less protection even though the fall hazard is the same and the likelihood of a fall from the edge is greater makes no sense. Carried to its logical conclusion, Wright's strained interpretation would mean that if it placed a guardrail 44 inches from the edge of an open-sided surface above a nine-foot eleven-inch drop where the surface's dimensions exceeded 45 inches in every direction, it would have no obligation under WISHA to protect its employees from falling off the edge. This is an absurd interpretation that defies common sense and does not protect workers.

**C. Wright Did Not Provide a Safe Workplace for Corona's Workers Because No Guardrail or Other Equivalent Protected These Workers From Falling Off the Walking/Working Surface, Which Could Have Caused Broken Bones or Hospitalization**

The Department has proven the fifth element of the test for a serious violation that there is a substantial probability that death or serious physical harm could result from the violative condition. *See* RCW 49.17.120. The Board's finding of fact 3 is legally incorrect regarding this element. Again, Wright tries to assert that this is merely a question of whether substantial evidence supports the Board's finding, but Wright misstates the issue. App. Br. 11. The Board's finding states:

3. No substantial probability existed that the Corona

employees exposed to the risk of falling described in Finding of Fact No. 2 above would be injured, or, if harm resulted, that it would be serious physical harm, including the possibility of fractures, paralysis, or death.

BR 26. The first clause of the Board's finding misapplies the legal standard for determining whether there is a probability of death or harm. And substantial evidence does not support the second clause.

Under WISHA, a "serious" violation exists:

[I]f there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use in such workplace, unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation.

RCW 49.17.180(6). The phrase "substantial probability that death or serious physical harm could result" means the likelihood that *if* harm results from the violation, that harm could be death or serious physical harm. *Mowat Constr. Co. v. Dep't of Labor & Indus.*, 148 Wn. App. 920, 932, 201 P.3d 407 (2009); *Lee Cook Trucking & Logging v. Dep't of Labor & Indus.*, 109 Wn. App. 471, 482, 36 P.3d 558 (2001). "Substantial probability" does not refer to the probability that harm will occur on a particular worksite, in part because the probability of an accident is separately accounted for in the penalty amount. *Potelco, Inc. v. Dep't of Labor & Indus.*, 166 Wn. App. 647, 656, 272 P.3d 262 (2012). A standard

that proscribes certain conditions, here the use of a railing or equivalent to protect against four-foot falls from walking/working surfaces, presumes the existence of a safety hazard. *Frank Coluccio Constr. Co.*, 181 Wn. App. at 41.

Thus, the issue in this case is not how likely it was that Corona's workers at this particular worksite would suffer serious physical harm from falling from a height from five to seven feet. *See Potelco*, 166 Wn. App. at 656. That is why the Board was legally incorrect when it found that "[n]o substantial probability existed that the Corona employees exposed to the risk of falling . . . would be injured." BR 26. Rather, the correct question is whether serious physical harm *could* result from falling off an edge from a height of five to seven feet.

Here, the only witness who testified about what harm could occur from a fall from a height of five to seven feet was safety inspector Olsen. He testified that broken bones and hospitalization could result. BR Olsen 137. He testified that it was likely that the workers would break bones if they fell. BR Olsen 143. Wright presented no evidence that a fall from this height would *not* cause serious physical harm. Thus, the only factual evidence in the record supported the conclusion that a fall from that height would cause serious harm.

None of the evidence that Wright points to in its brief on this issue

provides substantial evidence that serious physical harm could *not* occur. Wright points only to Muniz’s testimony that the level he worked at was chest level and that he boosted himself up (BR Muniz 14); Spencer’s testimony that the area below Muniz was soft dirt (BR Spencer 92-93); and Spencer’s testimony that if Muniz fell from the location he was working in Exhibit 5, he would fall a little less than four feet onto soft dirt (BR Spencer 92-93). App. Br. 11-12.<sup>8</sup> Wright ignores that there was no testimony that said that a fall from a height that requires protection—over four feet—could not cause serious harm if it is on “soft dirt.” It ignores that Spencer conceded that whether the ground was “soft dirt” did not matter. BR Spencer 110-11. He agreed that “[i]t only matters how high you are off the ground.” BR Spencer 110-11. And Wright ignores that there was another worker who was exposed to a fall of seven feet. BR Olsen 137.

Importantly none of the testimony offered by Wright establishes that falling from a height of up to seven feet could not cause serious physical harm. The Board erred by substituting its own judgment about what might happen if the workers fell. As the uncontested evidence shows,

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<sup>8</sup> This Court should also give no consideration to Spencer’s testimony that Muniz would fall less than four feet. It is a verity that the surface where the workers were working was more than four feet off the ground. BR 3, 26. Wright has never challenged this Board finding and, indeed, explicitly states in its brief that substantial evidence supports finding of fact 2, which contains this finding. App. Br. 10.

falls are hazardous, which is why the Department regulates the conditions that cause falls.

**D. Wright Violated WAC 296-155-100(1)(a) by Not Providing a Safe Workplace**

**1. As the General Contractor, Wright Had a Duty To Establish, Supervise, and Enforce A Safe Workplace for All Workers On the Construction Site, Including Corona's Workers**

As the general contractor on this jobsite, Wright had a duty to provide a safe working environment for all workers on the jobsite. General contractors have a nondelegable, specific duty to ensure compliance with all applicable WISHA regulations for “every employee on the jobsite,” not just its own employees. *Stute*, 114 Wn.2d at 456, 463-64; *accord Kamla*, 147 Wn.2d at 122. Thus, a general contractor’s duty to protect workers on the jobsite extends to “any employee who may be harmed by the employer’s violation of the safety rules.” *Afoa v. Port of Seattle*, 176 Wn.2d 460, 471, 296 P.3d 800 (2013). As our Supreme Court explained, “[t]he *Stute* court imposed the per se liability as a matter of policy: ‘to further the purposes of WISHA to assure safe and healthful working conditions for every person working in Washington.’” *Kamla*, 147 Wn.2d at 122 (quoting *Stute*, 114 Wn.2d at 464).

The basis for a general contractor’s expansive duty to all workers on the jobsite arises from “the general contractor’s innate supervisory

authority,” which “constitutes sufficient control over the workplace.” *Stute*, 114 Wn.2d at 464. A general contractor has authority to influence work conditions at a construction site. *Kamla*, 147 Wn.2d at 124. As *Stute* explained, general contractors “as a matter of law” have “per se control over the workplace,” which places them “in the best position to ensure compliance with safety regulations.” 114 Wn.2d at 463-64. Because a general contractor is in the best position, financially and structurally, to ensure WISHA compliance “the prime responsibility for safety of all workers should rest on the general contractor.” *Stute*, 114 Wn.2d at 463.

Wright characterizes the general contractor’s non-delegable duty as merely one “to either furnish adequate safety equipment, or to contractually require its subcontractors to furnish safety equipment relevant to their responsibilities.” App. Br. 19-20 (citing *Stute*, 114 Wn.2d at 464). But *Stute* is not limited to furnishing safety equipment. *Stute* was clear that the general contractor must comply with all safety regulations for every employee on the jobsite: “[W]e hold the general contractor should bear the primary responsibility for compliance with safety regulations because the general contractor’s innate supervisory authority constitutes sufficient control over the workplace.” *Id.* at 464.

