



## ADMINISTRATIVE POLICY

### STATE OF WASHINGTON DEPARTMENT OF LABOR AND INDUSTRIES EMPLOYMENT STANDARDS

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<b>TITLE:</b>	<b>INDUSTRIAL WELFARE ACT: APPLICATIONS, EXEMPTIONS, AND INTERPRETATIONS</b>	<b>NUMBER:</b>	<b>ES.C.1</b>
<b>CHAPTER:</b>	<a href="#">RCW 49.12</a> <a href="#">WAC 296-126</a> <a href="#">WAC 296-125</a> <a href="#">WAC 296-131</a>	<b>REPLACES:</b>	<b>N/A</b>
		<b>ISSUED:</b>	<b>1/02/2002</b>
		<b>REVISED:</b>	<b>6/24/2005</b>

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#### ADMINISTRATIVE POLICY DISCLAIMER

This policy is designed to provide general information in regard to the current opinions of the Department of Labor & Industries on the subject matter covered. This policy is intended as a guide in the interpretation and application of the relevant statutes, regulations, and policies, and may not be applicable to all situations. This policy does not replace applicable RCW or WAC standards. If additional clarification is required, the Program Manager for Employment Standards should be consulted.

This document is effective as of the date of print and supersedes all previous interpretations and guidelines. Changes may occur after the date of print due to subsequent legislation, administrative rule, or judicial proceedings. The user is encouraged to notify the Program Manager to provide or receive updated information. This document will remain in effect until rescinded, modified, or withdrawn by the Director or his or her designee.

#### **1. The department has authority to investigate and regulate conditions of labor under the Industrial Welfare Act (IWA). “Conditions of labor” regulated by [RCW 49.12](#) include:**

- Requirements for employing minors, persons under 18 years of age.
- Meal and rest periods.
- Provisions for personal privacy.
- Employee access to personnel files.
- Family care.
- Wearing apparel, including uniforms.
- Provisions for volunteer fire fighters when they are fighting a fire and cannot report to work for their regularly scheduled shifts.
- “Conditions of labor” do *not* include conditions or practices subject to WISHA (safety and health) statutes or rules.

## 2. When does the Chapter 49.12 RCW, the Industrial Welfare Act, apply?

The IWA generally regulates hours worked and conditions of labor and other wage issues that are not specifically covered by [RCW 49.46](#), the Minimum Wage Act, and other statutes relating to payment of wages, i.e., [RCW 49.48](#) or [RCW 49.52](#).

[WAC 296-126](#), Standards of Labor, generally contains rules promulgated subject to [RCW 49.12](#). All of these rules have the same force of law as the provisions of RCW 49.12 itself.

**3. Definition of “employee.”** Employees are those “employed in the business of their employer,” regardless of the type of work they perform, except those employees who are exempt under [RCW 49.12.185](#), [WAC 296-126-001](#) and [002](#), and [WAC 296-125-015 \(2\)](#).

**4. Definition of “employ.”** “Employ” means to engage, suffer or permit to work. See [RCW 49.46.010\(3\)](#) and [WAC 296-126-002\(3\)](#). See administrative Policy [ES.C.2 Hours Worked](#).

## 5. Which employers are subject to RCW 49.12?

Generally, an “employer” under RCW 49.12 is “any person, firm, corporation, partnership, business trust, legal representative, or other business entity which engages in any business, industry, profession, or activity in this state and employs one or more employees, and includes the state, any state institution, state agency, political subdivisions of the state, and any municipal corporation or quasi-municipal corporation.” See [RCW 49.12.005\(4\)](#).

Effective May 20, 2003, RCW 49.12 was amended by the legislature to include “the state, any state institution, state agency, political subdivisions of the state, and any municipal corporation or quasi-municipal corporation”. Thus it brought public employees under the protections of the IWA.

## 6. Which employees are subject to the protections of RCW 49.12?

Unless specifically exempted, the protections of the Industrial Welfare Act apply to all employees who are employed by employers who are subject to [RCW 49.12](#).

## 7. Which employers are exempt from, or not subject to, RCW 49.12?

**a. Sheltered workshops.** None of the provisions of this chapter apply to sheltered workshops per [RCW 49.12.091](#).

**b. Tribal enterprises.** The department’s interpretation is that none of the provisions of [RCW 49.12](#) apply to tribal enterprises operating within the confines of their tribal lands.

