

Preliminary Cost-Benefit Analysis and Least Burdensome Analysis

Rules implementing Initiative 1433, An Act Related to Fair Labor Standards – Paid Sick Leave and Retaliation, Chapter 296-128 WAC, Minimum wages

Washington State Department of Labor and Industries

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Minor changes only

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CHAPTER 1: BACKGROUND AND INTRODUCTION

This report presents the economic analyses performed by the Department of Labor and Industries (L&I) to estimate the costs and benefits of the proposed rules for implementing Initiative 1433, An Act Related to Fair Labor Standards. The proposed rules addressing paid sick leave and other labor standards are added to Chapter 296-128 WAC. The Cost-Benefit Analysis and Least-Burdensome Alternative Analysis in this report are based on the best available information at the time of publication.

The Washington Administrative Procedure Act (APA) requires L&I to evaluate significant legislative rules to “determine that the probable benefits of the rule are greater than its probable costs, taking into account both the qualitative and quantitative benefits and costs and the specific directives of the law being implemented.” RCW 34.05.328(1)(d). Chapters 1 through 5 of this document describe that determination.

The APA also requires L&I to “determine, after considering alternative versions of the rule... that the rule being adopted is the least burdensome alternative for those required to comply with it that will achieve the general goals and specific objectives” of the governing and authorizing statutes. RCW 34.05.328(1)(e). Chapter 6 of this document describes that determination.

1.1 The background of this rulemaking

1.1.1 Initiative I-1433

In November 2016, Washington voters approved Initiative Measure No. 1433 (I-1433), a ballot measure concerning labor standards. I-1433 was codified under Chapter 49.46 RCW.

I-1433, in part, requires employers to provide their employees with paid sick leave, the purpose of which is to promote public health, family stability and economic security, balanced with the demands of the workplace. I-1433 includes, in part, provisions addressing the accrual and carryover of paid sick leave, defines what paid sick leave can be used for and when, and prohibits employers from retaliating against employees for exercising any rights provided by Chapter 49.46 RCW.

In addition, I-1433 directed L&I to adopt and implement rules to carry out and enforce the initiative, including but not limited to procedures for notification to employees and reporting regarding paid sick leave, and protecting employees from retaliation for the lawful use of paid sick leave and exercising other rights under Chapter 49.46 RCW.

RCW 49.46.820 provides the I-1433 is to be liberally construed to carry out the intent, policies, and purposes of the initiative.

1.1.1 Local ordinances

Within Washington State, the cities of Seattle, Tacoma, SeaTac, and Spokane have paid sick leave ordinances. SeaTac's ordinance is limited to certain hospitality and transportation employees. Spokane's ordinance expires on the effective date of the initiative's paid sick leave requirements.

In addition, Seattle has an ordinance addressing scheduling requirements for hourly employees who work at large food services and retail establishments within Seattle city limits. Seattle Municipal Code 14.22. Seattle's ordinance applies to retail and food service establishments with 500 or more employees worldwide and full-service restaurants with 500 or more employees and 40 or more full-service restaurant locations worldwide. The ordinance is effective as of July 1, 2017. Since all employers who are covered by this ordinance are also affected by the Seattle paid sick leave ordinance and rules, there is no additional impact attributable to L&I's rules.

1.1.3 Rule development process

In order to have rules in place before the January 1, 2018, effective date of the paid sick leave component of the initiative, L&I began a comprehensive rulemaking development process with the public and with stakeholders, starting in January 2017. As part of the process, L&I set up an engagement website that gave the public an opportunity to review and comment throughout.

In January 2017, L&I filed the CR-101, preproposal statement of inquiry, as required by the APA. As part of L&I's rulemaking process, an initial public meeting with stakeholders was held, and L&I asked stakeholders to provide feedback on key questions to be covered in the rules. A draft document containing stakeholder input was created and circulated, and stakeholders were able to provide comment on each other's contributions. An initial version of the proposed rules was circulated during April 2017, and a second public meeting was held to discuss the initial version and to obtain stakeholder comment. Thereafter, a second version of the rules was drafted and circulated during May 2017, and a third public meeting was held. A third version of the rules and the CR-102 were filed on July 5, 2017.

1.2 The description of the rule amendments

1.2.1 Determination for significant legislative rules or exemption

As required by the APA, L&I analyzed its proposed rules to determine whether the rules are "significant legislative rules" as defined in RCW 34.05.328(5)(a)(i). This section describes the results of the required analysis. A comprehensive list of the rule categories for all sections of the proposed rules is in Appendix 1.

1.2.1.1 Proposed changes not considered significant legislative rules or are exempt

Proposed changes to the following sections are not considered significant legislative rules by definition, or meet one or more of the following exemptions:

WAC Number	Description of Proposed Change	Reason Rule is Not a Significant Legislative Rule or is Exempt
WAC 296-128-600, Definitions.	Defines the terms used in the rules.	<ul style="list-style-type: none"> • RCW 34.05.328(5)(b)(iii) – definition consistent with the language of the statute • RCW 34.05.328(5)(b)(iii) – definition consistent with language in other state rule

		<ul style="list-style-type: none"> • RCW 34.05.328(5)(c)(ii) – interpretation of statute language
WAC 296-128-620, Paid sick leave accrual.	<p>Addresses how paid sick leave is accrued and how much unused accrued paid sick leave must be carried over.</p> <p>Defines the term “year” - employers can use any fixed, consecutive 12-month period of time for accrual, use and carry-over of paid sick leave hours with calendar year being the default definition.</p>	<ul style="list-style-type: none"> • RCW 34.05.328(5)(b)(iii) and RCW 34.05.328(5)(v) - Consistent with the language of the statute under RCW 49.46.210(1) • RCW 34.05.328(5)(c)(ii) – interpretation of statute language
WAC 296-128-630(1)-(3), Paid sick leave usage.	<p>Addresses the authorized purposes for the use of paid sick leave and when accrued paid sick leave must be made available for employees to use. WAC 296-128-630(4), addressing increments of use, is discussed under the significant legislative rules section below.</p>	<p>RCW 34.05.328(5)(b)(iii) and RCW 34.05.328(5)(v) - Consistent with the language of the statute under RCW 49.46.210(1)</p>
WAC 296-128-670, Rate of pay for use of paid sick leave.	<p>Addresses the rate of pay for use of paid sick leave at the employee’s normal hourly compensation, defined under the rules as the hourly rate that an employee would have earned for the time during which the employee used paid sick leave. The rule requires employers to use a reasonable calculation to determine normal hourly compensation. The rule provides a variety of examples of reasonable calculations.</p>	<ul style="list-style-type: none"> • RCW 34.05.328(5)(b)(iii) and RCW 34.05.328(5)(v) - Consistent with the language of the statute under RCW 49.46.200 and RCW 49.46.210(1) • RCW 34.05.328(5)(c)(ii) – interpretation of statute language
WAC 296-128-680, Payment of paid sick leave.	<p>Addresses the payday when an employer must pay an employee for paid sick leave.</p>	<ul style="list-style-type: none"> • RCW 34.05.328(5)(c)(ii) – interpretation of statute language • RCW 34.05.328(5)(b)(iii) and RCW 34.05.328(5)(v) - Consistent with the state law language under WAC 296-126-023

