AMENDATORY SECTION (Amending Order 74-9, filed 3/13/74, effective 4/15/74)

WAC 296-126-001 Applicability. ((~~These standards, adopted pursuant to the authority of chapter 49.12 RCW as amended by chapter 16, Laws of 1973 2nd ex. sess., shall apply to any person employed in any industry or occupation within the state of Washington, unless:~~

~~(1) Exempted by the provisions of chapter 49.12 RCW (newspaper vendors or carriers, domestic or casual labor in or about private residences, agricultural labor as defined in RCW 50.04.150, as now or hereafter amended, and sheltered workshops, are all exempt from these provisions);~~

~~(2) Otherwise exempted in rules and regulations adopted by the industrial welfare committee of the state of Washington;~~

~~(3) Exempted by a variance issued under the provisions in WAC 296-126-130;~~

~~(4) Such person is an employee of the state or any political subdivision, or municipal corporation to the extent that these rules conflict with any statute, rule or regulation adopted under the authority of the appropriate legislative body.~~)) (1) These rules apply to employers and employees in the state as defined in RCW 49.12.005 (3) and (4).

(2) These rules do not apply to:

(a) Newspaper vendors or carriers;

(b) Domestic or casual labor in or about private residences;

(c) Agricultural labor as defined in RCW 50.04.150; or

(d) Sheltered workshops.

Note 1: Public employers and employees should review RCW 49.12.005 (3)(a) and (b) and WAC 296-126-002(2) to determine applicability.

Note 2: For a variance from the rules under this chapter, see WAC 296-126-130.

AMENDATORY SECTION (Amending Order 76-15, filed 5/17/76)

WAC 296-126-002 Definitions. (1) "Employer" means 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, unless exempted by chapter 49.12 RCW or these rules. For purposes of these rules, the state or its political subdivisions, municipal corporations, quasi-municipal corporations (collectively called "public employers") are considered to be "employers" and subject to these rules in the

following manner:

(a) Before May 2003, public employers are not subject to these rules unless the rules address:

(i) Sick leave and care of family members under RCW 49.12.265 through 49.12.295.

(ii) Parental leave under RCW 49.12.350 through 49.12.370.

(iii) Compensation for required employee uniforms under RCW 49.12.450.

(iv) Employers' duties towards volunteer firefighters and reserve officers under RCW 49.12.460.

(b) After May 2003, public employers are subject to these rules only if these rules do not conflict with the following:

(i) Any state statute or rule.

(ii) Any local resolution, ordinance, or rule adopted before April 1, 2003.

(2) "Employee" means an employee who is employed in the business of his employer whether by way of manual labor or otherwise. ((~~This definition is not intended, for purposes of these regulations, to~~)) "Employee" does not include:

(a) Any individual registered as a volunteer with a state or federal volunteer program or any person who performs any assigned or authorized duties for an educational, religious, governmental or nonprofit charitable corporation by choice and receives no payment other than reimbursement for actual expenses necessarily incurred in order to perform such volunteer services;

(b) Any individual employed in a bona fide executive, administrative or professional capacity or in the capacity of commissioned outside salesperson; ((~~nor is it intended to include~~))

(c) Independent contractors where said individuals control the manner of doing the work and the means by which the result is to be accomplished.

(3) "Employ" means to engage, suffer or permit to work.

(4) "Adult" means any person ((~~of either sex,~~)) eighteen years of age or older.

(5) "Minor" means any person ((~~of either sex~~)) under eighteen years of age.

(6) "Student learner" means a person enrolled in a bona fide vocational training program accredited by a national or regional accrediting agency recognized by the United States Office of Education, or authorized and approved by the Washington state commission for vocational education, who may be employed part time in a definitely organized plan of instruction.

(7) "Learner" means 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 by the director pursuant to regulations of the department of labor and industries.

(8) "Hours worked" shall be 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.

(9) "Conditions of labor" shall mean and include the

conditions of rest and meal periods for employees including provisions for personal privacy, practices, methods and means by or through which labor or services are performed by employees and includes bona fide physical qualifications in employment, but shall not include conditions of labor otherwise governed by statutes and rules and regulations relating to industrial safety and health administered by the department.

(10) ((~~"Committee" shall mean the industrial welfare committee as provided by law. The committee's secretary is the supervisor of employment standards in care of the Department of Labor and Industries, General Administration Building, Olympia, Washington 98504.~~)) "Department" means the department of labor and industries.

(11) "Director" means the director of the department of labor and industries or the designated representative.

