

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)(1) (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 non-compliance 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.]