<p>WAC 296-128-690(1), (3)-(5), Separation and reinstatement of accrued paid sick leave upon rehire.</p>	<p>Addresses reinstatement of accrued paid sick leave within twelve months of separation.</p>	<ul style="list-style-type: none"> • RCW 34.05.328(5)(b)(iii) and RCW 34.05.328(5)(v) - Consistent with the language of the statute under RCW 49.46.210(1) • RCW 34.05.328(5)(c)(ii) – interpretation of statute language
<p>WAC 296-128-700, Paid time off (PTO) programs.</p>	<p>Clarifies that an employer may, but is not required to, meet the requirement to provide paid sick leave by using a paid time off (PTO) program, such as a program that combines vacation leave, sick leave, or other forms of leave into one pool. Any PTO program, created by a written policy or collective bargaining agreement, must meet or exceed the requirements for paid sick leave under RCW 49.46.200 and 49.46.210, and all applicable rules</p>	<ul style="list-style-type: none"> • RCW 34.05.328(5)(c)(ii) – interpretation of statute language • RCW 34.05.328(5)(b)(iii) and RCW 34.05.328(5)(v) - Consistent with the statute language under RCW 49.46.210(1)(e)
<p>WAC 296-128-720, Shift Swapping.</p>	<p>States that employers may not require employees to search for or find a replacement worker when taking paid sick leave. Clarifies that by mutual agreement, 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.</p>	<ul style="list-style-type: none"> • RCW 34.05.328(5)(b)(iii) and RCW 34.05.328(5)(v) - Consistent with the language of the statute under RCW 49.46.210(1)(h) • RCW 34.05.328(5)(c)(ii) – Interpretation of statute language
<p>WAC 296-128-740, Third-party administrators.</p>	<p>Clarifies that employers may contract with a third-party administrator to administer paid sick leave requirements, but that using a third-party administrator does not relieve employers of their obligations to meet the paid sick leave requirements.</p>	<ul style="list-style-type: none"> • RCW 34.05.328(5)(c)(ii) – Interpretation of statute language

WAC 296-128-770, Retaliation.	Addresses acts of retaliation for an employee’s exercise of any of their Chapter 49.46 RCW rights.	<ul style="list-style-type: none"> • RCW 34.05.328(5)(b)(iii) and RCW 34.05.328(5)(v) - Consistent with the language of the statute under RCW 49.46.210(3) and (4) • RCW 34.05.328(5)(c)(ii) – Interpretation of statute language
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1.2.1.3 Proposed changes considered significant legislative rules

WAC 296-128-010, Recordkeeping

Rule Overview: The existing recordkeeping requirements of RCW 49.46 are amended to incorporate payroll or other records documenting paid sick leave accrued, used, and paid to employees. Employers must keep records that show, for each employee, paid sick leave accruals each month, and any unused paid sick leave available for use; paid sick leave reductions each month, and the date of the employee’s commencement of employment.

Costs to be estimated: The costs associated with the recordkeeping requirements created by the initiative.

WAC 296-128-630(4), Paid sick leave usage

Rule Overview: 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 15-minute increments, then an employer must allow employees to use paid sick leave in 15-minute increments.

Costs to be estimated: The administrative cost of processing leave usage in increments of one hour or less. When employees use paid sick leave, some employers may experience costs associated with covering the employee's absence. While L&I recognizes there are costs to employers, these costs are attributable to the initiative that created the employee's right to use paid sick leave and are not considered in this analysis. Additionally, many employers will not automatically cover an employee's absence by calling another employee to fill in. There are an array of options available to employers to cover an employee's absence while on paid sick leave that do not cause any increased cost, including, but not limited to rearranging rest and meal breaks, working with fewer employees, or filling in

themselves. For purposes of estimating costs associated with the rule in general, it would be difficult to predict how employers will address this issue.¹

During the rule development process, some employers commented that while they normally track work in small increments, including five minutes or less, allowing leave in those increments would be infeasible. Similarly, some employers commented one-hour increments would be infeasible. To mitigate the costs in these situations, L&I added the variance provision in WAC 296-128-640.

WAC 296-128-760, Employer notification and reporting to employees

Rule Overview: Employers must notify each employee of their entitlement to paid sick leave, the rate of accrual, the authorized purposes for use of paid sick leave, and that employers may not retaliate against employees for the lawful use of paid sick leave and other rights provided under Chapter 49.46 RCW. Employers can decide whether the notification is written or electronic. A one-time notification must be given to existing employees no later than March 1, 2018. New hires are notified on the date of commencement of their employment. Employers must report to employees about their leave balances each month, but only if they have worked since the prior notification.

Costs to be estimated: The administrative costs associated with providing initial notice to existing employees, providing notice to new hires, and satisfying the ongoing monthly reporting requirements.

1.2.1.3 Proposed changes to the following sections of the proposed rules are not considered significant legislative rules or are exempt but will be included in cost estimate

Proposed changes to the following sections are not considered significant legislative rules by definition, or meet one or more of the following exemptions. However, L&I estimates the cost of compliance as indicated below:

WAC 296-128-640, Variance from required increments of paid sick leave usage

Rule Overview: This rule permits L&I to grant a variance from the increment of use requirement if an employer can show “good cause” that providing paid sick leave in increments consistent with the employer’s payroll system and practices, not to exceed one hour, is infeasible, and the variance does not affect the health, safety, or welfare of employees. Variances may be sought by submitting a written application. Affected employees are given notice of the employer's request for variance and have an opportunity to be heard. L&I will grant a variance if good cause is shown and will issue an order detailing the terms of the variance. Variance determinations are subject to reconsideration. L&I may issue temporary variances. The terms of any variance granted must be made readily available to employees.

¹ According to a study of New York City’s paid sick leave law, 84% of employers reported covering short absences of non-exempt employees taking sick leave by temporarily assigning work to other workers, allowing employees to swap shifts, putting the work on hold, or having some employees work from home while out sick. Appelbaum, E., & Milkman, R. (2016) <http://cepr.net/images/stories/reports/nyc-paid-sick-days-2016-09.pdf>

Costs to be estimated: The administrative costs associated with completing the application for a variance, communicating with employees about the variance request and their right to participate in L&I's determination, and costs associated with presenting any additional information, if requested, as part of the process.