Wright’s superintendent and engineer each testified at hearing that they saw no problem with this precarious edge work despite

uncontroverted testimony that Corona's workers could have broken bones or been hospitalized had they fallen from these heights. Wright thus sanctioned its subcontractor employees' plain violation of WAC 296-155-24503 and WAC 296-155-505, which require fall protection in the form of a standard railing or equivalent when the drop from a walking/working surface exceeds four feet. Wright's indifference to the danger this posed to Corona's workers violated its duty to establish a safe working environment under WAC 296-155-100(1)(a).

The Department proved that Wright did not establish, supervise, and enforce a safe work environment in a manner that is effective in practice, as WAC 296-155-100(1)(a) requires. Wright had constructive knowledge that the violation was occurring and took no steps to correct it. All of Wright's employees who testified at hearing stated that, had they seen the workers on the narrow concrete edge as depicted in Exhibits 5 and 7, they would not have taken any corrective action because they did not believe these workers were exposed to a fall hazard because the drop was less than 10 feet. *See* BR Spencer 84; BR Hydzik 123. Wright's active disregard of the four-foot rule for walking/working surfaces fell far short of establishing and enforcing a safe work environment.

Wright tries to divert this Court's attention away from its disregard of the four-foot rule to focus instead on the adequacy of its inspection

protocol. *See* App. Br. 19. It asserts, without citation to authority, that because the Department cited Wright for a violation of WAC 296-155-100(1)(a), the primary issue before the Board was whether Wright's "inspection protocol was adequate under the management's responsibility" required by that regulation. App. Br. 19. But the plain language of WAC 296-155-100(1)(a) is not limited to inspection protocols. That is not the only, or even the primary issue, raised by the regulation. Instead, it requires the general contractor to "establish, supervise, and enforce" a safe working environment that is "effective in practice." WAC 296-155-100(1)(a). Wright cites no authority, and there is none, to support its suggestion that an adequate inspection protocol alone fulfills a general contractor's duties under WAC 296-155-100(1)(a), even where the general contractor declines to enforce WISHA regulations on the jobsite.

Indeed, a regular inspection protocol is ineffective and fails to establish a safe working environment if, as here, it does not correct dangerous work conditions. That Wright employees "walked through the jobsite and looked for dangerous conditions," as the Board observed, is commendable. BR 3, 27. But Wright's obligation to protect its subcontractor employees went further under WAC 296-155-100(1)(a). Here, those same Wright employees who walked around looking for dangerous conditions did not believe that the Corona workers on the edge

needed to be protected against falls. If the inspection protocol does not uncover and correct dangerous conditions, the general contractor has not complied with WAC 296-155-100(1)(a).

2. **In Cases Involving General Contractors, the Department Does Not Need to Prove that the General Contractor Retained Control Over the Subcontractor's Manner of Work Because, Under *Stute*, the General Contractor Has Per Se Control Over the Workplace**

When a WISHA citation involves a general contractor, the Department does not need to prove that the general contractor retained control over the subcontractor's means and method of operation. A general contractor "as a matter of law" has "per se control over the workplace." *Stute*, 114 Wn.2d at 463-64. Wright ignores this rule and spends several pages of its brief discussing pre-*Stute* cases and the issue of whether it retained control over Corona's work at the job site. *See* App. Br. 20-23.

This argument is a red herring. *Stute* determined that "as a matter of law," general contractors have "per se control over the workplace," which places them "in the best position to ensure compliance with safety regulations" for all employees on the jobsite. *Id.* at 463-64. This comes from "the general contractor's innate supervisory authority," which "constitutes sufficient control over the workplace." *Id.* at 464. Under *Stute*, it is simply wrong to suggest that the Department had to prove that Wright

retained control over the “means or methods of operation; the equipment, direction, or supervision of Corona Steel’s work,” and that there needed to be a Board finding on this point. App. Br. 22. Wright’s challenge of the superior court’s conclusion of law that it retained control over the work done at the job site is thus without meaning. App. Br. 22; CP 93.

In contrast to general contractors, premises owners must comply with WISHA regulations only if they retain control over the manner of work. Thus, the issue of retained control applies only when the citation is against a jobsite owner. General contractors *always* have a duty to comply with WISHA regulations. *Afoa*, 176 Wn.2d at 472; *see also Kamla*, 147 Wn.2d at 123 (approving observation in Court of Appeals case that *Stute* rejected a claim that the specific duty attached only if the general contractor controlled the work of the subcontractor). Indeed, Wright even appears to concede this by arguing that *Afoa*, a case involving a premises owner, does not apply. App. Br. 22-23.

The Department properly cited Wright for its violation of WAC 296-155-100(1)(a), and proved all the elements necessary to show the violation. Wright raises the chimera of strict liability. App. Br. 23. But there is no strict liability when the Department must prove the five-part test to establish a serious violation under RCW 49.17.120. *See Potelco Inc. v. Dep’t of Labor & Indus.*, \_\_\_ Wn. App. \_\_\_, 361 P.3d 767, 778-79

(2015) (under joint employer doctrine, no strict liability when Department must prove five-part test). It simply is not true that the only evidence here is that the subcontractor violated the regulation. Rather, the Department had to prove all the elements of the test, including whether Wright had knowledge of the violation. In such circumstances, there is no strict liability. *Potelco*, 361 P.3d at 778-779.

Here, Wright did not abide by its duty to comply with the four-foot rule for walking/working surfaces on its jobsite. It did not establish and supervise a safe work environment. Therefore, the Department correctly cited it for a WISHA violation.

## VII. CONCLUSION

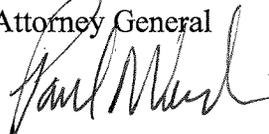
Wright failed in its duty to protect Corona's workers. Wright permitted Corona's workers to weld on the narrow edge of a walking/working surface outside of a guardrail with no fall protection. No guardrail or equivalent prevented these workers from falling up to 7 feet, which could have led to broken bones and hospitalization. Because the narrow edge was part of a larger walking/working surface that exposed the workers to a fall greater than four feet, Wright (as the general contractor) had to provide a guardrail or other equivalent to protect Corona's workers on the edge. Its failure to do so, and its belief that it had no obligation to do so, jeopardized the safety of Corona's workers. The Department

properly issued a citation for a serious WISHA violation and \$250 penalty.

This Court should affirm.

RESPECTFULLY SUBMITTED this 26<sup>th</sup> day of February,  
2016.

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# APPENDIX A

properly safeguarded, maintained in good condition, be in conformity with applicable safety and health standards, and shall conform to safety factors for the material used, as herein provided.

(8) As construction progresses, the component parts of structures shall be secured or braced to prevent collapse or failure.

(9) Prompt and safe removal of injured employees from elevated work locations, trenches and excavations shall be ensured prior to commencement of work.

[Statutory Authority: RCW 49.17.040 and 49.17.050, 86-03-074 (Order 86-14), § 296-155-035, filed 1/21/86; Order 74-26, § 296-155-035, filed 5/7/74, effective 6/6/74.]

