Chapter 296-128 WAC
MINIMUM WAGES

Last Update: 12/2/25

WAC

RECORDKEEPING PROVISIONS

296-128-010 Records required.
296-128-011 Special recordkeeping requirements.
296-128-012 Overtime for truck and bus drivers.
296-128-015 Definitions of workday and workweek.
296-128-020 Term for keeping records.
296-128-025 Place for keeping records and availability for inspection.
296-128-030 Petitions for exceptions.
296-128-035 Payment interval.

EMPLOYMENT OF LEARNERS

296-128-100 Authority.
296-128-105 Definitions.
296-128-110 Application for learner certificate.
296-128-115 Procedure for action upon an application.
296-128-120 Conditions governing issuance of learner certificates.
296-128-125 Terms and conditions of employment under learner certificates.
296-128-130 Records to be kept by employers of learners.
296-128-135 Amendment and revocation of learner certificate.
296-128-140 Supplemental regulations.
296-128-145 Reconsideration and review.
296-128-150 Procedure for amendment.

STUDENT LEARNERS

296-128-175 Applicability of the regulation.
296-128-180 Definitions.
296-128-185 Application for certificate.
296-128-190 Procedure for action upon application.
296-128-195 Conditions governing issuance of special student learner certificate.
296-128-200 Terms and conditions of special student learner certificate.
296-128-205 Term of special certificate.
296-128-210 Review.
296-128-215 Amendment of this regulation.

APPRENTICES

296-128-225 Employment of apprentices at subminimum wages.
296-128-230 Definition of apprentice.
296-128-235 Registration of apprenticeship agreement.
296-128-240 Procedure for issuing certificates authorizing employment of apprentices at subminimum wages.
296-128-245 Terms of special certificate.
296-128-250 Hearing procedure.

EMPLOYMENT OF STUDENT WORKERS

296-128-275 Applicability.
296-128-280 Definitions.
296-128-285 Filing applications.
296-128-290 Issuing or denying certificates.
296-128-295 Conditions governing issuance of certificates.
296-128-300 Data required on certificate.
296-128-305 Wage rate.
296-128-310 Records.
296-128-315 Amending and revoking certificates.
296-128-400 Minors.

EXECUTIVE, ADMINISTRATIVE, PROFESSIONAL, AND OUTSIDE SALESPEOPLE

296-128-500 Purpose.
296-128-505 Definitions.
296-128-510 Executive.
296-128-520 Administrative.
296-128-530 Professional.
296-128-532 Deductions for salaried, exempt employees.
296-128-533 Public employees.
296-128-535 Computer professionals.
296-128-540 Outside salesperson.
296-128-545 Salary thresholds.

REGULAR RATE OF PAY AND COMPENSATORY TIME

296-128-550 Regular rate of pay.
296-128-560 Compensating time off in lieu of overtime pay.

PAID SICK LEAVE

296-128-600 Definitions.
296-128-610 Requirements for a written policy—Duty of the department to provide sample policies.
296-128-620 Paid sick leave accrual.
296-128-630 Paid sick leave usage.

296-128-640 Variance from required increments of paid sick leave usage.
296-128-650 Reasonable notice.
296-128-660 Verification for absences exceeding three days.
296-128-670 Rate of pay for use of paid sick leave.
296-128-680 Payment of paid sick leave.
296-128-690 Separation and reinstatement of accrued paid sick leave upon rehire.
296-128-700 Paid time off (PTO) programs.
296-128-710 Shared leave.
296-128-720 Shift swapping.
296-128-730 Frontloading.
296-128-740 Third-party administrators.
296-128-750 Employee use of paid sick leave for unauthorized purposes.
296-128-755 Employer notification and reporting to employees.
296-128-760 Construction workers covered by a collective bargaining agreement under RCW 49.46.180.
296-128-765 Construction workers under RCW 49.46.210 (1)(l) (effective January 1, 2024).

MINIMUM WAGE ACT PROTECTIONS AND ENFORCEMENT

296-128-770 Retaliation.
296-128-780 Enforcement—Retaliation.
296-128-790 Enforcement—Retaliation—Civil penalties.
296-128-800 Enforcement—Retaliation—Appeals.
296-128-810 Enforcement—Paid sick leave.
296-128-820 Enforcement—Tips and service charges.
296-128-830 Enforcement—Complaints alleging a violation of other rights under chapter 49.46 RCW—Duty of department to investigate—Citations—Civil penalties.
296-128-840 Complaints alleging a violation of other rights under chapter 49.46 RCW—Administrative appeals.
296-128-850 Complaints alleging a violation of other rights under chapter 49.46 RCW—Collection procedures.
296-128-860 Severability clause.

ADULT ENTERTAINMENT ESTABLISHMENTS

296-128-90010 Definitions.
296-128-90020 Leasing fee and other fee requirements.
296-128-90030 Tips and gratuities.
296-128-90040 Written contracts of leasing fees—Administrative requirements.
296-128-90050 Required signage—Administrative requirements.
296-128-90060 Written notice of reason for termination or refusal to rehire—Administrative requirements.
296-128-90070 Retaliation.
296-128-90080 Enforcement—Compensation.
296-128-90090 Enforcement—Administrative violations.
296-128-90100 Enforcement—Retaliation.
296-128-90110 Administrative appeals.
296-128-90120 Collection procedures.
296-128-90130 Severability clause.

TRANSPORTATION NETWORK COMPANIES

296-128-99010 Definitions.

GENERAL REQUIREMENTS

296-128-99020 Fees collected and remitted for the driver resource center fund.
296-128-99030 Driver electronic receipts and weekly trip notices.
296-128-99040 Payment requirements.
296-128-99050 Geographic application of RCW 49.46.300 minimum compensation requirements.
296-128-99060 Tips and gratuities.
296-128-99070 Driver reimbursements.
296-128-99080 Deductions from driver compensation.
296-128-99090 Voluntary per trip earnings deduction contributions and reimbursements—Driver resource center.
296-128-99100 Deactivations.
296-128-99110 Notice of rights.
296-128-99120 Retaliation.

TNC—PAID SICK TIME STANDARDS

296-128-99130 Paid sick time accrual.
296-128-99140 Paid sick time usage.
296-128-99150 Paid sick time rate of pay.
296-128-99160 Reasonable notice.
296-128-99170 Paid time off (PTO) programs.
296-128-99180 Verification for paid sick time usage.
296-128-99190 Frontloading.
296-128-99200 Third-party administrators.
296-128-99210 Paid sick time notifications.
296-128-99220 Shared paid sick time.
296-128-99230 Driver use of paid sick time for unauthorized purposes.

TNC—ENFORCEMENT STANDARDS

296-128-99240 Enforcement—Complaints by driver—Additional investigations by department for amounts owed to drivers.
296-128-99250 Enforcement—Remittances.
296-128-99260 Enforcement—Complaint by driver—Paid sick time.

296-128-99270 Enforcement—Retaliation investigations.
296-128-99280 Enforcement—Administrative violations.
296-128-99290 Enforcement—Administrative enforcement supplemental and variance for delayed implementation of accessible system and communication system requirements.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

296-128-050 Applicability of this regulation. [§ 1, Regulation 294.6.005, filed 12/30/60.] Repealed by WSR 24-20-113, filed 10/1/24, effective 11/1/24. Statutory Authority: RCW 49.46.170(2).

296-128-055 Definition. [Statutory Authority: RCW 49.46.810. WSR 17-21-092, § 296-128-055, filed 10/17/17, effective 1/1/18; § 2, Regulation 294.6.005, filed 12/30/60.] Repealed by WSR 24-20-113, filed 10/1/24, effective 11/1/24. Statutory Authority: RCW 49.46.170(2).

296-128-060 Application for certificate. [Statutory Authority: RCW 49.46.810. WSR 17-21-092, § 296-128-060, filed 10/17/17, effective 1/1/18; § 3, Regulation 294.6.005, filed 12/30/60.] Repealed by WSR 24-20-113, filed 10/1/24, effective 11/1/24. Statutory Authority: RCW 49.46.170(2).

296-128-065 Conditions for granting a certificate. [Statutory Authority: RCW 49.46.810. WSR 17-21-092, § 296-128-065, filed 10/17/17, effective 1/1/18; § 4, Regulation 294.6.005, filed 12/30/60.] Repealed by WSR 24-20-113, filed 10/1/24, effective 11/1/24. Statutory Authority: RCW 49.46.170(2).

296-128-070 Issuance of certificate. [Statutory Authority: RCW 49.46.810. WSR 17-21-092, § 296-128-070, filed 10/17/17, effective 1/1/18; § 5, Regulation 294.6.005, filed 12/30/60.] Repealed by WSR 24-20-113, filed 10/1/24, effective 11/1/24. Statutory Authority: RCW 49.46.170(2).

296-128-075 Terms of certificate. [Statutory Authority: RCW 49.46.810. WSR 17-21-092, § 296-128-075, filed 10/17/17, effective 1/1/18; § 6, Regulation 294.6.005, filed 12/30/60.] Repealed by WSR 24-20-113, filed 10/1/24, effective 11/1/24. Statutory Authority: RCW 49.46.170(2).

296-128-080 Renewal of certificate. [§ 7, Regulation 294.6.005, filed 12/30/60.] Repealed by WSR 24-20-113, filed 10/1/24, effective 11/1/24. Statutory Authority: RCW 49.46.170(2).

296-128-085 Review. [§ 8, Regulation 294.6.005, filed 12/30/60.] Repealed by WSR 24-20-113, filed 10/1/24, effective 11/1/24. Statutory Authority: RCW 49.46.170(2).

296-128-090 Amendment of this regulation. [§ 9, Regulation 294.6.005, filed 12/30/60.] Repealed by WSR 24-20-113, filed 10/1/24, effective 11/1/24. Statutory Authority: RCW 49.46.170(2).

296-128-410 Counselor staff occupations in organized seasonal recreational camps—Women and minors. [Industrial Welfare Order 11-63, filed 9/13/63; Minimum Wage and Welfare Order 54, filed 3/23/60.] Repealed by Order 77-32, filed 12/30/77. Later promulgation, see chapter 296-125 WAC.

296-128-415 Food processing industry—Women and minors. [Industrial Welfare Order 5-62, filed 11/25/64; Minimum Wage and Welfare Order 51, filed 3/23/60.] Repealed by Order 77-32, filed 12/30/77. Later promulgation, see chapter 296-125 WAC.

296-128-420 Fresh fruit and vegetable packing industry—Women and minors. [Industrial Welfare Order 6-62, filed 11/25/64; Minimum Wage and Welfare Order 52, filed 3/23/60.] Repealed by Order 77-32, filed 12/30/77. Later promulgation, see chapter 296-125 WAC.

296-128-425 General amusement and recreation industry—Women and minors. [Industrial Welfare Order 8-62, filed 11/25/64; Minimum Wage Order 45-A, filed 3/23/60.] Repealed by Order 77-32, filed 12/30/77. Later promulgated, see chapter 296-125 WAC.

296-128-430 Health care industry—Women and minors. [Industrial Welfare Order 68-3, filed 5/8/68, effective 7/15/68; Industrial Welfare Order 10-62, filed 11/25/64; Minimum Wage Order 46, filed 3/23/60.] Repealed by Order 77-32, filed 12/30/77. Later promulgation, see chapter 296-125 WAC.

296-128-435 Laundry, dry-cleaning and dye works industry—Women and minors. [Industrial Welfare Order 3-62, filed 11/25/64; Minimum Wage and Welfare Order 48, filed 3/23/60.] Repealed by Order 77-32, filed 12/30/77. Later promulgation, see chapter 296-125 WAC.

296-128-440 Manufacturing industry and general working conditions—Women and minors. [Industrial Welfare Order 2-62, filed 11/25/64; Minimum Wage and Welfare Order 50, filed 3/23/60.] Repealed by Order 77-32, filed 12/30/77. Later promulgation, see chapter 296-125 WAC.

296-128-445 Mercantile industry, wholesale and retail—Women and minors. [Order 71-5, § 296-128-445, filed 5/26/71, effective 7/1/71, Mercantile Industrial Welfare Order 1-71; Industrial Welfare Order 1-62, filed 11/25/64; Minimum Wage Order 44, filed 3/23/60.] Repealed by Order 77-32, filed 12/30/77. Later promulgation, see chapter 296-125 WAC.

296-128-4451 Applicability. [Order 71-5, § 296-128-4451, filed 5/26/71, effective 7/1/71.] Repealed by Order 77-32, filed 12/30/77. Later promulgation, see chapter 296-125 WAC.

296-128-4452 Definitions. [Order 71-5, § 296-128-4452, filed 5/26/71, effective 7/1/71.] Repealed by Order 77-32, filed 12/30/77. Later promulgation, see chapter 296-125 WAC.

296-128-4453 Minimum wages. [Order 71-5, § 296-128-4453, filed 5/26/71, effective 7/1/71.] Repealed by Order 77-32, filed 12/30/77. Later promulgation, see chapter 296-125 WAC.

296-128-4454 Deductions. [Order 71-5, § 296-128-4454, filed 5/26/71, effective 7/1/71.] Repealed by Order 77-32, filed 12/30/77. Later promulgation, see chapter 296-125 WAC.

296-128-4455 Statements furnished. [Order 71-5, § 296-128-4455, filed 5/26/71, effective 7/1/71.] Repealed by Order 77-32, filed 12/30/77. Later promulgation, see chapter 296-125 WAC.

296-128-4456 Records. [Order 71-5, § 296-128-4456, filed 5/26/71, effective 7/1/71.] Repealed by Order 77-32, filed 12/30/77. Later promulgation, see chapter 296-125 WAC.

296-128-4457 Meal and rest periods. [Order 71-5, § 296-128-4457, filed 5/26/71, effective 7/1/71.] Repealed by Order 77-32, filed 12/30/77. Later promulgation, see chapter 296-125 WAC.

296-128-4458 Working conditions. [Order 71-5, § 296-128-4458, filed 5/26/71, effective 7/1/71.] Repealed by Order 77-32, filed 12/30/77. Later promulgation, see chapter 296-125 WAC.

296-128-4459 Uniforms. [Order 71-5, § 296-128-4459, filed 5/26/71, effective 7/1/71.] Repealed by Order 77-32, filed 12/30/77. Later promulgation, see chapter 296-125 WAC.

296-128-446 Minor work permits. [Order 71-5, § 296-128-446, filed 5/26/71, effective 7/1/71.] Repealed by Order 77-32, filed 12/30/77. Later promulgation, see chapter 296-125 WAC.

296-128-4461 Posting of order. [Order 71-5, § 296-128-4461, filed 5/26/71, effective 7/1/71.] Repealed by Order 77-32, filed 12/30/77. Later promulgation, see chapter 296-125 WAC.

296-128-4462 Separability. [Order 71-5, § 296-128-4462, filed 5/26/71, effective 7/1/71.] Repealed by Order 77-32, filed 12/30/77. Later promulgation, see chapter 296-125 WAC.

296-128-4463 Penalties. [Order 71-5, § 296-128-4463, filed 5/26/71, effective 7/1/71.] Repealed by Order 77-32, filed 12/30/77. Later promulgation, see chapter 296-125 WAC.

296-128-450 Office workers—Women and minors. [Industrial Welfare Order 13-63, filed 11/25/64; Minimum Wage Order 43, filed 3/23/60; Statement of interpretation of applicability of Industrial Welfare Committee Order 13-63, office workers, filed 11/25/64.] Repealed by Order 77-32, filed 12/30/77. Later promulgation, see chapter 296-125 WAC.

296-128-455 Personal service industry—Women and minors. [Industrial Welfare Order 4-62, filed 11/25/64.] Repealed by Order 77-32, filed 12/30/77. Later promulgation, see chapter 296-125 WAC.

296-128-460 Public housekeeping industrial—Women and minors. [Order 71-5 (Industrial Welfare Order No. 9-71), § 296-128-460, filed 5/26/71, effective 7/1/71; Industrial Welfare Order 9-62, filed 11/25/64; Minimum Wage Order 46, filed 3/23/60.] Repealed by Order 77-32, filed 12/30/77. Later promulgation, see chapter 296-125 WAC.

296-128-4601 Applicability. [Order 71-5, § 296-128-4601, filed 5/26/71, effective 7/1/71.] Repealed by Order 77-32, filed 12/30/77. Later promulgation, see chapter 296-125 WAC.

296-128-4602 Definitions. [Order 71-5, § 296-128-4602, filed 5/26/71, effective 7/1/71.] Repealed by Order 77-32, filed 12/30/77. Later promulgation, see chapter 296-125 WAC.

296-128-4603 Minimum wages. [Order 71-5, § 296-128-4603, filed 5/26/71, effective 7/1/71.] Repealed by Order 77-32, filed 12/30/77. Later promulgation, see chapter 296-125 WAC.

296-128-4604 Deductions. [Order 71-5, § 296-128-4604, filed 5/26/71, effective 7/1/71.] Repealed by Order 77-32, filed 12/30/77. Later promulgation, see chapter 296-125 WAC.

296-128-4605 Statements furnished. [Order 71-5, § 296-128-4605, filed 5/26/71, effective 7/1/71.] Repealed by Order 77-32, filed 12/30/77. Later promulgation, see chapter 296-125 WAC.

296-128-4606 Records. [Order 71-5, § 296-128-4606, filed 5/26/71, effective 7/1/71.] Repealed by Order 77-32, filed 12/30/77. Later promulgation, see chapter 296-125 WAC.

296-128-4607 Meals and lodging. [Order 71-5, § 296-128-4607, filed 5/26/71, effective 7/1/71.] Repealed by Order 77-32, filed 12/30/77. Later promulgation, see chapter 296-125 WAC.

296-128-4608 Meal and rest periods. [Order 71-5, § 296-128-4608, filed 5/26/71, effective 7/1/71.] Repealed by Order 77-32, filed 12/30/77. Later promulgation, see chapter 296-125 WAC.

296-128-4609 Working conditions. [Order 71-5, § 296-128-4609, filed 5/26/71, effective 7/1/71.] Repealed by Order 77-32, filed 12/30/77. Later promulgation, see chapter 296-125 WAC.

296-128-461 Uniforms. [Order 71-5, § 296-128-461, filed 5/26/71, effective 7/1/71.] Repealed by Order 77-32, filed 12/30/77. Later promulgation, see chapter 296-125 WAC.

296-128-4611 Minor work permits. [Order 71-5, § 296-128-4611, filed 5/26/71, effective 7/1/71.] Repealed by Order 77-32, filed 12/30/77. Later promulgation, see chapter 296-125 WAC.

296-128-4612 Posting of order. [Order 71-5, § 296-128-4612, filed 5/26/71, effective 7/1/71.] Repealed by Order 77-32, filed 12/30/77. Later promulgation, see chapter 296-125 WAC.

296-128-4613 Separability. [Order 71-5, § 296-128-4613, filed 5/26/71, effective 7/1/71.] Repealed by Order 77-32, filed 12/30/77. Later promulgation, see chapter 296-125 WAC.

296-128-4614 Penalties. [Order 71-5, § 296-128-4614, filed 5/26/71, effective 7/1/71.] Repealed by Order 77-32, filed 12/30/77. Later promulgation, see chapter 296-125 WAC.

296-128-465 Telephone and telegraph industry—Women and minors. [Industrial Welfare Order 12-63, filed 11/25/64; Minimum Wage and Welfare Order 53, filed 3/23/60.] Repealed by Order 77-32, filed 12/30/77. Later promulgation, see chapter 296-125 WAC.

296-128-470 Theatrical amusement and recreation industry—Women and minors. [Industrial Welfare Order 7-62, filed 11/25/64; Minimum Wage Order 45, filed 3/23/60.] Repealed by Order 77-32, filed 12/30/77. Later promulgation, see chapter 296-125 WAC.

RECORDKEEPING PROVISIONS

WAC 296-128-010 Records required. For all employees who are subject to RCW 49.46.020, employers shall be required to keep and preserve payroll or other records containing the following information and data with respect to each and every employee to whom said section of said act applies:

(1) Name in full, and on the same record, the employee's identifying symbol or number if such is used in place of name on any time, work, or payroll records. This shall be the same name as that used for Social Security record purposes;

(2) Home address;

(3) Occupation in which employed;

(4) Date of birth if under 18;

(5) Time of day and day of week on which the employee's workweek begins. If the employee is part of a workforce or employed in or by an establishment all of whose workers have a workweek beginning at the same time on the same day, a single notation of the time of the day and beginning day of the workweek for the whole workforce or establishment will suffice. If, however, any employee or group of employees has a workweek beginning and ending at a different time, a separate notation shall then be kept for that employee or group of employees;

(6) Hours worked each workday and total hours worked each workweek (for purposes of this section, a "workday" shall be any consecutive 24 hours);

(7) Total daily or weekly straight-time earnings or wages; that is, the total earnings or wages due for hours worked during the workday or workweek, including all earnings or wages due during any overtime worked, but exclusive of overtime excess compensation;

(8) Total overtime excess compensation for the workweek; that is, the excess compensation for overtime worked which amount is over and above all straight-time earnings or wages also earned during overtime worked;

(9) Total additions to or deductions from wages paid each pay period. Every employer making additions to or deductions from wages shall also maintain a record of the dates, amounts, and nature of the items which make up the total additions and deductions;

(10) Total wages paid each pay period;

(11) Date of payment and the pay period covered by payment;

(12) Paid sick leave accruals each month, and any unused paid sick leave available for use by an employee;

(13) Paid sick leave reductions each month including, but not limited to: Paid sick leave used by an employee, paid sick leave donated to a co-worker through a shared leave program, or paid sick leave not carried over to the following year ("year" as defined in WAC 296-128-620(6));

(14) Paid sick leave payments to construction workers covered by a collective bargaining agreement before usage as provided under RCW 49.46.180, and any remaining leave which remains after payment;

(15) The date of commencement of their employment, as defined in WAC 296-128-600(2);

(16) Paid sick leave paid out to a construction worker following separation from employment;

(17) Any date(s) of separation from employment, as defined in WAC 296-128-600(14); and

(18) Employers may use symbols where names or figures are called for so long as such symbols are uniform and defined.

[Statutory Authority: Chapter 49.46 RCW. WSR 23-24-044, § 296-128-010, filed 11/30/23, effective 1/1/24. Statutory Authority: RCW 49.46.810. WSR 17-21-092, § 296-128-010, filed 10/17/17, effective 1/1/18; Regulation 294.7.001 (part), filed 12/30/60.]

WAC 296-128-011 Special recordkeeping requirements. (1) In addition to the records required by WAC 296-128-010, employers who employ individuals as truck or bus drivers subject to the provisions of the Federal Motor Carrier Act shall maintain records indicating the base rate of pay, the overtime rate of pay, the hours worked by each employee for each type of work, and the formulas and projected work

hours used to substantiate any deviation from payment on an hourly basis pursuant to WAC 296-128-012. The records shall indicate the period of time for which the base rate of pay and the overtime rate of pay are in effect.

For the purposes of this section and WAC 296-128-012, "base rate of pay" means the amount of compensation paid per hour or per unit of work in a workweek of forty hours or less. A base rate of pay shall be established in advance of the work performed and may be based on hours or work units such as mileage, performance of specified duties, or a specified percentage of the gross proceeds charged for specified work. A base rate of pay shall not be established that will result in compensation at less than the minimum wage prescribed in RCW 49.46.020. "Overtime rate of pay" means the amount of compensation paid for hours worked in excess of forty hours per week and shall be at least one and one-half times the base rate of pay.

(2) The records required by this section shall be made available by the employer at the request of the department. Any current or past employee may obtain copies of the formula, the base rate of pay, the overtime rate of pay, and that employee's records. Job applicants seeking employment by the employer as truck or bus drivers subject to the provisions of the Federal Motor Carrier Act, may obtain copies of the formula, the base rate of pay, and the overtime rate of pay.

[Statutory Authority: RCW 43.22.270 and 49.46.130. WSR 08-21-150, § 296-128-011, filed 10/21/08, effective 11/21/08. Statutory Authority: RCW 43.22.270, 49.46.130 and 1989 c 104. WSR 89-22-120, § 296-128-011, filed 11/1/89, effective 12/2/89.]

WAC 296-128-012 Overtime for truck and bus drivers. (1)(a) The compensation system under which a truck or bus driver subject to the provisions of the Federal Motor Carrier Act is paid shall include overtime pay at least reasonably equivalent to that required by RCW 49.46.130 for working in excess of forty hours a week. To meet this requirement, an employer may, with notice to a truck or bus driver subject to the provisions of the Federal Motor Carrier Act, establish a rate of pay that is not on an hourly basis and that includes in the rate of pay compensation for overtime. An employer shall substantiate any deviation from payment on an hourly basis to the satisfaction of the department by using the following formula or an alternative formula that, at a minimum, compensates hours worked in excess of forty hours per week at an overtime rate of pay and distributes the projected overtime pay over the average number of hours projected to be worked. The following formula is recommended for establishing a uniform rate of pay to compensate work that is not paid on an hourly basis and for which compensation for overtime is included:

1. Define work unit first. E.g., miles, loading, unloading, other.
2. $$\frac{\text{Average number of work units}}{\text{per hour}} = \frac{\text{Average number of work units accomplished per week}}{\text{Average number of hours projected to be worked per week}}$$
3. Weekly Base Rate = Number of units per hour x 40 hours x base rate of pay

4. Weekly Overtime rate = Number of units per hour x number of hours over 40 x overtime rate of pay

5. Total weekly pay = Weekly base rate plus weekly overtime rate

6. Uniform rate of pay = $\frac{\text{Total weekly pay}}{\text{Total work units}}$

Example: A truck driver is paid on a mileage basis for a two hundred thirty mile trip performed about ten times a week. The base rate of pay is twenty cents a mile. The overtime rate of pay is thirty cents a mile. The average length of the trip is four and one-half hours.

1. 2300 mi. per week divided by 45 hours per week = 51.1 miles per hour

2. (a) 51.1 miles/hour times 40 hours times .20/ mile = $408.80
   (b) 51.1 miles/hour times 5 hours = 255.5 miles
   (c) 255.5 miles times .30/mile = $76.65
   (d) $408.80 plus $76.65 = $485.45 divided by 2300 miles = 21.1 cents mile

(b) In using a formula to determine a rate of pay, the average number of hours projected to be worked and the average number of work units accomplished per week shall reflect the actual number of hours worked and work units projected to be accomplished by persons performing the same type of work over a representative time period within the past two years consisting of at least twenty-six consecutive weeks.

(c) The department may evaluate alternative rates of pay and formulas used by employers in order to determine whether the rates of pay established under this section result in the driver receiving compensation reasonably equivalent to one and one-half times the base rate of pay for actual hours worked in excess of forty hours per week.

(2) Where an employee receives a different base rate of pay depending on the type of work performed, the rate that is paid or used for hours worked in excess of forty hours per week shall be at least the overtime rate of pay for the type of work in which most hours were worked.

(3) Compensation plans before March 1, 2007. An employer who employed drivers who worked over forty hours a week consisting of both in-state and out-of-state hours anytime before March 1, 2007, may, within ninety days of the adoption of this subsection, submit a proposal consistent with subsection (1) of this section to the department for approval of a reasonably equivalent compensation system. The employer shall submit information to substantiate its proposal consisting of at least twenty-six consecutive weeks over a representative time period between July 1, 2005, and March 1, 2007. The department shall then determine if the compensation system includes overtime that was at least reasonably equivalent to that required by RCW 49.46.130.

Note 1: On March 1, 2007, the Washington state supreme court ruled that overtime rate of pay includes hours worked within and outside the state of Washington for Washington-based employees. *Bostain v. Food Express, Inc.*, 159 Wn.2d 700, 153 P.3d 846 (2007).

Note 2: The adoption date of this subsection is October 21, 2008.

[Statutory Authority: RCW 43.22.270 and 49.46.130. WSR 08-21-150, § 296-128-012, filed 10/21/08, effective 11/21/08. Statutory Authority: RCW 43.22.270, 49.46.130 and 1989 c 104. WSR 89-22-120, § 296-128-012, filed 11/1/89, effective 12/2/89.]

WAC 296-128-015 Definitions of workday and workweek. (1) A workweek is a fixed and regularly recurring period of one hundred sixty-eight hours or seven consecutive twenty-four-hour periods. It may begin on any day of the week and any hour of the day, and need not coincide with a calendar week.

(2) A workday is a fixed and regularly recurring period of twenty-four hours. It may begin at any hour of a calendar day and must begin at the same time each calendar day.

[Regulation 294.7.001 (part), filed 12/30/60.]

WAC 296-128-020 Term for keeping records. Unless otherwise specifically authorized by the director all records required under WAC 296-128-010 shall be kept for a period of at least three years.

[Regulation 294.7.001 (part), filed 12/30/60.]

WAC 296-128-025 Place for keeping records and availability for inspection. Each employer shall keep the records required by this regulation safe and accessible at the place or places of employment or at one or more established central recordkeeping offices where such records are customarily maintained. All such records shall be open at any time to inspection and transcription or copying by the director and his duly authorized representative and to the employee, upon request for that employee's work record, at any reasonable time.

[Statutory Authority: RCW 43.22.270, 49.12.020, 49.12.091, 49.12.050, 49.46.020 and 49.46.070. WSR 89-22-016 (Order 89-16), § 296-128-025, filed 10/24/89, effective 11/24/89; Regulation 294.7.001 (part), filed 12/30/60.]