**c. Employers exempted by variance.** Employers who have been granted a variance may be exempt from the rules contained within [WAC 296-126](#), which was adopted under RCW 49.12. The department has no authority to grant a variance from the statutory provisions of RCW 49.12. See [RCW 49.12.105](#). Also *see ES.C.9* regarding variances for detailed discussion of application for, granting of and termination of variances under RCW 49.12.

An employer who has been granted a variance must comply with the terms of the variance. Non-compliance with the terms of the variance is treated in the same manner as a violation of the IWA and corresponding WACs.

## 8. Which individuals are exempt from the protections of RCW 49.12?

**a. Newspaper vendors or carriers.** The department construes the definition of newspaper vendors or carriers narrowly and does not include magazine carriers or vendors, those who distribute advertising circulars, or those who sell or distribute literature at sporting events, etc.

**b. Casual laborers in and about private residences.** Both [RCW 49.12.185](#) and [WAC 296-126-001](#) (1) exempt domestic and casual workers in or about private residences.

**c. Agricultural workers.** Agricultural workers are exempt under [RCW 49.12.185](#), but there are separate employment standards for agricultural workers in [RCW 49.30](#) and [WAC 296-131](#).

**d. Volunteers.** Any individuals registered as volunteers with a state or federal volunteer program, or any person who performs assigned or authorized duties for an educational, religious, governmental or nonprofit charitable organization by choice and receives no payment other than reimbursement for actual expenses necessary to performing the volunteer services. Educational, charitable, or religious nonprofit organizations must be registered under the requirements of the Secretary of State.

**Volunteers are not allowed in a “for-profit” business.** Any individual, partnership, association, corporation, business trust, or any person or group of persons acting directly or indirectly in the interest of an employer that is a “for profit” business and who permits any individual to work, is subject to the provisions of the IWA.

**e. Bona fide executive, administrative, professional, computer professional or outside sales.** See [WAC 296-126-002](#)(2) and [WAC 296-128-510](#) to 540 for definitions. See administrative policy [ES.A.9.3 - 9.7](#) for a detailed discussion and interpretations of these terms.

**f. “Independent contractors.** “Independent contractors” where the worker controls the work and the means by which the result is to be accomplished, are exempt from the protections of the IWA. A true independent contractor is exempt that person is not “employed” by an employer. However, an employer cannot avoid conforming to the IWA and related rules by merely referring to someone as an “independent contractor.” Whether an individual is an independent contractor or an employee must be carefully evaluated on a case-by-case basis.

**9. Employers have a general duty to provide workplace conditions that do not endanger employee health, safety and welfare.** Employers subject to the IWA must maintain workplace conditions to a level that will not endanger the health, safety or welfare of employees and to provide facilities, equipment, practices, methods, operations and procedures that adequately protect employees’ health, safety and welfare under [WAC 296-126-094](#).

**10. Child labor.** Public employers are exempt from the requirements of the Minor Work Regulations (See [WAC 296-125-015 \(4\)](#)). For-profit businesses and nonprofit organizations are subject to the Minor Work Regulations.

**11. Meal and rest periods.** Meal and rest periods are considered conditions of labor. Employees who are protected by the IWA are entitled to meal and rest breaks as set forth in [WAC 296-126-092](#). The department’s policies on meal and rest breaks are addressed in detail in administrative policy [ES.C.6](#).

**12. Employee access to personnel records.** Employees who are protected by the IWA have the right to view their personnel records at least annually, per [RCW 49.12.240](#) through 260. This right is considered a condition of labor, subject to investigation by the department. See administrative policy [ES.C.7](#).

**13. Family Care.** The 1988 Legislature recognized the changing nature of the work force and the competing demands on families brought about by increasing numbers of working mothers, single-parent households, and dual-career families. The Family Care Law, [RCW 49.12.270](#) through

.295 was enacted in 1988 and revised in the 2002 session. [Chapter 296-130 WAC](#) was adopted by the department for clarification. See administrative policy [ES.C.10](#).

**14. Wearing apparel and uniforms:** The 1998 legislature enacted [RCW 49.12.450](#) to address wearing apparel and uniforms, which eliminated the department's rules and policies. See administrative policies [ES.C.8.1](#) and [ES.C.8.2](#).

