

WAC 296-136-010 Definitions. (1) "Adverse action" means any action taken or threatened by an employer against an employee for their exercise of chapter 49.84 RCW rights, which may include, but is not limited to:

- (a) Terminating, suspending, demoting, or denying a promotion;
- (b) Changing the number of work hours for which the employee is scheduled;
- (c) Altering the employee's preexisting work schedule;
- (d) Reducing the employee's rate of pay;
- (e) Threatening to take, or taking action, based upon the immigration status of an employee, former employee, or an employee or former employee's family member; and
- (f) Preventing future job opportunities whether for the employer or elsewhere.

(2) "Affiliate" means a person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with another person. For purposes of this subsection, "control" means the possession, directly or indirectly, of more than 50 percent of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting shares, by contract, or otherwise.

(3) "Aggregated data" has the same meaning as "aggregated work speed data" and means information that an employer has combined or collected in summary or other form such that the data cannot be identified with any individual.

(4) "Defined time period" means any unit of time measurement equal to or less than the duration of an employee's shift, and includes hours, minutes, and seconds and any fraction thereof.

(5) "Department" means the department of labor and industries.

(6) "Designated employee representative" means any employee representative including, but not limited to, an authorized employee representative that has a collective bargaining relationship with the employer.

(7) "Director" means the director of the department of labor and industries or the director's designee.

(8) "Employee" means an employee who is not exempt under RCW 49.46.010 (3)(c) and works at a warehouse distribution center.

(9) "Employee work speed data" has the same meaning as "work speed data" and means information an employer collects, stores, analyzes, or interprets relating to an individual employee's performance of a quota including, but not limited to, quantities of tasks performed, quantities of items or materials handled or produced, rates or speeds of tasks performed, measurements or metrics of employee performance in relation to a quota, and time categorized as performing tasks or not performing tasks. Work speed data does not include qualitative performance assessments, personnel records, or itemized wage statements pursuant to department rules, except for any content of those records that includes work speed data as defined in this subsection.

(10) "Employer" means a person who directly or indirectly, or through an agent or any other person, including through the services of a third-party employer, temporary services, or staffing agency, independent contractor, or any similar entity, at any time, employs or exercises control over the wages, hours, or working conditions of 100 or more employees at a single warehouse distribution center in the state or 1,000 or more employees at one or more warehouse distribution centers in the state.

(a) For the purposes of determining the number of employees employed at a single warehouse distribution center or at one or more warehouse distribution centers, all employees employed directly or indirectly, or through an agency or any other person, and all employees employed by an employer and its affiliates, must be counted.

(b) For the purposes of determining responsible employers, all agents or other persons, and affiliates must be deemed employers and are jointly and severally responsible for compliance with this chapter.

(11) "Establishment" means a single physical location where business is conducted or where services or industrial operations are performed. Normally, one business location has only one establishment. When distinct and separate economic activities are performed at a single physical location each would be considered separate establishments provided:

(a) No one industry description in the North American Industrial Classification System applies to the joint activities of the establishments;

(b) Separate reports are routinely prepared for each establishment on the number of employees, their wages and salaries, sales or receipts, and other business information; and

(c) Employment and output are significant for both activities.

(12) "Person" means an individual, corporation, partnership, limited partnership, limited liability partnership, limited liability company, business trust, estate, trust, association, joint venture, agency, instrumentality, or any other legal or commercial entity, whether domestic or foreign.

(13) "Plain language" means language that is clear, concise, and visually easy to read. It must use common words, rather than jargon, acronyms, or unnecessary legal language.

(14) "Preferred language" means the employee's language of choice.

(15) "Quota" means a work performance standard, whether required or recommended, where:

(a) An employee is assigned or required to perform at a specified productivity speed, or perform a quantified number of tasks, or to handle or produce a quantified amount of material, within a defined time period and under which the employee may suffer an adverse employment action if they fail to complete the performance standard; or

(b) An employee's actions are categorized between time performing tasks and not performing tasks, if the employee may suffer an adverse employment action if they fail to meet the performance standard.

(c) For the purposes of this chapter, if any quota applies to a group of employees, each individual employee of the group is considered to have an individual quota.

(16) "Reasonable travel time" means that the employee must have enough time to access break locations considering the architecture and geography of the facility and location within the facility that the employee is located at the time a break is required.

(17) "Similar employee" means a covered employee performing similar tasks at the same warehouse distribution center.

(18) "Warehouse distribution center" means an establishment engaged in activities as defined by any of the following North American Industry Classification System codes; however, such establishment is denominated:

(a) 493 for warehousing and storage, but does not include 493130 for farm product warehousing and storage;

- (b) 423 for merchant wholesalers, durable goods;
- (c) 424 for merchant wholesalers, nondurable goods; or
- (d) 454110 for electronic shopping and mail-order houses.

[Statutory Authority: Chapter 49.84 RCW. WSR 24-12-045, § 296-136-010, filed 5/31/24, effective 7/1/24.]