WAC 296-128-030 Petitions for exceptions. (1) **Submission of petitions for relief.** Any employer or group of employers who, due to peculiar conditions under which he or they must operate, desires authority to maintain records in a manner other than required in this regulation, or to be relieved of preserving certain records for the period specified in the regulation, may submit a written petition to the director setting forth the authority desired and the reasons therefor.

(2) **Action on petitions.** If, on review of the petition and after completion of any necessary investigation supplementary thereto, the director shall find that the authority prayed for, if granted, will not hamper or interfere with enforcement of the provisions of the act or any regulation or orders issued thereunder, he may then grant such authority but limited by such conditions as he may determine are requisite, and subject to subsequent revocation. Where the authority granted hereunder is sought to be revoked for failure to comply with the conditions determined by the director to be requisite to its existence, the employer or groups of employers involved shall be notified in writing of the facts constituting such failure and afforded an opportunity to achieve or demonstrate compliance.

(3) **Compliance after submission of petitions.** The submission of a petition or the delay of the director in acting upon such petition shall not relieve any employer or group of employers from any obligations to comply with all the requirements of the regulations in this

part applicable to him or them. However the director shall give notice of the denial of any petition with due promptness.

[Regulation 294.7.001 (part), filed 12/30/60.]

WAC 296-128-035 Payment interval. (1) This rule shall apply to employers and employees subject to chapter 49.46 RCW.

Note: Employers and employees not subject to this regulation may still be subject to the payment interval requirements of WAC 296-126-023 or 296-131-010.

(2) Definitions:

(a) "Monthly interval" means a one-month time period between established pay days.

(b) "Pay day" means a specific day or date established by the employer on which wages are paid for hours worked during a pay period.

(c) "Payment interval" means the amount of time between established pay days. A payment interval may be daily, weekly, bi-weekly, semi-monthly or monthly.

(d) "Pay period" means a defined time frame for which an employee will receive a paycheck. A pay period may be daily, weekly, bi-weekly, semi-monthly or monthly.

(3) An employer shall pay all wages owed to an employee on an established regular pay day at no longer than monthly payment intervals. If federal law provides specific payment interval requirements that are more favorable to an employee than the payment interval requirements provided under this rule, federal law shall apply.

(4) If an employer pays wages on the basis of a pay period that is less than a month, the employer shall establish a regular pay day no later than ten calendar days after the end of the pay period, unless expressly provided otherwise by law.

Example 1: Employer establishes a weekly pay period. The workweek is from Sunday January 1 through Saturday January 7. Unless a different payment interval applies by law, the employer must pay wages no later than January 17.

Example 2: Employer establishes two semi-monthly pay periods (the first pay period covers the 1st day of the month to the 15th day of the month; the second pay period covers the 16th day of the month to the last day of the month). Unless a different payment interval applies by law, the employer must pay wages no later than the 25th day of the current month for the first pay period, and no later than the 10th day of the following month for the second pay period.

(5) If an employer pays wages on the basis of a monthly pay period, the employer may establish a regular payroll system under which wages for work performed by an employee during the last seven days of the monthly pay period may be withheld and included with the wages paid on the pay day for the next pay period.

Example: Employer establishes a monthly pay period starting on the 1st day of each month with an established pay day on the last day of the month. In a thirty-one-day month, unless a different payment interval applies by law, the employer must pay wages for work performed between the 1st and 24th days of the month on the established pay day (the last day of the month). The employer may pay wages for work performed between the 25th and 31st days of the current month on the following month's pay day (which means that the employer would pay wages for work performed between the 25th and 31st days of the current month, and the 1st and 24th days of the following month, on the following month's pay day).

If pay period is:	And if pay day for regular wages is:	Then pay day for overtime wages must be no later than:
1st of the month - 15th day of the month	25th of the month	10th of the following month
16th of the month - 30th or 31st of the month	10th of the following month	25th of the following month

(6) An employer shall pay overtime wages owed to an employee on the regular pay day for the pay period in which the overtime wages were earned. If the correct amount of overtime wages cannot be determined until after such regular pay day, the employer may establish a separate pay day for overtime wages; provided, that the payment of overtime wages may not be delayed for a period longer than that which is reasonably necessary for the employer to compute and arrange for payment of the amount due, and overtime wages must be paid by the regular pay day following the next pay period.

Example: Employer establishes two semi-monthly pay periods. The first pay period covers work performed from the 1st day of the month to the 15th day of the month with the pay day of the 25th; the second pay period covers the 16th day of the month to the last day of the month with the pay day of the 10th of the following month. An employee works overtime in each of the pay periods. Unless a different payment interval applies by law, the employer must pay the overtime wages no later than the 10th day of the following month for the overtime earned during the first pay period, and no later than the 25th day of the following month for the overtime earned during the second pay period.

If pay period is:	And if pay day for regular wages is:	Then pay day for overtime wages must be no later than:
1st of the month - 15th day of the month	25th of the month	10th of the following month
16th of the month - 30th or 31st of the month	10th of the following month	25th of the following month

(7) Mailed paychecks shall be postmarked no later than the established pay day. If the established pay day falls on a weekend day or holiday when the business office is not open, mailed paychecks shall be postmarked no later than the next business day. Employers that pay employees by direct deposit or other electronic means shall ensure that such wage payments are made and available to employees on the established pay day.

(8) These rules may be superseded by a collective bargaining agreement negotiated under the National Labor Relations Act, 29 U.S.C. Sec. 151 et seq., the Public Employees' Bargaining Act, RCW 41.56.010 et seq., or the Personnel System Reform Act, RCW 41.80.001 et seq., if the terms of, or recognized custom and practice under, the collective bargaining agreement prescribe specific payment interval requirements for employees covered by the collective bargaining agreement; provided, that:

(a) All regular wages (whether paid on an hourly, salary, commission, piece rate, or other basis) shall be paid to employees covered by the collective bargaining agreement ("covered employees") at no longer than monthly intervals;

(b) All other wages (including overtime, bonus pay, and other categories of specialty pay in addition to regular wages) are paid in accordance with the payment interval requirements applicable to covered employees under the terms of, or recognized custom and practice under, the collective bargaining agreement; and

(c) The employer pays regular wages to covered employees at no less than the applicable minimum wage rate.

[Statutory Authority: Chapters 49.12, 49.30, and 49.46 RCW. WSR 07-03-145, § 296-128-035, filed 1/23/07, effective 3/1/07. Statutory Authority: RCW 43.22.270, 49.12.020, 49.12.091, 49.12.050, 49.46.020 and 49.46.070. WSR 89-22-016 (Order 89-16), § 296-128-035, filed 10/24/89, effective 11/24/89.]

EMPLOYMENT OF LEARNERS

WAC 296-128-100 Authority. This regulation is promulgated in accordance with RCW 49.46.060.

[§ 1, Regulation 294.6.003, filed 3/23/60.]

WAC 296-128-105 Definitions. As used in this regulation:

(1) A "learner" is a worker whose total experience in an authorized learner occupation is less than the period of time allowed as a learning period for that occupation in a learner certificate issued pursuant to these regulations.

(2) An "experienced worker" is a worker whose total experience in an authorized learner occupation is at least equal to the period of time allowed as a learning period for that occupation in a learner certificate issued pursuant to these regulations.

(3) "Experienced worker available for employment" means an experienced worker residing within the area from which the employer customarily draws its labor supply or within a reasonable commuting distance of such area, and who is willing and able to accept employment with the employer; or an experienced worker residing outside of the area from which the employer customarily draws its labor supply, who has in fact made himself available for employment.

[§ 2, Regulation 294.6.003, filed 3/23/60.]

WAC 296-128-110 Application for learner certificate. (1) Whenever the employment of learners at wages lower than the minimum wage applicable under RCW 49.46.020 is believed necessary to prevent curtailment of opportunities for employment by a specified employer, an application for a certificate authorizing the employment of such learners at subminimum wage rates may be filed by the employer with the director of the department of labor and industries or his authorized representative.

(2) Application must be made on the official form provided by the department and furnish all information called for on said form.

(3) Separate application must be made with respect to each establishment or place of business operated by the applicant and in which he desires to employ learners at subminimum wage rates.

[§ 3, Regulation 294.6.003, filed 3/23/60.]

WAC 296-128-115 Procedure for action upon an application. (1) Upon receipt of an application for a learner certificate or renewal of such certificate the director or his authorized representative shall consider all relevant facts and, subject to the conditions specified in WAC 296-128-120, shall issue or deny a learner certificate or, in appropriate circumstances, provide an opportunity to interested parties to present their views on the application prior to granting or denying a learner certificate.

(2) If a learner certificate is granted, notice of such fact and the terms of the certificate shall be posted at the employer's place of business for fifteen days after receipt thereof and any interested person may file with the director written requests for reconsideration or review. Such application should set forth the applicant's interest in the review and the reasons he seeks review.

(3) If a learner certificate is denied, notice of such denial shall be mailed to the employer and it shall be without prejudice to the subsequent filing of an application.

[§ 4, Regulation 294.6.003, filed 3/23/60.]

WAC 296-128-120 Conditions governing issuance of learner certificates. The following conditions shall govern the issuance of a special certificate authorizing the employment of learners at subminimum wage rates:

(1) An adequate supply of qualified experienced workers is not available for employment; the experienced workers presently employed in occupations in which learners are requested, are afforded an opportunity for full time employment; learners are available for employment; and the granting of a certificate is necessary to prevent curtailment of employment opportunities.

(2) Reasonable efforts have been made to obtain experienced workers, including the placement of an order with the employment security office of the state of Washington.

(3) The issuance of a learner certificate will not tend to create unfair competitive labor cost advantages nor have the effect of impairing or depressing wage or working standards established for experienced workers for work of a like or comparable character in the industry.

(4) Abnormal labor conditions such as a strike, lock-out or other similar condition do not exist at the place of business for which a learner certificate is requested.

(5) There are no serious outstanding violations of the provisions of learner certificates previously issued to the employer, nor have there been any serious violations of the Washington Minimum Wage and Hour Act which provide reasonable grounds to believe that the terms of a certificate may not be complied with.

(6) The occupation or occupations in which learners are to receive training require a sufficient degree of skill to necessitate an appreciable training period.

(7) Learners shall be afforded every reasonable opportunity for continued employment upon completion of the learning period.

(8) Unless otherwise specified in the learner certificate, a learning program shall not exceed four hundred eighty hours of employment, and the total hours worked in any establishment by learners shall not exceed ten percent of the total hours normally worked by experienced workers in such establishment: Provided, That where less than ten experienced workers are employed by an employer, a learner certificate may authorized the employment of learners for a maximum of forty hours per week under a bona fide learner program.

[§ 5, Regulation 294.6.003, filed 3/23/60.]

WAC 296-128-125 Terms and conditions of employment under learner certificates. (1) A learner certificate, if issued, shall specify, among other things:

(a) The number or proportion of learners authorized to be employed on any one day;

(b) The occupations in which learners may be employed;

(c) The subminimum wage rates permitted for each learner occupation during the authorized learning period; which shall not be less than eighty-five percent of the minimum wage specified in RCW 49.46.020, as it may be amended, unless otherwise specified in the certificate;

(d) The learning period for each authorized learner occupation;

(e) The effective and expiration dates of the certificate.

(2) A learner certificate may be issued for a period of not longer than one year. A renewal certificate will not be issued without a clear showing that conditions set forth in WAC 296-128-120 still prevail.

(3) Learners hired pursuant to a learner certificate prior to the date on which such certificate expires may be continued in employment at the authorized subminimum wage rate for the duration of their authorized learning period even though the certificate expired before the learning period is completed.

(4) A copy of the learner certificate shall be posted by the employer during its effective period in a conspicuous place in the department where learners are to be employed.

(5) No learner shall be hired under a learner certificate if, at the time the employment begins, experienced workers capable of equaling the performance of a worker of minimum acceptable skill are available for employment.

(6) No learner shall be hired under a learner certificate while abnormal labor conditions exist such as a strike, lock-out, or other similar conditions in the place of business for which a learner certificate has been issued.

(7) The number of hours of previous employment in a learner occupation for which the learner has been hired must be deducted from the authorized learning period if within the three years immediately preceding the hiring of such learner he has been employed in the learner occupation for less than the total number of hours authorized as a learning period and shall also be deducted from the authorized learning period all hours spent in pertinent training in a vocational

training school on the occupation for which the learner has been employed.

(8) No provision of any learner certificate will excuse noncompliance with higher standards applicable to learners which may be established under any other state law, federal law, or trade union agreement.

(9) Unless otherwise specified in the learner certificate a learning program shall not exceed four hundred eighty hours of employment and the total hours worked in any establishment by learners shall not exceed ten percent of the total hours normally worked by experienced workers in such establishment: Provided, That where less than ten experienced workers are employed by an employer a learner certificate may authorize the employment of learners for a maximum of forty hours per week under a bona fide learner program.

[§ 6, Regulation 294.6.003, filed 3/23/60.]

WAC 296-128-130 Records to be kept by employers of learners. The director or his authorized representative may specify additional records to be kept by employers of learners as a condition to compliance with the learner certificate.

[§ 7, Regulation 294.6.003, filed 3/23/60.]

WAC 296-128-135 Amendment and revocation of learner certificate. The director may amend or revoke a learner certificate when it is necessary by reason of changes in these regulations, or where the employer has violated its terms, or where the certificate was obtained by misleading or false statements, or where changed conditions warrant it in the opinion of the director.

[§ 8, Regulation 294.6.003, filed 3/23/60.]

WAC 296-128-140 Supplemental regulations. (1) Upon application of any person or persons, representing any industry or branch thereof, or upon his own motion, the director, if he deems it advisable, may, after appropriate and timely notice to interested parties, cause a hearing to be held to determine the need for employment of learners at wages lower than the minimum wage applicable under RCW 49.46.020 in order to prevent curtailment of employment opportunities in any industry or branch thereof; and if such need is found to exist, determine the occupations which require a learning period and the limitations as to wages, time, number, proportion, and length of learning period. Such hearing shall be held before the director or his duly authorized representative. Following such hearing the director may, by supplemental regulations, prescribe the conditions under which special certificates shall be issued for the employment of learners in such industry or branch thereof, if he finds that there is a need therefor to prevent curtailment of opportunities for employment.

(2) At such hearing the director may cause to be brought before him or his authorized representative any witness whose testimony he deems material to the subject matter before him.

[§ 9, Regulation 294.6.003, filed 3/23/60.]

WAC 296-128-145 Reconsideration and review. (1) Any person aggrieved by the action of the director or his authorized representative denying or granting a learner certificate may within fifteen days after mailing of notice of such action file a written request for reconsideration with the director.

(2) A request for a reconsideration shall be accompanied by a statement of the additional evidence which the applicant believes may materially affect the decision.

(3) A request for review shall be granted where reasonable grounds are set forth in the request and if such review is granted all interested persons shall be afforded an opportunity to be heard.

[§ 10, Regulation 294.6.003, filed 3/23/60.]

WAC 296-128-150 Procedure for amendment. The director may at any time upon his own motion or upon written request of any interested persons setting forth reasonable grounds therefor amend or revoke any of the terms of this regulation or of any supplemental regulations promulgated in accordance with WAC 296-128-140 after hearing as provided in RCW 49.46.080.

[§ 11, Regulation 294.6.003, filed 3/23/60.]

STUDENT LEARNERS

WAC 296-128-175 Applicability of the regulation. This regulation is issued in accordance with RCW 49.46.060, to provide for the employment under special certificates of student learners at wages less than the minimum provided in RCW 49.46.020, in order to prevent curtailment of opportunities for employment. Such certificates shall be subject to the terms and conditions hereinafter set forth.

[§ 1, Regulation 294.6.004, filed 3/23/60.]

WAC 296-128-180 Definitions. (1) A "student learner" is a student who is receiving instruction in an accredited school, college, or university, and who is employed on a part-time basis in a bona fide vocational training program, or in a job-training program established by an accredited school and approved by the director of the department of labor and industries.

(2) A "bona fide vocational training program" is one authorized and approved by the state board of vocational education and provides for part-time employment which may be scheduled for part of the workday or workweek, for alternating weeks or for other limited periods during the year, supplemented by and integrated with a definitely organized plan of instruction designed to teach technical knowledge or related industrial information given as a regular part of the student learner's course by an accredited school, college, or university.

[§ 2, Regulation 294.6.004, filed 3/23/60.]

WAC 296-128-185 Application for certificate. (1) Whenever the employment of a student learner at wages lower than the minimum wage applicable under RCW 49.46.020 is believed necessary to prevent curtailment of opportunities for employment, an application for a special certificate authorizing the employment of such student learner at subminimum wages shall be filed by the employer with the director of the department of labor and industries or his authorized representative.

(2) Application shall be on forms furnished by the department of labor and industries and must be signed by the employer, an appropriate school official and the student learner. Such application shall, among other things, show: The nature of the training program; the total number of workers employed by the employer; the number and hourly wage rate of experienced workers employed in the occupation in which the student learner is to be trained; the hourly wage rate or progressive wage schedule which the employer proposes to pay the student learner; the age of the student learner; the period of employment training at subminimum wages; the number of hours of employment training a week; the number of hours of school instruction a week.

[§ 3, Regulation 294.6.004, filed 3/23/60.]

WAC 296-128-190 Procedure for action upon application. (1) Upon receipt of application for the employment of a student learner the director or his authorized representative shall either issue a special certificate or deny the application. To the extent deemed necessary the director or his authorized representative may provide an opportunity to interested persons to to be heard on the application prior to granting or denying it.

(2) If a special certificate is issued it shall be mailed to the employer and a copy of it shall be mailed to the school official who signs the application.

[§ 4, Regulation 294.6.004, filed 3/23/60.]

WAC 296-128-195 Conditions governing issuance of special student learner certificate. The following conditions must be satisfied before a special certificate may be issued authorizing employment of student learners at subminimum wages:

(1) Any training program under which the student learner will be employed must be a bona fide vocational training program as defined in WAC 296-128-180 or be a part of a job-training program established by the governing body of the school and approved by the director of the department of labor and industries.

(2) The employment of the student learner at subminimum wages must be necessary to prevent curtailment of opportunities for employment.

(3) The occupation for which the student learner is receiving preparatory training must require a sufficient degree of skill to necessitate a substantial learning period.

(4) The employment of a student learner must not have the effect of displacing a worker employed in the establishment in which the student learner is to be employed.

(5) The employment of the student learner at subminimum wages must not tend to impair or depress the wage rates or working standards

established for experienced workers for work of a like or comparable nature.

(6) The issuance of such a certificate must not tend to prevent the development of apprenticeships or must not impair established apprenticeship standards in the occupation or industry involved.

[§ 5, Regulation 294.6.004, filed 3/23/60.]

WAC 296-128-200 Terms and conditions of special student learner certificate. (1) The special student learner certificate if issued shall specify among other things: (a) The name of the student learner; (b) the name and address of the employer; (c) the name of the school which provides the related school instruction; (d) the occupation in which the student is to be trained; (e) the maximum number of hours of employment training in any one week at a specified subminimum wage rate; (f) the number of hours per week in which the student is engaged in his school training program; (g) the effective and expiration dates of the certificate.

(2) The subminimum wage rate shall be not less than seventy-five percent of the minimum wage provided in RCW 49.46.020.

(3) Unless otherwise authorized by the director or his authorized representative the number of hours of employment training each week at subminimum wages pursuant to certificate, when added to the hours of school instruction shall not exceed forty hours: Provided, however, That when school is not in session on any school day or school week, the student learner may work a number of hours in addition to the weekly number of hours of employment training authorized by the certificate, provided that the hours do not exceed eight in such day or forty in such week.

(4) Unless otherwise authorized by the director or his authorized representative the total number of hours worked by all student learners employed by an employer shall not exceed 10 percent of the total hours worked by all regular employees of said employer in the establishment in which such student learners are employed.

[§ 6, Regulation 294.6.004, filed 3/23/60.]

WAC 296-128-205 Term of special certificate. A special student learner certificate may be issued for a period not to exceed the length of one school year unless the director finds that a longer period is justified by extraordinary circumstances.

[§ 7, Regulation 294.6.004, filed 3/23/60.]

WAC 296-128-210 Review. Any person aggrieved by the action of the director or his authorized representative in denying or granting a special student learner certificate may within fifteen days after the mailing of notice of such action file a written request for review which will be granted where such request sets forth reasonable grounds therefor. To the extent the director or his authorized representative deems it necessary he shall afford all persons interested in said review an opportunity to be heard.

[§ 8, Regulation 294.6.004, filed 3/23/60.]

WAC 296-128-215 Amendment of this regulation. Any person desiring revision of any of the terms of this regulation may submit in writing to the director a petition setting forth the changes desired and the reasons for proposing them. If the director believes that reasonable cause for amendment of this regulation is set forth he will schedule a hearing in accordance with RCW 49.46.080.

[§ 9, Regulation 294.6.004, filed 3/23/60.]

APPRENTICES

WAC 296-128-225 Employment of apprentices at subminimum wages. The director or his authorized representative, to the extent necessary to prevent curtailment of employment opportunities, shall issue special certificates to employers or apprenticeship committees as defined in RCW 49.04.040 authorizing the employment of apprentices in skilled trades at wages lower than the minimum wage applicable under RCW 49.46.020, subject to the limitations and conditions set forth in this regulation.

[§ 1, Regulation 294.6.002, filed 12/30/60.]

WAC 296-128-230 Definition of apprentice. The term "apprentice" shall mean a person at least 16 years of age who is covered by a written agreement registered with the Washington state apprenticeship council providing for not less than 4,000 hours of reasonably continuous employment for such person, and for his participation in an approved schedule of work experience through employment which should be supplemented by 144 hours per year of related technical instruction.

[§ 2, Regulation 294.6.002, filed 12/30/60.]

WAC 296-128-235 Registration of apprenticeship agreement. Before an apprentice may be employed at subminimum wages, the employer or apprenticeship committee shall have submitted an apprenticeship agreement for registration with the director of apprenticeship or the apprenticeship council of the department of labor and industries.

[§ 3, Regulation 294.6.002, filed 12/30/60.]

WAC 296-128-240 Procedure for issuing certificates authorizing employment of apprentices at subminimum wages. (1) Upon being informed by the director of apprenticeship that such apprenticeship agreement has been accepted for registration in accordance with RCW 49.04.030, and that such agreement calls for employment of apprentices at subminimum wages, the director, or his authorized representative, may issue a special certificate in accordance with WAC 296-128-225. Otherwise, he shall deny the special certificate.

(2) The special certificate, if issued, shall be mailed to the employer or apprenticeship committee and a copy shall be mailed to the apprentice. If the certificate is denied, the employer or apprenticeship committee will be so notified by mail.

(3) A special certificate will not be issued where there are serious outstanding violations involving an employer for whom a special certificate is being requested, or where there are any serious outstanding violations of a certificate previously issued, or where there have been any serious violations of the act which provide reasonable grounds to conclude that the terms of a certificate may not be complied with, if issued.

[§ 4, Regulation 294.6.002, filed 12/30/60.]

WAC 296-128-245 Terms of special certificate. (1) Each special certificate shall specify the conditions and limitations under which it is granted, including the name of the apprentice, the skilled trade in which he is to be employed, the subminimum wage rates and the periods of time during which such wage rates may be paid.

(2) The terms of any special certificate, including the wages specified therein may be amended for cause.

[§ 5, Regulation 294.6.002, filed 12/30/60.]

WAC 296-128-250 Hearing procedure. The director or his authorized representative may conduct an investigation, which may include a hearing, prior to issuing or denying an application for special certificate. To the extent he deems appropriate, the director, or his authorized representative, may provide an opportunity for other interested persons to be heard prior to granting or denying an apprentice certificate.

[§ 6, Regulation 294.6.002, filed 12/30/60.]

EMPLOYMENT OF STUDENT WORKERS

WAC 296-128-275 Applicability. The regulations hereinafter set forth are issued pursuant to RCW 49.46.060 to provide for the employment by educational institutions under special certificates of student workers as learners at wages lower than the minimum wage applicable under RCW 49.46.020. Such certificates shall be subject to the terms and conditions hereinafter set forth.

[§ 1, Regulation 294.6.001, filed 3/23/60.]

WAC 296-128-280 Definitions. As used in the regulations:

(1) A "student worker" is a student who is receiving instruction in a bona fide educational program in an educational institution and who is employed on a part-time basis by the educational institution from which the student is receiving his instruction, for the purpose of enabling the student to defray part of his school expenses.

(2) "Department" means department of labor and industries.

(3) "Director" means director of department of labor and industries.

(4) "Supervisor" means supervisor of wage and hour division of the department of labor and industries.

[§ 2, Regulation 294.6.001, filed 3/23/60.]

WAC 296-128-285 Filing applications. Whenever the employment of student workers as learners at wages lower than the minimum wage applicable under RCW 49.46.020 is believed necessary to prevent curtailment of opportunities for employment in a specified educational institution, applications for special certificates authorizing the employment of such student workers as learners at subminimum wage rates may be filed by an appropriate official of the educational institution with the director, supervisor, or duly authorized representative of the wage and hour division of the department of labor and industries on official forms furnished by the department.

[§ 3, Regulation 294.6.001, filed 3/23/60.]

WAC 296-128-290 Issuing or denying certificates. Upon receipt of an application for the employment of student workers as learners, the director or his authorized representative shall issue or deny a special certificate authorizing employment of student workers. To the extent he deems appropriate, the director or his authorized representative may provide an opportunity to other interested persons to present data and views on the application prior to granting or denying a student worker certificate. If a student worker certificate is granted, it shall be mailed to the educational institution. If a student worker certificate is denied, notice of such denial shall be mailed to the educational institution and such denial shall be without prejudice to the filing of any subsequent application.

[§ 4, Regulation 294.6.001, filed 3/23/60.]

WAC 296-128-295 Conditions governing issuance of certificates. The following conditions shall govern the issuance of a special certificate authorizing the employment of student workers as learners by an educational institution at subminimum wage rates:

(1) The employment of the student workers at subminimum wages authorized by the certificate must be necessary to prevent curtailment of opportunities for employment in a specified educational institution.

(2) The issuance of the student worker certificate will not tend to create unfair competitive labor cost advantages nor have the effect of impairing or depressing wage or working standards established for experienced workers for work of a like or comparable character in the industry or community.

(3) The occupations to be filled by the student workers shall not be in the production of goods or services which would be sold in competition with privately owned businesses, nor in enterprises operated by the educational institution in competition with privately owned businesses.

(4) There have been no serious outstanding violations of the provisions of a student workers certificate previously issued to the educational institution, nor have there been any serious violations of the act which provide reasonable grounds to conclude that the terms of a student worker certificate may not be complied with, if issued.

[§ 5, Regulation 294.6.001, filed 3/23/60.]

WAC 296-128-300 Data required on certificate. The student worker certificate, if issued, shall specify, among other things:

(1) The name and address of the educational institution employing the student workers;

(2) The occupations in which the student workers are employed;

(3) The number of student workers to be employed in any one day;

(4) The authorized subminimum wage rate to be paid for each occupation;

(5) The effective and expiration dates of the certificate.

[§ 6, Regulation 294.6.001, filed 3/23/60.]

WAC 296-128-305 Wage rate. The subminimum wage rate shall be not less than 75 percent of the minimum wage rate established by RCW 49.46.020, as it may be amended.

[§ 7, Regulation 294.6.001, filed 3/23/60.]

WAC 296-128-310 Records. In addition to any other records required by reason of the Washington Minimum Wage and Hour Act, the educational institution shall keep and maintain the following records specifically relating to student workers employed at subminimum wage rates:

(1) Each student worker employed under a student worker certificate shall be designated as such on the payroll records kept by the institution, with each student worker's occupation and rate of pay being shown.

(2) The records required including a copy of any special certificate issued, shall be kept and made available for inspection at all times for at least three years from the effective date of the certificate.

[§ 8, Regulation 294.6.001, filed 3/23/60.]

WAC 296-128-315 Amending and revoking certificates. The director of the department of labor and industries or his authorized representative may amend the provisions of a student worker certificate or he may revoke such certificate where it is shown to his satisfaction that its provisions have not been complied with.

[§ 9, Regulation 294.6.001, filed 3/23/60.]

WAC 296-128-400 Minors. (1) **Applicability of order.** This order shall apply to all minors employed in any industry or establishment in the state of Washington who are not expressly covered by another minimum wage and welfare order issued by the industrial welfare committee, except: Minors employed:

(a) By common carrier railroads, sleeping car companies and freight or express companies subject to regulations of federal law.

(b) In agricultural labor.

(c) In domestic work or chores performed in or about private residences.

(d) In a vocational education, work experience or apprentice training program, when such program is properly supervised by school personnel or in accordance with written agreements and approved training schedules.

(e) Directly by a telephone or telegraph company. This order shall not apply to newspaper vendors and newspaper carriers.

(2) Definitions. For the purpose of this order:

(a) A "minor" is a person of either sex under the age of eighteen years.

(b) The term "employee" shall mean any minor who is employed to work in any industry or establishment in the state of Washington other than those expressly excluded by the foregoing paragraphs.

(c) The term "employer" shall mean any person, association, corporation, co-partnership, or municipal corporation, engaged in any industry or establishment covered by this order and who (or which) employs any minor covered by this order.