**WAC 296-155-040 Safe place standards.** (1) Each employer shall furnish to each employee a place of employment free from recognized hazards that are causing or likely to cause serious injury or death to employees.

(2) Every employer shall require safety devices, furnish safeguards, and shall adopt and use practices, methods, operations, and processes which are reasonably adequate to render such employment and place of employment safe. Every employer shall do everything reasonably necessary to protect the life and safety of employees.

(3) No employer shall require any employee to go or be in any employment or place of employment which is hazardous to the employee.

(4) No employer shall fail or neglect:

(a) To provide and use safety devices and safeguards.

(b) To adopt and use methods and processes reasonably adequate to render the employment and place of employment safe.

(c) To do everything reasonably necessary to protect the life and safety of employees.

(5) No employer, owner, or lessee of any real property shall construct or cause to be constructed any place of employment that is hazardous to the employee.

(6) No person shall do any of the following:

(a) Remove, displace, damage, destroy or carry off any safety device, safeguard, notice, or warning, furnished for use in any employment or place of employment.

(b) Interfere in any way with the use thereof by any other person.

(c) Interfere with the use of any method or process adopted for the protection of any employee, including themselves, in such employment, or place of employment.

(d) Fail or neglect to do everything reasonably necessary to protect the life and safety of employees.

(7) The use of intoxicants or debilitating drugs while on duty is prohibited. Employees under the influence of intoxicants or drugs shall not be permitted in or around worksites. This subsection (7) shall not apply to employees taking prescription drugs or narcotics as directed and prescribed by a physician, provided such use does not endanger the employee or others.

[Statutory Authority: Chapter 49.17 RCW, 94-15-096 (Order 94-07), § 296-155-040, filed 7/20/94, effective 9/20/94; Order 74-26, § 296-155-040, filed 5/7/74, effective 6/6/74.]

## PART B-1 OCCUPATIONAL HEALTH AND ENVIRONMENTAL CONTROL

**WAC 296-155-100 Management's responsibility.** (1) It shall be the responsibility of management to establish, supervise, and enforce, in a manner which is effective in practice:

(a) A safe and healthful working environment.

(b) An accident prevention program as required by these standards.

(c) Training programs to improve the skill and competency of all employees in the field of occupational safety and health.

(2) Employees required to handle or use poisons, caustics, and other harmful substances shall be instructed regarding the safe handling and use, and be made aware of the potential hazards, personal hygiene, and personal protective measures required.

(3) In job site areas where harmful plants or animals are present, employees who may be exposed shall be instructed regarding the potential hazards, and how to avoid injury, and the first-aid procedures to be used in the event of injury.

(4) Employees required to handle or use flammable liquids, gases, or toxic materials shall be instructed in the safe handling and use of these materials and made aware of the specific requirements contained in Parts B, D, and other applicable parts of this standard.

(5) Permit-required confined spaces. The requirements of chapters 296-24, 296-62 and 296-155 WAC apply.

(6) The employer shall ensure that work assignments place no employee in a position or location not within ordinary calling distance of another employee able to render assistance in case of emergency.

**Note:** This subsection does not apply to operators of motor vehicles, watchpersons or other jobs which, by their nature, are single employee assignments. However, a definite procedure for checking the welfare of all employees during working hours should be instituted and all employees so advised.

(7) Each employer shall post and keep posted a notice or notices (Job Safety and Health Protection - Form F416-081-909) to be furnished by the department of labor and industries, informing employees of the protections and obligations provided for in the act and that for assistance and information, including copies of the act, and of specific safety and health standards employees should contact the employer or the nearest office of the department of labor and industries. Such notice or notices shall be posted by the employer at each establishment in a conspicuous place or places where notices to employees are customarily posted. Each employer shall take steps to assure that such notices are not altered, defaced, or covered by other material.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060, 06-05-027, § 296-155-100, filed 2/7/06, effective 4/1/06. Statutory Authority: Chapter 49.17 RCW, 95-04-007, § 296-155-100, filed 1/18/95, effective 3/1/95; 94-15-096 (Order 94-07), § 296-155-100, filed 7/20/94, effective 9/20/94; 91-24-017 (Order 91-07), § 296-155-100, filed 11/22/91, effective 12/24/91. Statutory Authority: RCW 49.17.040 and 49.17.050, 86-03-074 (Order 86-14), § 296-155-100, filed 1/21/86; Order 76-6, § 296-155-100, filed 3/1/76; Order 74-26, § 296-155-100, filed 5/7/74, effective 6/6/74.]

[Statutory Authority: Chapter 49.17 RCW. 94-15-096 (Order 94-07), § 296-155-235, filed 7/20/94, effective 9/20/94; Order 74-26, § 296-155-235, filed 5/7/74, effective 6/6/74.]

**WAC 296-155-240 Sterilization of protective equipment.** Goggles, gloves, respirators and other protectors shall not be interchanged among employees for use unless they have been thoroughly cleaned since last use.

[Order 74-26, § 296-155-240, filed 5/7/74, effective 6/6/74.]

### PART C-1 FALL RESTRAINT AND FALL ARREST

#### WAC 296-155-245 Reserve.

[Statutory Authority: RCW 49.17.040, [49.17.]050 and [49.17.]060. 96-24-051, § 296-155-245, filed 11/27/96, effective 2/1/97. Statutory Authority: Chapter 49.17 RCW. 95-10-016, § 296-155-245, filed 4/25/95, effective 10/1/95.]

**WAC 296-155-24501 Scope and application.** This section sets forth requirements for employers to provide and enforce the use of fall protection for employees in construction, alteration, repair, maintenance (including painting and decorating), demolition workplaces, and material handling covered under chapter 296-155 WAC.

Note: See Appendix B for additional standards that require the use of fall restraint and/or fall arrest protection.

[Statutory Authority: RCW 49.17.010, [49.17.]040, and [49.17.]050. 00-14-058, § 296-155-24501, filed 7/3/00, effective 10/1/00. Statutory Authority: RCW 49.17.040, [49.17.]050 and [49.17.]060. 96-24-051, § 296-155-24501, filed 11/27/96, effective 2/1/97. Statutory Authority: Chapter 49.17 RCW. 95-10-016, § 296-155-24501, filed 4/25/95, effective 10/1/95; 91-03-044 (Order 90-18), § 296-155-24501, filed 1/10/91, effective 2/12/91.]

**WAC 296-155-24503 Definitions. Anchorage** means a secure point of attachment for lifelines, lanyards, or deceleration devices which is capable of withstanding the forces specified in the applicable sections of chapter 296-155 WAC.

**Approved** means, for the purpose of this section; tested and certified by the manufacturer, or any recognized national testing laboratory, to possess the strength requirements specified in this section.

**Body belt** means a Type 1 safety belt used in conjunction with lanyard or lifeline for fall restraint only.

**Full body harness** means a configuration of connected straps to distribute a fall arresting force over at least the thighs, shoulders and pelvis, with provisions for attaching a lanyard, lifeline, or deceleration devices.

**Full body harness system** means a Class III full body harness and lanyard which is attached to an anchorage meeting the requirements of chapter 296-155 WAC, Part C-1; or attached to a horizontal or vertical lifeline which is properly secured to an anchorage(s) capable of withstanding the forces specified in the applicable sections of chapter 296-155 WAC.

