



# RULE-MAKING ORDER PERMANENT RULE ONLY

## CR-103P (August 2017) (Implements RCW 34.05.360)

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER  
STATE OF WASHINGTON  
FILED

DATE: October 17, 2017

TIME: 4:20 PM

WSR 17-21-092

**Agency:** Department of Labor and Industries

**Effective date of rule:**

**Permanent Rules**

- 31 days after filing.
- Other (specify) January 1, 2018 (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

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

- Yes
  - No
- If Yes, explain:

**Purpose:** The purpose of this rulemaking is to implement, carry out, and enforce Initiative 1433, An Act Relating to Fair Labor Standards, which requires employers provide paid sick leave to employees. These rules:

- Set parameters for the directives in Chapter 49.46 RCW; and
- Create definitions and descriptions for paid sick leave pertaining to: written policies, accrual, usage, variance from required increments of use, reasonable notice, verification for absences exceeding three days, rate of pay, payment of paid sick leave, separation and reinstatement of accrued paid sick leave upon rehire, paid time off (PTO) programs, shared leave, shift swapping, frontloading, third party administrators, employee use of paid sick leave for unauthorized purposes, employer notification and reporting to employees, and retaliation.

In addition to the paid sick leave proposed rules, amendments are being made to rules updating outdated language concerning people with disabilities to “People-first” language.

This rulemaking’s effective date of January 1, 2018, is an exception to RCW 34.05.380(2) and meets the requirement of RCW 34.05.380(3)(a).

Enforcement of the retaliation and enforcement directives related to the implementation of Initiative 1433 are being addressed in a separate rulemaking.

**Citation of rules affected by this order:**

- New:
- WAC 296-128-600 Definitions
  - WAC 296-128-610 Requirements for a written policy – Duty of the department to provide sample policies
  - WAC 296-128-620 Paid sick leave accrual
  - WAC 296-128-630 Paid sick leave usage
  - WAC 296-128-640 Variance from required increments of paid sick leave usage
  - WAC 296-128-650 Reasonable notice
  - WAC 296-128-660 Verification for absences exceeding three days
  - WAC 296-128-670 Rate of pay for use of paid sick leave
  - WAC 296-128-680 Payment of paid sick leave
  - WAC 296-128-690 Separation and reinstatement of accrued paid sick leave upon rehire
  - WAC 296-128-700 Paid time off (PTO) programs
  - WAC 296-128-710 Shared leave
  - WAC 296-128-720 Shift swapping
  - WAC 296-128-730 Frontloading
  - WAC 296-128-740 Third-party administrators
  - WAC 296-128-750 Employee use of paid sick leave for unauthorized purposes
  - WAC 296-128-760 Employer notification and reporting to employees
  - WAC 296-128-770 Retaliation

Repealed: n/a

Amended: WAC 296-128-010 Records required  
WAC 296-128-055 Definition  
WAC 296-128-060 Application for certificate  
WAC 296-128-065 Conditions for granting a certificate  
WAC 296-128-070 Issuance of certificate  
WAC 296-128-075 Terms of certificate

Suspended: n/a

**Statutory authority for adoption:** RCW 49.46.810

**Other authority:**

**PERMANENT RULE (Including Expedited Rule Making)**

Adopted under notice filed as WSR 17-14-113 on July 5, 2017 (date).

Describe any changes other than editing from proposed to adopted version:

**WAC 296-128-600 [Definitions]**

Subsection (1) - The department updated the definition for “absences exceeding three days” to change the word “scheduled” to “required.” This change to the definition is intended to provide clarity about the ability of employers to require verification for employee absences on days where the employee is not required, or reasonably expected, to work.

**WAC 296-128-610 [Requirements for a written policy – Duty of the department to provide sample policies]**

The department updated the term “worker” to “employee” to reflect consistency in the use of terminology throughout the rules.

**WAC 296-128-640 [Variance from required increments of paid sick leave usage]**

Subsection (1) - The department updated the term “may” to “shall” in order to be consistent with the requirement set forth in subsection (5).

Subsection (5) – The department updated the term “will” to “shall” to reflect consistency in the use of terminology throughout the rules.

**WAC 296-128-650 [Reasonable notice]**

Subsection (1)(b) – The department updated the term “scheduled” to “required.” This update is consistent with the change in terminology contained in WAC 296-128-600(1).

**WAC 296-128-660 [Verification for absences exceeding three days]**

Subsection (7) – The department updated language to address concerns about an employer’s ability to require verification for use of paid sick leave for purposes authorized under federal, state, or other local leave laws. The previous language only addressed the Family and Medical Leave Act.

**WAC 296-128-760 [Employer notification and reporting to employees]**

Subsection (1)(c) – Similar to WAC 296-128-610, the department added language to the rules addressing the department’s commitment to providing employers with model notification policies which meet the standard for compliance.

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

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Other:

**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	<u>18</u>	Amended	<u>1</u>	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	___	Repealed	___
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**The number of sections adopted in order to clarify, streamline, or reform agency procedures:**

New	___	Amended	<u>5</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	___	Repealed	___

**Date adopted:** October 17, 2017

**Name:** Joel Sacks

**Title:** Director

**Signature:**