(d) The term "agricultural labor" shall mean employment.

(i) On a farm, in the employ of any person in connection with the cultivating of the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including raising, shearing, feeding, caring for, training and management of livestock, bees, poultry, and furbearing animals and wildlife, or in the employ of the owner or tenant or other operator of a farm in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment; or

(ii) In handling, planting, packing, packaging, grading, storing, or delivering to storage or to a market or to a carrier for transportation to market, any agricultural or horticultural commodity; but only if such service is performed as an incident to ordinary farming operations, or, in the case of fruits and vegetables in their raw and natural state, as an incident to the preparation of such fruits and vegetables for market. The provisions of this paragraph shall not be deemed to be applicable with respect to services performed in connection with commercial canning or commercial freezing or any other commercial processing which changes the character of the product from its raw and natural state or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.

(3) **Minimum wages.**

(a) Minimum wages for all minors covered by this order, in the state of Washington shall be fifty cents per hour, regardless of the manner in which they are computed, except when another order (or orders) issued by the industrial welfare committee of the state of Washington provides a different minimum.

(b) Whenever the administrator of the wage and hour division of the United States department of labor shall issue a certificate or certificates permitting the employment of learners, apprentices, messengers, and handicapped workers, at wage rates below the minimums herein fixed, the payment of wages in accordance with such permits shall not constitute a violation of this order.

(4) **Hours.**

(a) No minor shall be employed more than five hours without a meal period, on the employee's time, of at least thirty minutes.

(b) There shall be a rest period on the employer's time of ten minutes in every four-hour period of employment.

(c) Minors 14 and 15 years of age shall not be employed more than eight hours in any one day or six days in any one week. In computing the hours, one-half the total attendance hours in school shall be included. When school is not in session said minors shall not be employed more than forty hours in any one week.

(d) Minors 16 and 17 years of age shall not be employed more than eight hours in any one day or six days in any one week except in seasonal industries or in cases of emergency.

(e) Minors 14 and 15 years of age shall not be permitted to work after the hours of 7:00 p.m. or before 6 a.m. (pacific standard time), unless such employment is specifically authorized by the terms of this order, or by a permit specifically authorizing such employment issued by the industrial welfare committee of the state department of labor and industries, or its duly designated agent for the issuance of such permit.

(f) Minor boys 14 and 15 years of age may be issued permits to work in approved amusement industries not more than six days a week and not later than 7:00 p.m. (pacific standard time).

(g) Minors 16 and 17 years of age attending school may be employed after 7:00 p.m. (pacific standard time) for such hours not exceeding eight hours in any one day, and in such employments, as shall be specifically authorized in the individual permits issued to each minor, when upon investigation by the supervisor of women and minors in industry the conditions of employment are found not detrimental to the welfare of the minors or their school program. Such permits shall not be issued to girls unless satisfactory assurance is given the industrial welfare committee of the state department of labor and industries or its authorized agent that such minors are to be safely conveyed to their homes.

(5) **Work permits and proof of age certificates.**

(a) No minor shall be employed in any occupation covered by this order unless the employer has on file during the period of employment an unexpired work certificate or permit issued by the industrial welfare committee of the state department of labor and industries or its duly designated agent for the issuance of such permit. Such permit will not be issued except upon presentation of such evidence of age as is required by the industrial welfare committee.

(b) The issuance of a certificate or permit to work shall not authorize or excuse a violation of the state of Washington compulsory school attendance law, and shall not be issued to any minor legally required to attend school when school is in session except with the approval of the school authorities.

(6) **Employment prohibited to all minors.**

(a) No minor shall be employed in any occupation which the state department of labor and industries, through its industrial welfare committee, shall upon due notice and hearing find and by order declare to be particularly hazardous for the employment of minors under the ages specified in such order as detrimental to their health or morals.

(b) No minor shall be permitted to work in any of the following occupations:

(i) In any place where intoxicating liquor is served in the same room.

(ii) As driver or helper on state licensed motor vehicles in traffic congested areas.

(iii) In operating, tending or in dangerous proximity to dangerous power driven machinery.

(iv) In connection with the commercial operation of a 35 millimeter projection machine in a motion picture theatre or public building.

(v) To give signals to engineers in logging operations, or to receive and forward signals.

(vi) As an engineer, or within dangerous proximity to any cables, rigging or hazardous machinery.

(7) **Employment prohibited to all minor girls.** No minor girl shall be employed as:

(a) A shaker in a laundry, except on hand towels, handkerchiefs, napkins and similar small articles.

(b) In or in connection with a barber shop.

(c) A canvasser or peddler from house to house.

(d) An elevator operator.

(e) A clerk selling cigars or tobacco.

(f) A hotel messenger.

(g) A cabaret performer.

(h) In shooting galleries, penny arcades, bowling alleys.

(i) A public messenger (i.e., one whose services are available to the public for hire), except that girls 16 and 17 years of age will be permitted as building messengers in buildings within a radius of three blocks from one another.

(8) **Employment entirely prohibited to minors under 16 years of age.** Minors under sixteen years of age shall not be permitted to operate machinery in connection with processing or manufacturing plants.

(9) **Employments prohibited to minors under 14 years of age.** Minors under fourteen years of age shall not be employed in the following occupations unless such employment is specifically authorized by a permit issued by a judge of the superior court of the state of Washington:

(a) In stock room work in warehouses.

(b) As clerks in mercantile establishments.

(c) In offices as errand or office maintenance workers.

(d) In cafes as bus boys or dishwashers or helpers.

(e) As service station attendants.

(f) In other occupations which the industrial welfare committee, after due notice and hearing, shall have determined to be hazardous or detrimental to the welfare of the minor.

(10) **Employment of minors 14 to 18 years of age.** Minors 14 to 18 years of age may be employed in any occupation or industry except where such employment is expressly prohibited by this order or by statute of the state of Washington, provided that all the conditions and requirements of this order are complied with.

(11) **Working conditions.**

(a) All places where minors are employed shall be maintained in a safe and sanitary condition. The requirements for safety, sanitation and first aid shall be in conformity with the safety standards, rules and regulations as adopted by the division of safety of the department of labor and industries.

(b) Every room in which minors are employed shall be adequately heated and ventilated, and supplied with adequate natural or artificial light in accordance with the general safety standards of the department of labor and industries.

(c) Each such room shall be provided with a smooth, tight floor, which can be kept clean and sanitary. Where wet processes are employed, the floors must be adequately drained so that there will be no

unreasonable depth of liquid at any point. Where floors are wet, wooden racks or grating of an adequate height shall be provided at such points.

(d) Toilet rooms shall be provided for women and female minors sufficiently separated and isolated to insure privacy, which rooms shall be maintained in a sanitary condition, adequately lighted, heated and ventilated. A sufficient number of wash bowls or sink space shall be located either within the toilet room or adjacent to the toilet room. Any wash bowls or sinks not so located shall be installed in an approved location. Sufficient soap and either individual or paper towels shall be provided.

(e) Employers shall provide for adequate keeping of employee's outer clothing during working hours, and for their work clothes during nonworking hours. When the occupation requires a change of clothing, a suitable space adequately heated shall be provided where employees may make such change in privacy.

(f)(i) A suitable rest room for women and female minors shall be provided, and shall be properly ventilated and heated.

(ii) An adequate cloak room shall be provided.

(iii) An adequate lunch room furnished with tables and chairs, and facilities for heating water shall be provided: Provided, however, That where less than ten women and female minors are regularly employed, the supervisor of women and minors in industry, upon application and showing, may permit a modified compliance with the foregoing part of this section or any part of the same.

(g) No female minor shall be required or permitted to lift or carry an excessive weight.

(h) No female minor shall be knowingly employed for a period of four weeks before confinement for pregnancy or four weeks thereafter.

(12) **Records.** Records showing the name of minors employed, dates of employment, wages paid and the hours worked by them, shall be kept by the employer and available for inspection by the representatives of the industrial welfare committee of the state department of labor and industries at all reasonable times.

(13) **Posting of order.** The employer shall post a copy of this order in all places where minor workers are employed.

(14) **Separability.** If the application of any provision of this order, or any section, subsection, subdivision, sentence, clause, phrase, word or portion of this order shall be held invalid or unconstitutional, the remaining provisions thereof shall not be affected thereby but shall continue to be given full force and effect as if the part so held invalid or unconstitutional had not been included therein.

(15) **Penalties.** The supervisor of women and minors in industry shall investigate the complaint of any individual alleging that this order has been violated. Any person employing a minor in violation of this order shall upon conviction thereof be punished in accordance with the applicable laws of the state of Washington, RCW 49.12.170, now states as follows: "Any person employing a woman or minor for whom a minimum wage or standard conditions of labor have been specified, at less than said minimum wage, or under conditions of labor prohibited by order of the committee; or violating any other of the provisions of RCW 49.12.010 through 49.12.180, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars."

[Minimum Wage and Welfare Order No. 49, filed 3/23/60.]

EXECUTIVE, ADMINISTRATIVE, PROFESSIONAL, AND OUTSIDE SALESPEOPLE

WAC 296-128-500 Purpose. (1) This regulation is adopted in accordance with chapter 49.46 RCW to define the terms "bona fide executive, administrative, or professional capacity or in the capacity of outside salesperson," to define salary basis and to establish a procedure for computing overtime pay.

(2) An employee who meets the definitions of executive, administrative, or professional and who is paid on a salary basis (except as provided for in WAC 296-128-510 (2)(b), 296-128-520 (1)(c) and (2)(b), 296-128-530 (1)(b), (2)(b) and (3)(d), or 296-128-535 (1)(c)) is considered exempt from the requirements of chapter 49.46 RCW. A job title, or payment of a salary, does not in and of itself exempt a worker from these requirements.

[Statutory Authority: RCW 49.46.010 (3)(c). WSR 20-01-063, § 296-128-500, filed 12/10/19, effective 7/1/20. Statutory Authority: RCW 49.46.005, 49.46.010, 49.46.120, and chapter 49.46 RCW. WSR 03-03-109, § 296-128-500, filed 1/21/03, effective 2/21/03; Order 76-5, § 296-128-500, filed 2/24/76.]

WAC 296-128-505 Definitions. (1) "Customarily and regularly" means a frequency that must be greater than occasional but which, of course, may be less than constant. Tasks or work performed "customarily and regularly" includes work normally and recurrently performed every workweek; it does not include isolated or one-time tasks.

(2) "Educational establishment" means an elementary or secondary school system, an institution of higher education, or other educational institution.

(3) "Exclusive of board, lodging, or other facilities" means "free and clear" or independent of any claimed credit for noncash items of value that an employer may provide to an employee. Thus, the costs incurred by an employer to provide an employee with board, lodging, or other facilities may not count towards the minimum salary amount required for an exemption.

(4) "Primary duty" means the principal, main, major, or most important duty that the employee performs. Determination of an employee's primary duty must be based on all the facts in a particular case, with the major emphasis on the character of the employee's job as a whole. Because the burden of proving an exception to the definition of "employee" falls on the employer claiming the exception, the burden falls on the employer to demonstrate that the employees meet the primary duty requirement.

(a) Factors to consider when determining the primary duty of an employee include, but are not limited to, the relative importance of the exempt duties as compared with other types of duties; the amount of time spent performing exempt work; the employee's relative freedom from direct supervision; and the relationship between the employee's salary and the wages paid to other employees for the kind of nonexempt work performed by the employee.

(b) The amount of time spent performing exempt work can be a useful guide in determining whether exempt work is the primary duty of an employee. Employees who spend more than fifty percent of their time performing exempt work will generally satisfy the primary duty requirement. Employees who do not spend more than fifty percent of their time performing exempt duties may meet the primary duty requirement if the other factors support such a conclusion. The burden falls on the employer to demonstrate that the employees meet the primary duty requirement.

[Statutory Authority: RCW 49.46.010 (3)(c). WSR 20-01-063, § 296-128-505, filed 12/10/19, effective 7/1/20.]

WAC 296-128-510 Executive. (1) The term "individual employed in a bona fide executive … capacity" in RCW 49.46.010 (3)(c) shall mean any employee:

(a) Whose primary duty is management of the enterprise in which the employee is employed or of a customarily recognized department or subdivision thereof; and

(b) Who customarily and regularly directs the work of two or more other employees; and

(c) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring, firing, advancement, promotion, or any other change of status of other employees are given particular weight; and

(d) Who is compensated on a salary basis at a rate of not less than the amount specified in WAC 296-128-545, exclusive of board, lodging, or other facilities.

(2) The term "individual employed in a bona fide executive … capacity" in RCW 49.46.010 (3)(c) shall also include any employee:

(a) Who owns at least a bona fide twenty percent equity interest in the enterprise in which the employee is employed, regardless of whether the business is a corporate or other type of organization, and who is actively engaged in its management; and

(b) The requirements of WAC 296-128-545 do not apply to the executive employees described in this subsection.

(3) For the purposes of this section:

(a) A "customarily recognized department or subdivision" must have a permanent status and a continuing function.

(i) A recognized department or subdivision need not be physically within the employer's establishment and may move from place to place.

(ii) When an enterprise has more than one establishment, the employee in charge of each establishment may be considered in charge of a recognized department or subdivision of the enterprise.

(iii) Continuity of the same subordinate personnel is not essential to the existence of a recognized department or subdivision with a continuing function.

(b) "Management" includes, but is not limited to, activities such as interviewing, selecting, and training of employees; setting and adjusting their rates of pay and hours of work; directing the work of employees; maintaining production or sales records for use in supervision or control; appraising employees' productivity and efficiency for the purpose of recommending promotions or other changes in status; handling employee complaints and grievances; disciplining employees; planning the work; determining the techniques to be used; apportioning the work among the employees; determining the type of materials, sup-

plies, machinery, equipment or tools to be used or merchandise to be bought, stocked and sold; controlling the flow and distribution of materials or merchandise and supplies; providing for the safety and security of the employees or the property; planning and controlling the budget; and monitoring or implementing legal compliance measures.

(c) "Two or more other employees" means two full-time employees or their equivalent. One full-time and two half-time employees, for example, are equivalent to two full-time employees. Four half-time employees are also equivalent. Hours worked by an employee cannot be credited more than once for different executives.

[Statutory Authority: RCW 49.46.010 (3)(c). WSR 20-01-063, § 296-128-510, filed 12/10/19, effective 7/1/20; Order 76-5, § 296-128-510, filed 2/24/76.]

WAC 296-128-520 Administrative. (1) The term "individual employed in a bona fide … administrative … capacity" in RCW 49.46.010 (3)(c) shall mean any employee:

(a) Whose primary duty is the performance of office or nonmanual work directly related to the management or general business operations of the employer or the employer's customers;

(b) Whose primary duty includes the exercise of discretion and independent judgment with respect to matters of significance; and

(c) Who is compensated on a salary or fee basis at a rate of not less than the amount specified in WAC 296-128-545, exclusive of board, lodging, or other facilities.

(2) The term "individual employed in a bona fide … administrative … capacity" in RCW 49.46.010 (3)(c) shall also include any employee:

(a) Whose primary duty is performing administrative functions directly related to academic instruction or training in an educational establishment or department or subdivision thereof; and

(b) Who is compensated on a salary or fee basis at a rate of not less than the amount specified in WAC 296-128-545, exclusive of board, lodging, or other facilities, or on a salary basis which is at least equal to the entrance salary for teachers in the educational establishment by which they are employed.

(3) For the purposes of this section:

(a) To qualify for the administrative exemption, an employee's primary duty must be the performance of work directly related to the management or general business operations of the employer or the employer's customers. "Directly related to management or general business operations" means work directly related to assisting with the running or servicing of the business, as distinguished, for example, from working on a manufacturing production line or selling a product in a retail or service establishment.

(b) "Discretion and independent judgment" means the comparison and the evaluation of possible courses of conduct, and acting or making a decision after the various possibilities have been considered. The phrase "discretion and independent judgment" must be applied in the light of all the facts involved in the particular employment situation in which the question arises. The exercise of discretion and independent judgment implies that the employee has the authority to make an independent choice, free from immediate direction or supervision. However, employees can exercise discretion and independent judgment even if their decisions or recommendations are reviewed at a higher level. The exercise of discretion and independent judgment must

be more than the use of skill in applying well-established techniques, procedures or specific standards described in manuals or other sources. The exercise of discretion and independent judgment also does not include clerical or secretarial work, recording or tabulating data, or performing other mechanical, repetitive, recurrent or routine work.

(c) "Performing administrative functions directly related to academic instruction or training" means work related to the academic operations and functions in a school rather than to administration along the lines of general business operations. Such academic administrative functions include operations directly in the field of education. Jobs relating to areas outside the educational field are not within the definition of academic administration.

[Statutory Authority: RCW 49.46.010 (3)(c). WSR 20-01-063, § 296-128-520, filed 12/10/19, effective 7/1/20; Order 76-5, § 296-128-520, filed 2/24/76.]

WAC 296-128-530 Professional. (1) The term "individual employed in a bona fide … professional capacity" in RCW 49.46.010 (3)(c) shall mean any employee:

(a) Whose primary duty consists of the performance of work:

(i) Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction; or

(ii) Requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor; and

(b) Who is compensated on a salary or fee basis at a rate of not less than the amount specified in WAC 296-128-545, exclusive of board, lodging, or other facilities.

(2) The term "individual employed in a bona fide … professional capacity" in RCW 49.46.010 (3)(c) shall also include any employee:

(a) With a primary duty of teaching, tutoring, instructing, or lecturing in the activity of imparting knowledge and who is employed and engaged in this activity as a teacher in an educational establishment by which the employee is employed; and

(b) Who is compensated on a salary or fee basis. The requirements of WAC 296-128-545 do not apply to the teaching professionals described in the subsection.

(3) The term "individual employed in a bona fide … professional capacity" in RCW 49.46.010 (3)(c) shall also include any employee:

(a) Who is the holder of a valid license or certificate permitting the practice of law or medicine or any of their branches and is actually engaged in the practice thereof; or

(b) Who is the holder of the requisite academic degree for the general practice of medicine and is engaged in an internship or resident program pursuant to the practice of the profession. Employees engaged in internship or resident programs, whether or not licensed to practice prior to commencement of the program, qualify as exempt professionals if they enter such internship or resident programs after the earning of the appropriate degree required for the general practice of their profession.

(c) In the case of medicine, the exemption applies to physicians and other practitioners licensed and practicing in the field of medical science and healing or any of the medical specialties practiced by physicians or practitioners. The term "physicians" includes medical doctors including general practitioners and specialists, osteopathic

physicians (doctors of osteopathy), podiatrists, dentists (doctors of dental medicine), and optometrists (doctors of optometry or bachelors of science in optometry).

(d) The requirements of WAC 296-128-545 do not apply to the law or medicine professionals described in this subsection.

(4) For the purposes of this section:

(a) "Customarily acquired by a prolonged course of specialized intellectual instruction" restricts the exemption to professions where specialized academic training is a standard prerequisite for entrance into the profession. The exemption is also available to employees who attained substantially the same advanced knowledge through a combination of work experience and intellectual instruction.

(b) "Field of science or learning" means the traditional professions of law, medicine, theology, accounting, actuarial computation, engineering, architecture, teaching, various types of physical, chemical and biological sciences, pharmacy, and other similar occupations that have a recognized professional status.

(c) "Recognized field of artistic or creative endeavor" includes such fields as music, writing, acting, and the graphic arts.

(d) "Work requiring advanced knowledge" means work which is predominantly intellectual in character, and which includes work requiring the consistent exercise of discretion and judgment, as distinguished from performance of routine mental, manual, mechanical or physical work. An employee who performs work requiring advanced knowledge generally uses the advanced knowledge to analyze, interpret, or make deductions from varying facts or circumstances. Advanced knowledge cannot be attained at the high school level.

[Statutory Authority: RCW 49.46.010 (3)(c). WSR 20-01-063, § 296-128-530, filed 12/10/19, effective 7/1/20; Order 76-5, § 296-128-530, filed 2/24/76.]

WAC 296-128-532 Deductions for salaried, exempt employees. (1) **When does this section apply?** This section applies to any employee who is paid on a salary basis and who meets the definitions of executive, administrative, or professional.

(2) **What does salary basis mean?** Salary is where an employee regularly receives for each pay period of one week or longer (but not to exceed one month) a predetermined monetary amount (the salary) consisting of all or part of his or her compensation, which amount will not be less than required to be paid pursuant to WAC 296-128-510 through 296-128-530. The salary shall not be subject to deduction because of variations in the quantity or quality of the work performed, except as provided in this section. Under RCW 49.46.130 (2)(a), salaried employees may receive additional compensation or paid time off and still be considered exempt.

(3) **When are deductions from salary allowed?**

(a) If the employee performs no work in a particular week, regardless of the circumstances, the employer may deduct for the entire week.

(b) When the employee takes at least a whole day off for personal reasons other than sickness or accident, the employer may deduct in full day increments.

(c) Deductions for absences due to sickness or disability may be made in full day increments if the deduction is made according to the

employer's bona fide plan, policy or practice of providing paid sick and disability leave (other than industrial accidents or disability).

(i) Deductions are permitted when either leave is exhausted or the employee has not yet qualified under the plan.

(ii) Deductions are permitted even if an employee receives compensation under that plan or under workers' compensation laws.

(d) When an employee is eligible for the federal Family and Medical Leave Act 29 U.S.C. Sec. 2611 et seq., deductions may be made for partial day absences due to leave taken according to that law and the applicable provisions in chapter 49.78 RCW.

(e) In the first and final week of employment, an employee's salary may be prorated for the actual days worked.

(f) Deductions are allowed for disciplinary absences that are imposed for violations of safety rules of major significance. This includes only those relating to the prevention of serious danger to the plant, the public, or other employees, such as rules prohibiting smoking in explosive plants or around hazardous or other flammable materials.

(g) Deductions are allowed when authorized under RCW 49.48.010, 49.52.060, or WAC 296-126-025.

(4) **What are improper deductions from salary?**

(a) Deductions are not permitted for partial days of work, except as permitted by subsection (3)(d) of this section or by WAC 296-128-533.

(b) Deductions are not permitted for lack of work for any amount of time less than a full week.

(c) Deductions are not permitted when the employee participates in jury duty, attendance as a witness, or temporary military leave if the employee performs any work during that week. The employer may, however, offset any amounts received by an employee as jury or witness fees or military pay.

(d) Deductions are not permitted for absences due to sickness or disability if the employer does not have a bona fide plan, policy or practice in place for sick or disability leave.

(e) Any other deductions not allowed under subsection (3) of this section.

(5) **Is a "window of correction" permitted?** A limited window of correction will be permitted when an improper deduction is shown to be infrequent and inadvertent and the employer immediately begins taking corrective steps to promptly resolve the improper deduction when brought to the attention of the supervisor or other appropriate representative of the employer. Such corrections will be allowed only to the extent that the deduction is not due to lack of work or part of a pattern of the same or substantially similar deductions.

(6) **What deductions may be made from leave banks?**

(a) Deductions may be made from compensatory time in any increment.

(b) Deductions may be made from bona fide leave banks in partial or full day increments. However, partial day deductions may be made only on the express or implied request of the employee for time off from work. Leave bank deductions may not be made for less than one hour.

A "bona fide leave bank" is a benefit provided to employees in the case of absence from work due to sickness or personal time off, including vacation. It must be in writing and contained in contract or agreement, or in a written policy that is distributed to employees. A leave bank policy, or a leave bank provision in a contract or agree-

ment, is not "bona fide" if it is used as a subterfuge to circumvent or evade the requirements of this regulation.

(c) When leave banks are exhausted, deductions from salary may not be made, except as permitted in subsection (3) of this section.

[Statutory Authority: RCW 49.46.005, 49.46.010, 49.46.120, and chapter 49.46 RCW. WSR 03-03-109, § 296-128-532, filed 1/21/03, effective 2/21/03.]

WAC 296-128-533 Public employees. (1) **How do the provisions specified in WAC 296-128-532 affect public employees?** WAC 296-128-532 (1) through (5) is applicable to public employees, except that deductions from salary or leave banks are permitted in the following additional circumstances.

(a) **Deductions from salary for partial day absences:** A public employee who otherwise meets the requirements of WAC 296-128-532 will not be disqualified from the executive, administrative, or professional exemptions on the basis that such public employee is paid according to a pay system that:

(i) Is established by statute, ordinance, or regulation, or by a policy or practice established according to principles of public accountability, under which the public employee accrues sick or personal leave (annual, vacation, etc.); and

(ii) Permits the public employee's pay to be reduced or the public employee to be placed on leave without pay for absences for personal reasons or because of illness or injury of less than one work day when accrued leave is not used by a public employee.

(b) **Deductions from leave banks:** Deductions may be made from a public employee's accrued leave banks in any increment in accordance with any statute, ordinance, or regulation, or by a policy or practice established according to principles of public accountability.

(c) **Deductions for furlough:** Deductions from the salary of a public employee for absences where authorized by law due to a budget-required leave of absence will not disqualify the public employee from being paid on a "salary basis" except in the workweek in that the absence occurs and for which the public employee's pay is accordingly reduced.

(2) **What does "public employee" mean?** Public employee means an employee directly employed by a county, incorporated city or town, municipal corporation, state agency, institution of higher education, political subdivision or other public agency and includes any department, bureau, office, board, commission or institution of such public entities.

[Statutory Authority: RCW 49.46.005, 49.46.010, 49.46.120, and chapter 49.46 RCW. WSR 03-03-109, § 296-128-533, filed 1/21/03, effective 2/21/03.]

WAC 296-128-535 Computer professionals. (1) The term "individual employed in a bona fide … professional capacity" in RCW 49.46.010 (3)(c) shall also mean any employee:

(a) Who is a computer system analyst, computer programmer, software engineer, or other similarly skilled worker; and

(b) Whose primary duty consists of one of the following:

(i) The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software, or system functional specifications;

(ii) The design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;

(iii) The design, documentation, testing, creation or modification of computer programs related to machine operation systems; or

(iv) A combination of the aforementioned duties, the performance of which requires the same level of skills; and

(c) Who is compensated on a salary or fee basis, as provided in WAC 296-128-545, or on an hourly basis at a rate as follows:

(i) Beginning July 1, 2020, and through December 31, 2020:

(A) When the employee works for an employer with fifty or fewer employees, an amount not less than twenty-seven dollars and sixty-three cents per hour; and

(B) When the employee works for an employer with more than fifty employees, an amount not less than 2.75 times the minimum wage prescribed in RCW 49.46.020 per hour.

(ii) Beginning January 1, 2021, and through December 31, 2021:

(A) When the employee works for an employer with fifty or fewer employees, an amount not less than 2.75 times the minimum wage prescribed in RCW 49.46.020 per hour; and

(B) When the employee works for an employer with more than fifty employees, an amount not less than 3.5 times the minimum wage prescribed in RCW 49.46.020 per hour.

(iii) Beginning January 1, 2022, and each following year, an amount not less than 3.5 times the minimum wage prescribed in RCW 49.46.020 per hour regardless of the size of the employer.

Table 1
Illustration of Hourly Basis Rates
for Computer Professionals

Employer Size	July 1, 2020	January 1, 2021	January 1, 2022
1-50 Employees	$27.63 per hour	Minimum wage x 2.75	Minimum wage x 3.5
51+ Employees	Minimum wage x 2.75	Minimum wage x 3.5	Minimum wage x 3.5

Table 1 is provided for illustrative purposes only.

(iv) For the purposes of this section, the size of the employer is based solely on the number of Washington-based employees it employs at the time of the effective date for each subsection. Each Washington-based employee counts as an employee for the purposes of determining the size of the employer regardless of whether that employee works full-time or part-time. An employer classified as employing fewer than fifty employees under RCW 50A.10.030 (8)(c) may rely on that classification for purposes of determining the size of the employer under this section for the following calendar year.

(2) The exemption for employees in computer occupations does not include:

(a) Employees engaged in the manufacture, repair, or maintenance of computer hardware and related equipment; or

(b) Employees whose work is highly dependent upon, or facilitated by, the use of computers and computer software programs (e.g., engineers, drafters and others skilled in computer-aided design software), but who are not primarily engaged in computer systems analysis and programming or other similarly skilled computer-related occupations identified in WAC 296-128-535 (1)(a).

[Statutory Authority: RCW 49.46.010 (3)(c). WSR 20-01-063, § 296-128-535, filed 12/10/19, effective 7/1/20. Statutory Authority: RCW 49.46.010 (5)(c). WSR 98-02-027, § 296-128-535, filed 12/31/97, effective 2/1/98.]

WAC 296-128-540 Outside salesperson. The term "individual employed in the capacity of outside salesperson" in RCW 49.46.010 (3)(c) shall mean any employee:

(1) Whose primary duty is:

(a) Making sales; including any sale, exchange, contract to sell, consignment for sale, shipment for sale or other disposition; or

(b) Obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer; and

(2) Who is customarily and regularly engaged away from the employer's place or places of business in performing such primary duty; and

(3) Who is compensated by the employer on a guaranteed salary, commission or fee basis and who is advised of their employee status as an "outside salesperson." The requirements of WAC 296-128-545 do not apply to the outside salespersons described in this section.