WAC 296-128-650, Reasonable notice

Rule Overview: The initiative permits employers to require reasonable notice of an absence from work for the use of paid sick leave for an authorized purpose. If the need for leave is foreseeable, the employer may, but is not required to, ask for advance notice from the employee. Employers may ask for less notice, but if the employer does not have a policy on the number of days for advance notice, an employee must provide at least ten days notice, or as early as practicable, to use paid sick leave.

When the need for paid sick leave is unforeseeable, an employer may ask for notice as soon as possible before the scheduled start of a shift, unless it is not practicable to do so. Another person can provide notice to the employer on the employee's behalf. Depending on the type of leave requested, notice requirements must comply with the Domestic Violence Leave Act, must be part of a written policy or collective bargaining agreement, and must be provided to employees before notice is required for the use of paid sick leave.

Costs to be estimated: Administrative costs associated with creating a written policy for employees to provide advance notice for the use of paid sick leave.

WAC 296-128-660, Verification for absences exceeding three days

Rule Overview: The rule allows, but does not require, employers to ask employees to verify any absence exceeding three days is for an authorized purpose. As part of the employer's verification requirement, an employer may require an employee to provide verification from a health care provider. If an employer has a verification policy, the policy must be in writing and provided to the employee in advance of requiring the employee to provide verification. If an employer creates a verification policy requiring an employee to provide verification from a health care provider, employers are prohibited from asking about the nature of the condition for which leave is used, and must keep any medical information obtained confidential.

Employer verification requirements may not result in an unreasonable burden or expense on employees. If an employee believes an employer's verification requirements result in an unreasonable burden or expense, employees must be allowed to provide an oral or written explanation to their employer asserting that the leave was for an authorized purpose and how the verification requirement results in an unreasonable burden or expense. An employer must consider the employee's explanation and make a reasonable effort to identify alternative methods for the employee to meet the employer's verification requirement, including mitigating any out-of-pocket expenses associated with meeting medical verification requirements or accepting the employee's oral or written explanation as a form of verification that meets the employer's requirements. If the employer and employee are unable to resolve a disagreement, either may consult with L&I, and the employee can file a complaint. If an

employer does have a verification requirement, such employee verification must be provided within a ten-day calendar period after the leave begins, and verification requirements must be in a written policy made readily available to employees before verification requirements are requested by employers. Verification requirements must be consistent with the Domestic Violence Leave Act and the Family and Medical Leave Act.

Costs to be estimated: Administrative costs associated with creating a policy explaining verification requirements to employees, making the policy readily available to employees, and administering the policy.

WAC 296-128-700, Shared Leave

Rule Overview: This rule allows, but does not require, employers to establish a shared paid sick leave program in which an employee may choose to donate paid sick leave to a coworker. The employer must have a written policy or a collective bargaining agreement describing the shared leave program. The employer must notify employees of the policy and make the information readily available to employees.

Costs to be estimated: Costs associated with developing a written program, notifying employees, and making the information available to employees.

WAC 296-128-730, Frontloading

Rule Overview: The rule allows, but does not require, employers to establish processes that allow employees to use paid sick leave before it has accrued. If an employer chooses to provide employees with paid sick leave to use before they have accrued it, the employer must have a written policy or collective bargaining agreement describing the program to employees and explaining how balances are administered before the employee can use the frontloaded leave. Employees must be notified about their paid sick leave available for use not less than monthly.

Costs to be estimated: Costs associated with developing a written policy and creating processes to front load leave and to notify employees about balances.

1.2.1.4 Proposed changes to the following sections of the proposed rule are either considered significant legislative rules or exempt by definition but do not have additional costs associated.

WAC 296-128-690, Separation and reinstatement of accrued paid sick leave upon rehire.

Rule Overview: The rule allows, but does not require, employers to reimburse employees for portions of accrued, unused paid sick leave at the time of separation. If an employer chooses to reimburse employees, terms for reimbursement must be agreed to in writing by both the employer and employee, unless the right to reimbursement is set forth elsewhere in state law or through a collective bargaining agreement.

Basis for determination of no additional costs: The initiative requires an employer to keep track of any accrued, unused paid sick leave for twelve months after separation. The rule allows an employer to

avoid the tracking requirement associated with separation imposed by the initiative as long as the employer reimburses an employee at a rate at least equal to their normal hourly compensation for all accrued, unused paid sick leave. Any potential costs incurred by tracking and reinstating accrued, unused paid sick leave if the employee returns within twelve months of separation are offset by the costs of creating a written agreement that reimburses the employee for accrued, unused paid sick leave upon separation.

WAC 296-128-750, Employee use of paid sick leave for unauthorized purposes.

Rule Overview: The rule allows an employer to withhold payment of paid sick leave if the employer can demonstrate that the employee’s use of paid sick leave was not for an authorized purpose. If an employer withholds payment, the employer may not also deduct hours from an employee's paid sick leave balance. If the employer withholds payment for paid sick leave, the employer must notify the employee. The employee may file a complaint with L&I if the employee maintains the paid sick leave was used for an authorized purpose.

Basis for determination of no additional costs: Employers must notify employees about why they are not being paid for sick leave when the employee expects to be paid. Employers and employees may consult with the department regarding the verification requirement, and the employee may file a complaint with the department.

CHAPTER 2: ASSESSING COSTS

2.1 Methodology

Before quantifying any potential cost impact of this proposal, it is worth noting that the probable costs estimated in this analysis only represent the new costs of complying with the proposed rule for the affected parties, excluding those realized or potential costs associated with or originated from current practices, or “baseline” standards set forth under existing laws, rules or national consensus standards. With regard to this report, any compliance costs that can be attributed to the passed initiative are not considered costs of complying with the proposed department rule, thus will not be analyzed in this report. For example, the cost of paying at least one hour of sick leave to employees for every 40 hours worked will not be analyzed in this report, as it is a requirement from the law, although it is the biggest cost component of the paid sick leave program.

L&I partnered with Thurston Economic Development Council (TEDC) Center for Business & Innovation to seek inputs from business stakeholders on the potential cost impact of the proposed rule. The department understands this will limit the number of businesses involved compared to a more traditional approach such as a business survey. However, given the timeline for the rulemaking, the department considers this an efficient while still reliable data source. Most data supplied by TEDC are presented in a wide range that reflects the level of uncertainties and flexibilities that are needed for this type of cost analysis. They mainly serve as benchmark estimates for the average cost per affected

business for each rule amendment identified in Subsections 1.2.1.2 and 1.2.1.3. Depending on the availability of current sick leave program and the level of human resources, the average cost can vary greatly from employer to employer. These differences are addressed in each subsection below.

To aggregate various costs of this rule for different types of businesses, the department also needs to multiply the per-business cost with the estimated number of businesses in each group. Although it is impossible to know exactly how much this rule will cost, the department believes that the estimated total costs in this report are conservative and represent the range that the actual costs will most likely fall in.

