



RULE-MAKING ORDER

CR-103 (June 2004) (Implements RCW 34.05.360)

Agency: Department of Labor and Industries

- Permanent Rule
- Emergency Rule

Effective date of rule:

Permanent Rules

- 31 days after filing.
- Other (specify) 3/1/2007 (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Effective date of rule:

Emergency Rules

- Immediately upon filing.
- Later (specify) _____

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

- Yes
 - No
- If Yes, explain:

Purpose: WAC 296-126-023, WAC 296-128-035, and WAC 296-131-010, Payment Interval Rules.

The purpose of this rulemaking is to incorporate the payment interval administrative policy regarding into the rules. By integrating the policy into rule and expanding the rule to clarify different payment intervals approaches, the payment interval rule will be easier to use, understand, and provide greater certainty and consistency without having to rely on additional documents. The adoption will:

1. Retain the requirement that employers must pay all wages at no longer than monthly intervals on regular pay days.
2. Continue to require an employer to implement a regular payroll system in which wages from up to seven days before pay day may be withheld if paying at a monthly interval
3. Continue to require that paychecks must be mailed on the established payday and funds provided by direct deposit or electronic means must be available on the established payday.
4. Employers are required to pay wages no later than 10 days after the end of the pay period, except for monthly payroll systems.
5. Allow employers to establish separate pay periods for regular and overtime wages plus commission and other specialty pay as long as workers are paid no later than the pay day for the following pay period.

Citation of existing rules affected by this order:

Repealed: None
 Amended: WAC 296-126-023, WAC 296-128-035, and WAC 296-131-010
 Suspended: None

Statutory authority for adoption: Chapter 49.12 RCW, Chapter 49.30 RCW, and Chapter 49.46 RCW

Other authority : None.

PERMANENT RULE ONLY (Including Expedited Rule Making)

Adopted under notice filed as WSR 06-17-136 on August 22, 2006.

Describe any changes other than editing from proposed to adopted version: See Attachment 1.

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting: na

Name: _____ phone () _____
 Address: _____ fax () _____
 e-mail _____

EMERGENCY RULE ONLY

Under RCW 34.05.350 the agency for good cause finds:

- That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
- That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding:

Date adopted: January 23, 2007

NAME (TYPE OR PRINT)

Judy Schurke

SIGNATURE

TITLE

Acting Director

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: January 23, 2007

TIME: 2:45 PM

WSR 07-03-145

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	_____	Amended	_____	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____
Recently enacted state statutes:	New	_____	Amended	_____	Repealed	_____

The number of sections adopted at the request of a nongovernmental entity:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted in the agency's own initiative:

New	_____	Amended	<u>3</u>	Repealed	_____
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	_____	Amended	<u>3</u>	Repealed	_____
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The number of sections adopted using:

Negotiated rule making:	New	_____	Amended	_____	Repealed	_____
Pilot rule making:	New	_____	Amended	_____	Repealed	_____
Other alternative rule making:	New	_____	Amended	<u>3</u>	Repealed	_____

The following sections were amended between the proposed and adopted versions (bold and italics indicate change):

WAC 296-126-023

(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).

<u><i>If pay period is:</i></u>	<u><i>Then payday must be no later than:</i></u>	<u><i>And employer must pay wages for at least:</i></u>
<u><i>Monthly, starting on 1st day of the month</i></u>	<u><i>Last day of the month</i></u>	<u><i>1st day of the month – 24th day of the month</i></u>

(6) An employer shall pay *nonbase overtime* wages owed to an employee *(including overtime, bonus pay, and other categories of specialty pay in addition to base pay)* on the regular pay day for the pay period in which *such nonbase the overtime* wages were earned. If the correct amount of *nonbase overtime* wages cannot be determined until after such regular pay day, the employer may establish a separate pay day for *nonbase overtime* wages; however, the payment of *nonbase 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 *in no even may payment be delayed beyond overtime wages must be paid by the regular payday period following the next pay period in which the nonbase wages were earned.*

Example: Employer establishes two semi-monthly pay periods. ~~(the~~ The first pay period covers *work performed from the 1st day of the month to the 15th day of the month with the payday of the 25th*; the second pay period covers the 16th day of the month *with the payday of the 10th of the following month to the last day of the month*. ~~The employer pays a base hourly wage of fifteen dollars per hour, plus a ten percent commission. An employee works overtime in each of the pay periods.~~ Unless a different payment interval applies by law, the employer must pay *overtime the base hourly* wages no later than the *25th 10th* day of the *following* month for the *overtime earned during the* first pay period, and no later than the *10th 25th* day of the following month for the *overtime earned during the* second pay period. *The employer may pay the additional commission wages no later than the 10th day of the following month for commissions earned during the first pay period, and no later than the 25th day of the following month for commissions earned during the second pay period.*

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

(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 **base 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 ~~base pay 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 **base regular** wages to covered employees at no less than the applicable minimum wage rate.