[Statutory Authority: RCW 49.46.010 (3)(c). WSR 20-09-040, § 296-128-540, filed 4/7/20, effective 7/1/20; WSR 20-01-063, § 296-128-540, filed 12/10/19, effective 7/1/20; Order 76-5, § 296-128-540, filed 2/24/76.]

WAC 296-128-545 Salary thresholds. To qualify as an exempt employee under this section, an employee must be compensated on a salary or fee basis, exclusive of board, lodging, or other facilities, as follows:

(1) Beginning July 1, 2020, and through December 31, 2020, an amount not less than 1.25 times the minimum wage prescribed in RCW 49.46.020 for a forty-hour workweek regardless of the size of the employer;

(2) Beginning January 1, 2021, and through December 31, 2021:

(a) When the employee works for an employer with fifty or fewer employees, an amount not less than 1.5 times the minimum wage prescribed in RCW 49.46.020 for a forty-hour workweek; and

(b) When the employee works for an employer with more than fifty employees, an amount not less than 1.75 times the minimum wage prescribed in RCW 49.46.020 for a forty-hour workweek.

(3) Beginning January 1, 2022, and through December 31, 2022, an amount not less than 1.75 times the minimum wage prescribed in RCW 49.46.020 for a forty-hour workweek regardless of the size of the employer;

(4) Beginning January 1, 2023, and through December 31, 2023:

(a) When the employee works for an employer with fifty or fewer employees, an amount not less than 1.75 times the minimum wage prescribed in RCW 49.46.020 for a forty-hour workweek; and

(b) When the employee works for an employer with more than fifty employees, an amount not less than 2.0 times the minimum wage prescribed in RCW 49.46.020 for a forty-hour workweek.

(5) Beginning January 1, 2024, and through December 31, 2024, an amount not less than 2.0 times the minimum wage prescribed in RCW 49.46.020 for a forty-hour workweek regardless of the size of the employer;

(6) Beginning January 1, 2025, and through December 31, 2025:

(a) When the employee works for an employer with fifty or fewer employees, an amount not less than 2.0 times the minimum wage prescribed in RCW 49.46.020 for a forty-hour workweek; and

(b) When the employee works for an employer with more than fifty employees, an amount not less than 2.25 times the minimum wage prescribed in RCW 49.46.020 for a forty-hour workweek.

(7) Beginning January 1, 2026, and through December 31, 2026, an amount not less than 2.25 times the minimum wage prescribed in RCW 49.46.020 for a forty-hour workweek regardless of the size of the employer;

(8) Beginning January 1, 2027, and through December 31, 2027:

(a) When the employee works for an employer with fifty or fewer employees, an amount not less than 2.25 times the minimum wage prescribed in RCW 49.46.020 for a forty-hour workweek; and

(b) When the employee works for an employer with more than fifty employees, an amount not less than 2.5 times the minimum wage prescribed in RCW 49.46.020 for a forty-hour workweek.

(9) Beginning January 1, 2028, and each following year, an amount not less than 2.5 times the minimum wage prescribed in RCW 49.46.020 for a forty-hour workweek regardless of the size of the employer:

Table 2
Illustration of Salary Threshold As Multipliers of Minimum Wage

	Employer Size	
Effective Date	1-50 Employees	51+ Employees
July 1, 2020	1.25x	1.25x
January 1, 2021	1.5x	1.75x
January 1, 2022	1.75x	1.75x
January 1, 2023	1.75x	2.0x
January 1, 2024	2.0x	2.0x
January 1, 2025	2.0x	2.25x
January 1, 2026	2.25x	2.25x
January 1, 2027	2.25x	2.5x
January 1, 2028	2.5x	2.5x

Table 2 is provided for illustrative purposes only.

(10) For the purposes of this section, the size of the employer is based solely on the number of Washington-based employees it employs at the time of the effective date for each subsection. Each Washington-based employee counts as an employee for the purposes of determining the size of the employer regardless of whether that employee works full-time or part-time. An employer classified as employing fewer than fifty employees under RCW 50A.10.030 (8)(c) may rely on that classifi-

cation for purposes of determining the size of the employer under this section for the following calendar year.

[Statutory Authority: RCW 49.46.010 (3)(c). WSR 20-09-040, § 296-128-545, filed 4/7/20, effective 7/1/20; WSR 20-01-063, § 296-128-545, filed 12/10/19, effective 7/1/20.]

REGULAR RATE OF PAY AND COMPENSATORY TIME

WAC 296-128-550 Regular rate of pay. The regular rate of pay shall be the hourly rate at which the employee is being paid, but may not be less than the established minimum wage rate. Employees who are compensated on a salary, commission, piece rate or percentage basis, rather than an hourly wage rate, unless specifically exempt, are entitled to one and one-half times the regular rate of pay for all hours worked in excess of forty per week. The overtime may be paid at one and one-half times the piecework rate during the overtime period, or the regular rate of pay may be determined by dividing the amount of compensation received per week by the total number of hours worked during that week. The employee is entitled to one and one-half times the regular rate arrived at for all hours worked in excess of forty per week.

[Order 76-5, § 296-128-550, filed 2/24/76.]

WAC 296-128-560 Compensating time off in lieu of overtime pay. The provisions of chapter 49.46 RCW requiring one and one-half times the regular rate of pay for hours worked in excess of forty per week does not apply to any person who requests compensating time off in lieu of overtime pay. Therefore, compensating time may be as agreed upon by the employer and the individual employee at the request of the employee, but may not be imposed by the employer in lieu of overtime pay upon any employee who has not so requested such compensating time off.

[Order 76-5, § 296-128-560, filed 2/24/76.]

PAID SICK LEAVE

WAC 296-128-600 Definitions. (1) "Absences exceeding three days" means absences exceeding three consecutive days an employee is required to work. For example, assume an employee is required to work on Mondays, Wednesdays, and Fridays, and then the employee uses paid sick leave for any portion of those three work days in a row. If the employee uses paid sick leave again on the following Monday, the employee would have absences exceeding three days.

(2) "Commencement of his or her employment" as provided in RCW 49.46.210 (1)(d), means no later than the beginning of the first day on which the employee is authorized or required by the employer to be on duty on the employer's premises or at a prescribed workplace. "Commencement of their employment" has the same meaning.

(3) "Construction industry employer" means an employer in the industry described in North American industry classification system industry code 23, except for residential building construction code 2361.

(4) "Construction worker" means a worker who performed service, maintenance, or construction work on a job site, in the field or in a fabrication shop using the tools of the worker's trade or craft.

(5) "Construction worker covered by a collective bargaining agreement" as provided in RCW 49.46.180, means a worker who performed service, maintenance, or construction work on a job site, in the field or in a fabrication shop using the tools of the worker's trade or craft who is covered by a collective bargaining agreement. To meet this definition, the union signatory to the collective bargaining agreement must be an approved referral union program authorized under RCW 50.20.010 and in compliance with WAC 192-210-110, the collective bargaining agreement must establish equivalent sick leave provisions, as provided in RCW 49.46.180(2), and the collective bargaining agreement or CBA addendum must expressly waive the requirements of RCW 49.46.200 through 49.46.830 in clear and unambiguous terms or in an agreed addendum to an existing agreement previously ratified.

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

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

(8) "Employee" has the same meaning as RCW 49.46.010(3). An employee includes a construction worker or construction worker covered by a collective bargaining agreement unless a more specific provision applies.

(9) "Employer" has the same meaning as RCW 49.46.010(4).

(10) "Frontloading" means providing an employee with paid sick leave before it has accrued at the rate required by RCW 49.46.210 (1)(a).

(11) "Health-related reason," as provided in RCW 49.46.210 (1)(b)(iii), means a serious public health concern that could result in bodily injury or exposure to an infectious agent, biological toxin, or hazardous material. Health-related reason does not include closures for inclement weather.

(12) "Hours worked" shall be interpreted in the same manner as WAC 296-126-002(8).

(13) "Normal hourly compensation" means the hourly rate that an employee would have earned for the time during which the employee used paid sick leave. For employees who use paid sick leave for hours that would have been overtime hours if worked, employers are not required to apply overtime standards to an employee's normal hourly compensation. Normal hourly compensation does not include tips, gratuities, service charges, holiday pay, or other premium rates, unless the employer or a collective bargaining agreement allow for such considerations. However, where an employee's normal hourly compensation is a differential rate, meaning a different rate paid for the same work performed under differing conditions (e.g., a night shift), the differential rate is not a premium rate.

(14) "Qualifying immigration proceeding" means any judicial or administrative immigration proceeding involving the employee or employee's family member.

(15) "Regular and normal wage" has the same meaning as normal hourly compensation.

(16) "Separation" and "separates from employment" mean the end of the last day an employee is authorized or required by the employer to be on duty on the employer's premises or at a prescribed workplace.

(17) "Verification" means evidence that establishes or confirms that an employee's use of paid sick leave is for an authorized purpose under RCW 49.46.210 (1)(b) and (c).

(18) "Workweek" means a fixed and regularly recurring period of 168 hours, or seven consecutive 24-hour periods. It may begin on any day of the week and any hour of the day, and need not coincide with a calendar week.

[Statutory Authority: Chapters 49.46 and 49.76 RCW. WSR 25-24-086, s 296-128-600, filed 12/2/25, effective 1/2/26. Statutory Authority: RCW 49.46.210. WSR 24-15-118, § 296-128-600, filed 7/23/24, effective 8/23/24. Statutory Authority: Chapter 49.46 RCW. WSR 23-24-044, § 296-128-600, filed 11/30/23, effective 1/1/24. Statutory Authority: RCW 49.46.810. WSR 17-21-092, § 296-128-600, filed 10/17/17, effective 1/1/18.]

WAC 296-128-610 Requirements for a written policy—Duty of the department to provide sample policies. Where these rules set forth requirements for an employer to have a written policy (WAC 296-128-650(3), 296-128-660(2), 296-128-710(2), and 296-128-730(4)), the department shall, in consultation with employee and employer representatives, develop sample policies which meet the department's standard for compliance with these rules. The department shall make such sample policies available on the department's website.

[Statutory Authority: RCW 49.46.810. WSR 17-21-092, § 296-128-610, filed 10/17/17, effective 1/1/18.]

WAC 296-128-620 Paid sick leave accrual. (1) Employees accrue paid sick leave for all hours worked. An employee must accrue at least one hour of paid sick leave for every forty hours worked as an employee. Employers may provide employees with a more generous paid sick leave accrual rate.

(2) Paid sick leave for employees who are employed on or before January 1, 2018, will accrue for all hours worked beginning on January 1, 2018. Employees hired after January 1, 2018, begin accruing paid sick leave upon the commencement of his or her employment.

(3) Employers are not required to allow employees to accrue paid sick leave for hours paid when not working. For example, employers are not required to allow employees to accrue paid sick leave during vacation, paid time off, or while using paid sick leave.

(4) Employers must allow employees to carry over at least forty hours of accrued, unused paid sick leave to the following year. If an employee carries over forty hours of unused paid sick leave to the following year, accrual of paid sick leave in the subsequent year would be in addition to the forty hours accrued in the previous year and carried over.

(5) Employers may cap carryover of accrued, unused paid sick leave to the following year at forty hours. Employers may allow for a more generous carryover of accrued, unused paid sick leave to the following year.

(6) "Year," for purposes of this section, means calendar year, fiscal year, benefit year, employment year, or any other fixed consecutive twelve-month period established by an employer policy or a collective bargaining agreement, and used in the ordinary course of the employer's business for the purpose of calculating wages and benefits. Unless otherwise established by the employer, the default definition of "year" is calendar year.

[Statutory Authority: RCW 49.46.810. WSR 17-21-092, § 296-128-620, filed 10/17/17, effective 1/1/18.]

WAC 296-128-630 Paid sick leave usage. (1) An employee is entitled to use paid sick leave for the authorized purposes outlined in RCW 49.46.210 (1)(b) and (c). This right means an employee has the choice about whether or not to use accrued, unused paid sick leave when a qualified purpose occurs and an employer may not require an employee to use accrued, unused paid sick leave if the employee does not choose to request to use paid sick leave.

(2) An employee is entitled to use accrued, unused paid sick leave beginning on the 90th calendar day after the commencement of their employment. Employers may allow employees to use accrued, unused paid sick leave prior to the 90th calendar day after the commencement of their employment.

(3) Beginning on the 90th calendar day after the commencement of their employment, employers must make accrued paid sick leave available to employees for use in a manner consistent with the employer's established payment interval or leave records management system, not to exceed one month after the date of accrual.

(4) Unless a greater increment is approved by a variance as provided by WAC 296-128-640, employers must allow employees to use paid sick leave in increments consistent with the employer's payroll system and practices, not to exceed one hour. For example, if an employer's normal practice is to track increments of work for the purposes of compensation in 15-minute increments, then an employer must allow employees to use paid sick leave in 15-minute increments.

(5) Paid sick leave pay may be paid to construction workers covered by a collective bargaining agreement before the usage of the leave under the terms of a collective bargaining agreement if an employer meets the requirements of RCW 49.46.180 and any applicable rules.

[Statutory Authority: Chapter 49.46 RCW. WSR 23-24-044, § 296-128-630, filed 11/30/23, effective 1/1/24. Statutory Authority: RCW 49.46.810. WSR 17-21-092, § 296-128-630, filed 10/17/17, effective 1/1/18.]

WAC 296-128-640 Variance from required increments of paid sick leave usage. (1) The department shall grant a variance from the increments required by WAC 296-128-630(4) for "good cause." Good cause means situations where an employer can establish that compliance with the requirements for increments of use are infeasible, and that granting a variance does not have a significant harmful effect on the health, safety, and welfare of the involved employees. The existence of a collective bargaining agreement which sets forth increments of use may be used as a factor in determining good cause for granting a variance from the increments required by WAC 296-128-630(4).

(2) An employer may seek a variance from the requirement to provide employees with paid sick leave in increments greater than the increments required by WAC 296-128-630(4) by submitting a written application to the department. The application must contain the following:

(a) A justification for the variance, which establishes good cause for providing paid sick leave in increments greater than the increments required by WAC 296-128-630(4);

(b) The paid sick leave increments of use being sought;

(c) The group of employees for whom the variance is sought; and

(d) Evidence that the employer provided to the involved employees and, if applicable, to their union representatives, the following:

(i) A copy of the written request for a variance;

(ii) Information about the right of the involved employees and, if applicable, their union representatives, to be heard by the department during the variance application review process;

(iii) Information about the process by which involved employees and, if applicable, their union representatives, may make a written request to the director for reconsideration, subject to the provisions outlined in subsection (7) of this section; and

(iv) The department's address and phone number, or other contact information.

(3) The department must allow the employer, any involved employees and, if applicable, their union representatives, the opportunity for oral or written presentation during the variance application review process whenever circumstances of the particular application warrant it.

(4) No later than sixty days after the date on which the department received the application for a variance, the department must issue a written decision either granting or denying the variance. The department may extend the sixty-day time period by providing advance written notice to the employer and, if applicable, the union representatives of any involved employees, setting forth a reasonable justification for an extension of the sixty-day time period, and specifying the duration of the extension. The employer must provide involved employees with notice about any such extension.

(5) Variances shall be granted if the department determines that there is good cause for allowing an employer to provide paid sick leave in increments greater than the increments required by WAC 296-128-630(4). The variance order shall state the following:

(a) The paid sick leave increments of use approved in the variance;

(b) The basis for a finding of good cause;

(c) The group of employees impacted; and

(d) The period of time for which the variance will be valid, not to exceed three years from the date of issuance.

(6) Upon making a determination for issuance of a variance, the department must make notification in writing to the employer and, if applicable, the union representatives of any involved employees. If the variance is denied, the written notification will include a stated basis for the denial.

(7) An employer, involved employee and, if applicable, their union representative, may file with the director a request for reconsideration within fifteen days after receiving notice of the variance determination. The request for reconsideration must set forth the grounds upon which the reconsideration is being made. If reasonable grounds exist, the director may grant such review and, to the extent deemed appropriate, afford all interested parties an opportunity to be

heard. If the director grants such review, the written decision of the department will remain in place until the reconsideration process is complete.

(8) Unless subject to the reconsideration process, the director may revoke or terminate the variance order at any time after giving the employer at least thirty days' notice before revoking or terminating the order.

(9) Where immediate action is necessary pending further review by the department, the department may issue a temporary variance. The temporary variance will remain valid until the department determines whether good cause exists for issuing a variance. An employer need not meet the requirement in subsection (2)(d) of this section in order to be granted a temporary variance.

(10) If an employer obtains a variance under these rules, the employer must provide the involved employees with information about the increments of use requirements that apply within fifteen days of receiving notification of such approval from the department. An employer must make this information readily available to all employees.

[Statutory Authority: RCW 49.46.810. WSR 17-21-092, § 296-128-640, filed 10/17/17, effective 1/1/18.]

WAC 296-128-650 Reasonable notice. (1) An employer may require employees to give reasonable notice of an absence from work for the use of paid sick leave for an authorized purpose under RCW 49.46.210 (1)(b). Employers may require employees to comply with the employer's notification policies, as long as such policies do not interfere with an employee's lawful use of paid sick leave.

(a) If the need for paid sick leave is foreseeable, the employer may require advance notice from the employee. Unless the employer allows less advance notice, the employee must provide notice at least ten days, or as early as practicable, in advance of the use of paid sick leave.

(b) If the need for paid sick leave is unforeseeable, the employer may require notice from the employee. The employee must provide notice to the employer as soon as possible before the required start of their shift, unless it is not practicable to do so. In the event it is impracticable for an employee to provide notice to their employer, a person on the employee's behalf may provide notice to the employer.

(2) If an employer requires employees to give reasonable notice of an absence from work for the use of paid sick leave for an authorized purpose under the Domestic Violence Leave Act, chapter 49.76 RCW, any such reasonable notice requirements must comply with the provisions outlined in WAC 296-135-060.

(3) Employers must have a written policy or a collective bargaining agreement outlining any requirements of an employee to give reasonable notice for the use of paid sick leave, and must make notification of such policy or agreement, prior to requiring an employee to provide reasonable notice. An employer must make this information readily available to all employees. If an employer does not require an employee to give reasonable notice for the use of paid sick leave, a written policy is not required.

[Statutory Authority: RCW 49.46.810. WSR 17-21-092, § 296-128-650, filed 10/17/17, effective 1/1/18.]

WAC 296-128-660 Verification for absences exceeding three days. (1) For absences exceeding three days, an employer may require verification that an employee's use of paid sick leave is for an authorized purpose under RCW 49.46.210 (1)(b) and (c).

(2) If an employer requires verification for the use of paid sick leave under RCW 49.46.210 (1)(b) and (c), the employer must have a written policy or a collective bargaining agreement outlining any such requirements. The employer must notify the employee of such policy or agreement, including the employee's right to assert that the verification requirement results in an unreasonable burden or expense on the employee, prior to requiring the employee to provide verification. An employer must make this information readily available to all employees.

(3) If an employer requires an employee to provide verification from a health care provider identifying the need for use of paid sick leave for an authorized purpose under RCW 49.46.210 (1)(b) and (c), the employer must not require that the information provided explain the nature of the condition. If the employer obtains any health information about an employee or an employee's family member, the employer must treat such information in a confidential manner consistent with applicable privacy laws.

(4) Employer-required verification may not result in an unreasonable burden or expense on the employee.

(a) If an employer requires verification, and the employee anticipates that the requirement will result in an unreasonable burden or expense, the employee must be allowed to provide an oral or written explanation to their employer which asserts:

(i) That the employee's use of paid sick leave was for an authorized purpose under RCW 49.46.210 (1)(b) or (c); and

(ii) How the employer's verification requirement creates an unreasonable burden or expense on the employee.

(b) The employer must consider the employee's explanation. Within 10 calendar days of the employee providing an explanation to their employer about the existence of an unreasonable burden or expense, the employer must make a reasonable effort to identify and provide alternatives for the employee to meet the employer's verification requirement in a manner which does not result in an unreasonable burden or expense on the employee. A reasonable effort by the employer to identify and provide alternatives could include, but is not limited to:

(i) Accepting the oral or written explanation provided by the employee, as outlined in (a)(i) and (ii) of this subsection, as a form of verification which meets the employer's verification requirement; or

(ii) Mitigating the employee's out-of-pocket expenses associated with obtaining medical verification.

(c) If after the employer considers the employee's explanation, the employer and employee disagree that the employer's verification requirement results in an unreasonable burden or expense on the employee:

(i) The employer and employee may consult with the department regarding the verification requirement; and

(ii) The employee may file a complaint with the department.

(5) If an employer requires verification that the use of paid sick leave is for an authorized purpose under RCW 49.46.210 (1)(b), verification must be provided to the employer within a reasonable time period during or after the leave. For employee use of paid sick leave under RCW 49.46.210 (1)(b), "reasonable time period" is a period of

time defined by a written policy or a collective bargaining agreement, but may not be less than 10 calendar days following the first day upon which the employee uses paid sick leave.

(6) For employee use of paid sick leave under RCW 49.46.210 (1)(b)(iv), an employee may submit, and the employer must accept:

(a) Documentation that the employee or the employee's family member is involved in a qualifying immigration proceeding from any of the following persons from whom the employee or employee's family member sought assistance in addressing the proceeding: An advocate for immigrants or refugees, an attorney, a member of the clergy, or other professional. The provision of documentation under this subsection does not waive or diminish the confidential or privileged nature of communications between an employee or an employee's family member and one or more of the individuals described in this subsection pursuant to RCW 5.60.060 or other applicable law; or

(b) An employee's written statement that the employee or the employee's family member is involved in a qualifying immigration proceeding and that the leave taken was for one of the purposes described in RCW 49.46.210 (1)(b)(iv).

The documentation or written statement must not disclose any personally identifiable information about a person's immigration status or underlying immigration protection.

(7) If an employer requires verification that the use of paid sick leave is for an authorized purpose under the Domestic Violence Leave Act, chapter 49.76 RCW, any such verification requirements must comply with the provisions outlined in WAC 296-135-070.

(8) For use of paid sick leave for purposes authorized under federal, state, or other local laws that permit employers to make medical inquiries, an employer may require verification from an employee that complies with such certification requirements.

[Statutory Authority: Chapters 49.46 and 49.76 RCW. WSR 25-24-086, s 296-128-660, filed 12/2/25, effective 1/2/26. Statutory Authority: RCW 49.46.810. WSR 17-21-092, § 296-128-660, filed 10/17/17, effective 1/1/18.]

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 substan-

tially 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.]

WAC 296-128-680 Payment of paid sick leave. (1) Unless verification for absences exceeding three days is required by an employer, the employer must pay paid sick leave to an employee no later than the payday for the pay period in which the paid sick leave was used by the employee. If verification is required by the employer, paid sick leave must be paid to the employee no later than the payday for the pay period during which verification is provided to the employer by the employee.

(2) The employer must pay the balance of accrued and unused paid sick leave to a construction worker under RCW 49.46.210 (1)(l) (effective January 1, 2024), at the end of the established pay period, pursuant to RCW 49.48.010(2), following the construction worker's separation.

(3) Payment of paid sick leave at the normal hourly compensation to construction workers covered by a collective bargaining agreement may occur before usage, as authorized by RCW 49.46.180 and applicable rules.

[Statutory Authority: Chapter 49.46 RCW. WSR 23-24-044, § 296-128-680, filed 11/30/23, effective 1/1/24. Statutory Authority: RCW 49.46.810. WSR 17-21-092, § 296-128-680, filed 10/17/17, effective 1/1/18.]

WAC 296-128-690 Separation and reinstatement of accrued paid sick leave upon rehire. Except as provided for construction workers by RCW 49.46.210 (1)(l) (effective January 1, 2024) and applicable rules, and provided for construction workers covered by collective bargaining agreements by RCW 49.46.180 and applicable rules:

(1) When an employee separates from employment and is rehired within 12 months of separation by the same employer, whether at the same or a different business location of the employer, the employer must comply with the provisions of RCW 49.46.210 (1)(k). If an employee separates from employment, the employer is not required to provide financial or other reimbursement to the employee for accrued, unused paid sick leave at the time of separation.

(2) An employer may choose to reimburse an employee for any portion of their accrued, unused paid sick leave at the time the employee separates from employment.

(a) If an employer chooses to reimburse an employee for any portion of their accrued, unused paid sick leave at the time the employee separates from employment, any such terms for reimbursement must be mutually agreed upon in writing by both the employer and the employee, unless the right to such reimbursement is set forth elsewhere in state law or through a collective bargaining agreement.

(b) If an employee is rehired by the same employer, whether at the same or a different business location of the employer, within 12 months after the date the employee separates from employment, the employer must reinstate the employee's previously accrued, unused paid sick leave. An employer need not reinstate any hours of paid sick leave previously provided to the employee through financial or other reimbursement at the time of separation, as long as the value of the paid sick leave was established and paid at a rate that was at least equal to the employee's normal hourly compensation.

(3) When an employee separates from employment and the employee is rehired within 12 months of separation by the same employer, whether at the same or a different business location of the employer, an employee who reached the 90th calendar day of employment prior to separation shall have their previously accrued, unused paid sick leave balance available for use upon rehire. If the employee did not reach the 90th calendar day of employment prior to separation, the previous period of employment must be counted for purposes of determining the date upon which the employee is entitled to use paid sick leave.

(4) Upon rehire, an employer must provide notification to the employee of the amount of accrued, unused paid sick leave available for use by the employee.

(5) If the period of time an employee separates from employment extends into the following year ("year" as defined at WAC 296-128-620(6)), the employer is not required to reinstate more than 40 hours of the employee's accrued, unused paid sick leave.

[Statutory Authority: Chapter 49.46 RCW. WSR 23-24-044, § 296-128-690, filed 11/30/23, effective 1/1/24. Statutory Authority: RCW 49.46.810. WSR 17-21-092, § 296-128-690, filed 10/17/17, effective 1/1/18.]

WAC 296-128-700 Paid time off (PTO) programs. (1) A PTO program is a program that combines more than one type of leave, including all paid sick leave, into one bank of leave (i.e., a program that combines vacation leave, or other discretionary forms of leave, and paid sick leave into one bank). Paid time off (PTO) provided to employees by an employer's PTO program satisfies the requirement to provide paid sick leave if:

(a) The PTO program meets or exceeds the provisions of RCW 49.46.200 and 49.46.210, and all applicable rules including, but not limited to:

(i) Accrual of PTO leave at a rate of not less than one hour for every 40 hours worked as an employee;

(ii) Payment for PTO leave at the greater of the minimum hourly wage rate established by RCW 49.46.020 or the normal hourly compensation;

(iii) Carryover of at least 40 hours of accrued, unused PTO leave to the following year ("year" as defined at WAC 296-128-620(6));

(iv) Access to all PTO leave in the bank on the same terms for all the purposes authorized under RCW 49.46.210 (1)(b) and (c) except as provided in subsection (2) of this section;

(v) Recordkeeping requirements set forth in WAC 296-128-010 and 296-128-755; and

(b) The employer notifies the employee of their intention to utilize the PTO program in order to meet paid sick leave requirements under RCW 49.46.210.

(2) An employer may include more generous PTO (leave in excess of the accrual requirements) that is not subject to RCW 49.46.200 and 49.46.210, and all applicable rules, in the same leave bank as state paid sick leave compliant with RCW 49.46.200 and 49.46.210, and all applicable rules if:

(a) The compliant sick leave meets all the requirements of subsection (1) of this section independently of any more generous leave provided under an employer policy or CBA;

(b) The compliant paid sick leave is tracked separately;

(c) There is no requirement for the employee to use their protected leave for more generous purposes (purposes not authorized under RCW 49.46.210 (1)(b) and (c), such as vacation leave) before accessing the more generous PTO leave for more generous purposes; and

(d) If there is no policy that encourages the employee to use their protected leave for more generous purposes (purposes not authorized under RCW 49.46.210 (1)(b) and (c), such as vacation leave) before accessing the more generous PTO leave for more generous purposes.

(3) If an employee chooses to use their PTO leave for purposes other than those authorized under RCW 49.46.210 (1)(b) and (c), and the need for use of paid sick leave later arises when no additional PTO leave is available, the employer is not required to provide any additional PTO leave to the employee as long as the employer's PTO program meets or exceeds the provisions of RCW 49.46.200 and 49.46.210, and all applicable rules.

(4) If an employer utilizes a PTO program to meet or exceed the provisions of RCW 49.46.200 and 49.46.210 for construction workers, the balance of the PTO must be paid out to any qualifying construction workers covered under RCW 49.46.210 (1)(l) (effective January 1, 2024), following separation.

[Statutory Authority: Chapter 49.46 RCW. WSR 23-24-044, § 296-128-700, filed 11/30/23, effective 1/1/24. Statutory Authority: RCW 49.46.810. WSR 17-21-092, § 296-128-700, filed 10/17/17, effective 1/1/18.]

WAC 296-128-710 Shared leave. (1) An employer may establish a shared paid sick leave program in which an employee may choose to donate paid sick leave to a co-worker.

(2) If an employer establishes a shared paid sick leave program, the employer must have a written policy or a collective bargaining agreement which specifies that an employee may donate accrued, unused paid sick leave to a co-worker for purposes authorized under RCW 49.46.210 (1)(b) and (c).

The employer must notify employees of such policy or agreement prior to allowing an employee to donate or use shared paid sick leave. An employer must make this information readily available to all employees.