2.2 Key assumptions and statistics

The requirements inherited from I-1433 essentially apply to all the businesses in the state, and many policy areas on the operational side are very complicated if not controversial. Due to these facts and given the time and resource constraints, the economic impact analyses contained in this report rely on the following assumptions. These assumptions are either adopted from the literature review of similar studies or implied from the existing relevant and credible data.

Assumption 1: businesses last for five years on average.

The cost impact of the requirements identified in Section 1 is uneven over time, with high upfront costs but much lower costs in the subsequent years. In order to compare the total costs with the benefits of this rule, both of them need to be estimated within the same timeframe.

The historical business survival data indicate that more than a half of businesses failed after five years of opening, nationwide or statewide². Given this fact, the department uses a five-year time period as the average life of a typical Washington business, and annualizes the possible costs and benefits businesses incur during this lifespan.

Assumption 2: businesses with similar employment size bear the same compliance cost.

The cost impact of each requirement analyzed in this report may vary by many factors including industry, location, firm age, level of involvement in other areas with the department. It is practically impossible to distinguish the costs due to each factor. However, the department believes firm size is the most important single factor that can best capture these differences.

Business size: To simplify the cost analysis, the department applies certain employment threshold values to divide the population of affected businesses into four groups: the smallest businesses with 1-4 employees; the relatively small businesses with 5-49 employees; the relatively large businesses with 50-249 employees; and the largest businesses with 250 or more employees. The smallest group accounts for 60 percent of all businesses, but only employs seven percent of workers. In contrast, the businesses with the largest employment size account for less than one percent of total establishments, but hire more than one third of all Washington workers. Relating to the compliance costs of this rule, businesses

² "Establishment age and survival data." BLS, November 2016 (<https://www.gov/bdm/bdmage.htm#TOTAL>).
Data source: L&I Data Warehouse report "Facts about state fund accounts and their claims." L&I, October 2016.

of different firm sizes also have different levels of human resource management, internal accounting and other professional management support. Therefore, their cost impacts also differ significantly. Due to the data and time constraints, we assume that businesses in the same group have the same cost impact. Table 1 below presents the basic statistics on each group of businesses and their levels of HR and other management support.

Table 1: Washington businesses by employment size and the level of HR support³

Firm Size	# of businesses	Share of businesses	# of total employment	Share of employment	Average employment per business	Level of HR support
1-4 employees	124,853	60.6%	218,345	7.0%	1.7	No in-house HR staff; business owners handle most of personnel work.
5-49 employees	71,295	34.6%	1,004,521	32.0%	14.1	A few HR staff or designated personnel staff
50-249 employees	8,490	4.1%	835,768	26.6%	98.4	Mix of in-house HR staff and HR outsourcing
250+ employees	1,353	0.7%	1,081,593	34.4%	799.4	In-house HR department

Assumption 3: the share of businesses that currently have a paid sick leave policy increases at a certain rate for each larger group.

Another major determinant of the cost impact is whether a business currently has a companywide paid sick leave policy. In order to aggregate the total costs across all affected businesses, the department must estimate the number of businesses that already have a paid sick leave policy as well as those that do not have one yet.

The latest BLS data indicated that approximately 76 percent of workers in Pacific region (including California, Washington, Oregon, Alaska, and Hawaii) had access to paid sick leave⁴. Lacking the data at a state level, the department assumes that this is the percentage for Washington workers. The department also derived a share of 25 percent to 100 percent of workers employed in each group that currently have access to PSL benefits (see Table 2), based on the overall percentage and the total employment in each group. Applying these percentage points to the total number of businesses in each size group, together with the assumption that all businesses in the City of Tacoma, the City of Spokane, and all but the smallest businesses in the City of Seattle have been in full compliance with their citywide ordinances⁵, the

³ "Number of establishments and employment size for all ownerships, 2016 Q1." ESD.

⁴ "Table 32: Leave benefits: access, civilian workers, March 2016, Employee Benefit Survey." BLS.

⁵ Businesses with 1-4 FTEs in Seattle are exempt from the Paid Sick and Safe Time Ordinance.

department estimates that about 89,255 businesses currently have their own paid sick leave (or PSL) policies and the remaining 116,736 businesses do not.

Table 2: Current status of PSL policy for businesses with paid employees

Business Size	# of total employment	% of workers that have access to PSL	# of total businesses in WA	# of businesses that currently have a PSL policy	# of businesses that currently do not have a PSL policy
1-4 employees	218,345	25%	124,853	35,848	89,005
5-49 employees	1,004,521	55%	71,295	44,600	26,695
50-249 employees	835,768	85%	8,490	7,453	1,037
250+ employees	1,081,593	100%	1,353	1,353	0
All above	3,140,227	76%	205,991	89,255	116,736

Assumption 4: The type of individuals needed for each work task and their hourly rates are pre-determined for each group of businesses.

While the TEDC provided the estimates on the amount of time spent to bring the employers into compliance with each requirement identified in the following subsection, the department must estimate the type of individuals involved for businesses with different employment size, as well as the individual hourly rate paid to each individual.

With the assistance from TEDC and the rulemaking program, four types of individuals (or expertise) that may be involved are identified: business owners, HR specialist or a designated staff, External HR consultant or Accountant, Attorney and other legal consultant. Table 3 below presents their average hourly rate and the business groups that are associated with each of these individuals.

Table 3: Type of individuals / occupations / expertise involved in performing required work

Type of individual involved	Level of expertise	Average hourly rate	Business group associated with these individuals
Business owner	Internal 1	\$32.50 ⁶	Smallest businesses

⁶ “Median hourly rate for small business owners in U.S.”, www.payscale.com. May 4, 2017.

HR Specialist or a designated staff occupation	Internal 2	\$44.41 ⁷	All but the smallest businesses
HR consultant /Accountant	External 1	\$128.47 ⁸	All businesses

2.3 Cost impact analysis

2.3.1 WAC 296-128-010 and WAC 296-128-760, Employers' Responsibilities of Recordkeeping, Notification and Reporting to Employees

Under the proposed sections of WAC 296-128-010 and WAC 296-128-760, all employers are required to notify employees 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 other rights provided under chapter 49.46 RCW in written or electronic form. Employers also must provide each employee with written or electronic notification, not less than monthly, detailing the amount of paid sick leave accrued and the paid sick leave reductions since notification was last made, and any unused paid sick leave available for use by the employee. In addition, employers must keep and preserve payroll or other records containing the information on paid sick leave accruals and reductions for each pay period.

The department assumes that businesses that currently have their PSL policies are already in compliance with the monthly reporting requirement. The initial notification requirement can be easily met by providing employees a copy of I-1433 and the rule language under WAC 296-128. The recordkeeping requirement on the paid sick leave accrual and balance can be met with the records created for reporting purposes, so there is no extra cost on this element. For businesses that currently do not have their PSL policies, the cost of monthly reporting varies significantly by whether or not an employer has a payroll system that supports sick leave reporting.