AMENDATORY SECTION (Amending Order 74-9, filed 3/13/74, effective 4/15/74)

WAC 296-126-010 ((~~Minimum wages--Adults.~~)) Exceptions to minimum wage rate--Special certificates. ((~~Except where a higher minimum wage is required by Washington state or federal law,~~

~~(1) Every employer shall pay to each of his or her adult employees wages at a rate of not less than one dollar and eighty cents per hour, and effective January 1, 1975, not less than two dollars per hour, whether computed on an hourly commission, piecework or other basis, except as may be otherwise provided by law or regulation.~~

~~(2) These provisions shall not apply to outside commissioned salespersons; or to trainees, learners, student learners, apprentices or handicapped persons for whom special certificates or special permits have been issued as set forth in RCW 49.12.110. These special rates shall be computed as follows: Learners -- 85% of the applicable minimum wage; student-learner -- 75% of the applicable minimum rate; handicapped -- at a rate designed to reflect adequately the individual's earning capacity.~~)) (1) The director may issue a special certificate to an employer authorizing the employer to pay at a wage rate that is less than the applicable minimum wage rate to the following employees:

(a) An employee who is physically or mentally handicapped to such a degree that he or she is unable to obtain employment in the competitive labor market;

(b) A trainee or learner not subject to the jurisdiction of the Washington state apprenticeship and training council under chapter 49.04 RCW; or

(c) A student learner.

(2) The director shall fix the minimum wage and issue a special certificate only where the director determines that an employer has applied for it in good faith.

(3) The director shall fix the duration of the validity of the certificate.

NEW SECTION

WAC 296-126-015 Wage rates under special certificates. Employers shall compute the wage rates under special certificates as follows:

(1) Physically and mentally handicapped employees: At a rate designed to adequately reflect the employees' earning capacity.

(2) Learners: At eighty-five percent of the applicable minimum wage rate.

(3) Student-learner: At seventy-five percent of the applicable minimum wage rate.

Note: See chapter 49.46 RCW and chapter 296-128 WAC for minimum wage laws.

AMENDATORY SECTION (Amending WSR 05-24-019, filed 11/29/05, effective 1/1/06)

WAC 296-126-030 Adjustments for overpayments. (1) An overpayment occurs when an employer pays an employee for:

(a) More than the agreed-upon wage rate; or

(b) More than the hours actually worked.

(2) Recouping the overpayment may reduce the employee's gross wages below the state minimum wage.

(3) An employer cannot recover an overpayment when the disputed amount concerns the quality of work.

(4) An employer can recover an overpayment from an employee's paycheck provided the overpayment was infrequent and inadvertent. Infrequent means rarely, not occurring regularly, or not showing a pattern. Inadvertent means an error that was accidental, unintentional, or not deliberately done. The burden of proving the inadvertent error rests with the employer who made the error. The employer has ninety days from the initial overpayment to detect and implement a plan with the employee to collect the overpayment. If the overpayment is not detected within the ninety-day period, the employer cannot adjust an employee's current or future wages to recoup the overpayment. Recouping of overpayments is limited to the ninety-day detection period.

(5) In the case of employees covered by an unexpired collective bargaining agreement that expires on or after January 1, 2006, in which overpayments are included in the terms of the collective bargaining agreement, the effective date of this rule

shall be the later of:

(a) The first day following expiration of the collective bargaining agreement; or

(b) The effective date of the revised collective bargaining agreement.

Helpful information:

The following are examples of when overpayments may or may not be allowed:

Example 1. Allowed. Overpayment of agreed wage rate: An employee was paid an agreed rate of ten dollars per hour but received a paycheck at the rate of eleven dollars per hour. The employer provided documentation of the overpayment to the affected employee and adjusted the employee's next paycheck for the amount overpaid in the previous pay period.

Example 2. Allowed. Overpayment for hours worked: An employee worked seventy-two hours in the pay period, but the employee was paid for eighty hours for that period. The employer provided documentation of the overpayment to the affected employee and adjusted the employee's next paycheck for the eight hours overpaid in the previous pay period.

Example 3. Not allowed. Overpayment not detected within ninety days of first occurrence: An employer agreed to pay an employee ten dollars per hour, but when the first check was received, the amount paid was paid at eleven dollars per hour. The employee may or may not have brought it to the attention of the employer. Six months later the employer detected the overpayments and adjusted the employee's wages in the next paycheck for the entire amount of the overpayment. This is not an allowable adjustment because it was not detected within ninety days from the first occurrence.

(6) The employer must provide advance written notice to the employee before any adjustment is made. The notice must include the terms under which the overpayment will be recouped. For example: One adjustment or a series of adjustments.

(7) The employer must provide documentation of the overpayment to the affected employee or employees.

(8) The employer must identify and record all wage ((~~deductions~~)) adjustments openly and clearly in employee payroll records.

(9) Regardless of the provisions of this section, if appropriate, employers retain the right of private legal action to recover an overpayment from an employee.

(10) This regulation does not apply to public employers. See chapter 49.48 RCW, Wages--Payment--Collection.

AMENDATORY SECTION (Amending Order 74-9, filed 3/13/74, effective 4/15/74)

WAC 296-126-040 Statements furnished. (1) Every employer shall furnish to each employee at the time of payment of wages an itemized statement showing the pay basis (i.e., hours or days worked), rate or rates of pay, gross wages and all deductions ((~~therefrom~~)) for that pay period.