[Statutory Authority: RCW 49.46.810. WSR 17-21-092, § 296-128-710, filed 10/17/17, effective 1/1/18.]

WAC 296-128-720 Shift swapping. (1) An employer may not require, as a condition of an employee using paid sick leave, that the employee search for or find a replacement worker to cover the hours during which the employee is using paid sick leave.

(2) Upon mutual agreement by the employer and employee(s) involved, an employee may work additional hours or shifts, or trade shifts with another employee, in lieu of using available paid sick leave for missed hours or shifts that qualify for the use of paid sick leave.

[Statutory Authority: RCW 49.46.810. WSR 17-21-092, § 296-128-720, filed 10/17/17, effective 1/1/18.]

WAC 296-128-730 Frontloading. (1) An employer may, but is not required to, frontload paid sick leave to an employee in advance of accrual. An employer that allows an employee to go into "negative balances" of paid sick leave (i.e., where paid sick leave has not accrued and the employer allows its use) is frontloading paid sick leave to the employee.

(2) If an employer frontloads paid sick leave, the employer must ensure that such frontloaded paid sick leave complies with the provisions of RCW 49.46.180, 49.46.200, and 49.46.210, and all applicable rules.

(3) If an employer frontloads paid sick leave, the employer must do so by using a reasonable calculation, consistent with the accrual requirement set forth under RCW 49.46.210 (1)(a), to determine the amount of paid sick leave the employee would be projected to accrue during the period of time for which paid sick leave is being frontloaded.

(a) If the employer calculates and frontloads, and an employee subsequently uses, an amount of paid sick leave which exceeds the paid sick leave the employee would have otherwise accrued absent frontload-

ing, the employer shall not seek reimbursement from the employee for such paid sick leave used during the course of ongoing employment.

(b) If an employer frontloads paid sick leave to an employee, but such frontloaded paid sick leave is less than the amount the employee was entitled to accrue under RCW 49.46.210 (1)(a), the employer must make such additional amounts of paid sick leave available for use by the employee as soon as practicable, but no later than 30 days after identifying the discrepancy.

(4) The employer must have a written policy or a collective bargaining agreement which addresses the requirements for use of frontloaded paid sick leave. An employer must notify employees of such policy or agreement prior to frontloading an employee paid sick leave, and must make this information readily available to all employees.

(5) An employer may not make a deduction from an employee's final wages for frontloaded paid sick leave used prior to the accrual rate required by RCW 49.46.210 (1)(a), unless there is a specific agreement in place with the employee allowing for such a deduction. Such deductions must also meet the requirements set forth in RCW 49.48.010 and WAC 296-126-025.

(6) If an employer frontloads paid sick leave to a construction worker under RCW 49.46.210 (1)(l) (effective January 1, 2024) and the construction worker separates from employment, the employer must pay the balance of frontloaded leave in the construction worker's bank unless the employer can determine the amount of unused paid sick leave the employee accrued during the period of time for which paid sick leave was frontloaded using a reasonable calculation consistent with the accrual requirement set forth under RCW 49.46.210 (1)(a).

[Statutory Authority: Chapter 49.46 RCW. WSR 23-24-044, § 296-128-730, filed 11/30/23, effective 1/1/24. Statutory Authority: RCW 49.46.810. WSR 17-21-092, § 296-128-730, filed 10/17/17, effective 1/1/18.]

WAC 296-128-740 Third-party administrators. (1) Employers may contract with a third-party administrator in order to administer the paid sick leave requirements under RCW 49.46.180, 49.46.200, and 49.46.210, and all applicable rules.

(2) Employers are not relieved of their obligations under RCW 49.46.200 and 49.46.210, and all applicable rules, if they elect to contract with a third-party administrator to administer paid sick leave requirements. With the consent of employers, third-party administrators may pool an employee's accrued, unused paid sick leave from multiple employers as long as the accrual rate is at least equal to one hour of paid sick leave for every 40 hours worked as an employee. For example, if a group of employers have employees who perform work for various employers at different times, the employers may choose to contract with a third-party administrator to track the hours worked and rate of accrual for paid sick leave for each employee, and pool such accrued, unused paid sick leave for use by the employee when the employee is working for any employers in the same third-party administrator network.

(3) A collective bargaining agreement may outline the provisions for an employer to use a third-party administrator as long as such provisions meet all paid sick leave requirements under RCW 49.46.180, 49.46.200, and 49.46.210, and all applicable rules.

(4) An employer may utilize a third-party administrator in order to meet separation payout requirements under RCW 49.46.210 (1)(l) (effective January 1, 2024) and applicable rules.

(5) Under the terms of a collective bargaining agreement, an employer may meet its obligation to meet separation payout requirements under RCW 49.46.210 (1)(l) (effective January 1, 2024) and applicable rules by providing the third-party administrator a payment of any accrued unused leave, including regular payments meant to satisfy paid sick leave payment requirements. The third-party administrator may maintain a leave balance the employee may access after the separation of employment subject to the terms of the collective bargaining agreement.

[Statutory Authority: Chapter 49.46 RCW. WSR 23-24-044, § 296-128-740, filed 11/30/23, effective 1/1/24. Statutory Authority: RCW 49.46.810. WSR 17-21-092, § 296-128-740, filed 10/17/17, effective 1/1/18.]

WAC 296-128-750 Employee use of paid sick leave for unauthorized purposes. (1) If an employer can demonstrate that an employee's use of paid sick leave was for a purpose not authorized under RCW 49.46.210 (1)(b) and (c), the employer may withhold payment of paid sick leave for such hours, but may not subsequently deduct those hours from an employee's legitimately accrued, unused paid sick leave hours.

(2) If an employer withholds payment for the use of paid sick leave for purposes not authorized under RCW 49.46.210 (1)(b) and (c), the employer must provide notification to the employee. If the employee maintains that the use of paid sick leave was for an authorized purpose, the employee may file a complaint with the department.

[Statutory Authority: RCW 49.46.810. WSR 17-21-092, § 296-128-750, filed 10/17/17, effective 1/1/18.]

WAC 296-128-755 Employer notification and reporting to employees. (1) Employers must notify each employee of their entitlement to paid sick leave, the rate at which the employee will accrue paid sick leave, the authorized purposes under which paid sick leave may be used, the employer's intention to use a PTO program to meet requirements under RCW 49.46.210 (if applicable), and that retaliation by the employer for the employee's lawful use of paid sick leave and other rights provided under chapter 49.46 RCW, and all applicable rules, is prohibited.

(a) Employers must provide such notification in written or electronic form, and must make this information readily available to all employees.

(b) For employees hired on or after January 1, 2018, employers must notify each employee of such rights no later than the commencement of their employment. For existing employees as of January 1, 2018, the employer must notify each employee no later than March 1, 2018.

(c) The department shall, in consultation with employee and employer representatives, develop sample notification policies that meet the department's standard for compliance with these rules. The department shall make such sample notification policies available on the department's website.

(2) Not less than monthly, employers must provide each employee with written or electronic notification detailing the amount of paid sick leave accrued, the amount of paid sick leave paid before usage to construction workers covered by a collective bargaining agreement as permissible under RCW 49.46.180, the paid sick leave reductions since the last notification, and any unused paid sick leave available for use by the employee. Employers may satisfy the notification requirements by providing this information in regular payroll statements.

(a) Employers are not required to provide monthly notification to an employee if the employee has no hours worked since the last notification.

(b) If an employer chooses to frontload paid sick leave to an employee in advance of accrual:

(i) The employer must make written or electronic notification to an employee no later than the end of the period for which the frontloaded paid sick leave was intended to cover, establishing that the amount of paid sick leave frontloaded to the employee was at least equal to the accrual rate under RCW 49.46.210 (1)(a); and

(ii) The employer is not relieved of their obligation to provide notification, not less than monthly, of the paid sick leave available for use by the employee.

[Statutory Authority: Chapter 49.46 RCW. WSR 23-24-044, § 296-128-755, filed 11/30/23, effective 1/1/24.]

WAC 296-128-760 Construction workers covered by a collective bargaining agreement under RCW 49.46.180. (1) **Payment before usage.** RCW 49.46.180 allows a construction worker covered by a collective bargaining agreement to receive payment for paid sick leave before usage under the terms of a collective bargaining agreement if:

(a) The leave itself becomes available for protected use by at least the 90th calendar day of employment as established in RCW 49.46.210 (1)(d);

(b) The union signatory to the collective bargaining agreement is an approved referral union program authorized under RCW 50.20.010 and WAC 192-210-110;

(c) The collective bargaining agreement provides equivalent sick leave provisions that meet the requirements of RCW 49.46.200 through 49.46.830, and all applicable rules; and

(d) The requirements of RCW 49.46.200 through 49.46.830 are expressly waived in the collective bargaining agreement in clear and unambiguous terms or in an addendum to an existing agreement including an agreement that is open for negotiation provided the sick leave portions were previously ratified by the membership.

(2) **Deductions for paid sick leave payments.** An employer may not make a deduction from paid sick leave payment to a construction worker covered by a collective bargaining agreement before usage, unless such deduction meets the requirements set forth in RCW 49.48.010 and WAC 296-126-025.

(3) **Reinstatement of sick leave hours upon rehire.** If a construction worker covered by a collective bargaining agreement is rehired within 12 months after separation from employment by the same employer, whether at the same or a different business location, was paid their paid sick leave before usage under RCW 49.46.180, and still had protected accrued, unused sick leave available for use, the accrued, unused sick leave must be reinstated upon rehire. Any portion of sick

leave already paid during a previous period of employment does not have to be paid again when used during reemployment.

(4) **Use of sick leave hours upon rehire.** How to treat prior days of employment for access to paid sick leave.

(a) If a construction worker covered by a collective bargaining agreement separates from employment, is rehired within 12 months of separation, whether at the same or a different business location of the employer, was paid their paid sick leave before usage under RCW 49.46.180 and has reached the 90th calendar day of employment prior to separation, the construction worker covered by a collective bargaining agreement is eligible to use accrued sick leave immediately upon rehire.

(b) If a construction worker covered by a collective bargaining agreement separates from employment, is rehired within 12 months of separation, whether at the same or a different business location of the employer, was paid their paid sick leave before usage under RCW 49.46.180, and did not reach the 90th calendar day of employment prior to separation, the previous period of employment must be counted for purposes of determining the date upon which they are entitled to use sick leave.

(5) **Exceptions to subsections (3) and (4) of this section.** If a construction worker covered by a collective bargaining agreement separates from employment, is not rehired within 12 months of separation by the same employer, whether at the same or a different business location, the employer is not required to meet standards in subsection (3) or (4) of this section.

(6) **Notification upon rehire.** Upon rehire, an employer must provide notification to the construction worker covered by a collective bargaining agreement of the amount of accrued, unused paid sick leave available for use by the employee, including sick leave paid before usage.

[Statutory Authority: Chapter 49.46 RCW. WSR 23-24-044, § 296-128-760, filed 11/30/23, effective 1/1/24. Statutory Authority: RCW 49.46.810. WSR 17-21-092, § 296-128-760, filed 10/17/17, effective 1/1/18.]

WAC 296-128-765 Construction workers under RCW 49.46.210 (1)(l) (effective January 1, 2024). (1) Following separation, construction industry employers must pay the balance of accrued and unused paid sick leave to construction workers classified under NAICS code 23 who have not reached the 90th calendar day of employment, except for construction workers who perform work limited to work only under NAICS code 236100.

(2) When a construction worker is rehired within 12 months of separation, whether at the same or a different business location of the employer, any sick leave previously paid out following separation does not need to be reinstated.

(3) When a construction worker is rehired within 12 months of separation, whether at the same or a different business location of the construction industry employer, the previous period of employment must be counted for purposes of determining the date upon which the construction worker is entitled to use paid sick leave.

[Statutory Authority: RCW 49.46.210. WSR 24-15-118, § 296-128-765, filed 7/23/24, effective 8/23/24. Statutory Authority: Chapter 49.46 RCW. WSR 23-24-044, § 296-128-765, filed 11/30/23, effective 1/1/24.]

MINIMUM WAGE ACT PROTECTIONS AND ENFORCEMENT

WAC 296-128-770 Retaliation. (1) It is unlawful for an employer to interfere with, restrain, or deny the exercise of any employee right provided under or in connection with chapter 49.46 RCW. This means an employer may not use an employee's exercise of any of the rights provided under chapter 49.46 RCW as a negative factor in any employment action such as evaluation, promotion, or termination, or otherwise subject an employee to discipline for the exercise of any rights provided under chapter 49.46 RCW.

(2) It is unlawful for an employer to adopt or enforce any policy that counts the use of paid sick leave for a purpose authorized under RCW 49.46.210 (1)(b) and (c) as an absence that may lead to or result in discipline by the employer against the employee.

(3) It is unlawful for an employer to take any adverse action against an employee because the employee has exercised their rights provided under chapter 49.46 RCW. Such rights include, but are not limited to: Filing an action, or instituting or causing to be instituted any proceeding under or related to chapter 49.46 RCW; exercising their right to paid sick leave, minimum wage, overtime, tips and gratuities; or testifying or intending to testify in any such proceeding related to any rights provided under chapter 49.46 RCW.

(4) Adverse action means any action taken or threatened by an employer against an employee for their exercise of chapter 49.46 RCW rights, which may include, but is not limited to:

(a) Denying use of, or delaying payment for, paid sick leave, minimum wages, overtime wages, all tips and gratuities, and all service charges, except those service charges itemized as not being payable to the employee or employees servicing the customer;

(b) Terminating, suspending, demoting, or denying a promotion;

(c) Reducing the number of work hours for which the employee is scheduled;

(d) Altering the employee's preexisting work schedule;

(e) Reducing the employee's rate of pay; and

(f) Threatening to take, or taking action, based upon the immigration status of an employee or an employee's family member.

[Statutory Authority: RCW 49.46.810. WSR 17-21-092, § 296-128-770, filed 10/17/17, effective 1/1/18.]

WAC 296-128-780 Enforcement—Retaliation. (1) An employee who believes that they were subject to retaliation by their employer, as defined in WAC 296-128-770, for the exercise of any employee right under chapter 49.46 RCW, may file a complaint with the department within one hundred eighty days of the alleged retaliatory action. The department may, at its discretion, extend the one hundred eighty-day period on recognized equitable principles or because extenuating circumstances exist. For example, the department may extend the one hundred eighty-day period when there is evidence that the employer has concealed or misled the employee regarding the alleged retaliatory action.

(2) If an employee files a timely complaint with the department alleging retaliation, the department will investigate the complaint and issue either a citation and notice of assessment or a determination of compliance within ninety days after the date on which the department received the complaint, unless the complaint is otherwise resolved. The department may extend the period by providing advance written notice to the employee and the employer setting forth good cause for an extension of the period, and specifying the duration of the extension.

(3) The department may consider a complaint to be otherwise resolved when the employee and the employer reach a mutual agreement to remedy any retaliatory action, or the employee voluntarily and on the employee's own initiative withdraws the complaint. Mutual agreements include, but are not limited to, rehiring, reinstatement, back pay, and reestablishment of benefits.

(4) If the department's investigation finds that the employee's allegation of retaliation cannot be substantiated, the department will issue a determination of compliance to the employee and the employer detailing such finding.

(5) If the department's investigation finds that the employer retaliated against the employee, and the complaint is not otherwise resolved, the department may, at its discretion, notify the employer that the department intends to issue a citation and notice of assessment, and may provide up to thirty days after the date of such notification for the employer to take corrective action to remedy the retaliatory action. If the complaint is not otherwise resolved, then the department shall issue a citation and notice of assessment. The department's citation and notice of assessment may:

(a) Order the employer to make payable to the employee earnings that the employee did not receive due to the employer's retaliatory action, including interest of one percent per month on all earnings owed. The earnings and interest owed will be calculated from the first date earnings were owed to the employee;

(b) Order the employer to restore the employee to the position of employment held by the employee when the retaliation occurred, or restore the employee to an equivalent position with equivalent employment hours, work schedule, benefits, pay, and other terms and conditions of employment;

(c) Order the employer to cease using any policy that counts the use of paid sick leave as an absence that may lead to or result in discipline against the employee;

(d) For the first violation, order the employer to pay the department a civil penalty as specified in WAC 296-128-790; and

(e) For a repeat violation, order the employer to pay the department up to double the civil penalty as specified in WAC 296-128-790.

(6) The department will send the citation and notice of assessment or determination of compliance to both the employer and employee by service of process or using a method by which the mailing can be tracked or the delivery can be confirmed to their last known addresses.

(7) During an investigation of the employee's retaliation complaint, if the department discovers information suggesting alleged violations by the employer of the employee's other rights under chapter 49.46 RCW, and all applicable rules, the department may investigate and take appropriate enforcement action without requiring the employee to file a new or separate complaint. If the department determines that the employer violated additional rights of the employee under chapter

49.46 RCW, and all applicable rules, the employer may be subject to additional enforcement actions for the violation of such rights. If the department discovers information alleging the employer retaliated against or otherwise violated rights of other employees under chapter 49.46 RCW, and all applicable rules, the department may launch further investigation under chapter 49.46 RCW, and all applicable rules, without requiring additional complaints to be filed.

(8) The department may prioritize retaliation investigations as needed to allow for timely resolution of complaints.

(9) Nothing in WAC 296-128-780 through 296-128-800 impedes the department's ability to investigate under the authority prescribed in RCW 49.48.040.

(10) Nothing in WAC 296-128-780 through 296-128-800 precludes an employee's right to pursue private legal action.

[Statutory Authority: RCW 49.46.810, 49.46.005, 49.46.020, 49.46.090, 49.46.100, 49.46.120, 49.46.200, 49.46.210, 49.46.810, 49.46.820, and 49.46.830. WSR 18-01-111, § 296-128-780, filed 12/19/17, effective 1/1/18.]

WAC 296-128-790 Enforcement—Retaliation—Civil penalties. (1) If the department's investigation finds that an employer retaliated against an employee, pursuant to the procedures outlined in WAC 296-128-780, the department may order the employer to pay the department a civil penalty. A civil penalty for an employer's retaliatory action will not be less than one thousand dollars or an amount equal to ten percent of the total amount of unpaid earnings attributable to the retaliatory action, whichever is greater. The maximum civil penalty for an employer's retaliatory action shall be twenty thousand dollars for the first violation, and forty thousand dollars for each repeat violation.

(2) The department may, at any time, waive or reduce any civil penalty assessed against an employer under this section if the department determines that the employer has taken corrective action to remedy the retaliatory action.

(3) The department will deposit civil penalties paid under this section in the supplemental pension fund established under RCW 51.44.033.

(4) Collections of amounts owed for unpaid citations and notices of assessment, as detailed in WAC 296-128-780(5), will be handled pursuant to the procedures outlined in RCW 49.48.086.

[Statutory Authority: RCW 49.46.810, 49.46.005, 49.46.020, 49.46.090, 49.46.100, 49.46.120, 49.46.200, 49.46.210, 49.46.810, 49.46.820, and 49.46.830. WSR 18-01-111, § 296-128-790, filed 12/19/17, effective 1/1/18.]

WAC 296-128-800 Enforcement—Retaliation—Appeals. (1) A person, firm, or corporation aggrieved by a citation and notice of assessment or a determination of compliance may, within thirty days after the date of such decision, submit a request for reconsideration to the department setting forth the grounds for seeking such reconsideration, or submit an appeal to the director pursuant to the procedures outlined in subsection (4) of this section. If the department receives a

timely request for reconsideration, the department will either accept the request or treat the request as a notice of appeal.

(2) If a request for reconsideration is accepted, the department will send notice of the request for reconsideration to the employer and the employee. The department will determine if there are any valid reasons to reverse or modify the department's original decision to issue a citation and notice of assessment or determination of compliance within thirty days of receipt of such request. The department may extend this period by providing advance written notice to the employee and employer setting forth good cause for an extension of the period, and specifying the duration of the extension. After reviewing the reconsideration, the department will either:

(a) Notify the employee and the employer that the citation and notice of assessment or determination of compliance is affirmed; or

(b) Notify the employee and the employer that the citation and notice of assessment or determination of compliance has been reversed or modified.

(3) A request for reconsideration submitted to the department shall stay the effectiveness of the citation and notice of assessment or the determination of compliance pending the reconsideration decision by the department.

(4) Within thirty days after the date the department issues a citation and notice of assessment or a determination of compliance, or within thirty days after the date the department issues its decision on the request for reconsideration, a person, firm, or corporation aggrieved by a citation and notice of assessment or a determination of compliance may file with the director a notice of appeal.

(5) A notice of appeal filed with the director under this section shall stay the effectiveness of the citation and notice of assessment or the determination of compliance pending final review of the appeal by the director as provided for in chapter 34.05 RCW.

(6) Upon receipt of a notice of appeal, the director shall assign the hearing to an administrative law judge of the office of administrative hearings to conduct the hearing and issue an initial order. The hearing and review procedures shall be conducted in accordance with chapter 34.05 RCW, and the standard of review by the administrative law judge of an appealed citation and notice of assessment or determination of compliance shall be de novo. Any party who seeks to challenge an initial order shall file a petition for administrative review with the director within thirty days after service of the initial order. The director shall conduct administrative review in accordance with chapter 34.05 RCW.

(7) If a request for reconsideration is not submitted to the department within thirty days after the date of the original citation and notice of assessment or determination of compliance, and a person, firm, or corporation aggrieved by a citation and notice of assessment or determination of compliance did not submit an appeal to the director, then the citation and notice of assessment or determination of compliance is final and binding, and not subject to further appeal.

(8) The director shall issue all final orders after appeal of the initial order. The final order of the director is subject to judicial review in accordance with chapter 34.05 RCW.

(9) Director's orders that are not appealed within the time period specified in this section and chapter 34.05 RCW are final and binding, and not subject to further appeal.

(10) An employer who fails to allow adequate inspection of records in an investigation by the department under WAC 296-128-780

through 296-128-800 within a reasonable time period may not use such records in any appeal under such rules to challenge the correctness of any determination by the department.

[Statutory Authority: RCW 49.46.810, 49.46.005, 49.46.020, 49.46.090, 49.46.100, 49.46.120, 49.46.200, 49.46.210, 49.46.810, 49.46.820, and 49.46.830. WSR 18-01-111, § 296-128-800, filed 12/19/17, effective 1/1/18.]

WAC 296-128-810 Enforcement—Paid sick leave. (1) If an employee files a complaint with the department alleging that the employer failed to provide the employee with paid sick leave as provided in RCW 49.46.180, 49.46.200, and 49.46.210, the department will investigate the complaint as an alleged violation of a wage payment requirement, as defined by RCW 49.48.082(12).

(2) When the department's investigation results in a finding that the employer failed to provide the employee with paid sick leave accrual, use, or carryover during an ongoing employment relationship, the employee may elect to:

(a) Receive full access to the balance of accrued paid sick leave hours unlawfully withheld by the employer, based on a calculation of at least one hour of paid sick leave for every 40 hours worked as an employee during the period of noncompliance; or

(b) Receive payment from the employer at their normal hourly compensation for each hour of paid sick leave that the employee would have used or been reasonably expected to use, whichever is greater, during the period of noncompliance, not to exceed an amount the employee would have otherwise accrued. The employee will receive full access to the balance of accrued paid sick leave hours unlawfully withheld by the employer, less the number of paid sick leave hours paid out to the employee pursuant to this subsection.

(3) When the department's investigation results in a finding that the employer failed to provide the employee with paid sick leave accrual, use, or carryover, and the employee is no longer employed by the same employer, the employee may elect to receive payment at their normal hourly compensation, receive reinstatement of the balance of paid sick leave hours, or receive a combination of payment and reinstatement from the employer for all hours of paid sick leave that would have accrued during the period of noncompliance. Such hours must be based on a calculation of at least one hour of paid sick leave for every 40 hours worked as an employee.

(4) The department's notice of assessment, pursuant to RCW 49.48.083, may order the employer to provide the employee any combination of reinstatement and payment of accrued, unused paid sick leave hours assessed pursuant to subsection (2) or (3) of this section. When the department's investigation results in a finding that the employer failed to pay the balance of paid sick leave to a construction worker following separation, as required under RCW 49.46.210 (1)(l) (effective January 1, 2024), the department's notice of assessment may order the employer to pay the remainder of any accrued and unused paid sick leave that was not paid out at the time of separation.

(5) For purposes of this section, an employer found to be in noncompliance cannot cap the employee's carryover of paid sick leave at 40 hours to the following year for each year of noncompliance ("year" as defined in WAC 296-128-620(6)).

[Statutory Authority: Chapter 49.46 RCW. WSR 23-24-044, § 296-128-810, filed 11/30/23, effective 1/1/24. Statutory Authority: RCW 49.46.810, 49.46.005, 49.46.020, 49.46.090, 49.46.100, 49.46.120, 49.46.200, 49.46.210, 49.46.810, 49.46.820, and 49.46.830. WSR 18-01-111, § 296-128-810, filed 12/19/17, effective 1/1/18.]

WAC 296-128-820 Enforcement—Tips and service charges. If an employee files a complaint with the department alleging that their employer failed to pay to the employee all tips and gratuities due to the employee under RCW 49.46.020, or all service charges due to the employee under RCW 49.46.020 and 49.46.160, the department will investigate the complaint. The department will investigate the complaint pursuant to the procedures outlined in the Wage Payment Act, RCW 49.48.082 through 49.48.087.

[Statutory Authority: RCW 49.46.810, 49.46.005, 49.46.020, 49.46.090, 49.46.100, 49.46.120, 49.46.200, 49.46.210, 49.46.810, 49.46.820, and 49.46.830. WSR 18-01-111, § 296-128-820, filed 12/19/17, effective 1/1/18.]

WAC 296-128-830 Enforcement—Complaints alleging a violation of other rights under chapter 49.46 RCW—Duty of department to investigate—Citations—Civil penalties. (1) If an employee files a complaint with the department alleging a violation of the employee's rights under chapter 49.46 RCW, and all applicable rules, that are not otherwise enforced by the department pursuant to WAC 296-128-780 through 296-128-820, or the Wage Payment Act, RCW 49.48.082 through 49.48.087, the department will investigate the complaint under this section. Alleged violations include, but are not limited to, failure of an employer to comply with: The recordkeeping requirements set forth in WAC 296-128-010; the requirements to maintain written policies or collective bargaining agreements, as outlined in WAC 296-128-650(3), 296-128-660(2), 296-128-710(1), and 296-128-730(4); and notification and reporting requirements set forth in WAC 296-128-755 and 296-128-760(6).

(a) The department may not investigate any such alleged violation of rights that occurred more than three years before the date that the employee filed the complaint.

(b) If an employee files a timely complaint with the department, the department will investigate the complaint and issue either a citation assessing a civil penalty or a closure letter within 60 days after the date on which the department received the complaint, unless the complaint is otherwise resolved. The department may extend the period by providing advance written notice to the employee and the employer setting forth good cause for an extension of the period, and specifying the duration of the extension.

(c) The department will send notice of a citation assessing a civil penalty or the closure letter to both the employer and the employee by service of process or using a method by which the mailing can be tracked or the delivery can be confirmed to their last known addresses.

(2) If the department's investigation finds that the employee's allegation cannot be substantiated, the department will issue a closure letter to the employee and the employer detailing such finding.

(3) If the department determines that the violation of rights under chapter 49.46 RCW, and all applicable rules, that are not enforced by the department pursuant to WAC 296-128-780 through 296-128-820, or the Wage Payment Act, RCW 49.48.082 through 49.48.087, was a willful violation, and the employer fails to take corrective action, the department may order the employer to pay the department a civil penalty as specified in (a) of this subsection.

(a) A citation assessing a civil penalty for a willful violation of such rights will be $1,000 for each willful violation. For a repeat willful violator, the citation assessing a civil penalty will not be less than $2,000 for each repeat willful violation, but no greater than $20,000 for each repeat willful violation.

(b) The department may not issue a citation assessing a civil penalty if the employer reasonably relied on:

(i) A written order, ruling, approval, opinion, advice, determination, or interpretation of the director; or

(ii) An interpretive or administrative policy issued by the department and filed with the office of the code reviser. In accordance with the department's retention schedule obligations under chapter 40.14 RCW, the department will maintain a complete and accurate record of all written orders, rulings, approvals, opinions, advice, determinations, and interpretations for purposes of determining whether an employer is immune from civil penalties under (b) of this subsection.

(c) The department may, at any time, waive or reduce a civil penalty assessed under this section if the director determines that the employer has taken corrective action to resolve the violation.

(d) The department will deposit civil penalties paid under this section in the supplemental pension fund established under RCW 51.44.033.

(4) For purposes of this section, the following definitions apply:

(a) "Repeat willful violator" means any employer that has been the subject of a final and binding citation for a willful violation of one or more rights under chapter 49.46 RCW, and all applicable rules, within three years of the date of issuance of the most recent citation for a willful violation of one or more such rights.

(b) "Willful" means a knowing and intentional action that is neither accidental nor the result of a bona fide dispute.

[Statutory Authority: Chapter 49.46 RCW. WSR 23-24-044, § 296-128-830, filed 11/30/23, effective 1/1/24. Statutory Authority: RCW 49.46.810, 49.46.005, 49.46.020, 49.46.090, 49.46.100, 49.46.120, 49.46.200, 49.46.210, 49.46.810, 49.46.820, and 49.46.830. WSR 18-01-111, § 296-128-830, filed 12/19/17, effective 1/1/18.]

