

WAC 296-128-670 Rate of pay for use of paid sick leave. (1) For each hour of paid sick leave used, an employee must be paid the greater of the minimum hourly wage rate established by RCW 49.46.020 or their normal hourly compensation.

(2) For each hour of paid sick leave paid out to a construction worker following separation, the construction worker must be paid the greater of the minimum hourly wage rate established by RCW 49.46.020 or their normal hourly compensation.

(3) An employer must calculate an employee's normal hourly compensation using a reasonable calculation based on the hourly rate that an employee would have earned for the time during which the employee used paid sick leave. Examples of reasonable calculations to determine normal hourly compensation include, but are not limited to:

(a) For an employee paid partially or wholly on a commission basis, dividing the total earnings by the total hours worked in the full pay periods in the prior 90 days of employment;

(b) For an employee paid partially or wholly on a piece rate basis, dividing the total earnings by the total hours worked in the most recent workweek in which the employee performed identical or substantially similar work to the work they would have performed had they not used paid sick leave;

(c) For a nonexempt employee paid a salary, dividing the annual salary by 52 to determine the weekly salary, and then dividing the weekly salary by the employee's normal scheduled hours of work;

(d) For an employee whose hourly rate of pay fluctuates:

(i) Where the employer can identify the hourly rates of pay for which the employee was scheduled to work, a calculation equal to the scheduled hourly rates of pay the employee would have earned during the period in which paid sick leave is used;

(ii) Where the employer cannot identify the hourly rates of pay for which the employee would have earned if the employee worked, a calculation based on the employee's average hourly rate of pay in the current or preceding 30 days, whichever yields the higher hourly rate.

(4) For employees who are scheduled to work a shift of indeterminate length (e.g., a shift that is defined by business needs rather than a specific number of hours), the rate of pay may be calculated by multiplying the employee's normal hourly compensation by the total hours worked by a replacement employee in the same shift, or similarly situated employees who worked that same or similar shift. If there is no replacement employee to compare to, the employer may use the average number of hours the employee using the paid sick leave typically works during a similar shift.

(5) Construction workers covered by a collective bargaining agreement who are paid before the usage of the leave under the terms of a collective bargaining agreement should be paid their normal hourly compensation. Unless addressed in a collective bargaining agreement, the payment should reflect a reasonable calculation of the normal hourly compensation based on the date of payment.

(6) An employer must apply a consistent methodology when calculating the normal hourly compensation of similarly situated employees.

[Statutory Authority: Chapter 49.46 RCW. WSR 23-24-044, § 296-128-670, filed 11/30/23, effective 1/1/24. Statutory Authority: RCW 49.46.810. WSR 17-21-092, § 296-128-670, filed 10/17/17, effective 1/1/18.]