The breakdown estimates on the amount of time needed to fulfill these responsibilities for different types of businesses are presented in Table 4. On average, businesses will need 2-4 hours for the notification requirement. For businesses that currently do not have a paid sick leave policy but have a supportive payroll systems, it takes about 0.5-3 hours to set up the system and another 0.5 hours to run the system each month. If they don't have a payroll system that supports sick leave reporting, they will need an estimated 2-6 hours upfront and 1 hour each month to regularly report the needed information to employees. For businesses that have a shared work program or choose to limit annual carryovers to 40 hours, the recordkeeping requirement will cost them 0.5-2 hours on average. L&I will explore technological options that could help these businesses reduce these costs.

⁷ "Median hourly wage (\$30.20) plus benefits (32 percent of total compensation) for HR Specialist in Washington State, 2016 Occupational Employment and Wage Estimates." ESD. July 2016.

⁸ "Average hourly cost of HR Consultants & Advisors, ProMatcher Cost Report."
<http://human-resources.promatcher.com/cost/>.

Table 4: Estimated time needed for notification, reporting and recordkeeping requirements⁹

Type of requirement	Type of businesses it applies		Specific cost component	Estimated time needed
	by current PSL status	by payroll system		
Notification	All	All	Creating a system for providing all employees (current and new hires) initial notification and making the documents available.	2-4 hours
Monthly Reporting	Only applies to businesses with no current PSL policy	With a supportive payroll systems	Researching how to set up the payroll system, and taking the required actions in the system to obtain the needed result of a statement showing accurate sick leave accrual, usage, and remaining balance.	0.5-3 hours
			Running the system each month for reporting purpose	0.5 hours / month
		Without a supportive payroll systems	Creating a ledger or electronic spreadsheet that meets the time tracking requirements and creating entries for each employee.	2-6 hours
			Collecting the time records covering the monthly period for each employee, calculating sick leave accruals, usage and balances, and distributing them to employees.	1 hour / month
Record-keeping	Only applies to businesses with no current PSL policy	All	No extra information needed beyond the monthly reporting requirement.	0 hour
			For employers with a shared leave program, they need to create a shared leave record showing the reduction of leave balances of those donating time and the increase of sick leave balances for those receiving shared leave.	0.5-2 hours
			For employers that chooses to limit annual carryovers to 40 hours, they need to create a year-end leave reduction record, which would show the reduction of sick leave balances of affected employees.	0.5-2 hours

The department also assumes there is no need of external resources to perform these work tasks. Based on these assumptions and the data on the affected businesses, the total costs for monthly reporting are estimated in a range of \$35.02 million to \$37.55 million.

Table 5: Total annual costs of monthly reporting requirement

Business Size	For employers with a supportive payroll system ¹⁰			For employers without a supportive payroll system		
	Annualized per employer cost	# of affected businesses	Annualized total costs	Annualized per employer cost	# of affected businesses	Annualized total costs

⁹ Data Source: Thurston County Economic Development Council.

¹⁰ L&I assumes that for all businesses with no current PSL policies, about 50 percent, 10 percent, and zero percent of businesses with 1-4 employees, 5-49 employees and 50+ employees currently do manual payroll respectively.

1-4 employees	\$198-\$215	44,503	\$8,822,629-\$9,545,795	\$403-\$429	44,503	\$17,934,524-\$19,091,590
5-49 employees	\$271-\$293	24,025	\$6,508,477-\$7,041,959	\$551-\$586	2,669	\$1,470,039-\$1,564,880
50-249 employees	\$271-\$293	1,037	\$280,796-\$303,812	\$551-\$586	0	\$0
250+ employees	\$271-\$293	0	\$0	\$551-\$586	0	\$0
All above	-	69,564	\$15,611,902-\$16,891,566	-	47,172	\$19,404,563-\$20,656,470

The department assumes that all businesses in Washington will provide a notification of the new state paid sick leave law to their employees. The annual costs for this notification are estimated to be \$3.06-\$6.13 million. Together with the estimated \$0.40-\$1.58 million of recordkeeping cost for employers that have a shared paid sick leave program and choose to limit balance carryover, the total costs for notification, monthly reporting, and recordkeeping are estimated at \$38.48 million to \$ 45.26 million each year.

Table 6: Total annual costs of notification requirement

Business Size	Annualized¹¹ per-employer cost	# of affected businesses	Annualized total costs
1-4 employees	\$13-\$26	124,853	\$1,623,089 - \$3,246,178
5-49 employees	\$17.76-\$35.53	71,295	\$1,266,484 - \$2,532,969
50-249 employees	\$17.76-\$35.53	8,490	\$150,816 - \$301,633
250+ employees	\$17.76-\$35.53	1,353	\$24,035 - \$48,069
All above	-	205,991	\$3,064,424 - \$6,128,849

2.3.2 WAC 296-128-630 Paid sick leave usage and WAC 296-128-640 Variance from required increments of paid sick leave usage

Under the proposed rule, unless a greater increment is approved by a variance, 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 instance, many employers track employee hours worked in 15-

¹¹ Per the assumptions in Section 2.2, annualized over the 5 year projected life span for businesses.

minute increments, so 15 minutes would be the increment required for paid sick leave usage pursuant to the proposed rule.

It is worth noting that the department will not analyze the potential cost of replacement workers in this section. This cost is originated from the passed initiative that grants employees’ right to use the paid sick leave, so it is the employer’s duty to find the replacement when a worker is taking sick leave for the authorized purpose. Since the proposed rule defines the permitted increments of paid sick leave use rather than leaving it up to each employer to decide, L&I assumes it will result in more sick leave requests for each covered worker that must be processed each year than would have been requested if the employer defined their own increments of use. The department will also estimate the probable cost of applying for a variance in leave increments for businesses that choose to apply for this.

The estimated time needed to process the leave requests and for applying for increment variance are described in Table 7. L&I assumes the proposed rule will result in an average of two additional sick leave requests for each covered worker that need to be processed each year than would have been used if the employer defined their own increments of use. In addition, studies indicate 25 percent of employees who have access to paid sick leave did not use any in a given year.¹² Depending on the firm size and employers’ current payroll systems, the average time needed to process each leave request can vary significantly from anywhere between one minute to 10 minutes. If we assume an average of five minutes to process each request, and two additional sick leave requests for each covered worker each year, it will require 10 minutes per employee per year. This is a conservative estimate as the time to process each request can be reduced with automation.

The total amount of time needed to prepare a variance is estimated between six and 15 hours.