**15. Variances.** The director or his or her designee has authority to issue variances to relieve employers from the obligations imposed by department rules governing certain wages, hours and conditions of employment. See [RCW 49.12.105](#) and [WAC 296-126-130](#). The department cannot, by variance, waive the obligations found in the statute. See administrative policy [ES.C.9](#).

**16. Record keeping requirements.** Employers who are subject to the IWA must keep and produce certain records. See administrative policy [ES.D.1](#).

**17. Volunteer fire fighters.** [RCW 49.12.460](#) provides that employer may not discharge or discipline an employee who is also a volunteer fire fighter because of leave taken related to "an alarm or fire or an emergency call." This applies only when volunteer fire fighters:

- 1) are not paid,
- 2) are not already at their place of employment (not at work yet) when they are called to serve as a volunteer, unless the employer agreed to such accommodation by allowing them to leave if they are at work and receive an alarm or fire or an emergency call, and
- 3) have been ordered to remain at their position by the commanding authority at the scene of the fire.

An aggrieved employee may make complaints of discharge or discipline to the department within 90 days of the alleged violation. The department will investigate and determine whether this law has been violated and send a determination to the complainant and to the employer within 90 days of receipt of the complaint. If the department determines a violation has occurred and the employer fails to reinstate the employee or withdraw the disciplinary action within 30 days, the remedy for the volunteer fire fighter is to bring action against the employer in superior court.

**18. Definition of "Industrial Welfare Committee."** Whenever the term "industrial welfare committee" or "committee" is used in [RCW 49.12](#), or in department rules or policies, it shall mean the director of the Department of Labor and Industries and his or her designee or authorized representative.

**19. Department authority under RCW 49.12.** Assuming that RCW 49.12 applies to the type of employers and employees involved, the department has the authority to investigate wages, hours and conditions of labor. See [RCW 49.12.041](#) and [RCW 49.12.091](#).

**20. Relationship between Industrial Welfare Act and Minimum Wage Act (MWA).** The IWA predates the MWA; therefore, many questions about wages, hours or working conditions may be more specifically addressed in the MWA, [RCW 49.46](#), and in administrative policy [ES.A.1](#) on minimum wage. When a specific provision of the MWA conflicts with or is inconsistent with a provision of the IWA which addresses wages or conflicts with or is inconsistent with an IWA rule ([WAC 296-126](#)), the analysis should be under the more specific provisions of the MWA.

However, if application of the IWA results in more favorable treatment of the worker, the IWA should be applied. [RCW 49.46.120](#) of the MWA shall not displace any federal, state or local law or any rule or regulation issued thereunder, which is more favorable to employees than the provisions of the MWA or corresponding rules. See administrative policy [ES.A.7](#).

**21. The department has authority to investigate and regulate payment of wages under the Industrial Welfare Act.** The IWA requires that employers pay wages that are adequate for

maintenance. “Wages adequate for maintenance” are at least the minimum wage required by [RCW 49.46.020](#) or, in some cases, the subminimum wage set by the director. The department is prohibited by [RCW 49.48.080](#) from wage collection efforts against public agencies.

**22. Subminimum wages.** The department has the authority under [RCW 49.12.091](#) to set wage rates by rule for occupations not subject to the MWA if the department determines after an investigation that the wages paid in that industry are “inadequate for maintenance.” These wages can be less than the minimum wage rate established in [RCW 49.46.020](#).

Once the department sets a subminimum wage rate by rule for a particular industry, it is unlawful for employers subject to RCW 49.12 to pay their employees less than the subminimum wage rate set by rule. See [RCW 49.12.091](#).

**23. The department has the authority to investigate and regulate hours worked under the Industrial Welfare Act.** “Hours worked” is considered to mean all hours during which the employee is authorized or required by the employer to be on duty on the employer's premises or at a prescribed work place. See [WAC 296-126-002](#)(8). “Hours worked” includes all time worked whether it is a full hour or less. See administrative policy [ES.C.2 Hours Worked](#).

**24. The department’s authority over hours worked include investigations of excessive overtime.** Employees protected by the IWA may complain to the department that “the number of hours or other matters relating to overtime employment is detrimental to the health, safety or welfare of the employee.” The department may investigate such complaints and issue findings and conclusions. If the circumstances are found to be detrimental to the health, safety or welfare of the employee, the Director *may* make additional rules or revise existing rules to address the conclusions of the investigation. See [WAC 296-126-090](#).

