

**((HANDICAPPED)) WORKERS WITH A DISABILITY**

AMENDATORY SECTION (Amending § 2, Regulation 294.6.005, filed 12/30/60)

**WAC 296-128-055 Definition.** "~~((Handicapped))~~ Worker with a disability" means an individual whose earning capacity is impaired by age or physical or mental deficiency or injury for the work he or she is to perform.

AMENDATORY SECTION (Amending § 3, Regulation 294.6.005, filed 12/30/60)

**WAC 296-128-060 Application for certificate.** (1) Application for a certificate authorizing the employment of ~~((handicapped))~~ workers with a disability shall be made upon forms made available by the director or ~~((his))~~ authorized representatives.

(2) The application shall set forth, among other things, the nature of the disability, a description of the occupation at which the ~~((handicapped))~~ worker with a disability is to be employed, and the wage the employer proposes to pay the ~~((handicapped))~~ worker with a disability per hour. The nature of the disability must be set out in detail.

(3) The application shall be signed jointly by the employer and the ~~((handicapped))~~ worker with a disability for whom such application is being made, except as otherwise authorized by the director or ~~((his))~~ an authorized representative.

AMENDATORY SECTION (Amending § 4, Regulation 294.6.005, filed 12/30/60)

**WAC 296-128-065 Conditions for granting a certificate.** (1) If the application is in proper form and sets forth facts showing:

(a) A subminimum wage is necessary to prevent curtailment of the ~~((handicapped worker's))~~ worker with a disability's opportunities for employment;

(b) The ~~((handicap))~~ disability impairs the earning capacity of the worker for the work he or she is to perform, a certificate may be issued.

(2) The director or ~~((his))~~ an authorized representative may require the submission of additional information to that shown on the application and may require the ~~((handicapped))~~ worker with a disability to take a medical examination where it is deemed necessary in or-

der to determine whether or not the issuance of a certificate is justified.

AMENDATORY SECTION (Amending § 5, Regulation 294.6.005, filed 12/30/60)

**WAC 296-128-070 Issuance of certificate.** If the application and other available information indicate that the requirements of this regulation are satisfied, the director or ~~((his))~~ an authorized representative shall issue a certificate. Otherwise ~~((he))~~ the director or an authorized representative shall deny a certificate. If issued, copies of the certificate shall be mailed to the employer and the ~~((handicapped))~~ worker with a disability and if denied, the employer and the ~~((handicapped))~~ worker with a disability shall be given written notice of the denial.

AMENDATORY SECTION (Amending § 6, Regulation 294.6.005, filed 12/30/60)

**WAC 296-128-075 Terms of certificate.** (1) A certificate shall specify, among other things, the name of the ~~((handicapped))~~ worker with a disability, the name of the employer, the occupation in which the ~~((handicapped))~~ worker with a disability is to be employed, the authorized subminimum wage rate and the period of time during which such wage rate may be paid.

(2) A certificate shall be effective for a period to be designated by the director or ~~((his))~~ an authorized representative and a ~~((handicapped))~~ worker with a disability employed under such certificate may be paid subminimum wages only during the effective period of the certificate.

(3) The wage rate set in the certificate shall be fixed at a figure designed to reflect adequately the ~~((handicapped worker's))~~ worker with a disability's earning capacity. No wage rate shall be fixed at less than seventy-five percent of the applicable minimum wage under RCW 49.46.020 unless, after investigation a lower rate appears to be clearly justified.

(4) Any money received by a ~~((handicapped))~~ worker with a disability by reason of any state or federal pension or compensation program for ~~((handicapped persons))~~ workers with a disability shall not be considered as offsetting any part of the wage or remuneration due the ~~((handicapped))~~ worker by the employer.

(5) The worker with a disability or trainee shall be paid not less than one and one-half times the regular rate for hours worked in excess of forty in the workweek or eight in the workday.

(6) The terms of any certificate, including the subminimum wage rate specified therein, may be amended by the director or ~~((his))~~ an authorized representative upon written notice to the parties concerned, if the facts justify such amendment.

**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 eighteen;

(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 twenty-four 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) The date of commencement of his or her employment, as defined in WAC 296-128-600(2);

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

NEW SECTION

**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" 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.

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

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

(5) "Employee" has the same meaning as RCW 49.46.010(3).

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

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

(8) "Health-related reason" 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.

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

(10) "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.

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

(12) "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.

(13) "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).

(14) "Workweek" means 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.

NEW SECTION

**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 web site.

NEW SECTION

**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.

NEW SECTION

**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).

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

(3) Beginning on the ninetieth calendar day after the commencement of his or her 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 fifteen-minute increments, then an employer must allow employees to use paid sick leave in fifteen-minute increments.

#### NEW SECTION

**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 re-

view 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.

NEW SECTION

**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.

NEW SECTION

**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 infor-



mation 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 ten 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 ten calendar days following the first day upon which the employee uses paid sick leave.

(6) 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.

(7) 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.

NEW SECTION

**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) 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 ninety 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 substantially 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 fifty-two 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 thirty days, whichever yields the higher hourly rate.

(3) 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.

(4) An employer must apply a consistent methodology when calculating the normal hourly compensation of similarly situated employees.

NEW SECTION

**WAC 296-128-680 Payment of paid sick leave.** 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.

NEW SECTION

**WAC 296-128-690 Separation and reinstatement of accrued paid sick leave upon rehire.** (1) When an employee separates from employment and is rehired within twelve 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 twelve months after the date the employee separates from employment, the employer must reinstate the employee's 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 twelve months of separation by the same employer, whether at the same or a different business location of the employer, an employee who reached the ninetieth 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 ninetieth 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 forty hours of the employee's accrued, unused paid sick leave.

NEW SECTION

**WAC 296-128-700 Paid time off (PTO) programs.** (1) Paid time off (PTO) provided to employees by an employer's PTO program (e.g., a program that combines vacation leave, sick leave, or other forms of leave into one pool), created by a written policy or a collective bargaining

agreement, satisfies the requirement to provide paid sick leave if the PTO program meets or exceeds the provisions of RCW 49.46.200 and 49.46.210, and all applicable rules, including:

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

(b) Payment for PTO leave at the employee's normal hourly compensation;

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

(d) Access to use PTO leave for all the purposes authorized under RCW 49.46.210 (1)(b) and (c); and

(e) Employer notification and recordkeeping requirements set forth in WAC 296-128-010 and 296-128-760.

(2) 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.

#### NEW SECTION

**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.

#### NEW SECTION

**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.

NEW SECTION

**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.

(2) If an employer frontloads paid sick leave, the employer must ensure that such frontloaded paid sick leave complies with the provisions of RCW 49.46.200 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 frontloading, 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 thirty 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.

NEW SECTION

**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 49.46.200 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 forty 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 49.46.200 and 49.46.210, and all applicable rules.

#### NEW SECTION

**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.

#### NEW SECTION

**WAC 296-128-760 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, 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 his or her 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 which meet the department's standard for compliance with these rules. The department shall make such sample notification policies available on the department's web site.

(2) Not less than monthly, employers must provide each employee with written or electronic notification detailing the amount of paid sick leave accrued and 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.

#### NEW SECTION

**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.