WAC 296-128-035

(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).

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

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(6) An employer shall pay **nonbase overtime** wages owed to an employee ~~(including overtime, bonus pay, and other categories of specialty pay in addition to base pay)~~ on the regular pay day for the pay period in which ~~such nonbase the overtime~~ wages were earned. If the correct amount of **nonbase overtime** wages cannot be determined until after such regular pay day, the employer may establish a separate pay day for **nonbase overtime** wages; however, the payment of **nonbase 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 ~~in no even may payment be delayed beyond overtime wages must be paid by the regular payday period~~ following the **next** pay period ~~in which the nonbase wages were earned.~~

Example: Employer establishes two semi-monthly pay periods. ~~(the~~ The first pay period covers **work performed from** the 1st day of the month to the 15th day of the month **with the payday of the 25th**; the second pay period covers the 16th day of the month **with the payday of the 10th of the following month to the last day of the month**). ~~The employer pays a base hourly wage of fifteen dollars per hour, plus a ten percent commission. An employee works overtime in each of the pay periods. Unless a different payment interval applies by law, the employer must pay overtime the base hourly wages no later than the 25th 10th day of the following month for the overtime earned during the first pay period, and no later than the 10th 25th day of the following month for the overtime earned during the second pay period. The employer may pay the additional commission wages no later than the 10th day of the following month for commissions earned during the first pay period, and no later than the 25th day of the following month for commissions earned during the second pay period.~~

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(a) All **base 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 **base pay 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 **base regular** wages to covered employees at no less than the applicable minimum wage rate.

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WAC 296-131-010

(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).

<u><i>If pay period is:</i></u>	<u><i>Then payday must be no later than:</i></u>	<u><i>And employer must pay wages for at least:</i></u>
<u><i>Monthly, starting on 1st day of the month</i></u>	<u><i>Last day of the month</i></u>	<u><i>1st day of the month – 24th day of the month</i></u>

(6) An employer shall pay **nonbase overtime** wages owed to an employee ~~(including overtime, bonus pay, and other categories of specialty pay in addition to base pay)~~ on the regular pay day for the pay period in which ~~such nonbase the overtime~~ wages were earned. If the correct amount of ~~nonbase overtime~~ wages cannot be determined until after such regular pay day, the employer may establish a separate pay day for **nonbase overtime** wages; however, the payment of **nonbase 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 ~~in no even may payment be delayed beyond overtime wages must be paid by the regular payday period~~ following the ~~next~~ pay period ~~in which the nonbase wages were earned~~.

Example: Employer establishes two semi-monthly pay periods. ~~(the~~ The first pay period covers ~~work performed from~~ the 1st day of the month to the 15th day of the month ~~with the payday of the 25th~~; the second pay period covers the 16th day of the month ~~with the payday of the 10th of the following month to the last day of the month~~). ~~The employer pays a base hourly wage of fifteen dollars per hour, plus a ten percent commission. An employee works overtime in each of the pay periods.~~ Unless a different payment interval applies by law, the employer must pay ~~overtime the base hourly~~ wages no later than the ~~25th 10th~~ day of the following month for the ~~overtime earned during the~~ first pay period, and no later than the ~~10th 25th~~ day of the following month for the ~~overtime earned during the~~ second pay period. ~~The employer may pay the additional commission wages no later than the 10th day of the following month for commissions earned during the first pay period, and no later than the 25th day of the following month for commissions earned during the second pay period.~~

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<u><i>1st of the month – 15th day of the month</i></u>	<u><i>25th of the month</i></u>	<u><i>10th of the following month</i></u>

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(a) All **base 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 ~~base pay~~ **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 **base regular** wages to covered employees at no less than the applicable minimum wage rate.