**25. What if there is a Collective Bargaining Agreement in effect?** The IWA permits employees to bargain collectively with their employers with representatives of their own choosing concerning wages or standards or conditions of employment. The wages and working conditions included in a collective bargaining agreement cannot be less than that provided under the IWA, except for public employers and construction trades with meal and rest periods negotiated under the provisions of the National Labor Relations Act.

Effective May 20, 2003, the legislature amended [RCW 49.12.005](#) to include “the state, any state institution, state agency, political subdivisions of the state, and any municipal corporation or quasi-municipal corporation”. Thus it brought public employees under all of the protections of the IWA, including the meal and rest period regulations, [WAC 296-126-092](#). See administrative policies [ES.A.6 Collective Bargaining Agreements and ES.C.6 Meal and Rest Periods](#).

The IWA and its related rules apply to public employers only if those rules do not conflict with any state statute or rule. It does not apply to public employers with a local resolution, ordinance, or rule adopted by the local legislative authority that was in effect prior to April 1, 2003.

Employees of public employers may enter into collective bargaining contracts, labor/management agreements, or other mutually agreed to employment agreements that specifically vary from or supersede, in part or in total, the rules regarding meal and rest periods.

Public employers with collective bargaining agreements (CBA) in effect prior to April 1, 2003 that provide for meal and rest periods different from the requirements of [WAC 296-126-092](#) may continue to follow their CBA until its expiration. Subsequent collective bargaining agreements may provide for meal and rest periods that are specifically different, in whole or in part, from the requirements under WAC 296-126-092.

Employees in the construction trades, i.e., laborers, carpenters, sheet metal, ironworkers, etc. may bargain with their employers under provisions of the National Labor Relations Act for terms of the CBA to include rest and meal periods that may vary from the requirements of [WAC 296-126-092](#). See administrative policies [ES.A.6](#) Collective Bargaining Agreements and [ES.C.6](#) Meal and Rest Periods.

## **26. What is the enforcement authority of RCW 49.12 and WAC 296-126?**

Civil penalties are applicable only for violations of the family care and minor work laws and rules. The department has specific authority to impose penalties for violations of the Family Care Act, [RCW 49.12.270](#)-295, and the minor work laws and rules under [RCW 49.12.390](#). The department does not have authority to impose civil penalties for other violations of the IWA.

However, employers who violate RCW 49.12 or rules may be subject to criminal misdemeanor charges with criminal penalties or fines from \$25 to \$1,000. See [RCW 49.12.170](#). The department does not have legislative authority to assert criminal charges and criminal fines against such employers. Only a county or city prosecutor or other prosecutor can assert criminal charges and fines.

**27. A civil cause of action for unpaid minimum or subminimum wages may be brought by the employee or by the department on an employee's behalf.** If the violation by the employer is failure to pay the minimum wage set forth in [RCW 49.46.020](#) or the minimum wage rate for learners, student learners, handicapped workers, minors and others working at a special wage rate set by the department, those employees have a private right of civil action to collect their unpaid wages, costs and attorney fees.

The department may bring such an action on the employees' behalf. The department has authority to order payment of all wages owed workers and institute actions necessary for collection. See [RCW 49.48.040](#). Note, however, if the employee is not subject to a subminimum wage, but is entitled to the full minimum wage set forth in [RCW 49.46.020](#), his or her private civil cause of action for unpaid wages, costs and attorney fees should be brought under RCW 49.46.090. The Department has authority to bring such an action on the employees' behalf. See [RCW 49.46.090](#) and [RCW 49.48.040](#). See administrative policies [ES.A.1 Minimum Wage Act](#) and [ES.C.9 Variances](#).

**28. Employees have the right of private action to enforce provisions of RCW 49.12 even if no wages are owing.** Employees have the private right of action to enforce the various provisions of [RCW 49.12](#) and corresponding rules relating to wages, hours and conditions of employment (including meal and rest periods, right to examine personnel records, right to examine employment records, right to a workplace that does not endanger health, safety or welfare, etc.), regardless of whether the employee has a cause of action for unpaid wages.