**Catenary line** - see horizontal lifeline.

**Competent person** means an individual knowledgeable of fall protection equipment, including the manufacturers recommendations and instructions for the proper use, inspection, and maintenance; and who is capable of identifying existing and potential fall hazards; and who has the authority to take prompt corrective action to eliminate those hazards; and who is knowledgeable of the rules contained in this sec-

tion regarding the erection, use, inspection, and maintenance of fall protection equipment and systems.

**Connector** means a device which is used to couple (connect) parts of the personal fall arrest system and positioning device systems together. It may be an independent component of the system, such as a carabiner, or it may be an integral component of part of the system (such as a buckle or dee ring sewn into a body belt or body harness, or a snap hook spliced or sewn to a lanyard or self-retracting lanyard).

**Continuous fall protection** means the design and use of a fall protection system such that no exposure to an elevated fall hazard occurs. This may require more than one fall protection system or a combination of prevention or protection measures.

**Control zone** means the area between the warning line and the unprotected sides and edges of the walking/working surface.

**Deceleration device** means any mechanism, such as a rope grab, ripstitch lanyard, specifically woven lanyard, tearing or deforming lanyards, automatic self-retracting lifelines/lanyards, etc., which serves to dissipate a substantial amount of energy during a fall arrest, or otherwise limit the energy imposed on an employee during fall arrest.

**Deceleration distance** means the additional vertical distance a falling employee travels, excluding lifeline elongation and free fall distance, before stopping, from the point at which the deceleration device begins to operate. It is measured as the distance between the location of an employee's body belt or body harness attachment point at the moment of activation (at the onset of fall arrest forces) of the deceleration device during a fall, and the location of that attachment point after the employee comes to a full stop.

**Drop line** means a vertical lifeline secured to an upper anchorage for the purpose of attaching a lanyard or device.

**Failure** means load refusal, breakage, or separation of component parts. Load refusal is the point where the ultimate strength is exceeded.

**Fall arrest system** means the use of multiple, approved safety equipment components such as; body harnesses, lanyards, deceleration devices, droplines, horizontal and/or vertical lifelines and anchorages, interconnected and rigged as to arrest a free fall. Compliance with anchorage strength requirements specified in the applicable sections of chapter 296-155 WAC, Part C-1 shall constitute approval of the anchorage.

**Fall protection work plan** means a written planning document in which the employer identifies all areas on the job site where a fall hazard of ten feet or greater exists. The plan describes the method or methods of fall protection to be utilized to protect employees, and includes the procedures governing the installation use, inspection, and removal of the fall protection method or methods which are selected by the employer. (See WAC 296-155-24505.)

**Fall restraint system** means an approved device and any necessary components that function together to restrain an employee in such a manner as to prevent that employee from falling to a lower level. When standard guardrails are selected, compliance with applicable sections governing their construction and use shall constitute approval.

**Fall distance** means the actual distance from the worker's support to the level where a fall would stop.

**Free fall** means the act of falling before a personal fall arrest system begins to apply force to arrest the fall.

**Free fall distance** means the vertical displacement of the fall arrest attachment point on the employee's body belt or body harness between onset of the fall and just before the system begins to apply force to arrest the fall. This distance excludes deceleration distance, and lifeline/lanyard elongation, but includes any deceleration device slide distance or self-retracting lifeline/lanyard extension before they operate and fall arrest forces occur.

**Hardware** means snap hooks, D rings, bucklers, carabiniers, adjusters, O rings, that are used to attach the components of a fall protection system together.

**Horizontal lifeline** means a rail, rope, wire, or synthetic cable that is installed in a horizontal plane between two anchorages and used for attachment of a worker's lanyard or lifeline device while moving horizontally; used to control dangerous pendulum like swing falls.

**Lanyard** means a flexible line of webbing, rope, or cable used to secure a body belt or harness to a lifeline or an anchorage point usually 2, 4, or 6 feet long.

**Leading edge** means the advancing edge of a floor, roof, or formwork which changes location as additional floor, roof, or formwork sections are placed, formed, or constructed. Leading edges not actively under construction are considered to be "unprotected sides and edges," and positive methods of fall arrest or fall restraint shall be required to protect exposed workers.

**Lifeline** means a vertical line from a fixed anchorage or between two horizontal anchorages, independent of walking or working surfaces, to which a lanyard or device is secured. Lifeline as referred to in this text is one which is part of a fall protection system used as back-up safety for an elevated worker.

**Locking snap hook** means a connecting snap hook that requires two separate forces to open the gate; one to deactivate the gatekeeper and a second to depress and open the gate which automatically closes when released; used to minimize roll out or accidental disengagement.

**Low pitched roof** means a roof having a slope equal to or less than 4 in 12.

**Mechanical equipment** means all motor or human propelled wheeled equipment except for wheelbarrows, mop-carts, robotic thermoplastic welders and robotic crimpers.

**Positioning belt** means a single or multiple strap that can be secured around the worker's body to hold the user in a work position; for example, a lineman's belt, a rebar belt, or saddle belt.

**Positioning device system** means a body belt or body harness system rigged to allow an employee to be supported on an elevated vertical surface, such as a wall, and work with both hands free while leaning.

**Restraint line** means a line from a fixed anchorage or between two anchorages to which an employee is secured in such a way as to prevent the worker from falling to a lower level.

**Roll out** means unintentional disengagement of a snap hook caused by the gate being depressed under torque or contact while twisting or turning; a particular concern with single action snap hooks that do not have a locking gatekeeper.

**Roof** means the exterior surface on the top of a building. This does not include floors or form work which, because a building has not been completed, temporarily become the top surface of a building.

**Roofing work** means the hoisting, storage, application, and removal of roofing materials and equipment, including related insulation, sheet metal, and vapor barrier work, but not including the construction of the roof deck.

**Rope grab** means a fall arrester that is designed to move up or down a lifeline suspended from a fixed overhead or horizontal anchorage point, or lifeline, to which the belt or harness is attached. In the event of a fall, the rope grab locks onto the lifeline rope through compression to arrest the fall. The use of a rope grab device is restricted for all restraint applications. (Refer to WAC 296-155-24510 (1)(b)(iii)).

**Safety line** - See lifeline.

**Safety monitor system** means a system of fall restraint used in conjunction with a warning line system only, where a competent person as defined by this part, having no additional duties, monitors the proximity of workers to the fall hazard when working between the warning line and the unprotected sides and edges including, the leading edge of a low pitched roof or walking/working surface.

**Self retracting lifeline** means a deceleration device which contains a drum wound line which may be slowly extracted from, or retracted onto, the drum under slight tension during normal employee movement, and which after onset of a fall, automatically locks the drum and arrests the fall.

**Shock absorbing lanyard** means a flexible line of webbing, cable, or rope used to secure a body belt or harness to a lifeline or anchorage point that has an integral shock absorber.

**Single action snap hook** means a connecting snap hook that requires a single force to open the gate which automatically closes when released.

**Snap hook** means a self-closing connecting device with a gatekeeper latch or similar arrangement that will remain closed until manually opened. This includes single action snap hooks that open when the gatekeeper is depressed and double action snap hooks that require a second action on a gatekeeper before the gate can be opened.