Table 7: Estimated time needed to process additional leave requests and variance applications¹³

Specific cost component	Estimated time needed
Processing additional number of requests for smaller leave usages	10 minutes / employee / year
Learning of the variance opportunity and the process	1-2 hours
Notification to employees of the employer’s intent to request a variance	0.5-2 hours
Writing a variance request that meets the “good cause” standard	2-6 hours
Distributing the written request to employees	0.5-1 hours
Submitting request and proof of employee notification to L&I and having potential follow-ups.	2-4 hours
Total time needed for variance application	6-15 hours

¹² In San Francisco, 25 percent of employees with access to paid sick leave used zero. Drago, R. & Lovell, V. (2011) http://www.working-families.org/network/pdf/SF_Report_PaidSickDays.pdf

In New York City, on average, only three-quarters of employees took any of the paid sick leave available to them in a 12 month period. Appelbaum, E., & Milkman, R. (2016) <http://cepr.net/images/stories/reports/nyc-paid-sick-days-2016-09.pdf>

¹³ Data Source: Thurston County Economic Development Council.

Using the total employment information on Table 2, the total costs of processing additional leave requests due to smaller increment requirement are estimated to be around \$16.68 million each year. The department also assumes that about 2.5 percent of all businesses will choose to apply for a variance. A variance is good for three years and most of these employers will need to renew at least once during the 5-year period reviewed, with the renewal costs being 10 percent of the initial costs. The total annual costs of applying and renewing variances are in a range of \$461.7 thousand to \$1.15 million.

Table 8: Total annual costs of processing sick leave requests and variance application

Business Size	Costs of processing additional leave requests			Costs of variance applications (based on a 6-year time period)				
	Additional leave requests each year	Cost / per request	Total annual cost	Initial application - per employer cost	Renewal cost-per employer	Annualized per employer cost	# of affected businesses	Annualized total costs
1-4 employees	319,330	\$2.71	\$864,851	\$483-\$1,207	\$48-\$121	\$89-\$221	3,121	\$276,342 - \$690,855
5-49 employees	1,469,112	\$3.70	\$5,436,939	\$519-\$1,297	\$52-\$130	\$95-\$238	1,782	\$169,475-\$423,688
50-249 employees	1,222,311	\$3.70	\$4,523,568	\$367-\$918	\$37-\$92	\$67-\$168	212	\$14,294 - \$35,735
250+ employees	1,581,830	\$3.70	\$5,854,088	\$266-\$666	\$27-\$67	\$49-\$122	34	\$1,652 - \$4,131
All	4,592,582	-	\$16,679,446	-	-	-	5,150	\$461,763 - \$1,154,408

2.3.3 WAC 296-128-660 Verification for absences exceeding three days

Under the proposed rule, an employer may require verification that an employee’s use of paid sick leave is for an authorized purpose for absences exceeding three days. If an employer requires this verification, the employer must have a written policy or collective bargaining agreement outlining any such requirements, and must notify the employee of such policy or agreement prior to requiring the employee to provide verification. An employer must make this information readily available to all employees. 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 a statement explaining this, and the employer must either mitigate the employee’s out-of-pocket expense associated with obtaining medical verification or accept an employee’s written justification as a form of

verification. The employee has the obligation to provide the verification within a reasonable time period, but that time frame may not be less than 10 calendar days.

There are three areas that will potentially impose compliance costs on affected businesses:

1. Employers’ cost of developing a written policy or agreement that specifies the verification requirement.
2. The time needed to review an employee’s written justification and expense associated with obtaining medical verification if employees are required to do so.
3. The potential administrative cost of documenting and adjusting payroll due to the requirement of at least 10 days for employees to provide verifications.

The first cost element is part of the cost of developing or updating a written policy or agreement analyzed in Section 2.3.4, so there is no extra cost that needs to be analyzed here.

To derive the total cost of the second item, we need to estimate the frequency of an employee being absent more than 3 consecutive days and the frequency of having to pay expenses for employees in obtaining medical verification. There is no such data readily available, but based on existing studies that indicate a total of three or fewer days of sick leave usage during the whole year for a typical worker¹⁴, the department estimates that about two percent of all workers in the state will have an absence exceeding three consecutive days once a year. Employers would pay the expense¹⁵ for an estimated 10 percent of these employees in order to obtain medical verification. To derive the cost of the third area, the department also assumes in 40 percent of the time an employee is required to provide verification, the verification is received after the pay period during which the absence occurs. Based on all the assumptions above and in Section 2.2, together with the average cost data supplied by TEDC¹⁶, the department estimates that the verification requirement will impose \$3.01 - \$5.09 million on the affected businesses each year.

Table 9: Total annual costs of verification requirement

Business Size	# of affected employees	Cost of reviewing, researching and meeting with employees on verification issue	Cost of possible medical expenses for obtaining verification	Cost of payroll adjustment	All

¹⁴ For example, a typical worker in San Francisco with access to paid sick leave used only three paid sick days during the previous year, and 25 percent of employees with access used zero paid sick day. Another study shows that employees across the U.S. are estimated to use an average of two and a half days annually, out of a maximum of seven that may be accrued based on data on sick leave usage patterns from the National Health Interview Survey.

¹⁵ Assuming an average cost of \$99.99 per office visit to a walk-in clinic to obtain the required verification.

¹⁶ TEDC estimated that on average, it would take 0.5-1 hour for employers to review and research each of employees’ written statements and to meet with that employee to discuss the decision. TEDC also estimated that an average of 1 hour is needed to document and make the payroll adjustment, either manually or in a computer payroll system.

1-4 employees	4,367	\$70,962-\$141,924	\$43,665-\$87,329	\$56,770	\$171,396-\$286,023
5-49 employees	20,090	\$446,108-\$892,216	\$200,884-\$401,468	\$356,886	\$1,003,878-\$1,650,870
50-249 employees	16,715	\$371,165-\$742,329	\$167,137-\$334,274	\$296,932	\$835,233-\$1,373,535
250+ employees	21,632	\$480,335-\$960,671	\$216,297-\$432,594	\$384,268	\$1,080,901-\$1,777,533
All above	62,805	\$1,368,570-\$2,737,140	\$627,983-\$1,255,965	\$1,094,856	\$3,091,408-\$5,087,961

2.3.4 Multiple WACs, Comprehensive Paid Sick Leave Policy

Although the proposed rule does not explicitly state that each business must have its sick leave policy in place after the rule becomes effective, it implies that businesses must have a written policy or collective bargaining agreement to address the specifics under the following circumstances:

- 1) If there are any requirements of an employee to give reasonable notice for the use of paid sick leave.
- 2) If there are any requirements of an employee to provide verification for use of paid sick leave.
- 3) If employers choose to establish a shared sick leave program.
- 4) If employers allow the option of frontloaded paid sick leave.

To avoid possible disputes from employees in these policy areas, all businesses are anticipated to create a new sick leave policy if they do not currently have one, or update their current policy to address these issues and all others related to paid sick leave benefit. Having a clear paid sick leave policy or agreement in place may cost employers upfront, but the annual cost in the following years is much smaller, and the benefit of avoiding potential legal disputes can be enormous in the long run.