WAC 296-128-840 Complaints alleging a violation of other rights under chapter 49.46 RCW—Administrative appeals. (1) A person, firm, or corporation aggrieved by a citation assessing a civil penalty issued by the department under WAC 296-128-830 may appeal the citation assessing a civil penalty to the director by filing a notice of appeal with the director within thirty days of the department's issuance of the citation assessing a civil

penalty not appealed within thirty days is final and binding, and not subject to further appeal.

(2) A notice of appeal filed with the director under this section will stay the effectiveness of the citation assessing a civil penalty pending final review of the appeal by the director as provided for in chapter 34.05 RCW.

(3) Upon receipt of a notice of appeal, the director will assign the hearing to an administrative law judge of the office of administrative hearings to conduct the hearing and issue an initial order. The hearing and review procedures will be conducted in accordance with chapter 34.05 RCW, and the standard of review by the administrative law judge of an appealed citation assessing a civil penalty will be de novo. Any party who seeks to challenge an initial order shall file a petition for administrative review with the director within thirty days after service of the initial order. The director will conduct administrative review in accordance with chapter 34.05 RCW.

(4) The director will issue all final orders after appeal of the initial order. The final order of the director is subject to judicial review in accordance with chapter 34.05 RCW.

(5) Orders that are not appealed within the period specified in this section and chapter 34.05 RCW are final and binding, and not subject to further appeal.

(6) An employer who fails to allow adequate inspection of records in an investigation by the department under WAC 296-128-830 through 296-128-850 within a reasonable time period may not use such records in any appeal under such rules to challenge the correctness of any determination by the department of penalties assessed.

[Statutory Authority: RCW 49.46.810, 49.46.005, 49.46.020, 49.46.090, 49.46.100, 49.46.120, 49.46.200, 49.46.210, 49.46.810, 49.46.820, and 49.46.830. WSR 18-01-111, § 296-128-840, filed 12/19/17, effective 1/1/18.]

WAC 296-128-850 Complaints alleging a violation of other rights under chapter 49.46 RCW—Collection procedures. Collections of unpaid citations assessing civil penalties will be handled pursuant to the procedures outlined in RCW 49.48.086.

[Statutory Authority: RCW 49.46.810, 49.46.005, 49.46.020, 49.46.090, 49.46.100, 49.46.120, 49.46.200, 49.46.210, 49.46.810, 49.46.820, and 49.46.830. WSR 18-01-111, § 296-128-850, filed 12/19/17, effective 1/1/18.]

WAC 296-128-860 Severability clause. If any provision of the rules in this chapter, or their application to any person or circumstance is held invalid, the remainder of these rules or their application of the provision to other persons or circumstances is not affected.

[Statutory Authority: RCW 49.46.810, 49.46.005, 49.46.020, 49.46.090, 49.46.100, 49.46.120, 49.46.200, 49.46.210, 49.46.810, 49.46.820, and 49.46.830. WSR 18-01-111, § 296-128-860, filed 12/19/17, effective 1/1/18.]

ADULT ENTERTAINMENT ESTABLISHMENTS

WAC 296-128-90010 Definitions. (1) "Adult entertainment" has the same meaning as in RCW 49.17.470.

(2) "Adult entertainment establishment" or "establishment" has the same meaning as in RCW 49.17.470.

(3) "Amounts collected" for the purposes of calculating leasing fees under RCW 49.46.360(3) and associated rules, means an establishment's designated charges for entertainment provided in private performance areas and any individual performance in a private or nonprivate area, based on the establishment's designation of what those services cost, whether presumed, contractual, or posted.

(4) "Director" means the director of the department of labor and industries, or the director's designated representative.

(5) "Entertainer" means any person who provides adult entertainment within an adult entertainment establishment, whether or not a fee is charged or accepted for entertainment and whether or not the person is an employee under RCW 49.46.010.

(6) "Leasing fee" means a fee, charge, or other request for money from an entertainer by an establishment in exchange for the entertainer's access or use of the establishment premises or for allowing an entertainer to conduct entertainment on the premises.

(7) "Tips or gratuities" or "tips and gratuities" means any amount freely given by a customer to an entertainer. Tips and gratuities are in addition to, and do not count towards an entertainer's amounts collected.

[Statutory Authority: RCW 49.46.360. WSR 24-24-075, s 296-128-90010, filed 12/2/24, effective 1/2/25.]

WAC 296-128-90020 Leasing fee and other fee requirements. (1) An establishment is not required to collect leasing fees or other fees from an entertainer. If an establishment charges an entertainer any leasing fee or other fee including, but not limited to, entertainment fees or room charges, such fee(s) must:

(a) Apply equally to all entertainers in a given establishment;

(b) Apply due dates or required timing of fee payment equally to all entertainers in a given establishment;

(c) Be stated in a written contract, including a method for estimating the total amount collected by the entertainer in any eight-hour period for the purposes of calculating maximum leasing fee rates in accordance with WAC 296-128-90040; and

(d) Continue to apply for a period of not less than three months.

(2) An establishment may not charge an entertainer fees or interest:

(a) For late payments or nonpayment of any fee;

(b) For an entertainer's failure to appear at a scheduled time;

(c) That result in the entertainer carrying forward an unpaid balance from any previously incurred leasing fee;

(d) In an amount greater than the entertainer receives during the applicable period of access to or usage of the establishment premises; or

(e) Within an eight-hour period, any leasing fee that exceeds:

(i) The lesser of $150 or 30 percent of amounts collected by the entertainer in a nonprivate performance area; plus

(ii) 30 percent of amounts collected by the entertainer for adult entertainment provided in a private performance area.

(iii) "30 percent of amounts collected" should be calculated based on the estimated amount determined by the establishment in the written contract, and not based on the exact amounts collected by an entertainer during their shift.

(3) This section does not prevent an establishment from providing leasing fee discounts or credits to encourage scheduling or charge leasing fees that vary based on the time of day, so long as these are applied uniformly.

(4) This section does not require an establishment to count exact amounts collected by an entertainer at the end of a period of work.

[Statutory Authority: RCW 49.46.360. WSR 24-24-075, s 296-128-90020, filed 12/2/24, effective 1/2/25.]

WAC 296-128-90030 Tips and gratuities. (1) Entertainers are not required to surrender any tips or gratuities including, but not limited to, participating in any tip pool.

(2) Entertainers are not required to disclose tip or gratuity amounts to an establishment.

(3) Tips and gratuities are in addition to, and do not count towards, amounts collected by the entertainer.

(4) An establishment may not take adverse action against an entertainer in response to the entertainer's use of, collection of, or refusal to surrender tips or gratuities.

[Statutory Authority: RCW 49.46.360. WSR 24-24-075, s 296-128-90030, filed 12/2/24, effective 1/2/25.]

WAC 296-128-90040 Written contracts of leasing fees—Administrative requirements. (1) Any leasing fee or other fee including, but not limited to, entertainment fees or room charges, charged by an establishment to an entertainer must be stated in a written contract.

(2) If the establishment charges leasing fees, the written contract must include:

(a) A method for estimating the total amount collected by the entertainer in any eight-hour period;

(b) The effective dates of the contract;

(c) The duration of the contract, to be a period of not less than three months;

(d) Leasing fee discounts or credits offered to the entertainer; and

(e) Designated costs of services considered to be amounts collected by the entertainer. If designated costs vary based on the time of day or the day of the week, the varied rates must be reflected in the contract.

(3) An establishment's recorded tally of the number of dances performed by an entertainer multiplied by amounts collected by the entertainer, as designated in the written contract, may be considered a method for estimating the total amounts collected by the entertainer in any eight-hour period for the purposes of calculating maximum leas-

ing fee rates in WAC 296-128-90020 (2)(e). Leasing fee or other fee violations caused by inaccurate tallies of the number of dances is considered a compensation violation and enforced under WAC 296-128-90080.

(4) An establishment must keep copies of written contracts and documents used in estimating the total amounts collected by an entertainer, including records of dance tallies, for three years from the contract end date.

(5) Failing to comply with this section is an administrative violation.

[Statutory Authority: RCW 49.46.360. WSR 24-24-075, s 296-128-90040, filed 12/2/24, effective 1/2/25.]

WAC 296-128-90050 Required signage—Administrative requirements. (1) All establishments must display signage in areas designated for entertainers that communicate:

(a) Entertainers are not required to surrender any tips or gratuities; and

(b) An establishment may not take adverse action against an entertainer in response to the entertainer's use or collection of tips or gratuities.

(2) Failing to comply with this section is an administrative violation.

[Statutory Authority: RCW 49.46.360. WSR 24-24-075, s 296-128-90050, filed 12/2/24, effective 1/2/25.]

WAC 296-128-90060 Written notice of reason for termination or refusal to rehire—Administrative requirements. (1) An establishment must provide an entertainer, or former entertainer, with written notice of the reason(s) for any termination or refusal to rehire that includes any applicable date(s) of events or corrective action that led to the termination or rehire refusal.

(2) An establishment must provide the written notice of reason(s) to the entertainer, or former entertainer, upon termination or refusal to rehire or within 10 business days of the termination or refusal to rehire the entertainer.

(3) An establishment is not required to provide an entertainer with written notice of reason(s) for any refusal to rehire an individual who last worked at the establishment more than three years from the request for rehire.

(4) Failing to comply with this section is an administrative violation.

[Statutory Authority: RCW 49.46.360. WSR 24-24-075, s 296-128-90060, filed 12/2/24, effective 1/2/25.]

WAC 296-128-90070 Retaliation. (1) It is unlawful for an establishment to interfere with, restrain, or deny the exercise of any entertainer right provided under or in connection with RCW 49.46.360 or associated rules.

(2) It is unlawful for an establishment to adopt or enforce any policy that may lead to or result in any termination or other adverse action against an entertainer for exercising their rights under RCW 49.46.360 and associated rules.

(3) It is unlawful for an establishment to take any adverse action against an entertainer because the entertainer has exercised their rights provided under chapter 49.46 RCW or associated rules. Such rights include, but are not limited to: The use or collection of tips or gratuities; filing an action, or instituting or causing to be instituted any proceeding under or related to RCW 49.46.360; or testifying or intending to testify in any such proceeding related to any rights provided under RCW 49.46.360 or associated rules.

(4) Adverse action means any action taken or threatened by an establishment against an entertainer for the entertainer's exercise of rights under RCW 49.46.360 or associated rules, that may include, but is not limited to:

(a) Denying, reducing, or delaying payment of amounts collected, tips and gratuities, or any other amounts owed;

(b) Threatening to take, or taking, action based upon the immigration status of an entertainer or an entertainer's family member;

(c) Terminating, suspending, or limiting reasonable access to the establishment;

(d) Altering order of performances or stage time of an entertainer;

(e) Altering how an entertainer's requested music is handled;

(f) Denial or delay of an entertainer's access to security services;

(g) Moving an entertainer from a private performance area to a nonprivate performance area, or otherwise interrupting, preventing, or delaying an entertainer's opportunity for higher income; or

(h) Preventing an entertainer from working in any other lawful occupation or business.

[Statutory Authority: RCW 49.46.360. WSR 24-24-075, s 296-128-90070, filed 12/2/24, effective 1/2/25.]

WAC 296-128-90080 Enforcement—Compensation. (1) The department may enforce any amounts owed including, but not limited to, amounts collected and tips or gratuities under RCW 49.46.360 and associated rules as a wage payment requirement under RCW 49.48.082.

(2) If an entertainer files a complaint with the department alleging amounts owed as a result of a violation of RCW 49.46.360 and associated rules, the department will investigate the complaint. Alleged violations include, but are not limited to, improper leasing fees or other fees, improper deductions, or the improper collection of amounts owed to an entertainer, including tips or gratuities.

(3) If the department determines that an establishment has violated a requirement of RCW 49.46.360 or associated rules, the department may order the establishment to pay entertainers all amounts owed, including interest of one percent per month on all amounts owed. The amounts and interest owed must be calculated from the first date amounts were owed to the entertainer, except that the department may not order the establishment to pay any amounts and interest that were owed more than three years before the date the complaint was filed with the department.

(4) Unless the complaint is otherwise resolved or withdrawn by the entertainer, the department shall issue either a citation and notice of assessment or a determination of compliance. The department may not investigate any alleged violation that occurred more than three years before the date that the entertainer filed the complaint.

(5) If the department determines that the violation of rights under RCW 49.46.360 or associated rules was a willful violation, and the establishment fails to take corrective action, the department may order the establishment to pay the department a civil penalty as specified in (a) of this subsection.

(a) A citation assessing a civil penalty for a willful violation of such rights will be $1,000 or an amount equal to 10 percent of the total amount of unpaid amounts owed, whichever is greater, for each willful violation. For a repeat willful violator, the citation assessing a civil penalty will not be less than $2,000, but no greater than $20,000 for each repeat willful violation.

(b) The department may not assess a civil penalty if the establishment reasonably relied on:

(i) A written order, ruling, approval, opinion, advice, determination, or interpretation of the director; or

(ii) An interpretive or administrative policy issued by the department and filed with the office of the code reviser. In accordance with the department's retention schedule obligations under chapter 40.14 RCW, the department will maintain a complete and accurate record of all written orders, rulings, approvals, opinions, advice, determinations, and interpretations for purposes of determining whether an establishment is immune from civil penalties under (b) of this subsection.

(c) The department may, at any time, waive or reduce a civil penalty assessed under this section.

(d) The department will deposit civil penalties paid under this section in the supplemental pension fund established under RCW 51.44.033.

(6) During any investigation under RCW 49.46.360, if the department discovers information suggesting additional violations of any requirements of RCW 49.46.360 or any associated rules, the department may investigate and take appropriate enforcement action without any additional complaint. The department may also initiate an investigation on behalf of one or more entertainers for a violation of any requirements of RCW 49.46.360 or any associated rules, when the director otherwise has reason to believe that a violation may have occurred or will occur.

(7) The department may conduct a consolidated investigation for any alleged violations identified under RCW 49.46.360 or associated rules, when there are common questions of law or fact involving entertainers for the same establishment.

(8) The department may, for the purposes of enforcing RCW 49.46.360 or any associated rules, issue subpoenas to compel the attendance of witnesses or parties and the production of documents and records, administer oaths and examine witnesses under oath, take depositions, and seek affidavits or other verifications. The department may request an establishment perform a self-audit of any records. The results or conclusions of the self-audit must be provided to the department within a reasonable time. Reasonable timelines will be specified in the self-audit request. The records examined by the establishment in order to perform the self-audit must be made available to the department upon request.

(9) For purposes of this section, the following definitions apply:

(a) "Repeat willful violator" means any establishment that has been the subject of a final and binding citation for a willful violation of one or more rights under RCW 49.46.360, and all associated rules, within three years of the date of issuance of the most recent citation for a willful violation of one or more such rights.

(b) "Willful" means a knowing and intentional action that is neither accidental nor the result of a bona fide dispute.

[Statutory Authority: RCW 49.46.360. WSR 24-24-075, s 296-128-90080, filed 12/2/24, effective 1/2/25.]

WAC 296-128-90090 Enforcement—Administrative violations. (1) If an entertainer files a complaint with the department alleging a violation of any administrative requirement of RCW 49.46.360 or any associated rules, the department will investigate the complaint under RCW 49.46.360. Alleged violations include, but are not limited to, failure of an establishment to comply with: Written contract requirements of RCW 49.46.360 (2) and (3), signage requirements of RCW 49.46.360(5), notice requirements of RCW 49.46.360(6), and associated rules.

(2) The department may not investigate any such alleged violation of rights that occurred more than three years before the date that the entertainer filed the complaint.

(3) If an entertainer files a timely complaint with the department, the department will investigate the complaint and issue either a citation assessing a civil penalty or a closure letter, unless the complaint is otherwise resolved.

(4) If the department's investigation finds that an entertainer's allegation cannot be substantiated, the department will issue a closure letter to the entertainer and the establishment detailing such finding.

(5) If the department's investigation finds that the establishment violated an administrative requirement, and the complaint is not otherwise resolved, the department may, at its discretion, notify the establishment that the department intends to issue a citation and notice of assessment. The department may provide up to 30 days after the date of such notification for the establishment to take corrective action to remedy the violation. If the complaint is not otherwise resolved, then the department shall issue a citation and notice of assessment. The department's citation and notice of assessment may:

(a) Order the establishment to provide written notices of reasons for the termination or refusal to rehire an entertainer;

(b) Order the establishment to cease using any written contracts, policies, or notices that are in violation of RCW 49.46.360 or associated rules;

(c) Order the establishment to update and correct any written contracts, policies, or notices that are in violation of RCW 49.46.360 or associated rules;

(d) For the first violation, order the establishment to pay the department a civil penalty; and

(e) For a repeat violation, order the establishment to pay the department up to double the last civil penalty issued.

(6) If the department determines that the violation of rights under RCW 49.46.360 or associated rules was a willful violation, and the establishment fails to take corrective action, the department may order the establishment to pay the department a civil penalty as specified in (a) of this subsection.

(a) A citation assessing a civil penalty for a willful violation of such rights will be $1,000 for each willful violation. For a repeat willful violator, the citation assessing a civil penalty will not be less than $2,000, but no greater than $20,000 for each repeat willful violation.

(b) The department may not assess a civil penalty if the establishment reasonably relied on:

(i) A written order, ruling, approval, opinion, advice, determination, or interpretation of the director; or

(ii) An interpretive or administrative policy issued by the department and filed with the office of the code reviser. In accordance with the department's retention schedule obligations under chapter 40.14 RCW, the department will maintain a complete and accurate record of all written orders, rulings, approvals, opinions, advice, determinations, and interpretations for purposes of determining whether an establishment is immune from civil penalties under (b) of this subsection.

(c) The department may, at any time, waive or reduce a civil penalty assessed under this section.

(d) The department will deposit civil penalties paid under this section in the supplemental pension fund established under RCW 51.44.033.

(7) The department will send notice of a citation assessing a civil penalty or the closure letter to both the establishment and the entertainer.

(8) During any investigation under RCW 49.46.360 or associated rules, if the department discovers information suggesting additional violations of any requirements of RCW 49.46.360 or any associated rules, the department may investigate and take appropriate enforcement action without any additional complaint. The department may also initiate an investigation on behalf of one or more entertainers for a violation of any requirements of RCW 49.46.360 or any associated rules, when the director otherwise has reason to believe that a violation may have occurred or will occur.

(9) The department may conduct a consolidated investigation for any alleged administrative violations identified under RCW 49.46.360 or associated rules, when there are common questions of law or fact involving entertainers for the same establishment.

(10) The department may, for the purposes of enforcing RCW 49.46.360 or any associated rules, issue subpoenas to compel the attendance of witnesses or parties and the production of documents and records, administer oaths and examine witnesses under oath, take depositions, and seek affidavits or other verifications. The department may request an establishment perform a self-audit of any records. The results or conclusions of the self-audit must be provided to the department within a reasonable time. Reasonable timelines will be specified in the self-audit request. The records examined by the establishment in order to perform the self-audit must be made available to the department upon request.

(11) For purposes of this section, the following definitions apply:

(a) "Repeat willful violator" means any establishment that has been the subject of a final and binding citation for a willful violation of one or more rights under RCW 49.46.360, and all associated rules, within three years of the date of issuance of the most recent citation for a willful violation of one or more such rights.

(b) "Willful" means a knowing and intentional action that is neither accidental nor the result of a bona fide dispute.

[Statutory Authority: RCW 49.46.360. WSR 24-24-075, s 296-128-90090, filed 12/2/24, effective 1/2/25.]

WAC 296-128-90100 Enforcement—Retaliation. (1) An entertainer who believes that they were subject to retaliation by their establishment, as defined in WAC 296-128-90010, for the exercise of any entertainer rights under RCW 49.46.360 or associated rules, may file a complaint with the department within 180 days of the alleged retaliatory action. The department may, at its discretion, extend the 180-day period on recognized equitable principles or because extenuating circumstances exist. For example, the department may extend the 180-day period when there is evidence that the establishment may have concealed or misled the entertainer regarding the alleged retaliatory action.

(2) If an entertainer files a timely complaint with the department alleging retaliation, the department will investigate the complaint and issue either a citation and notice of assessment or a determination of compliance, unless the complaint is otherwise resolved.

(3) The department may consider a complaint to be otherwise resolved when the entertainer and the establishment reach a mutual agreement to remedy any retaliatory action, or the entertainer voluntarily withdraws the complaint. Mutual agreements include, but are not limited to, rehiring, reinstatement, and payment of amounts due.

(4) If the department's investigation finds that the entertainer's allegation of retaliation cannot be substantiated, the department will issue a determination of compliance to the entertainer and the establishment detailing such finding.

(5) If the department's investigation finds that the establishment retaliated against the entertainer, and the complaint is not otherwise resolved, the department may, at its discretion, notify the establishment that the department intends to issue a citation and notice of assessment. The department may provide up to 30 days after the date of such notification for the establishment to take corrective action to remedy the retaliatory action. If the complaint is not otherwise resolved, then the department shall issue a citation and notice of assessment. The department's citation and notice of assessment may:

(a) Order the establishment to make payable to the entertainer earnings or other amounts that the entertainer did not receive due to the establishment's retaliatory action, including interest of one percent per month on all amounts owed. The amounts and interest owed will be calculated from the first date amounts were owed to the entertainer;

(b) Order the establishment to restore the entertainer to the position held by the entertainer when the retaliation occurred, or restore the entertainer to an equivalent position with equivalent hours, schedule, benefits, pay, and other terms and conditions of entertainer's position;

(c) Order the establishment to cease using any policy that may lead to or result in discipline against the entertainer for exercising their rights under RCW 49.46.360 or associated rules;

(d) Order the establishment to update and correct any written contracts, policies, or notices that are in violation of RCW 49.46.360 or associated rules;

(e) For the first violation, order the establishment to pay the department a civil penalty as specified in WAC 296-128-790; and

(f) For a repeat violation, order the establishment to pay the department up to double the civil penalty as specified in WAC 296-128-790.

(6) The department will send the citation and notice of assessment or determination of compliance to both the establishment and entertainer.

(7) During an investigation of the entertainer's retaliation complaint, if the department discovers information suggesting alleged violations by the establishment of the entertainer's other rights under chapter 49.46 RCW, and all associated rules, the department may investigate and take appropriate enforcement action without requiring the entertainer to file a new or separate complaint. If the department determines that the establishment violated additional rights of the entertainer under chapter 49.46 RCW or any associated rules, the establishment may be subject to additional enforcement actions for the violation of such rights. If the department discovers information alleging the establishment retaliated against or otherwise violated rights of other entertainers under chapter 49.46 RCW or any associated rules, the department may launch further investigation under chapter 49.46 RCW or any associated rules, without requiring additional complaints to be filed.

(8) Nothing in WAC 296-128-90010 through 296-128-90100 impedes the department's ability to investigate under the authority prescribed in RCW 49.48.040.

(9) Nothing in WAC 296-128-90010 through 296-128-90100 precludes an entertainer's right to pursue private legal action.

[Statutory Authority: RCW 49.46.360. WSR 24-24-075, s 296-128-90100, filed 12/2/24, effective 1/2/25.]

WAC 296-128-90110 Administrative appeals. (1) A person, firm, or corporation aggrieved by a citation or determination of compliance issued by the department under WAC 296-128-90080 through 296-128-90100 may appeal the citation or determination of compliance to the director by filing a notice of appeal with the director within 30 days of the department's issuance of the citation. A citation or determination of compliance not appealed within 30 days is final and binding, and not subject to further appeal.

(2) A notice of appeal filed with the director under this section will stay the effectiveness of the citation or determination of compliance pending final review of the appeal by the director as provided for in chapter 34.05 RCW.

(3) Upon receipt of a notice of appeal, the director will assign the hearing to an administrative law judge of the office of administrative hearings to conduct the hearing and issue an initial order. The hearing and review procedures will be conducted in accordance with chapter 34.05 RCW, and the standard of review by the administrative law judge of an appealed citation or determination of compliance will

be de novo. Any party who seeks to challenge an initial order shall file a petition for administrative review with the director within 30 days after service of the initial order. The director will conduct administrative review in accordance with chapter 34.05 RCW.

(4) The director will issue all final orders after appeal of the initial order. The final order of the director is subject to judicial review in accordance with chapter 34.05 RCW.

(5) Orders that are not appealed within the period specified in this section and chapter 34.05 RCW are final and binding, and not subject to further appeal.

(6) An establishment that fails to allow adequate inspection of records in an investigation by the department under WAC 296-128-90080 through 296-128-90100 within a reasonable time period may not use such records in any appeal under such rules to challenge the correctness of any determination by the department of amounts due and penalties assessed.

[Statutory Authority: RCW 49.46.360. WSR 24-24-075, s 296-128-90110, filed 12/2/24, effective 1/2/25.]

WAC 296-128-90120 Collection procedures. Collections of unpaid citations will be handled pursuant to the procedures outlined in RCW 49.48.086.

[Statutory Authority: RCW 49.46.360. WSR 24-24-075, s 296-128-90120, filed 12/2/24, effective 1/2/25.]

WAC 296-128-90130 Severability clause. If any provision of the rules in this chapter, or their application to any person or circumstance is held invalid, the remainder of these rules or their application of the provision to other persons or circumstances is not affected.

[Statutory Authority: RCW 49.46.360. WSR 24-24-075, s 296-128-90130, filed 12/2/24, effective 1/2/25.]

TRANSPORTATION NETWORK COMPANIES

WAC 296-128-99010 Definitions. (1) "Absence" means any period of time in which the driver is unable to perform passenger platform time on the transportation network company's driver platform due to an authorized purpose defined in RCW 49.46.210.

(2) An "accessible system" is:

(a) A platform through which the driver accesses, receives, and sends notices and communications with the transportation network company in compliance with chapter 49.46 RCW;

(b) A platform through which the transportation network company accesses, receives, sends, and stores notices and communications with a driver in compliance with chapter 49.46 RCW;

(c) Available in a driver's preferred language and English;

(d) Provided in plain language;

(e) Available to the driver via smartphone application and online web portal; and

(f) Available from any location and must not be inaccessible due to geo-fencing.

(3) "Account deactivation" means one or more of the following actions with respect to an individual driver or group of drivers that is implemented by a transportation network company and lasts for more than three consecutive days:

(a) Blocking access to the transportation network company driver platform;

(b) Changing a driver's status from eligible to provide transportation network company services to ineligible; or

(c) Any other material restriction in access to the transportation network company's driver platform.

(4) A "communication system" is:

(a) A platform through which the driver accesses, receives, and sends notices and communications with the transportation network company in compliance with chapter 49.46 RCW;

(b) A platform through which the transportation network company accesses, receives, sends, and stores notices and communications with a driver in compliance with chapter 49.46 RCW;

(c) Available in a downloadable comma-separated values file format, except as provided in WAC 296-128-99030(1);

(d) Available to the driver via smartphone application and online web portal; and

(e) Available from any location and must not be inaccessible due to geo-fencing.

(5) "Compensation" means payment owed to a driver by reason of providing network services including, but not limited to, the minimum payment for passenger platform time and mileage, incentives, and tips. Compensation does not include driver reimbursements.

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

(7) "Digital network" means any online-enabled application, website, or system offered or used by a transportation network company that enables the prearrangement of rides between drivers and passengers.

(8) "Director" means the director of the department of labor and industries, or the director's authorized representative.

(9) "Dispatch location" means the location of the driver at the time the driver accepts a trip request through the driver platform.

(10) "Dispatch platform time" means the time a driver spends traveling from a dispatch location to a passenger pick-up location. Dispatch platform time ends when a passenger cancels a trip or the driver begins the trip through the driver platform. A driver cannot simultaneously be engaged in dispatch platform time and passenger platform time for the same transportation network company. For shared rides, dispatch platform time means the time a driver spends traveling from the first dispatch location to the first passenger pick-up location.

(11) "Dispatched trip" means the provision of transportation by a driver for a passenger through the use of a transportation network company's application dispatch system.

(12) "Driver" has the same meaning as "commercial transportation services provider driver" in RCW 48.177.005. Except as otherwise specified in WAC 296-128-99010 through 296-128-99290, for purposes of Titles 48, 50A, 50B, and 51 RCW, and chapter 49.46 RCW, and any orders, regulations, administrative policies, or opinions of any state or local agency, board, division, or commission, pursuant to those ti-

tles, a driver is not an employee or agent of a transportation network company if the following factors are met:

(a) The transportation network company does not unilaterally prescribe specific dates, times of day, or a minimum number of hours during which the driver must be logged into the transportation network company's online-enabled application or platform;

(b) The transportation network company may not terminate the contract of the driver for not accepting a specific transportation service request;

(c) The transportation network company does not contractually prohibit the driver from performing services through other transportation network companies except while performing services through the transportation network company's online-enabled application or platform during dispatch platform time and passenger platform time; and

(d) The transportation network company does not contractually prohibit the driver from working in any other lawful occupation or business. Notwithstanding any state or local law to the contrary, any party seeking to establish that the factors in this subsection are not met bears the burden of proof. A driver for purposes of this section shall not include any person ultimately and finally determined to be an "employee" within the meaning of section 2(3) of the National Labor Relations Act, 29 U.S.C. Sec. 152(3).