**Static line** - see horizontal lifeline.

**Strength member** means any component of a fall protection system that could be subject to loading in the event of a fall.

**Steep roof** means a roof having a slope greater than 4 in 12.

**Unprotected sides and edges** means any side or edge (except at entrances to points of access) of a floor, roof, ramp or runway where there is no wall or guardrail system as defined in WAC 296-155-505(7).

**Walking/working surface** means for the purpose of this section, any area whose dimensions are forty-five inches or greater in all directions, through which workers pass or conduct work.

**Warning line system** means a barrier erected on a walking and working surface or a low pitch roof (4 in 12 or less), to warn employees that they are approaching an unprotected fall hazard(s).

**Work area** means that portion of a walking/working surface where job duties are being performed.

[Statutory Authority: RCW 49.17.010, [49.17].040, and [49.17].050. 00-14-058, § 296-155-24503, filed 7/3/00, effective 10/1/00. Statutory Authority: RCW 49.17.040, [49.17].050 and [49.17].060. 96-24-051, § 296-155-24503, filed 11/27/96, effective 2/1/97. Statutory Authority: Chapter 49.17 RCW. 95-10-016, § 296-155-24503, filed 4/25/95, effective 10/1/95; 91-03-044 (Order 90-18), § 296-155-24503, filed 1/10/91, effective 2/12/91.]

**WAC 296-155-24505 Fall protection work plan. (1)**

The employer shall develop and implement a written fall protection work plan including each area of the work place where the employees are assigned and where fall hazards of 10 feet or more exist.

(2) The fall protection work plan shall:

(a) Identify all fall hazards in the work area.

(b) Describe the method of fall arrest or fall restraint to be provided.

(c) Describe the correct procedures for the assembly, maintenance, inspection, and disassembly of the fall protection system to be used.

(d) Describe the correct procedures for the handling, storage, and securing of tools and materials.

(e) Describe the method of providing overhead protection for workers who may be in, or pass through the area below the work site.

(f) Describe the method for prompt, safe removal of injured workers.

(g) Be available on the job site for inspection by the department.

(3) Prior to permitting employees into areas where fall hazards exist the employer shall:

(a) Ensure that employees are trained and instructed in the items described in subsection (2)(a) through (f) of this section.

(b) Inspect fall protection devices and systems to ensure compliance with WAC 296-155-24510.

(4) Training of employees:

(a) The employer shall ensure that employees are trained as required by this section. Training shall be documented and shall be available on the job site.

(b) "Retraining." When the employer has reason to believe that any affected employee who has already been trained does not have the understanding and skill required by subsection (1) of this section, the employer shall retrain each such employee. Circumstances where retraining is required include, but are not limited to, situations where:

- Changes in the workplace render previous training obsolete; or

- Changes in the types of fall protection systems or equipment to be used render previous training obsolete; or

- Inadequacies in an affected employee's knowledge or use of fall protection systems or equipment indicate that the employee has not retained the requisite understanding or skill.

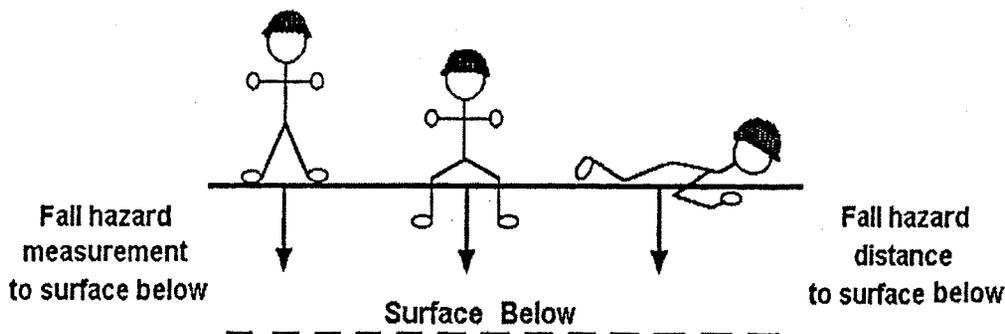
Note: The following appendices to Part C-1 of this chapter serve as nonmandatory guidelines to assist employers in complying with the appropriate requirements of Part C-1 of this chapter.

[Statutory Authority: RCW 49.17.010, [49.17].040, and [49.17].050. 00-14-058, § 296-155-24505, filed 7/3/00, effective 10/1/00. Statutory Authority: RCW 49.17.040, [49.17].050 and [49.17].060. 96-24-051, § 296-155-24505, filed 11/27/96, effective 2/1/97. Statutory Authority: Chapter 49.17 RCW. 95-10-016, § 296-155-24505, filed 4/25/95, effective 10/1/95; 91-03-044 (Order 90-18), § 296-155-24505, filed 1/10/91, effective 2/12/91.]

**WAC 296-155-24507 Reserve.**

[Statutory Authority: RCW 49.17.040, [49.17].050 and [49.17].060. 96-24-051, § 296-155-24507, filed 11/27/96, effective 2/1/97. Statutory Authority: Chapter 49.17 RCW. 95-10-016, § 296-155-24507, filed 4/25/95, effective 10/1/95.]

**WAC 296-155-24510 Fall restraint, fall arrest systems.** When employees are exposed to a hazard of falling from a location ten feet or more in height, the employer shall ensure that fall restraint, fall arrest systems or positioning device systems are provided, installed, and implemented according to the following requirements.



(c) The height of stairrails shall be as follows:

(i) Stairrails installed after the effective date of this standard, shall be not less than thirty-six inches (91.5 cm) from the upper surface of the stairrail system to the surface of the tread, in line with the face of the riser at the forward edge of the tread.

(ii) Stairrails installed before the effective date of this standard, shall be not less than thirty inches (76 cm) nor more than thirty-four inches (86 cm) from the upper surface of the stairrail system to the surface of the tread, in line with the face of the riser at the forward edge of the tread.

(d) Midrails, screens, mesh, intermediate vertical members, or equivalent intermediate structural members, shall be provided between the top rail of the stairrail system and the stairway steps.

(i) Midrails, when used, shall be located at a height midway between the top edge of the stairrail system and the stairway steps.

(ii) Screens or mesh, when used, shall extend from the top rail to the stairway step, and along the entire opening between top rail supports.

(iii) When intermediate vertical members, such as balusters, are used between posts, they shall be not more than nineteen inches (48 cm) apart.

(iv) Other structural members, when used, shall be installed such that there are no openings in the stairrail system that are more than nineteen inches (48 cm) wide.

(e) Handrails and the top rails of stairrail systems shall be capable of withstanding, without failure, a force of at least 200 pounds (890 n) applied within two inches (5 cm) of the top edge, in any downward or outward direction, at any point along the top edge.

(f) The height of handrails shall be not more than thirty-seven inches (94 cm) nor less than thirty inches (76 cm) from the upper surface of the handrail to the surface of the tread, in line with the face of the riser at the forward edge of the tread.

(g) When the top edge of a stairrail system also serves as a handrail, the height of the top edge shall be not more than thirty-seven inches (94 cm) nor less than thirty-six inches (91.5 cm) from the upper surface of the stairrail system to the surface of the tread, in line with the face of the riser at the forward edge of the tread.