The costs of creating a written policy normally include the time spent researching the law and policy options, writing the policy, distributing it to existing employees and new hires, training employees on the new policy, etc. While the rule requires the policy “be made available to employees”, this requirement can be met by distributing it to existing employees and new hires and retaining the policy to be available upon request. Employers have discretion as to the methods for retaining the policy. It can be as simple as storing an electronic or a paper copy. For employers that already have a PSL policy, the costs of updating their current policy or agreement to meet with the state law are much lower. Given that the department has committed to developing sample policies and making them available on its website for all affected businesses as described in WAC 296-128-610, the time needed to research and write the policy is expected to be greatly reduced.

Table 10: Estimated time needed to develop a companywide written policy or agreement covering reasonable notice and verification¹⁷

Major Cost Factors	Estimated time needed
Researching the law and policy options	1.5 - 4 hours
Writing the policy	2 - 4 hours
Distributing the policy to existing employees and new hires	0.5 - 2 hours
Training employees on the new policy	0.25 - 1 hour
Adding Shared leave written policy	1 - 3 hours
Adding Frontloading written policy	1 - 3 hours
Total written policy to include reasonable notice and verification	4.25 - 11 hours
All including Shared Leave and Frontloading programs	6.25 - 17 hours
Total amount of time needed to update a current PSL policy	2 - 5 hours

For businesses with different employment size, these work tasks are performed by different types of individuals (described in Table 3) based on the level of resources available to them, thus the total costs can be very different. Based on the estimate of the share of work by each level of expertise and the hourly rate indicated in Table 3, the per-employer cost of developing a new PSL policy is estimated to be in a range of \$189 to \$1,469, and the average cost of updating a current policy is between \$89 and \$432. Table 11 presents the estimated cost range for each business group. The department is also committed to offering educational opportunities for businesses, especially small businesses that currently do not have a policy and are not familiar with the new law. With these mitigation efforts, the actual per-business compliance costs are expected to be much lower.

Table 11: Aggregated per-employer cost by business size

Business Size	Share of work by each level of expertise	Per-employer cost of creating a policy to include reasonable notice and verification	Per-employer cost of creating a policy with additional programs	Per-employer cost of updating a current PSL policy
1-4 employees	Internal 1: 50% External 1: 50%	\$342-\$885	\$503-\$1,368	\$161-\$402
5-49 employees	Internal 2: 50% External 1: 50%	\$367-\$951	\$540-\$1,469	\$173-\$432
50-249 employees	Internal 2: 80% External 1: 20%	\$260-\$673	\$383-\$1,041	\$122-\$306
250+ employees	Internal 2: 100%	\$189-\$489	\$278-\$755	\$89-\$222

To derive the total annualized costs of developing or updating a PSL policy for all affected businesses across the state, we must also estimate the distribution of employers by each size group and whether

¹⁷ Data Source: Thurston Economic Development Council, June 2017.

they currently have a paid sick leave policy. Based on the information from both Table 2 and Table 11 above, the total costs of creating a PSL policy for all the businesses that currently do not have one ranged from \$8.20 million to \$21.27 million, and the total costs of updating a PSL policy for all the businesses that currently have their own PSL policies ranged from \$2.90 million to \$7.26 million. Altogether, this optional requirement will cost all the affected businesses between \$11.10 million to \$28.52 million each year over the life cycle of a business assumed in Section 2.2.

Table 12: Total annual costs of having a written policy or agreement in place

Business Size	For employers with no PSL policies ¹⁸				For employers with current PSL policies		All businesses
	# of affected businesses with no additional programs	# of affected businesses with additional programs	Annualized ¹⁹ total costs of creating a policy to include reasonable notice and verification	Annualized total costs of creating a policy including additional programs	# of affected businesses	Annualized total cost of updating an existing PSL policy	Annualized total cost for all businesses
1-4 employees	89,005	0	\$6,089,038-\$15,759,863	\$0	35,848	\$1,154,088-\$2,885,220	\$7,243,126-\$18,645,083
5-49 employees	24,025	2,669	\$1,765,235-\$4,568,843	\$288,437-\$784,549	44,600	\$1,542,097-\$3,855,243	\$3,595,769-\$9,208,635
50-249 employees	829	207	\$43,152-\$111,686	\$15,865-\$43,152	7,453	\$182,527-\$456,317	\$241,543-\$611,155
250+ employees	0	0	\$0	\$0	1,353	\$24,035-\$60,087	\$24,035-\$60,087
All above	113,860	2,877	\$7,897,424-\$20,440,392	\$304,302-\$827,700	89,255	\$2,902,747-\$7,256,866	\$11,104,472-\$28,524,959

2.3.5 Estimated total costs of the proposed rules

¹⁸ L&I assumes the employers with optional programs account for zero percent of all businesses that currently have no companywide policies in the smallest size group, 10 percent of all businesses with 5-49 employees, and 20 percent of all businesses with 50-249 employees.

¹⁹ Per the assumptions in Section 2.2, annualized over the five-year projected life span for businesses.

Sections 2.3.1 through 2.3.4 present detailed cost estimates for each identified rule amendment. All together, the department estimates that the total compliance costs on all affected businesses across the state range between \$55.22 million to up to \$61.51 million for the required elements. Including the costs of optional programs, the total annual costs are estimated to be between \$69.81 million and \$96.71 million.

Table 13: Summary of the annualized costs of each identified significant rule amendment

Cost component		Required or optional	Annual costs-low	Annual costs - high
Costs of notification, monthly reporting and recordkeeping requirements.		Required	\$38.08 million	\$43.68 million
Costs of increment requirement for PSL usage and variance application.		Required	\$17.14 million	\$17.83 million
	All required.		\$55.22 million	\$61.51 million
Costs of verification for absences exceeding three days.		Optional	\$3.09 million	\$5.09 million
Costs of creating & updating a comprehensive PSL written policy.		Optional	\$11.10 million	\$28.52 million
Recordkeeping costs for optional programs.		Optional	\$0.40 million	\$1.58 million
	All required and optional		\$69.81 million	\$96.71 million

CHAPTER 3: ASSESSING BENEFITS

In order to estimate the probable benefits that can be attributed to the proposed rule, the department relied on as many sources as possible including Washington State Employment Security Department (ESD) and the Bureau of Labor Statistics (BLS) databases, as well as multiple existing relevant studies and external data sources.