(13) "Driver platform" means the driver-facing application dispatch system software or any online-enabled application service, website, or system, used by a driver, or which enables services to be delivered to a driver, that enables the prearrangement of passenger trips for compensation.

(14) "Driver resource center" or "center" or "DRC" means a nonprofit organization that provides services to drivers. The nonprofit organization must be registered with the Washington secretary of state, have organizational bylaws giving drivers right to membership in the organization, and have demonstrated experience:

(a) Providing services to drivers in Washington state, including representing drivers in deactivation appeals proceedings; and

(b) Providing culturally competent driver representation services, outreach, and education. The administration and formation of the driver resource center may not be funded, excessively influenced, or controlled by a transportation network company.

(15) "Driver resource center fund" or "fund" means the dedicated fund created in RCW 49.46.310, the sole purpose of which is to administer funds collected from transportation network companies to provide services, support, and benefits to drivers.

(16) "Earned paid sick time" is the time provided by a transportation network company to a driver as calculated under RCW 49.46.210 and associated rules. For each hour of earned paid sick time used by a driver, the transportation network company shall compensate the driver at a rate equal to the driver's average hourly compensation.

(17) "Eligible account deactivation" means one or more of the following actions with respect to an individual driver that is implemented by a transportation network company:

(a) Blocking or restricting access to the transportation network company driver platform for more than three consecutive days; or

(b) Changing a driver's account status from eligible to provide transportation network company services to ineligible for more than three consecutive days; but

(c) An eligible account deactivation does not include any change in a driver's access or account status that is:

(i) Related to an allegation of discrimination, harassment, including sexual harassment or harassment due to someone's membership in a protected class, or physical or sexual assault, or willful or knowing commitment of fraud;

(ii) Related to an allegation that the driver was under the influence of drugs or alcohol while a related active investigation that takes no longer than 10 business days is under way; or

(iii) Any other categories the transportation network company and the driver resource center may agree to.

(18) "Geo-fencing" means the use of technology to create a virtual geographic boundary, enabling software to trigger a response when a mobile device enters or leaves a particular area.

(19) "Minimum compensation" means the minimum payment for passenger platform time and mileage set forth in RCW 49.46.300(4). "Minimum compensation" may include incentives or premium pay specific to a particular trip in which the incentive or premium pay is earned if the transportation network company discloses to the driver upon each offer of such pay the amount and terms of such pay and that such pay will be used to satisfy part or all of the minimum compensation requirement in RCW 49.46.300 for that particular trip. "Minimum compensation" does not include any incentive or premium pay not specific to a particular trip, any incentive or premium pay offered without the above disclosure, any bonuses, or any tips.

(20) "Network services" means services related to the transportation of passengers through the driver platform that are provided by a driver while logged in to the driver platform, including services provided during available platform time, dispatch platform time, and passenger platform time.

(21) "Passenger" has the same meaning as "commercial transportation services provider passenger" in RCW 48.177.005.

(22) "Passenger drop-off location" means the location of a driver's vehicle when the passenger leaves the vehicle.

(23) "Passenger pick-up location" means the location of the driver's vehicle at the time the driver starts the trip in the driver platform.

(24) "Passenger platform miles" means all miles driven during passenger platform time as recorded in a transportation network company's driver platform.

(25) "Passenger platform time" means the period of time when the driver is transporting one or more passengers on a trip, or portion of a trip, as follows:

(a) For a dispatched trip with a passenger pick-up location in Washington the entirety of the trip, regardless of the passenger drop-off location; and

(b) For a dispatched trip with a passenger pick-up location outside of Washington, the portion of passenger platform time and mileage that occurs within Washington.

(26) "Payday" means a specific day or date established by the transportation network company on which compensation, bonuses, incentives, tips, and other owed amounts are paid to a driver during a pay period.

(27) "Payment interval" means the amount of time between established paydays. A payment interval may be instant, daily, weekly, or bi-weekly.

(28) "Pay period" means a defined time frame for which a driver will receive a payment. A pay period may be instant, daily, weekly, or bi-weekly.

(29) "Personal vehicle" has the same meaning as "personal vehicle" in RCW 48.177.005.

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

(31) "Preferred language" is the driver's language choice provided in response to a transportation network company's request for their preferred language. Each transportation network company must make a good faith effort to learn a driver's preferred language. A transportation network company must translate documents available via an accessible system into the driver's preferred language, provided that the preferred language has been identified as the preferred language of at least two percent of drivers who utilize the transportation network company's driver platform in Washington. The transportation network companies and the driver resource center must work with the department to identify the preferred languages that meet the two percent threshold(s), at least every two years.

(32) "Qualifying immigration proceeding" means any judicial or administrative immigration proceeding involving the employee or employee's family member.

(33) "Shared ride" means a dispatched trip in which, prior to its commencement, a passenger requests through the transportation network company's digital network to share the dispatched trip with one or more passengers and each passenger is charged a fare that is calculated, in whole or in part, based on the passenger's request to share all or a part of the dispatched trip with one or more passengers, regardless of whether the passenger actually shares all or a part of the dispatched trip.

(34) "Tips" means a verifiable sum to be presented by a passenger as a gift or gratuity in recognition of service performed for the passenger by the driver receiving the tip.

(35) "Transportation network company" has the same meaning as defined in RCW 46.04.652. A transportation network company does not provide for hire transportation service and includes a third-party administrator when a transportation network company contracts with a third-party administrator for the purposes of providing paid sick time.

(36) "Verification" means evidence that establishes or confirms that a driver's use of paid sick time is for an authorized purpose under RCW 49.46.210.

[Statutory Authority: Chapters 49.46 and 49.76 RCW. WSR 25-24-086, s 296-128-99010, filed 12/2/25, effective 1/2/26. Statutory Authority: RCW 49.46.300(16) and chapter 49.46 RCW. WSR 22-24-034, § 296-128-99010, filed 11/30/22, effective 1/1/23.]

GENERAL REQUIREMENTS

WAC 296-128-99020 Fees collected and remitted for the driver resource center fund. Transportation network companies must collect and remit per trip fee amounts from passenger fares to the driver resource center fund as follows:

(1) Beginning July 1, 2024, the per trip fee amount is $0.15.

(2) Beginning January 1, 2025, and every January 1st thereafter, the per trip fee amount is as adjusted and published by the department in accordance with RCW 49.46.300 (12)(b).

(3) Each transportation network company shall submit to the fund, with its remittance under RCW 49.46.300(12), a report detailing the number of trips in the previous quarter and the total amount of the surcharge charged to customers. The first payment and accounting is due on the 30th day of the quarter following the collection of the surcharge. The department may request records from a transportation network company in order to confirm accuracy of remittance payments and reports submitted to the department.

[Statutory Authority: RCW 49.46.300(16) and chapter 49.46 RCW. WSR 22-24-034, § 296-128-99020, filed 11/30/22, effective 1/1/23.]

WAC 296-128-99030 Driver electronic receipts and weekly trip notices. (1) **Electronic receipts.** Within 24 hours of each dispatched trip, a transportation network company must transmit to the driver an electronic receipt, available in a communication system, for each unique trip or portion of a unique trip. For the purposes of an electronic receipt, a transportation network company may either provide a downloadable comma-separated values file or searchable PDF format containing a table with rows for each unique trip or portion of the trip and columns for each itemized element contained in the trip receipt. Electronic receipts must be available to the driver for at least two years following the date the transportation network company provided the receipt to the driver. The electronic receipt must itemize the following information for each unique trip, or portion of a unique trip:

(a) The total amount of passenger platform time;

(b) The total mileage driven during passenger platform time;

(c) The applicable rate(s) of pay including, but not limited to, the rate(s) per minute, rate(s) per mile, percentage of passenger fare, and any applicable trip-based financial incentives, promotions, or bonuses paid to the driver that resulted directly from the specific trip, rather than any aggregated trip activity, including variable rates based on geographic location;

(d) Any tip compensation paid by the passenger within 24 hours of the dispatched trip;

(e) Gross payment;

(f) Net payment after deductions, fees, tolls, surcharges, lease fees, or other charges;

(g) Itemized deductions or fees, including any tolls, surcharges, commissions, lease fees, and other charges;

(h) The applicable date and time frame for each trip and each portion of a trip; and

(i) The passenger pick-up and passenger drop-off locations for each trip and each portion of a trip as described by the street, city, and state in which the passenger pick-up and passenger drop-off occurred; however, if the passenger is an unaccompanied minor, only the city and state need be disclosed.

(2) **Weekly trip notices.** At least once a week, a transportation network company must transmit to the driver a written notice, available in a communication system, that contains the following information for trips, or portions of trips, which occurred in the prior week:

(a) The driver's total passenger platform time;

(b) Total mileage driven by the driver during passenger platform time;

(c) The driver's total tip compensation received from passengers within the prior week, itemized by the date of each dispatched trip or portion of a dispatched trip;

(d) The driver's gross payment, itemized by:

(i) Rate(s) per minute;

(ii) Rate(s) per mile; and

(iii) Any other method used to calculate pay including, but not limited to, base pay, percentage of passenger fare, or any applicable financial incentives, promotions, or bonuses paid to the driver related to any of the driver's activity on the platform, including variable rates based on geographic location;

(e) The driver's net payment after deductions, fees, tolls, surcharges, lease fees, or other charges;

(f) An itemization of deductions or fees, including all tolls, surcharges, commissions, lease fees, and other charges, from the driver's payment; and

(g) The total passenger platform time performed within the past 365 calendar days or the last 12 full calendar months immediately prior to the date the weekly notice is provided to the driver.

(3) **Aggregate data.** Beginning on July 1, 2026, a transportation network company shall make available to a driver a downloadable record containing the data from the driver's per-trip receipts for all trips in the reference period contained in this section. The record required by this section must be provided in a single aggregated, searchable, downloadable format, such as a comma separated values file or searchable PDF file. The reference period for the record required by this section must be the previous 24 months. The record required by this section must be made available for download within three business days from the date that the driver requests the record. The record required by this section must contain a table with rows for each unique trip and columns for each itemized element contained in each trip receipt. The record required by this section may contain additional information at the discretion of the transportation network company.

[Statutory Authority: Chapters 49.46 and 49.76 RCW. WSR 25-24-086, s 296-128-99030, filed 12/2/25, effective 1/2/26. Statutory Authority: RCW 49.46.300(16) and chapter 49.46 RCW. WSR 23-07-124, § 296-128-99030, filed 3/21/23, effective 4/21/23; WSR 22-24-034, § 296-128-99030, filed 11/30/22, effective 1/1/23.]

WAC 296-128-99040 Payment requirements. (1) A transportation network company must establish regularly scheduled payment intervals for compensation, tips and gratuities, reimbursements, or any other amounts due to a driver. The scheduled interval must occur at least bi-weekly. Nothing in this provision prevents a transportation company from establishing a more frequent interval or paying in advance of a scheduled payday, such as an instant payment.

(2) A transportation network company must pay the driver amounts owed no later than 10 calendar days after the end of the pay period.

(3) Transportation network companies may pay drivers by direct deposit or other electronic means on the established payday. If a transportation network makes a payment by mail, any mailed payment must be postmarked no later than the established payday. If the established payday falls on a weekend day or holiday when the business office is not open, mailed paychecks must be postmarked no later than the next business day.

(4) If any applicable federal, state, or local law or ordinance in a locality outside of Washington provides specific payment interval requirements that are more favorable to a driver than the payment interval requirements provided under this rule, that law shall apply.

[Statutory Authority: RCW 49.46.300(16) and chapter 49.46 RCW. WSR 22-24-034, § 296-128-99040, filed 11/30/22, effective 1/1/23.]

WAC 296-128-99050 Geographic application of RCW 49.46.300 minimum compensation requirements. (1) A transportation network company must pay drivers in accordance with RCW 49.46.300(4) as follows:

(a) For a dispatched trip with a passenger pick-up location in Washington all minimum compensation requirements under RCW 49.46.300(4) apply for the entirety of the trip, regardless of the passenger drop-off location; and

(b) For a dispatched trip with a passenger pick-up location outside of Washington all minimum compensation requirements under RCW 49.46.300(4) apply for the portion of a trip that occurs within Washington.

(2) For a dispatched trip with a passenger pick-up location in a city in the state of Washington with a population above 600,000, all minimum compensation requirements under RCW 49.46.300 (4)(a)(i) apply, regardless of the passenger drop-off location.

(3) For a trip with a passenger pick-up location in the state of Washington outside a city with a population above 600,000 and a passenger drop-off location inside a city with a population above 600,000 in the state of Washington, the greater of:

(a) The combined total of:

(i) The per minute and per mile minimum compensation requirements under RCW 49.46.300 (4)(a)(i) applied to the portion of passenger platform time or mileage that occurs within the city with a population above 600,000; and

(ii) The per minute and per mile compensation requirements under RCW 49.46.300 (4)(a)(ii) applied to the portion of passenger platform time or mileage that occurs outside the city with a population above 600,000; or

(b) The per trip minimum for a dispatched trip under RCW 49.46.300 (4)(a)(i)(B).

(4) **Shared rides.** The greater of the per trip minimums in subsections (1), (2), and (3) of this section apply to the entirety of the shared ride if any portion of the shared ride meets the requirements of subsection (1)(a) or (b) of this section.

(5) **More favorable standards.** If any portion of a dispatched trip or shared ride is subject to a standard established by any applicable federal, state, or local law or ordinance in a locality outside of Washington, or any rule or regulation issued under such law or ordinance, which is more favorable to drivers than these minimum compensation requirements, such standard shall not be affected by this chapter and such other laws, or rules or regulations, shall be in full force and effect and may be enforced as provided by law.

[Statutory Authority: RCW 49.46.300(16) and chapter 49.46 RCW. WSR 23-07-124, § 296-128-99050, filed 3/21/23, effective 4/21/23; WSR 22-24-034, § 296-128-99050, filed 11/30/22, effective 1/1/23.]

WAC 296-128-99060 Tips and gratuities. (1) A transportation network company shall remit to drivers all tips, except as provided in WAC 296-128-99080. Tips paid to a driver are in addition to, and may not count towards, the driver's minimum compensation under RCW 49.46.300(4) or associated rules.

(2) All tips must be paid in regular intervals in accordance with WAC 296-128-99040, upon payment from the passenger.

[Statutory Authority: RCW 49.46.300(16) and chapter 49.46 RCW. WSR 22-24-034, § 296-128-99060, filed 11/30/22, effective 1/1/23.]

WAC 296-128-99070 Driver reimbursements. (1) "Driver reimbursement" is an amount charged to a passenger and remitted to the driver for tolls, fees, or any other charges or surcharges.

(2) A transportation network company must pay driver reimbursements in an amount at least equal to the amount charged to the passenger for tolls, fees, or any other charges or surcharges.

(3) Amounts charged to a passenger and remitted to the driver for tolls, fees, or any other charges or surcharges must be paid in accordance with WAC 296-128-99040.

[Statutory Authority: RCW 49.46.300(16) and chapter 49.46 RCW. WSR 22-24-034, § 296-128-99070, filed 11/30/22, effective 1/1/23.]

WAC 296-128-99080 Deductions from driver compensation. (1) **Mandatory deductions.** A transportation network company may deduct any portion of a driver's compensation, without a driver's prior written authorization, for the following reasons:

(a) If the deduction is required by state or federal law; or

(b) To satisfy a court order, judgment, wage attachment, trustee process, bankruptcy proceeding, or payroll deduction notice for child support payments.

(2) A mandatory deduction may reduce a driver's compensation below the minimum compensation requirements in RCW 49.46.300(4) and associated rules.

(3) **Voluntary deductions.** Except as required by law, a transportation network company may only deduct compensation when the driver expressly authorizes the deduction in writing and does so in advance and for a lawful purpose. Voluntary deductions may reduce the driver's per trip earnings below the minimum compensation requirements set forth in chapter 49.46 RCW and associated rules. Any authorization by a driver must be voluntary and knowing.

(a) Voluntary deductions that may be authorized by a driver include, but are not limited to:

(i) Voluntary per trip earnings deduction contributions in accordance with WAC 296-128-99090; or

(ii) Voluntary deductions for a lease or rental car program.

(b) A driver's written authorization for deductions is valid if it:

(i) Is written in either English or the driver's preferred language;

(ii) States that the driver authorizes a deduction from the driver's compensation;

(iii) States the deduction amount(s), interval(s) of deductions, and nature of any deductions;

(iv) States the effective date(s) of a deduction;

(v) States the estimated end date of a deduction, if any;

(vi) Includes sufficient information to identify the driver;

(vii) Is submitted in advance of the deduction; and

(viii) Is submitted by the driver or the driver's authorized representative.

(c) A "voluntary and knowing" deduction means:

(i) The driver was informed via an accessible system that the deduction may reduce their compensation below the minimum compensation requirements in RCW 49.46.300 or associated rules; and

(ii) The driver was not pressured, manipulated, or coerced into authorizing the deduction.

(d) A driver may rescind a voluntary deduction with notice, written in either English or the driver's preferred language, at least 10 days before a scheduled deduction.

(4) **No financial benefit for any deduction.** A transportation network company, or any person acting in the interest of the transportation network company, may not derive any financial profit or benefit from any deduction.

(a) A deduction will be considered for financial profit or benefit only if it results in a gain over and above the fair market value of the goods or services for which the deduction was made.

(b) In determining whether a deduction resulted in a financial profit or benefit to the transportation network company, or any person acting in the interest of the transportation network company, the department may consider any of the following nonexhaustive factors:

(i) The cost of the goods or services incurred by the transportation network company, including reasonable administrative costs to provide the goods or services to the transportation network company driver;

(ii) The fair market value for the goods or services; and

(iii) Whether the deduction resulted in a gain over and above expenditures.

(5) **No deductions for loss or breakage.** In no case may a transportation network company deduct the cost of damage to or loss of transportation network company equipment, software, intellectual property, or other tangible or intangible property from a driver's compensation.

(6) A transportation network company must not deduct from a driver's tips, unless required by law or expressly authorized under the voluntary deduction provisions of this section.

[Statutory Authority: RCW 49.46.300(16) and chapter 49.46 RCW. WSR 22-24-034, § 296-128-99080, filed 11/30/22, effective 1/1/23.]

WAC 296-128-99090 Voluntary per trip earnings deduction contributions and reimbursements—Driver resource center. (1) Beginning no later than June 9, 2023, each transportation network company must provide an opportunity for drivers to make voluntary per trip earnings deduction contributions to the driver resource center, if the transportation network company has 100 or more drivers authorize such a deduction.

(2) The driver resource center will administer driver authorizations and revocations of the voluntary per trip earnings deduction contributions subject to the following:

(a) Each driver must expressly authorize the deduction in writing;

(b) Each deduction authorization must include sufficient information to identify the driver and driver's per trip deduction amount;

(c) Such a deduction may reduce the driver's per trip earnings below the minimum compensation requirements set forth in RCW 49.46.300 (13)(a) and all associated rules; and

(d) A driver's authorization will remain in effect until the driver or driver resource center provides the driver's express revocation to the transportation network company.

(3) The driver resource center must inform drivers that deductions will continue unless the driver requests express revocation or an adjustment of the deduction amount. The driver resource center may choose to meet this requirement by providing a standard form to drivers. If the driver resource center chooses to develop a standard form, it must:

(a) Be made available in English and the driver's preferred language; and

(b) Include the driver's requested per trip deduction amount.

(4) Transportation network companies must rely on the information provided by the driver resource center regarding any authorization or revocation of a deduction.

(5) A transportation network company may seek reimbursement from the driver resource center for costs associated with the deduction and remittance of voluntary per-trip earnings deduction contributions. Costs associated with deductions and remittances eligible for reimbursement include:

(a) Administrative costs; and

(b) Any transfer fees, charges, or other costs associated with any bank fees.

(6) The transportation network company must submit any reimbursement requests for costs associated with the deduction and remittance of voluntary per-trip earnings deduction contributions to the driver resource center by no later than 28 calendar days following the end of the month in which costs were accrued.

(7) With each reimbursement request, a transportation network company must provide the following supporting documents:

(a) A list of the drivers from whose compensation such deductions were made and the amounts deducted during that month; and

(b) Supporting documentation showing any claimed administrative costs, transfer fees, charges, or other associated costs.

(8) The driver resource center must issue a reimbursement to the transportation network company by no later than 28 calendar days following the reimbursement request.

(9) The driver resource center may deny a transportation network company's request for reimbursement of costs associated with deduction and remittance, if the request does not include supporting records sufficient to show the costs are reasonably related to the deduction or remittance of voluntary per-trip earnings deductions.

(10) The transportation network company may resubmit the request within 30 days of the rejection with additional supporting documents for further consideration.

(11) If the driver resource center denies a transportation network company's request for reimbursement of costs associated with deduction and remittance after providing further documentation, the transportation network company may request the department review the submissions and issue an order determining whether the reimbursement

should be paid. Such an order will be subject to review under the provisions of chapter 34.05 RCW.

(12) The transportation network company must keep records of all costs associated with reimbursement requests for deduction and remittance costs for three years.

[Statutory Authority: RCW 49.46.300(16) and chapter 49.46 RCW. WSR 22-24-034, § 296-128-99090, filed 11/30/22, effective 1/1/23.]

WAC 296-128-99100 Deactivations. (1) A transportation network company must enter into an agreement with the driver resource center regarding the driver account deactivation appeals process for eligible account deactivations, including an expeditious process for determining whether an account deactivation is an eligible account deactivation. Any agreement must be approved by the department. The department may approve an agreement only if the agreement is consistent with RCW 49.46.300 (15)(a)(iv) and associated rules, as set forth under RCW 49.46.300 (15)(c).

(2) Upon a driver's account deactivation, the transportation network company must provide notification via email and an accessible system to the driver that includes:

(a) Notification that the driver may have the right to appeal the account deactivation and receive representation by the driver resource center in an appeal;

(b) Contact information for the driver resource center, as specified by the driver resource center;

(c) A written statement describing the reason for deactivation and the internal policy violated;

(d) The effective start date of deactivation;

(e) The anticipated end date of deactivation or confirmation that the deactivation is permanent;

(f) Any action necessary for the driver to remedy the deactivation; and

(g) Notification of the driver's right to use earned accrued paid sick time during a deactivation period.

[Statutory Authority: RCW 49.46.300(16) and chapter 49.46 RCW. WSR 22-24-034, § 296-128-99100, filed 11/30/22, effective 1/1/23.]

WAC 296-128-99110 Notice of rights. (1) **Notice of rights requirements.** A transportation network company must provide each driver with a written notice of rights as established by RCW 49.46.300(7) and associated rules. The notice must inform drivers of:

(a) The right to the applicable per minute rate, per mile rate, or per trip rate guaranteed by RCW 49.46.300 or associated rules;

(b) The right to be protected from retaliation for exercising in good faith the rights protected by RCW 49.46.300 or associated rules; and

(c) The right to seek legal action or file a complaint with the department for violation of the requirements of RCW 49.46.300 or associated rules, including a transportation network company's failure to pay the minimum per minute rate, per mile rate, or per trip rate, or a transportation network company's retaliation against a driver or other person for engaging in an activity protected by RCW 49.46.300 or associated rules.

(2) **Sample notice.** The department may develop a sample notice of rights that meets the department's standard for compliance with RCW 49.46.300(7) and associated rules. If the department provides such a notice:

(a) The department may provide the sample notice of rights in English and the five most common languages spoken in the state, but may also consult with the driver resource center and transportation network company representatives to identify other common languages spoken by drivers in the state of Washington to provide additional translated sample notices of rights;

(b) Each transportation network company may satisfy its obligation to distribute the written notice of rights by providing the department's sample notice in an accessible system; and

(c) Each transportation network company should make additional efforts to provide access to the notice of rights in a driver's preferred language when a transportation network company knows or has reason to know the driver's preferred language.

(3) **Manner of distribution.** The transportation network company must distribute the notice of rights as follows:

(a) The written notice of rights must be made available and remain accessible to the driver in an electronic format that is readily accessible for at least three years. A transportation network company must make the notice of rights available to the driver via smartphone application or online web portal, in English and the five most common foreign languages spoken in this state. A transportation network company may meet this requirement by distributing the notice of rights via an accessible system;

(b) For a new driver or a driver who has not begun a period of passenger platform time for a 90 day period, the transportation network company shall affirmatively provide the driver with the notice of rights within 48 hours of the driver beginning a period of passenger platform time in Washington.

[Statutory Authority: RCW 49.46.300(16) and chapter 49.46 RCW. WSR 22-24-034, § 296-128-99110, filed 11/30/22, effective 1/1/23.]

WAC 296-128-99120 Retaliation. (1) It is unlawful for a transportation network company to interfere with, restrain, or deny the exercise of any driver right provided under or in connection with chapter 49.46 RCW or associated rules. This means a transportation network company may not use a driver's exercise of any of their rights provided under chapter 49.46 RCW or associated rules as a negative factor in any account deactivation, restriction in account access, or other adverse action, or otherwise subject a driver to an adverse action for the exercise of any rights provided under chapter 49.46 RCW or associated rules.

(2) It is unlawful for a transportation network company to adopt or enforce any policy that counts the use of paid sick time for a purpose authorized under RCW 49.46.210 (1)(b), (c), or (5)(h) as an absence that may lead to or result in any account deactivation or other adverse action.

(3) It is unlawful for a transportation network company to deactivate, restrict account access, or take any adverse action against a driver because the driver has exercised their rights provided under chapter 49.46 RCW or associated rules. Such rights include, but are not limited to: Filing an action, filing a complaint with the depart-

ment or driver resource center, or otherwise instituting or causing to be instituted any proceeding under or related to chapter 49.46 RCW or associated rules; exercising their right to paid sick time, compensation, tips and gratuities, reimbursements or other amounts due to a driver; utilizing the driver resource center; or testifying or offering or intending to testify in any such proceeding related to any driver rights provided under chapter 49.46 RCW or associated rules.

(4) Adverse action means any action taken or threatened by a transportation network company against a driver for the driver's exercise of chapter 49.46 RCW or associated rule rights, which actions may include, but is not limited to:

(a) Denying use of or delaying payment for paid sick time, compensation, all tips and gratuities, reimbursements, or any other amounts due to a driver;

(b) Deactivating an account as defined by RCW 49.46.300 (1)(a) and associated rules;

(c) Restricting any account access;

(d) Altering any of the driver's rates of pay;

(e) Preventing a driver's alternate compensation rate tier opportunities;

(f) Threatening to take, or taking, action based upon the immigration status of a driver or a driver's family member;

(g) Preventing a driver from working in any other lawful occupation or business; or

(h) Altering a driver's rating.

[Statutory Authority: RCW 49.46.300(16) and chapter 49.46 RCW. WSR 22-24-034, § 296-128-99120, filed 11/30/22, effective 1/1/23.]

TNC—PAID SICK TIME STANDARDS

WAC 296-128-99130 Paid sick time accrual. (1) Drivers accrue earned paid sick time for all passenger platform time worked. A driver must accrue at least one hour of paid sick time for every 40 hours of passenger platform time worked. Transportation network companies may provide drivers with a more generous paid sick time accrual rate.

(2) Drivers who provide network services on a driver platform shall accrue paid sick time for all passenger platform hours performed on or after January 1, 2023.

(3) Transportation network companies are not required to allow drivers to accrue paid sick time for any time not considered passenger platform time. Transportation network companies are not required but may choose to allow drivers to accrue paid sick time for time not considered passenger platform time.

(4) Transportation network companies must allow drivers to carry over at least 40 hours of accrued, unused paid sick time to the following calendar year. However, a transportation network company may allow for more than 40 hours of accrued, unused paid sick time to carry over to the following calendar year. If a driver carries over unused paid sick time to the following calendar year, accrual of paid sick time in the subsequent year would be in addition to the hours accrued in the previous calendar year and carried over.

(5) Transportation network companies may cap carryover of accrued, unused paid sick time to the following calendar year at 40

hours. Transportation network companies may allow for a more generous carryover of accrued, unused paid sick time to the following calendar year.

(6) If a driver does not record any passenger platform time on a transportation network company's driver platform for 365 consecutive calendar days, the transportation company may choose to allow any earned paid sick time to expire. A transportation network company must make available for use any unused earned paid sick time to a driver with less than a consecutive 365-day gap between recording passenger platform time for the transportation network company.

[Statutory Authority: RCW 49.46.300(16) and chapter 49.46 RCW. WSR 22-24-034, § 296-128-99130, filed 11/30/22, effective 1/1/23.]

WAC 296-128-99140 Paid sick time usage. (1) A driver is entitled to use earned paid sick time for the following purposes authorized in RCW 49.46.210(5):

(a) An absence resulting from the driver's mental or physical illness, injury, or health condition; to accommodate the driver's need for medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or a driver's need for preventive medical care;

(b) To allow the driver to provide care for an authorized family member under RCW 49.46.210 with a mental or physical illness, injury, or health condition; care of a family member who needs medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or care for a family member who needs preventive medical care;

(c) When the driver's child's school or place of care has been closed by order of a public official for any health-related reason or, beginning January 1, 2025, after the declaration of an emergency by a local or state government or agency, or by the federal government;

(d) For absences for which an employee would be entitled to leave under RCW 49.76.030;

(e) During an account deactivation or other status that prevents the driver from performing network services on the transportation network company's platform, unless the deactivation or status is due to a verified allegation of sexual assault or physical assault perpetrated by the driver;

(f) To allow the driver to prepare for, or participate in, any judicial or administrative immigration proceeding involving the driver or driver's family member; and

(g) A transportation company may provide more generous paid sick time policies or permit use of paid sick time for additional purposes or family members.

