

WAC 296-155-17329 Medical removal. (1) Temporary medical removal of an employee.

(a) **Temporary removal resulting from occupational exposure.** You must remove the employee from work environments in which exposure to MDA is at or above the action level or where dermal exposure to MDA may occur, following an initial examination (WAC 296-155-17327(2)), periodic examinations (WAC 296-155-17327(3)), an emergency situation (WAC 296-155-17327(4)), or an additional examination (WAC 296-155-17327(5)) in the following circumstances:

(i) When the employee exhibits signs and/or symptoms indicative of acute exposure to MDA; or

(ii) When the examining physician determines that an employee's abnormal liver function tests are not associated with MDA exposure but that the abnormalities may be exacerbated as a result of occupational exposure to MDA.

(b) **Temporary removal due to a final medical determination.**

(i) You must remove an employee from work having an exposure to MDA at or above the action level or where the potential for dermal exposure exists on each occasion that a final medical determination results in a medical finding, determination, or opinion that the employee has a detected medical condition which places the employee at increased risk of material impairment to health from exposure to MDA.

(ii) For the purposes of this section, the phrase "final medical determination" means the outcome of the physician review mechanism used pursuant to the medical surveillance provisions of this section.

(iii) Where a final medical determination results in any recommended special protective measures for an employee, or limitations on an employee's exposure to MDA, you must implement and act consistent with the recommendation.

(2) **Return of the employee to former job status.**

(a) You must return an employee to her or his former job status:

(i) When the employee no longer shows signs or symptoms of exposure to MDA, or upon the advice of the physician.

(ii) When a subsequent final medical determination results in a medical finding, determination, or opinion that the employee no longer has a detected medical condition which places the employee at increased risk of material impairment to health from exposure to MDA.

(b) For the purposes of this section, the requirement that an employer return an employee to his or her former job status is not intended to expand upon or restrict any rights an employee has or would have had, absent temporary medical removal, to a specific job classification or position under the terms of a collective bargaining agreement.

(3) **Removal of other employee special protective measure or limitations.** You must remove any limitations placed on an employee or end any special protective measures provided to an employee pursuant to a final medical determination when a subsequent final medical determination indicates that the limitations or special protective measures are no longer necessary.

(4) **Employer options pending a final medical determination.** Where the physician review mechanism used pursuant to the medical surveillance provisions of this section has not yet resulted in a final medical determination with respect to an employee, you must act as follows:

(a) **Removal.** The employer may remove the employee from exposure to MDA, provide special protective measures to the employee, or place limitations upon the employee, consistent with the medical findings,

determinations, or recommendations of the physician who has reviewed the employee's health status.

(b) **Return.** The employer may return the employee to her or his former job status, and end any special protective measures provided to the employee, consistent with the medical findings, determinations, or recommendations of any of the physicians who have reviewed the employee's health status, with two exceptions:

(i) If the initial removal, special protection, or limitation of the employee resulted from a final medical determination which differed from the findings, determinations, or recommendations of the initial physician; or

(ii) The employee has been on removal status for the preceding 6 months as a result of exposure to MDA, then the employer must await a final medical determination.

(5) **Medical removal protection benefits.**

(a) **Provisions of medical removal protection benefits.** You must provide to an employee up to 6 months of medical removal protection benefits on each occasion that an employee is removed from exposure to MDA or otherwise limited pursuant to this section.

(b) **Definition of medical removal protection benefits.** For the purposes of this section, the requirement that an employer provide medical removal protection benefits means that you must maintain the earnings, seniority, and other employment rights and benefits of an employee as though the employee had not been removed from normal exposure to MDA or otherwise limited.

(c) **Follow-up medical surveillance during the period of employee removal or limitations.** During the period of time that an employee is removed from normal exposure to MDA or otherwise limited, the employer may condition the provision of medical removal protection benefits upon the employee's participation in follow-up medical surveillance made available pursuant to this section.

(d) **Workers' compensation claims.** If a removed employee files a claim for workers' compensation payments for an MDA-related disability, then you must continue to provide medical removal protection benefits pending disposition of the claim. To the extent that an award is made to the employee for earnings lost during the period of removal, the employer's medical removal protection obligation must be reduced by such amount. You must receive no credit for workers' compensation payments received by the employee for treatment-related expenses.

(e) **Other credits.** The employer's obligation to provide medical removal protection benefits to a removed employee must be reduced to the extent that the employee receives compensation for earnings lost during the period of removal either from a publicly or employer-funded compensation program, or receives income from employment with any employer made possible by virtue of the employee's removal.

(f) **Employees who do not recover within the 6 months of removal.** You must take the following measures with respect to any employee removed from exposure to MDA:

(i) You must make available to the employee a medical examination pursuant to this section to obtain a final medical determination with respect to the employee;

(ii) You must ensure that the final medical determination obtained indicates whether or not the employee may be returned to her or his former job status, and, if not, what steps should be taken to protect the employee's health;

(iii) Where the final medical determination has not yet been obtained, or once obtained indicates that the employee may not yet be

returned to her or his former job status, you must continue to provide medical removal protection benefits to the employee until either the employee is returned to former job status, or a final medical determination is made that the employee is incapable of ever safely returning to her or his former job status; and

(iv) Where the employer acts pursuant to a final medical determination which permits the return of the employee to her or his former job status despite what would otherwise be an unacceptable liver function test, later questions concerning removing the employee again must be decided by a final medical determination. The employer need not automatically remove such an employee pursuant to the MDA removal criteria provided by this section.

(6) **Voluntary removal or restriction of an employee.** Where an employer, although not required by this section to do so, removes an employee from exposure to MDA or otherwise places limitations on an employee due to the effects of MDA exposure on the employee's medical condition, you must provide medical removal protection benefits to the employee equal to that required by subsection (5) of this section.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060. WSR 16-09-085, § 296-155-17329, filed 4/19/16, effective 5/20/16. Statutory Authority: Chapter 49.17 RCW. WSR 93-04-111 (Order 92-15), § 296-155-17329, filed 2/3/93, effective 3/15/93.]