(h) Stairrail systems and handrails shall be so surfaced as to prevent injury to employees from punctures or lacerations, and to prevent snagging of clothing.

(i) Handrails shall provide an adequate handhold for employees grasping them to avoid falling.

(j) The ends of stairrail systems and handrails shall be constructed so as not to constitute a projection hazard.

(k) Handrails that will not be a permanent part of the structure being built shall have a minimum clearance of three inches (8 cm) between the handrail and walls, stairrail systems, and other objects.

(l) Unprotected sides and edges of stairway landings shall be provided with guardrail systems. Guardrail system criteria are contained in chapter 296-155 WAC, Part K.

[Statutory Authority: RCW 49.17.040, [49.17.]050 and [49.17.]060. 96-24-051, § 296-155-477, filed 11/27/96, effective 2/1/97. Statutory Authority: Chapter 49.17 RCW. 95-10-016, § 296-155-477, filed 4/25/95, effective 10/1/95; 91-24-017 (Order 91-07), § 296-155-477, filed 11/22/91, effective 12/24/91.]

(12/31/12)

## PART J-1 SCAFFOLDS

**Note: Requirements relating to scaffolds have been moved to chapter 296-869 WAC.**

## PART K FLOOR OPENINGS, WALL OPENINGS AND STAIRWAYS

### WAC 296-155-500 Definitions applicable to this part.

**Floor hole** means an opening measuring less than twelve inches but more than one inch in its least dimension in any floor, roof, or platform through which materials but not persons may fall, such as a belt hole, pipe opening, or slot opening.

**Floor opening** means an opening measuring twelve inches or more in its least dimension in any floor, roof, or platform, through which persons may fall.

**Handrail** means a rail used to provide employees with a handhold for support.

**Low pitched roof** means a roof having a slope less than or equal to four in twelve.

**Mechanical equipment** means all motor or human propelled wheeled equipment except for wheelbarrows, mop-carts, robotic thermoplastic welders and robotic crimpers.

**Nose, nosing** means that portion of a tread projecting beyond the face of the riser immediately below.

**Platform** means a walking/working surface for persons, elevated above the surrounding floor or ground, such as a balcony or platform for the operation of machinery and equipment.

**Riser height** means the vertical distance from the top of a tread to the top of the next higher tread or platform/landing or the distance from the top of a platform/landing to the top of the next higher tread or platform/landing.

**Roof** means the exterior surface on the top of a building. This does not include floors which, because a building has not been completely built, temporarily become the top surface of a building.

**Roofing work** means the hoisting, storage, application, and removal of roofing materials and equipment, including related insulation, sheet metal, and vapor barrier work, but not including the construction of the roof deck.

**Runway** means a passageway for persons, elevated above the surrounding floor or ground level, such as a foot-walk along shafting or a walkway between buildings.

**Safety monitoring system** means a safety system in which a competent person monitors the safety of all employees in a roofing crew, and warns them when it appears to the monitor that they are unaware of the hazard or are acting in an unsafe manner. The competent person must be on the same roof and within visual distance of the employees, and must be close enough to verbally communicate with the employees.

**Stair platform** means an extended step or landing breaking a continuous run of stairs.

**Stairrail system** means a vertical barrier erected along the unprotected sides and edges of a stairway to prevent employees from falling to lower levels. The top surface of a stairrail system may also be a "handrail."

**Stairs, stairways** means a series of steps leading from one level or floor to another, or leading to platforms, pits,

boiler rooms, crossovers, or around machinery, tanks, and other equipment that are used more or less continuously or routinely by employees or only occasionally by specific individuals. For the purpose of this part, a series of steps and landings having three or more rises constitutes stairs or stairway.

**Standard railing** means a vertical barrier erected along exposed edges of a floor opening, wall opening, ramp, platform, or runway to prevent falls of persons.

**Standard strength and construction** means any construction of railings, covers, or other guards that meets the requirements of this part.

**Toeboard** means a vertical barrier at floor level erected along exposed edges of a floor opening, wall opening, platform, runway, or ramp to prevent falls of materials.

**Tread depth** means the horizontal distance from front to back of tread (excluding nosing, if any).

**Unprotected side or edge** means any side or edge of a roof perimeter where there is no wall three feet (.9 meters) or more in height.

**Wall opening** means an opening at least thirty inches high and eighteen inches wide, in any wall or partition, through which persons may fall, such as an opening for a window, a yard arm doorway or chute opening.

**Work area** means that portion of a roof where roofing work is being performed.

[Statutory Authority: RCW 49.17.040, [49.17.]050 and [49.17.]060. 96-24-051, § 296-155-500, filed 11/27/96, effective 2/1/97. Statutory Authority: Chapter 49.17 RCW. 95-10-016, § 296-155-500, filed 4/25/95, effective 10/1/95; 91-24-017 (Order 91-07), § 296-155-500, filed 11/22/91, effective 12/24/91; 91-03-044 (Order 90-18), § 296-155-500, filed 1/10/91, effective 2/12/91. Statutory Authority: RCW 49.17.040 and 49.17.050. 86-03-074 (Order 86-14), § 296-155-500, filed 1/21/86. Statutory Authority: RCW 49.17.040, 49.17.050 and 49.17.240. 81-13-053 (Order 81-9), § 296-155-500, filed 6/17/81; Order 74-26, § 296-155-500, filed 5/7/74, effective 6/6/74.]

#### **WAC 296-155-505 Guardrails, handrails and covers.**

(1) General provisions. This part applies to temporary or emergency conditions where there is danger of employees or materials falling through floor, roof, or wall openings, or from stairways, runways, ramps, open sided floors, open sides of structures, bridges, or other open sided walking or working surfaces.

(2) The employer shall determine if the walking/working surfaces on which its employees are to work have the strength and structural integrity to support employees safely. Employees shall be allowed to work on those surfaces only when the surfaces have the requisite strength and structural integrity.

(3) When guardrails or covers required by this section must be temporarily removed to perform a specific task, the area shall be constantly attended by a monitor to warn others of the hazard or shall be protected by a movable barrier.

(4) Guarding of floor openings and floor holes.

(a) Floor openings shall be guarded by a standard railing and toe boards or cover, as specified in subsections (4)(g) and (7) of this section. In general, the railing shall be provided on all exposed sides, except at entrances to stairways. All vehicle service pits shall have a cover or removable type standard guardrail. When not in use, pits shall be covered or guarded. Where vehicle service pits are to be used again immediately, and the service person is within a 50 foot distance of the

unguarded pit and also within line of sight of the unguarded pit, the cover or guardrail need not be replaced between uses. Where vehicle service pits are used frequently, the perimeters of the pits shall be delineated by high visibility, luminescent, skid resistant paint. Such painted delineation shall be kept clean and free of extraneous materials.

(b) Ladderway floor openings or platforms shall be guarded by standard railings with standard toe boards on all exposed sides, except at entrance to opening, with the passage through the railing either provided with a swinging gate or so offset that a person cannot walk directly into the opening.