(2) After three consecutive days of account deactivation, a driver may request paid sick time for any portion of the deactivation period, unless the deactivation or status is due to a verified allegation of sexual assault or physical assault perpetrated by the driver.

(3) A driver is entitled to use accrued earned paid sick time upon recording 90 hours of passenger platform time on the transportation network company's driver platform. Transportation network companies may allow drivers to use accrued, unused paid sick time prior to recording 90 hours of passenger platform time.

(4) Upon recording 90 hours of passenger platform time on the transportation network company's driver platform, a transportation

network company must make earned accrued paid sick time available for use to the driver.

(5) A driver is entitled to use earned paid sick time if the driver has recorded passenger platform time as a driver within 90 calendar days preceding the driver's request to use earned paid sick time.

(6) Earned paid sick time must be made available for use within a communication system for drivers.

(7) A transportation network company must allow drivers to use paid sick time in four-hour increments, not to exceed eight hours within one day. A transportation network company may allow paid sick time usage in shorter increments.

(8) A transportation network company must allow drivers to claim earned paid sick time through a communication system within a time frame during which a driver was eligible to use their earned paid sick time and projected absences, so long as the absence is for an authorized purpose under RCW 49.46.210.

(9) A driver may choose to use earned paid sick time simultaneously for multiple transportation network companies during the same time period for a purpose authorized under RCW 49.46.210.

[Statutory Authority: Chapters 49.46 and 49.76 RCW. WSR 25-24-086, s 296-128-99140, filed 12/2/25, effective 1/2/26. Statutory Authority: RCW 49.46.210. WSR 24-15-118, § 296-128-99140, filed 7/23/24, effective 8/23/24. Statutory Authority: RCW 49.46.300(16) and chapter 49.46 RCW. WSR 22-24-034, § 296-128-99140, filed 11/30/22, effective 1/1/23.]

WAC 296-128-99150 Paid sick time rate of pay. (1) A transportation network company must pay drivers their average hourly compensation for each hour of paid sick time used, as established by RCW 49.46.210.

(2) "Average hourly compensation" means a driver's compensation during passenger platform time for, or facilitated by, the transportation network company during the 365 days immediately prior to the day that paid sick time is used, divided by the total hours of passenger platform time worked by the driver on that transportation network company's driver platform during that period. A transportation network company may also calculate the "average hourly compensation" by adopting a consistent practice of dividing the last 12 full calendar months immediately prior to the day that paid sick time is used by the total hours of passenger platform time worked by the driver on that transportation network company's driver platform during that period. "Average hourly compensation" includes bonus and incentive pay. "Average hourly compensation" does not include tips or reimbursements.

(3) Nothing in this section prevents a transportation network company from providing a more generous rate of average hourly compensation.

[Statutory Authority: RCW 49.46.300(16) and chapter 49.46 RCW. WSR 22-24-034, § 296-128-99150, filed 11/30/22, effective 1/1/23.]

WAC 296-128-99160 Reasonable notice. (1) A transportation network company may not require advanced notice of paid sick time use from a driver for an authorized purpose under RCW 49.46.210.

(2) A transportation network company's request or requirement for advanced notice of paid sick time from a driver is considered an interference with a driver's lawful use of paid sick time and is subject to enforcement procedures under chapter 49.46 RCW and associated rules.

[Statutory Authority: RCW 49.46.300(16) and chapter 49.46 RCW. WSR 22-24-034, § 296-128-99160, filed 11/30/22, effective 1/1/23.]

WAC 296-128-99170 Paid time off (PTO) programs. (1) Paid time off (PTO) provided to drivers by a transportation network company's PTO program (i.e., a program that combines leave for multiple purposes into one pool), created by a written policy or agreement with a third-party administrator, satisfies the requirement to provide paid sick time if the PTO program meets or exceeds the provisions of RCW 49.46.210 and all applicable rules, including:

(a) Accrual of PTO leave at a rate of not less than one hour for every 40 hours of passenger platform time worked as a driver;

(b) Payment for PTO leave at a rate of no less than the driver's average hourly compensation;

(c) Carryover of at least 40 hours of unused earned PTO leave to the next calendar year;

(d) Access to use PTO leave for all the purposes authorized under RCW 49.46.210 (5)(h); and

(e) Transportation network company notification and recordkeeping requirements set forth in RCW 49.46.210 and all applicable rules.

(2) If a driver chooses to use PTO leave for purposes other than those authorized under RCW 49.46.210 and the need for use of paid sick time later arises when no additional PTO leave is available, the transportation network company is not required to provide any additional PTO leave to the driver as long as the transportation network company's PTO program meets or exceeds the provisions of RCW 49.46.210 and all applicable rules.

[Statutory Authority: RCW 49.46.300(16) and chapter 49.46 RCW. WSR 22-24-034, § 296-128-99170, filed 11/30/22, effective 1/1/23.]

WAC 296-128-99180 Verification for paid sick time usage. (1) A transportation network company must not request or require verification of a driver's authorized use except as permitted under RCW 49.46.210.

(2) For a driver's use of paid sick time for an absence exceeding three calendar days, a transportation network company may require verification that a driver's use of paid sick time is for an authorized purpose under RCW 49.46.210(5), except during an account deactivation as provided in subsection (3) of this section. "Exceeding three calendar days" means a driver spends more than three consecutive calendar days using earned paid sick time without recording passenger platform time on the transportation network company's driver platform.

(3) A transportation network company must not request verification if the paid sick time usage occurs during a deactivation period that prevents the driver from providing network services to the transportation network company.

(4) Before a transportation network company requires verification for the use of paid sick time under RCW 49.46.210, the transportation network company must:

(a) Provide a written policy or agreement with a third-party administrator in advance to the driver via an accessible system, outlining any such requirements; and

(b) Notify the driver of such policy or agreement with a third-party administrator, including the driver's right to assert that the verification requirement results in an unreasonable burden or expense on the driver, prior to the driver requesting the paid sick time.

(5) If a transportation network company requires verification from a driver, the verification must be provided to the transportation network company within a reasonable time period during or after the use of the paid sick time. For driver use of paid sick time under RCW 49.46.210, "reasonable time period" is a period of time defined by a transportation network company's written policy or agreement with a third-party administrator, but may not be less than 10 calendar days following the first day upon which the driver uses paid sick time.

(6) A transportation network company's requirements for verification may not result in an unreasonable burden or expense on the driver and may not exceed privacy or verification requirements otherwise established by law.

(7) If a transportation network company requires verification and the driver anticipates that the requirement will result in an unreasonable burden or expense:

(a) The driver must be allowed to provide a written explanation via an accessible system which asserts:

(i) The driver's use of paid sick time was for an authorized purpose under RCW 49.46.210; and

(ii) How the transportation network company's verification requirement creates an unreasonable burden or expense on the driver;

(b) The transportation network company must consider the driver's explanation. Within 10 calendar days of the driver providing an explanation to the transportation network company about the existence of an unreasonable burden or expense, the transportation network company must make a reasonable effort to identify and provide alternatives for the driver to meet the transportation network company's verification requirement in a manner which does not result in an unreasonable burden or expense on the driver. A reasonable effort by the transportation network company to identify and provide alternatives could include, but is not limited to:

(i) Accepting the written explanation provided by the driver as a form of verification that meets the transportation network company's verification requirement; or

(ii) Mitigating the driver's out-of-pocket expenses associated with obtaining medical verification, by no later than the driver's next regularly scheduled date of compensation or no more than 14 calendar days, whichever occurs first; and

(c) If after the transportation network company considers the driver's explanation, the transportation network company and driver disagree on whether the transportation network company's verification requirement results in an unreasonable burden or expense on the driver:

(i) The transportation network company and driver may consult with the department regarding verification requirements; and

(ii) A driver may file a complaint with the department.

(8) If a transportation network company requires a driver to provide verification from a health care provider identifying the need for use of paid sick time for an authorized purpose under RCW 49.46.210, the transportation network company must not require that the information provided explain the nature of the condition. If the transportation network company obtains any health information about a driver or a driver's family member, the transportation network company must treat such information in a confidential manner consistent with applicable privacy laws.

(9) If a transportation network company requires verification pursuant to this subsection, the transportation network company must compensate the driver for the requested hours or days of earned paid sick time no later than the driver's next regularly scheduled date of compensation or no more than 14 calendar days after verification is provided.

(10) If a transportation network company requires verification that the use of paid sick time is for an authorized purpose under the Domestic Violence Leave Act, chapter 49.76 RCW, any such verification requirements must comply with the provisions outlined in WAC 296-135-070.

(11) For use of paid sick time for purposes authorized under federal, state, or other local laws outside of Washington that permit transportation network companies to make medical inquiries, a transportation network company may require verification from a driver that complies with such certification requirements.

(12) Nothing in this section prevents a transportation network company from providing a more favorable verification process as long as such process meets or exceeds the requirements of this section and RCW 49.46.210.

[Statutory Authority: RCW 49.46.300(16) and chapter 49.46 RCW. WSR 22-24-034, § 296-128-99180, filed 11/30/22, effective 1/1/23.]

WAC 296-128-99190 Frontloading. (1) A transportation network company may, but is not required to, frontload paid sick time to a driver in advance of accrual.

(2) If a transportation network company frontloads paid sick time, the transportation network company must ensure that such frontloaded paid sick time complies with the provisions of RCW 49.46.210 and all applicable rules.

(3) If a transportation network company frontloads paid sick time, the transportation network company must do so by using a reasonable calculation, consistent with the accrual requirement set forth under RCW 49.46.210(5), to determine the amount of paid sick time the driver would be projected to accrue during the period of time for which paid sick time is being frontloaded.

(a) If the transportation network company calculates and frontloads, and a driver subsequently uses, an amount of paid sick time which exceeds the paid sick time the driver would have otherwise accrued absent frontloading, the transportation network company must not seek reimbursement from the driver for such paid sick time.

(b) If a transportation network company frontloads paid sick time to a driver, but such frontloaded paid sick time is less than the amount the driver was entitled to accrue under RCW 49.46.210(5), the transportation network company must make such additional amounts of earned paid sick time available for use by the driver as soon as prac-

ticable, but no later than 30 calendar days after identifying the discrepancy.

(4) If a transportation network company frontloads paid sick time, the company must have a written policy or an agreement with a third-party administrator which addresses the requirements for use of frontloaded paid sick time. A transportation network company must notify drivers of such policy or an agreement with a third-party administrator prior to frontloading a driver paid sick time, and must make this information readily available to all drivers via an accessible system.

(5) A transportation network company may not seek reimbursement from a driver for frontloaded paid sick time used prior to accrual under RCW 49.46.210(5), unless there is a specific agreement with a third-party administrator in place allowing for such a reimbursement.

[Statutory Authority: RCW 49.46.300(16) and chapter 49.46 RCW. WSR 22-24-034, § 296-128-99190, filed 11/30/22, effective 1/1/23.]

WAC 296-128-99200 Third-party administrators. (1) Transportation network companies may contract with a third-party administrator in order to administer the earned paid sick time requirements under RCW 49.46.210 and applicable rules. A transportation network company may contract with the driver resource center to act as a third-party administrator.

(2) With the consent of transportation network companies, third-party administrators may pool a driver's earned paid sick time from multiple transportation network companies as long as the accrual rate is at least equal to one hour of earned paid sick time for every 40 hours of passenger platform time worked. For example, if a group of transportation network companies has drivers who perform work for various transportation network companies at different times, the transportation network companies may choose to contract with a third-party administrator to track the hours worked and rate of accrual for earned paid sick time for each driver, and pool such earned paid sick time for use by the driver when the driver is working for any transportation network companies in the same third-party administrator network.

(3) A transportation network company must have a written policy or third-party administrator agreement that outlines the provisions for a transportation network company to use a third-party administrator. Such written policies must meet all of the paid sick time requirements under RCW 49.46.210 and all applicable rules, inform drivers of any other transportation network companies within the same third-party administrator network, and be made available via an accessible system.

(4) Transportation network companies are not relieved of their obligations under RCW 49.46.210, and all applicable rules, if they elect to contract with a third-party administrator to administer earned paid sick time requirements.

[Statutory Authority: RCW 49.46.300(16) and chapter 49.46 RCW. WSR 22-24-034, § 296-128-99200, filed 11/30/22, effective 1/1/23.]

WAC 296-128-99210 Paid sick time notifications. (1) Transportation network companies must notify each driver of the driver's entitlement to paid sick time, the rate at which the driver will accrue

paid sick time, the authorized purposes for which paid sick time may be used, and that retaliation by the transportation network company for the driver's lawful use of paid sick time and other rights provided under chapter 49.46 RCW, and all applicable rules, is prohibited.

(2) Transportation network companies must provide such a notification via an accessible system. For drivers hired on or after January 1, 2023, transportation network companies must notify each driver of such rights no later than the commencement of the driver performing passenger platform time. For existing drivers, the transportation network company must notify each driver no later than January 1, 2023.

(3) No less than monthly, transportation network companies must provide each driver with notification via a communication system detailing:

(a) The amount of paid sick time accrued since the last notification;

(b) The amount of paid sick time reductions since the last notification;

(c) The amount of unused earned paid sick time available for use;

(d) The average hourly compensation rate applied to any paid sick time used since the last notification and the calculation used to identify such rate; and

(e) The driver's expected average hourly rate of compensation for paid sick time use during the month following the statement, and the calculation used to identify such rate.

(4) Transportation network companies may satisfy the notification requirements by providing this information in regular pay statements.

(5) If a transportation network company chooses to frontload paid sick time to a driver in advance of accrual:

(a) The transportation network company must make notification to a driver via an accessible system no later than the end of the period for which the frontloaded paid sick time was intended to cover, establishing that the amount of paid sick time frontloaded to the driver was at least equal to the accrual rate under RCW 49.46.210; and

(b) The transportation network company is not relieved of its obligation to provide notification, not less than monthly, of the paid sick time available for use by the driver.

(6) A transportation network company must satisfy all notification requirements in RCW 49.46.210(5) and related rules for drivers with an account deactivation.

[Statutory Authority: RCW 49.46.300(16) and chapter 49.46 RCW. WSR 22-24-034, § 296-128-99210, filed 11/30/22, effective 1/1/23.]

WAC 296-128-99220 Shared paid sick time. (1) A transportation network company may, but is not required to, establish a shared paid sick time program in which a driver may choose to donate paid sick time to another driver.

(2) If a transportation network company establishes a shared paid sick time program, the company must have a written policy or third-party administrator agreement which specifies that a driver may donate accrued earned paid sick time to another driver for purposes authorized under RCW 49.46.210(5).

(3) The transportation network company must notify drivers of such policy or third-party administrator agreement via an accessible system prior to allowing a driver to donate or use shared paid sick time.

[Statutory Authority: RCW 49.46.300(16) and chapter 49.46 RCW. WSR 22-24-034, § 296-128-99220, filed 11/30/22, effective 1/1/23.]

WAC 296-128-99230 Driver use of paid sick time for unauthorized purposes. (1) If a transportation network company can demonstrate that a driver's use of paid sick time was for a purpose not authorized under RCW 49.46.210(5), the transportation network company may withhold payment of paid sick time for such hours, but may not subsequently deduct those hours from a driver's legitimately unused accrued earned paid sick time hours.

(2) If a transportation network company withholds payment for the use of paid sick time for purposes not authorized under RCW 49.46.210(5), the transportation network company must provide notification that includes a description of the reason the purpose was considered unauthorized via an accessible system to the driver. If the driver maintains that the use of paid sick time was for an authorized purpose, the driver may file a complaint with the department.

(3) If a driver accepts an offer of prearranged services for compensation from a transportation network company during the period of time for which the driver requested earned paid sick time, a transportation network company may determine that the driver did not use earned paid sick time for an authorized purpose.

[Statutory Authority: RCW 49.46.300(16) and chapter 49.46 RCW. WSR 22-24-034, § 296-128-99230, filed 11/30/22, effective 1/1/23.]

TNC—ENFORCEMENT STANDARDS

WAC 296-128-99240 Enforcement—Complaints by driver—Additional investigations by department for amounts owed to drivers. (1) If a driver files a complaint with the department alleging a transportation network company violated any compensation-related requirements of RCW 49.46.300, or any associated rules, the department will investigate the complaint under the provisions of RCW 49.46.320. "Compensation-related requirements" include compensation, improper deductions, or any other amounts owed to the driver.

(2) During an investigation, if the department discovers information suggesting additional violations of any compensation-related requirements of RCW 49.46.300, or any associated rules, the department may investigate and take appropriate enforcement action without any additional complaint. The department may also initiate an investigation on behalf of one or more drivers for a violation of any compensation-related requirements of RCW 49.46.300, or any associated rules, when the director otherwise has reason to believe that a violation has occurred or will occur.

(3) The department may conduct a consolidated investigation for any alleged compensation-related violations identified under RCW 49.46.300, or associated rules, when there are common questions of law or fact involving drivers who provide passenger platform services for the same transportation network company. If the department consolidates such matters into a single investigation, it will provide notice to the transportation network company.

(4) The department may, for the purposes of enforcing RCW 49.46.300 or any associated rules, issue subpoenas to compel the attendance of witnesses or parties and the production of documents, administer oaths and examine witnesses under oath, take depositions, and seek affidavits or other verifications. The department may request a transportation network company perform a self-audit of any records. The results or conclusions of the self-audit must be provided to the department within a reasonable time. Reasonable timelines will be specified in the self-audit request. The records examined by the transportation network company in order to perform the self-audit must be made available to the department upon request.

(5) Upon the department's request, a transportation network company must notify drivers via an accessible system that the department is conducting an investigation. The department may require the transportation network company to include a general description of each investigation as part of the notification, including the allegations and whether the notified driver may be affected. The department may consult with the transportation network company to provide the information for the description.

[Statutory Authority: RCW 49.46.300(16) and chapter 49.46 RCW. WSR 22-24-034, § 296-128-99240, filed 11/30/22, effective 1/1/23.]

WAC 296-128-99250 Enforcement—Remittances. (1) Upon receiving information suggesting that a transportation network company may have violated the remittance provisions of RCW 49.46.330, the department will investigate the applicable provisions of that section.

(2) If the department determines that a transportation network company has violated the remittance provisions of RCW 49.46.330 and issues a citation and notice of assessment, the department may order the transportation network company to pay all owed remittance payments as required under RCW 49.46.330. The department shall deposit all owed remittance payments into the driver resource center fund.

(3) Failure to accurately remit all applicable per trip fees is deemed a delinquency subject to the penalties and interest provided in RCW 49.46.330 and associated rules.

(4) Failure to remit payments by the deadlines is deemed a delinquency subject to the penalties and interest provided in RCW 49.46.330 and associated rules.

(5) The department may, for the purposes of enforcing RCW 49.46.330 or the associated rules, issue subpoenas to compel the attendance of witnesses or parties and the production of documents, administer oaths and examine witnesses under oath, take depositions, and seek affidavits or other verifications. The department may request a transportation network company perform a self-audit of any records. The results or conclusions of the self-audit must be provided to the department within a reasonable time. Reasonable timelines will be specified in the self-audit request. The records examined by the transportation network company in order to perform the self-audit must be made available to the department upon request.

(6) All remittance fees under RCW 49.46.330 for a calendar quarter are due the day immediately following the last day of the month following the calendar quarter. Any remittance fees not paid the day they are due are delinquent.

[Statutory Authority: RCW 49.46.300(16) and chapter 49.46 RCW. WSR 22-24-034, § 296-128-99250, filed 11/30/22, effective 1/1/23.]

WAC 296-128-99260 Enforcement—Complaint by driver—Paid sick time. (1) If a driver files a complaint with the department alleging that the transportation network company failed to provide the driver with earned paid sick time as provided in RCW 49.46.210, or any associated rules, the department will investigate the complaint as an alleged violation of a compensation-related requirement of RCW 49.46.300.

(2) If the department's investigation results in a finding that the transportation network company failed to provide the driver with earned paid sick time accrual, use, or carryover as required by RCW 49.46.210, the driver may elect to:

(a) Receive full access to the balance of accrued earned paid sick time hours withheld by the transportation network company, based on a calculation of at least one hour of earned paid sick time for every 40 hours of passenger platform time worked during the period of noncompliance; or

(b) Receive payment from the transportation network company at the driver's average hourly compensation for each hour of earned paid sick time that the driver would have used or have been reasonably expected to use, whichever is greater, during the period of noncompliance, not to exceed an amount the driver would have otherwise accrued. The driver will receive full access to the balance of accrued paid sick time hours unlawfully withheld by the transportation network company, less the number of paid sick time paid out to the driver pursuant to this subsection.

(3) When the department's investigation results in a finding that the transportation network company failed to provide the driver with earned paid sick time accrual, use, or carryover, and the driver has a deactivated account, the driver may elect to receive payment at the driver's average hourly compensation for each hour of earned paid sick time; receive reinstatement of the balance of paid sick time hours; or receive a combination of payment and reinstatement from the transportation network company for all hours of earned paid sick time that would have accrued during the period of noncompliance, unless such reinstatement is prohibited by law. Such hours must be based on a calculation at least one hour of earned paid sick time for every 40 hours of passenger platform time worked during the period of noncompliance.

(4) The department's notice of assessment may order the transportation network company to provide the driver any combination of reinstatement and payment of accrued, unused paid sick leave hours assessed pursuant to subsection (2) or (3) of this section.

(5) For the purposes of this section, a transportation network company found to be out of compliance must allow an affected driver to access any unused earned paid time ordered by the department for 365 days following the reinstatement of the earned paid sick time.

(6) For purposes of this section, a transportation network company found to be out of compliance must allow an affected driver to carryover over any additional earned paid sick time ordered by the department to the next calendar year in addition to the carryover of 40 hours of unused earned sick time required by RCW 49.46.210.

(7) The department may conduct a consolidated investigation for any alleged violations identified in RCW 49.46.210 or any associated rules, when there are common questions of law or fact involving drivers who provide passenger platform services for the same transportation network company. If the department consolidates such matters into a single investigation, it will provide notice to the transportation network company.

(8) The department may, for the purposes of enforcing RCW 49.46.210 or any associated rules, issue subpoenas to compel the attendance of witnesses or parties and the production of documents, administer oaths and examine witnesses under oath, take depositions, and seek affidavits or other verifications. The department may request a transportation network company perform a self-audit of any records. The results or conclusions of the self-audit must be provided to the department within a reasonable time. Reasonable timelines will be specified in the self-audit request. The records examined by the transportation network company in order to perform the self-audit must be made available to the department upon request.

(9) Upon the department's request, a transportation network company must notify drivers via an accessible system that the department is conducting an investigation. The department may require the transportation network company to include a general description of each investigation as part of the notification, including the allegations and whether the notified driver may be affected. The department may consult with the transportation network company to provide the information for the description.

[Statutory Authority: RCW 49.46.300(16) and chapter 49.46 RCW. WSR 22-24-034, § 296-128-99260, filed 11/30/22, effective 1/1/23.]

WAC 296-128-99270 Enforcement—Retaliation investigations. (1) The department will investigate any allegations that a transportation network company violated any of the protections of RCW 49.46.340, or any associated rules, pursuant to the enforcement procedures outlined in RCW 49.46.340.

(2) During an investigation, if the department discovers information suggesting additional violations of any of the protections of RCW 49.46.340 or any associated rules, the department may investigate and take appropriate enforcement action without any additional complaint. The department may also initiate an investigation on behalf of one or more drivers for a violation of RCW 49.46.340, or associated rules, when the director otherwise has reason to believe that a violation has occurred or will occur.

(3) The department may conduct a consolidated investigation for any alleged violations identified under RCW 49.46.210, 49.46.300, and 49.46.340, or associated rules, when there are common questions of law or fact involving drivers who provide passenger platform services for the same transportation network company. If the department consolidates such matters into a single investigation, it will provide notice to the transportation network company.

(4) The department may, for the purposes of enforcing RCW 49.46.340 or any associated rules, issue subpoenas to compel the attendance of witnesses or parties and the production of documents, administer oaths and examine witnesses under oath, take depositions, and seek affidavits or other verifications.

(5) Upon the department's request, a transportation network company must notify drivers via an accessible system that the department is conducting an investigation. The department may require the transportation network company to include a general description of each investigation as part of the notification, including the allegations and whether the notified driver may be affected. The department may consult with the transportation network company to provide the information for the description.

[Statutory Authority: RCW 49.46.300(16) and chapter 49.46 RCW. WSR 22-24-034, § 296-128-99270, filed 11/30/22, effective 1/1/23.]

WAC 296-128-99280 Enforcement—Administrative violations. (1) If a driver files a complaint with the department alleging a violation of any noncompensation requirement of RCW 49.46.210, 49.46.300 or any associated rules, the department will investigate the complaint under RCW 49.46.330.

(2) During an investigation, if the department discovers information suggesting additional violations of any of the protections of RCW 49.46.210, 49.46.300, or any associated rules, the department may investigate and take appropriate enforcement action without any additional complaint. The department may also initiate an investigation on behalf of one or more drivers for a violation of RCW 49.46.210, 49.46.300, or any associated rules, when the director otherwise has reason to believe that a violation has occurred or will occur.

(3) The department may conduct a consolidated investigation for any alleged violations identified under RCW 49.46.210, 49.46.300, or associated rules when there are common questions of law or fact involving drivers who provide passenger platform services for the same transportation network company. If the department consolidates such matters into a single investigation, it will provide notice to the transportation network company.

(4) The department may, for the purposes of enforcing RCW 49.46.300 or any associated rules, issue subpoenas to compel the attendance of witnesses or parties and the production of documents, administer oaths and examine witnesses under oath, take depositions, and seek affidavits or other verifications. The department may request a transportation network company perform a self-audit of any records, which must be provided within a reasonable time. Reasonable timelines will be specified in the self-audit request. The records examined by the transportation network company in order to perform the self-audit must be made available to the department upon request.

(5) Upon the department's request, a transportation network company must notify drivers via an accessible system that the department is conducting an investigation. The department may require the transportation network company to include a general description of each investigation as part of the notification, including the allegations and whether the notified driver may be affected. The department may consult with the transportation network company to provide the information for the description.

[Statutory Authority: RCW 49.46.300(16) and chapter 49.46 RCW. WSR 22-24-034, § 296-128-99280, filed 11/30/22, effective 1/1/23.]

WAC 296-128-99290 Enforcement—Administrative enforcement supplemental and variance for delayed implementation of accessible system and communication system requirements. (1) Nothing in these rules limits the department's authority to enforce RCW 49.46.200 through 49.46.350, or associated rules, as otherwise provided under Title 49 RCW.

(2)(a) A transportation network company that qualifies under (b) of this subsection may seek a temporary variance on the requirements for an accessible system or a communication system under this chapter by submitting a written application to the director.

(b) A transportation network company who provides less than 1,000,000 dispatched trips within the state in the preceding calendar year qualifies for the variance in this section. Separate entities that form an integrated enterprise shall be considered a single transportation network company under this rule as provided by RCW 49.46.300 (3)(b).

(c) This variance is limited to the requirements to use an accessible system or a communication system to communicate with drivers. The variance does not change the transportation network company's obligations to provide all notices, receipts, paid sick time balances and any other communications required by chapter 49.46 RCW and associated rules to the driver in an electronic format that is readily accessible through either a smartphone application or an online web portal.

(d) A written application for a variance must contain the following:

(i) A description of the specific requirements the qualifying transportation network company seeks to delay;

(ii) Reasons for the variance request, including good cause for the delayed implementation of the requirements for an accessible system or a communication system being sought;

(iii) The length of delay being sought for the requirement(s) and a timeline showing how the transportation network company plans to come into compliance with the applicable requirements of this chapter;

(iv) An explanation of how the transportation network company will ensure drivers are provided the required notifications under this chapter during the variance period; and

(v) Evidence confirming that the transportation network company qualifies under this subsection.

(e) After reviewing the application, the director may grant a temporary variance to remain valid for up to one year if the director determines that the transportation network company meets the requirements of this section, will ensure that drivers are being provided all required notices under this chapter during the variance period, and has established good cause. The director will take into consideration the timeline provided in the variance application in determining the length of the variance.

(f) "Good cause" means the transportation network company can establish that it is infeasible for the company to come into full compliance with the requirements for the use of an accessible system or a communication system within the necessary time frame.

(g) The director may revoke or terminate the variance order at any time, upon at least 30 days' notice to the transportation network company.

(h) Upon further request by a transportation network company, the director may approve an extension of the variance for up to an addi-

tional year. An extension request must contain the information outlined in (d) of this subsection.

(i) If a transportation network company obtains a variance under these rules, within 15 days of being granted the variance the transportation network company must provide drivers notice indicating how they will be receiving the required notifications under this chapter. The transportation network company must make this information readily available to all drivers.

[Statutory Authority: RCW 49.46.300(16) and chapter 49.46 RCW. WSR 23-07-124, § 296-128-99290, filed 3/21/23, effective 4/21/23; WSR 22-24-034, § 296-128-99290, filed 11/30/22, effective 1/1/23.]