(2) An itemized pay statement means a separate written statement from the paycheck issued to employees on each payday. Pay periods shall be identified on the pay statement by month, day, year, and payment date. The statement shall include the total of all actual hours worked, with regular and overtime hours shown separately, and all rate or rates of pay whether paid on hourly, salary, commission, piece rate or combination thereof or other basis during the pay period.

(3) The pay statement may be transmitted electronically provided each employee has access to receive and copy it on the payday. If an employee cannot receive an electronic pay statement at work or at home on the established payday, the employer must provide a written pay statement to the employee on the payday.

AMENDATORY SECTION (Amending Order 89-16, filed 10/24/89, effective 11/24/89)

WAC 296-126-050 Employment records. (1) Every employer shall keep for at least three years a record of the name, address, and occupation of each employee, dates of employment, rate or rates of pay, amount paid each pay period to each such employee and the hours worked.

(2) Every employer shall make the record described in subsection (1) available to the employee, upon request, at any reasonable time.

(3) ((~~Every employer shall, upon written request by the employee, furnish within ten working days of the request to each employee who is discharged a signed written statement, setting forth the reasons for such discharge and the effective date thereof.~~)) Every employer shall, within ten business days of receiving a written request by a former employee, furnish a signed written statement stating the reasons and effective date of discharge.

Note: Additional recordkeeping requirements for employers are stated in WAC 296-128-010 through 296-128-030 (rules regarding recordkeeping for employers subject to the Minimum Wage Act, chapter 49.46 RCW) and WAC 296-131-017 (rule regarding recordkeeping for agricultural employers).

AMENDATORY SECTION (Amending Order 74-9, filed 3/13/74, effective 4/15/74)

WAC 296-126-080 Posting of order. The employer shall keep posted a current copy of these regulations in a form provided by the department, titled "Your Rights as a Worker in Washington State." The poster shall be positioned in a readily accessible location and within plain view in each work site where an employee or employees are employed.

AMENDATORY SECTION (Amending Order 76-15, filed 5/17/76)

WAC 296-126-090 Hours. Any employee who feels the number of hours or other matters relating to overtime employment are detrimental to the health, safety or welfare of the employee may request the department of labor and industries to make an investigation following which the department will issue findings and conclusions. Whenever the circumstances are found to be detrimental to the health, safety or welfare of the employee, the ((~~industrial welfare committee~~)) department may adopt additional or revised employment standards.

AMENDATORY SECTION (Amending Order 74-9, filed 3/13/74, effective 4/15/74)

WAC 296-126-130 Variance. (1) ((~~Upon written application from an employer, a variance from any standard herein may be granted by the industrial welfare committee for good cause shown as authorized by section 8, chapter 16, Laws of 1973 2nd ex. sess. The employer shall give notice to the employees or their representative so that they may submit their written views to the committee on any variance request.~~)) An employer may seek a variance from the rules under this chapter by submitting a written application to the director. The application must contain the following:

(a) Reason(s) for the variance request; and

(b) Evidence that the employer provided to the employees or to their representatives the following:

(i) The intent to submit a variance.

(ii) A copy of the requested variance.

(iii) The director's address or phone number or other contact information.

(2) The ((~~committee~~)) director may ((~~afford~~)) allow the ((~~applicant~~)) employer and any involved employee, or their

representatives, the opportunity for oral presentation whenever circumstances of the particular application warrant such additional procedure.

(3) ((~~Temporary variance valid for not more than thirty calendar days may be issued by the committee for good cause where immediate action is necessary and warranted pending further review by the committee.~~)) After reviewing the application, the director shall grant the variance if the director determines that there is good cause for the variance from the rules under this chapter.

(4) "Good cause" ((~~shall~~)) means, but is not ((~~be~~)) limited to, those situations ((~~in which the employer finds that his circumstance warrants an alternative procedure and where he is able to demonstrate to the committee that such alternative would~~)) where the employer can justify the variance and can prove that the variance does not have a harmful effect on the health, safety, and welfare of the employees involved.

(5) The variance order shall state the following:

(a) The conditions the employer must maintain; and

(b) The practices, means, methods, operations, standards and processes which the employer must adopt under the variance.

(6) 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.

(7) The director may issue a temporary variance valid for no more than thirty calendar days when the employer demonstrates good cause and where immediate action is necessary pending further review by the director. An employer need not meet the requirement in subsection (1)(b) of this section in order to be granted a temporary variance.

(8) Employers do not require a variance in the following cases:

(a) Employers in construction trades with collective bargaining agreements negotiated under the National Labor Relations Act, 29 U.S.C. Sec. 151 et seq. These employers may vary from the meal and rest period rules, WAC 296-126-092, provided the agreement specifically requires meal and rest periods and prescribes requirements concerning those meal and rest periods; and

(b) Public employers that have entered into collective bargaining agreements, 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.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 296-126-060 Minor work permits.

WAC 296-126-096 Lifting.