(c) Hatchways and chute floor openings shall be guarded by one of the following:

(i) Hinged covers of standard strength and construction and a standard railing with only one exposed side. When the opening is not in use, the cover shall be closed or the exposed side shall be guarded at both top and intermediate positions by removable standard railings;

(ii) A removable standard railing with toe board on not more than two sides of the opening and fixed standard railings with toe boards on all other exposed sides. The removable railing shall be kept in place when the opening is not in use and shall be hinged or otherwise mounted so as to be conveniently replaceable.

(d) Wherever there is danger of falling through a skylight opening, and the skylight itself is not capable of sustaining the weight of a two hundred pound person with a safety factor of four, standard guardrails shall be provided on all exposed sides or the skylight shall be covered in accordance with (g) of this subsection.

(e) Pits and trap door floor openings shall be guarded by floor opening covers of standard strength and construction. While the cover is not in place, the pit or trap openings shall be protected on all exposed sides by removable standard railings.

(f) Manhole floor openings shall be guarded by standard covers which need not be hinged in place. While the cover is not in place, the manhole opening shall be protected by standard railings.

(g) All floor opening or hole covers shall be capable of supporting the maximum potential load but never less than two hundred pounds (with a safety factor of four).

(i) All covers shall be secured when installed so as to prevent accidental displacement by the wind, equipment, or employees.

(ii) All covers shall be color coded or they shall be marked with the word "hole" or "cover" to provide warning of the hazard.

(iii) If it becomes necessary to remove the cover, a monitor shall remain at the opening until the cover is replaced. The monitor shall advise persons entering the area of the hazard, shall prevent exposure to the fall hazard and shall perform no other duties.

(h) Floor holes, into which persons can accidentally walk, shall be guarded by either a standard railing with standard toe board on all exposed sides, or a floor hole cover of standard strength and construction that is secured against accidental displacement. While the cover is not in place, the floor hole shall be protected by a standard railing.

## (5) Guarding of wall openings.

(a) Wall openings, from which there is a drop of more than four feet, and the bottom of the opening is less than three feet above the working surface, shall be guarded as follows:

(i) When the height and placement of the opening in relation to the working surface is such that either a standard rail or intermediate rail will effectively reduce the danger of falling, one or both shall be provided;

(ii) The bottom of a wall opening, which is less than 4 inches above the working surface, regardless of width, shall be protected by a standard toe board or an enclosing screen either of solid construction or as specified in subsection (7)(f)(ii) of this section.

(b) An extension platform, outside a wall opening, onto which materials can be hoisted for handling shall have standard guardrails on all exposed sides or equivalent. One side of an extension platform may have removable railings in order to facilitate handling materials.

(c) When a chute is attached to an opening, the provisions of (a) of this subsection shall apply, except that a toe board is not required.

## (6) Guarding of open sided surfaces.

(a) Every open sided floor, platform or surface four feet or more above adjacent floor or ground level shall be guarded by a standard railing, or the equivalent, as specified in subsection (7)(a) of this section, on all open sides, except where there is entrance to a ramp, stairway, or fixed ladder. The railing shall be provided with a standard toe board wherever, beneath the open sides, persons can pass, or there is moving machinery, or there is equipment with which falling materials could create a hazard.

(b) Runways shall be guarded by a standard railing, or the equivalent, as specified in subsection (7) of this section, on all open sides, four feet or more above the floor or ground level. Wherever tools, machine parts, or materials are likely to be used on the runway, a toe board shall also be provided on each exposed side.

(c) Runways used exclusively for special purposes may have the railing on one side omitted where operating conditions necessitate such omission, providing the falling hazard is minimized by using a runway not less than 18 inches wide.

(d) Where employees entering upon runways become thereby exposed to machinery, electrical equipment, or other danger not a falling hazard, additional guarding shall be provided.

(e) Regardless of height, open sided floors, walkways, platforms, or runways above or adjacent to dangerous equipment, pickling or galvanizing tanks, degreasing units, and similar hazards, shall be guarded with a standard railing and toe board.

(f) Open sides of gardens, patios, recreation areas and similar areas located on roofs of buildings or structures shall be guarded by permanent standard railings or the equivalent. Where a planting area has been constructed adjacent to the open sides of the roof and the planting area is raised above the normal walking surface of the roof area, the open side of the planting area shall also be protected with standard railings or the equivalent.

## (7) Standard specifications.

(a) A standard railing shall consist of top rail, intermediate rail, toe board, and posts, and shall have a vertical height

of forty-two inches (1.1 m) plus or minus three inches (8 cm) (39-45 inches) from upper surface of top rail to floor, platform, runway, or ramp level. When conditions warrant, the height of the top edge may exceed the forty-five-inch height, provided the guardrail system meets all other criteria of this subsection. The intermediate rail shall be halfway between the top rail and the floor, platform, runway, or ramp. The ends of the rails shall not overhang the terminal posts except where such overhang does not constitute a projection hazard.

Note: When employees are using stilts, the top edge height of the top rail, or equivalent member, shall be increased an amount equal to the height of the stilts.

(b) Minimum requirements for standard railings under various types of construction are specified in the following items:

(i) For wood railings, the posts shall be of at least two inch by four inch stock spaced not to exceed 8 feet; the top rail shall be of at least two inch by four inch stock and each length of lumber shall be smooth surfaced throughout the length of the railing. The intermediate rail shall be of at least one inch by six inch stock.

(ii) For pipe railings, posts and top and intermediate railings shall be at least 1 1/2 inches nominal OD diameter with posts spaced not more than eight feet on centers.

(iii) For structural steel railings, posts and top and intermediate rails shall be of two inch by two inch by 3/8 inch angles or other metal shapes of equivalent bending strength, with posts spaced not more than eight feet on centers.

(iv) For wire rope railings, the top and intermediate railings shall be at least 1/2 inch fibre core rope, or the equivalent to meet strength factor and deflection of (b)(v) of this subsection. Posts shall be spaced not more than eight feet on centers. The rope shall be stretched taut, so as to present a minimum deflection.

(v) The anchoring of posts and framing of members for railings of all types shall be of such construction that the completed structure shall be capable of withstanding a load of at least 200 pounds applied in any direction at any point on the top rail, with a minimum of deflection.

(vi) Railings receiving heavy stresses from employees trucking or handling materials shall be provided additional strength by the use of heavier stock, closer spacing of posts, bracing, or by other means.

(vii) Other types, sizes, and arrangements of railing construction are acceptable, provided they meet the following conditions:

(A) A smooth surfaced top rail at a height above floor, platform, runway, or ramp level of between thirty-nine inches and forty-five inches;

(B) When the 200-pound (890N) test load specified in subsection (6)(b)(v) of this section is applied in a downward direction, the top edge of the guardrail shall not deflect to a height less than thirty-nine inches (1.0m) above the walking/working level. Guardrail system components selected and constructed in accordance with this part will be deemed to meet this requirement;

(C) Protection between top rail and floor, platform, runway, ramp, or stair treads, equivalent at least to that afforded by a standard intermediate rail;

(D) Elimination of overhang of rail ends unless such overhang does not constitute a hazard.

(c)(i) A standard toe board shall be nine inches minimum in vertical height from its top edge to the level of the floor, platform, runway, or ramp. It shall be securely fastened in place and have not more than 1/4 inch clearance above floor level. It may be made of any substantial material, either solid, or with openings not over 1 inch in greatest dimension.

(ii) Where material is piled to such height that a standard toe board does not provide protection, paneling, or screening from floor to intermediate rail or to top rail shall be provided.

(d) Floor opening covers shall be of any material that meets the following strength requirements:

(i) Conduits, trenches, and manhole covers and their supports, when located in roadways, and vehicular aisles shall be designed to carry a truck rear axle load of at least two times the maximum intended load;

(ii) All floor opening covers shall be capable of supporting the maximum potential load but never less than two hundred pounds (with a safety factor of four).

(A) All covers shall be secured when installed so as to prevent accidental displacement by the wind, equipment, or employees.

(B) All covers shall be color coded or they shall be marked with the word "hole" or "cover" to provide warning of the hazard.

(C) If it becomes necessary to remove the cover, a monitor shall remain at the opening until the cover is replaced. The monitor shall advise persons entering the area of the hazard, shall prevent exposure to the fall hazard and shall perform no other duties.

(e) Skylight openings that create a falling hazard shall be guarded with a standard railing, or covered in accordance with (d)(ii) of this subsection.

(f) Wall opening protection shall meet the following requirements:

(i) Barriers shall be of such construction and mounting that, when in place at the opening, the barrier is capable of withstanding a load of at least 200 pounds applied in any direction (except upward), with a minimum of deflection at any point on the top rail or corresponding member.

(ii) Screens shall be of such construction and mounting that they are capable of withstanding a load of at least 200 pounds applied horizontally at any point on the near side of the screen. They may be of solid construction of grill work with openings not more than eight inches long, or of slat work with openings not more than four inches wide with length unrestricted.

[Statutory Authority: RCW 49.17.010, [49.17].040, and [49.17].050. 00-14-058, § 296-155-505, filed 7/3/00, effective 10/1/00. Statutory Authority: RCW 49.17.040, [49.17.]050 and [49.17.]060. 96-24-051, § 296-155-505, filed 11/27/96, effective 2/1/97. Statutory Authority: Chapter 49.17 RCW. 95-10-016, § 296-155-505, filed 4/25/95, effective 10/1/95; 94-15-096 (Order 94-07), § 296-155-505, filed 7/20/94, effective 9/20/94; 91-24-017 (Order 91-07), § 296-155-505, filed 11/22/91, effective 12/24/91; 91-03-044 (Order 90-18), § 296-155-505, filed 1/10/91, effective 2/12/91; 90-03-029 (Order 89-20), § 296-155-505, filed 1/11/90, effective 2/26/90. Statutory Authority: RCW 49.17.040 and 49.17.050. 86-03-074 (Order 86-14), § 296-155-505, filed 1/21/86. Statutory Authority: RCW 49.17.040, 49.17.050 and 49.17.240. 81-13-053 (Order 81-9), § 296-155-505, filed 6/17/81; Order 76-29, § 296-155-505, filed 9/30/76; Order 74-26, § 296-155-505, filed 5/7/74, effective 6/6/74.]

**WAC 296-155-50503 Roofing brackets.** (1) Roofing brackets shall be constructed to fit the pitch of the roof.

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(2) Securing: Brackets shall be secured in place by nailing in addition to the pointed metal projections. When it is impractical to nail brackets, rope supports shall be used. When rope supports are used, they shall consist of first grade manila of at least 3/4 inch diameter, or equivalent.

(3) Crawling boards or chicken ladders.

(a) Crawling boards shall be not less than ten inches wide and one inch thick, having cleats 1 x 1 1/2 inches.

(i) The cleats shall be equal in length to the width of the board and spaced at equal intervals not to exceed twenty-four inches.

(ii) Nails shall be driven through and clinched on the underside.

(iii) The crawling board shall extend from the ridge pole to the eaves when used in connection with roof construction, repair, or maintenance.

(b) A firmly fastened lifeline of at least 3/4 inch diameter rope, or equivalent, shall be strung beside each crawling board for a handhold.

(c) Crawling boards shall be secured to the roof by means of adequate ridge hooks or other effective means.

[Statutory Authority: RCW 49.17.040, [49.17.]050 and [49.17.]060. 96-24-051, § 296-155-50503, filed 11/27/96, effective 2/1/97. Statutory Authority: Chapter 49.17 RCW. 95-10-016, § 296-155-50503, filed 4/25/95, effective 10/1/95; 91-03-044 (Order 90-18), § 296-155-50503, filed 1/10/91, effective 2/12/91. Statutory Authority: RCW 49.17.040 and 49.17.050. 86-03-074 (Order 86-14), § 296-155-50503, filed 1/21/86.]

#### WAC 296-155-50505 Reserved.

[Statutory Authority: Chapter 49.17 RCW. 94-15-096 (Order 94-07), § 296-155-50505, filed 7/20/94, effective 9/20/94; 91-24-017 (Order 91-07), § 296-155-50505, filed 11/22/91, effective 12/24/91. Statutory Authority: RCW 49.17.040 and 49.17.050. 86-03-074 (Order 86-14), § 296-155-50505, filed 1/21/86.]

#### WAC 296-155-510 Reserved.

[Statutory Authority: Chapter 49.17 RCW. 91-24-017 (Order 91-07), § 296-155-510, filed 11/22/91, effective 12/24/91; 89-11-035 (Order 89-03), § 296-155-510, filed 5/15/89, effective 6/30/89. Statutory Authority: RCW 49.17.040 and 49.17.050. 86-03-074 (Order 86-14), § 296-155-510, filed 1/21/86; Order 74-26, § 296-155-510, filed 5/7/74, effective 6/6/74.]

**WAC 296-155-515 Ramps, runways, and inclined walkways.** (1) Width. Ramps, runways and inclined walkways shall be eighteen inches or more wide.

(2) Standard railings. Ramps, runways and inclined walkways shall be provided with standard railings when located four feet or more above ground or floor level.

(3) Ramp specifications. Ramps, runways and walkways shall not be inclined more than twenty degrees from horizontal and when inclined shall be cleated or otherwise treated to prevent a slipping hazard on the walking surface.

[Statutory Authority: RCW 49.17.040, [49.17.]050 and [49.17.]060. 96-24-051, § 296-155-515, filed 11/27/96, effective 2/1/97. Statutory Authority: Chapter 49.17 RCW. 95-10-016, § 296-155-515, filed 4/25/95, effective 10/1/95. Statutory Authority: RCW 49.17.040 and 49.17.050. 86-03-074 (Order 86-14), § 296-155-515, filed 1/21/86.]

(12/31/12)

NO. 73943-3-I

**COURT OF APPEALS, DIVISION I  
OF THE STATE OF WASHINGTON**

HOWARD S. WRIGHT  
CONTRACTORS, LP,

Appellant,

v.

DEPARTMENT OF LABOR AND  
INDUSTRIES OF THE STATE OF  
WASHINGTON,

Respondent.

CERTIFICATE OF  
SERVICE

The undersigned, under penalty of perjury pursuant to the laws of the State of Washington, certifies that on February 26, 2016, she caused to be served the Department's Brief of Respondent and this Certificate of Service in the below-described manner:

**Via Efiling to:**

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Aaron Owada  
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Signed this 26th day of February, 2016, in Seattle, Washington by:



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