Specifically, both quantitative and qualitative benefits of the proposed rule are explained below:

3.1 Quantitative benefits

3.1.1 Methodology and Assumptions

It is practically unmanageable to separate the societal benefits of I-1433 Part II (Establishing Fair Labor Standards by Requiring Employers to Provide Paid Sick Leave to Employees) implementation, and the benefits of the proposed rule under WAC 296-128. The proposed rule is believed to be an essential and necessary condition for implementing the paid sick leave policy in Washington State through setting administrative procedures and standards for employers to follow in order to be able to implement the requirements of the initiative. In other words, when it comes to assessing benefits we are unable to

disentangle those that arise from the proposed rule compared with the initiative and we assume that the benefits granted by the initiative are the benefits of the rule. However, we are confident that the benefits quantified in the following estimates are a fraction of those that could be quantified given more time and resources. For example, we do not attempt to quantify the benefit of avoiding exposure to viruses other than the flu in the workplace, nor do we quantify the benefit of avoiding transmission to family members outside the workplace. We also assume the assumptions made in the calculation of the benefits that we do quantify are conservative.

- Assessing the benefits of this rulemaking, the department relied mainly on the approach used by the Institute for Women’s Policy Research (IWPR)²⁰ in its efforts to calculate the benefits of paid sick days on the whole society in numerous states and cities, including; Chicago, Colorado, Maryland, Massachusetts, Oregon, District of Columbia, Vermont, Louisiana, California, Florida, North Carolina, and Connecticut.
- To monetize both the benefits of reduced job turnover and less flu contagion in the workplace, the department has made a very conservative assumption on the affected workers average hourly wage. Assuming an average wage of \$13.32 an hour, using the weighted average of hourly wages for workers in food and beverage occupations by employment size in Washington State²¹ as detailed in Table 14. In contrast, most of the IWPR studies used a much higher average hourly wage estimate. For example, IWPR used an average hourly wage of \$16.50 in Oregon, \$16.08 in Vermont, \$15.89 in Denver, and \$14.30 in Chicago.

Occupational Code	Occupational title	Employment Size	Average Hourly Wage
35-3011	Bartenders	13,685	\$ 14.94
35-1011	Chefs & Head Cooks	2,103	\$ 25.84
35-3021	Combined Food Prep & Serving Workers, Inc Fast Food	68,587	\$ 11.45
35-2019	Cooks, All Other	316	\$ 15.89
35-2011	Cooks, Fast Food	7,592	\$ 11.47
35-2012	Cooks, Institution & Cafeteria	9,488	\$ 15.34

²⁰ <https://iwpr.org> Paid Sick Days Benefit Employers, Workers, and the Economy
<https://iwpr.org/wp-content/uploads/wpallimport/files/iwpr-export/publications/B361.pdf>

²¹ Employment Security Department (ESD) Occupational Wages
<https://esd.wa.gov/labormarketinfo/occupations>
https://esdorchardstorage.blob.core.windows.net/esdwa/Default/ESDWAGOV/labor-market-info/aries/Occupational-reports/OES/2016%20OES%20Databook_Online.xlsx

Occupational Code	Occupational title	Employment Size	Average Hourly Wage
35-2014	Cooks, Restaurant	24,526	\$ 13.30
35-2015	Cooks, Short Order	4,433	\$ 12.73
35-3022	Counter Attendants, Cafeteria/Concession & Coffee Shop	14,283	\$ 11.54
35-9011	Dining Room & Cafeteria Attendants & Bartender Helpers	7,771	\$ 11.99
35-9021	Dishwashers	11,862	\$ 11.31
35-9099	Food Preparation & Serving Related Workers, All Other	983	\$ 11.68
35-1012	Food Preparation & Serving Worker Supervisors	17,515	\$ 18.05
35-2021	Food Preparation Workers	22,842	\$ 13.14
35-3041	Food Servers, No restaurant	5,024	\$ 11.98
35-9031	Hosts/Hostesses, Restaurant, Lounge & Coffee Shop	7,030	\$ 11.76
35-3031	Waiters & Waitresses	46,301	\$ 14.96
Weighted Average by Employment Size			\$ 13.32

*Source: Employment Security Department (ESD) 2016 Occupational Employment Statistics (OES)

- Workers in the cities of Seattle, Tacoma, and Spokane have been excluded from the quantitative benefits calculations, even though these workers might be subject to some of the benefits under the proposed rule if the paid sick leave policies they are currently covered by are less generous than those stated under the initiative.
- Another major determinant is the percentage of employees currently working for an employer with a paid sick leave policy. In order to aggregate total benefits, the department needs to estimate the number of employees that already have a paid sick leave policy as well as those that do not have one yet. The latest BLS data indicated that approximately 76 percent of workers in Pacific region (including California, Washington, Oregon, Alaska, and Hawaii) had access to paid sick leave²². Lacking the data at a state level, the department assumes that this is the percentage for Washington workers. The department believes this is a very conservative assumption given that even the assumed 76 percent currently covered employees in Washington State might be subject to some of the probable benefits under this proposal, if the paid sick leave policies they are currently covered by are less generous than those stated under the initiative.

²² "Table 32: Leave benefits: access, civilian workers, March 2016, Employee Benefit Survey." BLS.

3.1.2 Reduced Job Turnover

Workers value paid sick days. When they have this benefit, they are less likely to look for a different job. Workers who experience a health care crisis are also more likely to return to their employer if the employer has a paid leave policy. Under the proposed rule, all employers will provide paid sick days, so the effect on voluntary turnover may be reduced since workers considering a job change will have paid sick days both at their current job and at their potential new job. Since changing jobs is somewhat costly and risky for both workers and employers, having paid sick days in a current job may increase worker loyalty to the current employer and reduce work/life conflict, even if another employer offered the same benefit. In addition, having paid sick days affects involuntary turnover by protecting workers from being fired for unauthorized work absences when they are sick or must care for sick family members.

Table 15: Cost Savings From Reduced Turnover		
Factor	Value	Notes / Source
Workers Newly Affected by the rule in Washington State	608,177	24% of Washington State workers excluding cities of Seattle, Tacoma, and Spokane. Based on the Bureau of Labor Statistics (BLS) percentage estimate of employees not having paid sick leave benefits in the Pacific Region. https://www.bls.gov/news.release/pdf/ebs2.pdf
Affected Workers Mean Hourly Wage	\$ 13.32	L&I estimate.
Affected Workers Average Daily Work Hours	8	L&I estimate.
Average Cost of Benefits and Payroll Taxes	31.7%	BLS Employer Costs for Employee Compensation – March 2017. https://www.bls.gov/news.release/pdf/ecec.pdf
Cost of Affected Workers per Year	\$ 22,191,347,708	
Average Cost of Turnover (25%)	\$ 5,547,836,927	The Cost of Employee Turnover https://www.gnapartners.com/blog/how-much-does-employee-turnover-really-cost-your-business/
Average Percentage Point Reduction in Voluntary Turnover When Paid Sick Days are Provided	5%	Institute for Women’s Policy Research (IWPR) https://iwpr.org/wp-content/uploads/wpallimport/files/iwpr-export/publications/B270.pdf
Expected Reduction in Turnover Cost Due to the Proposed Rule		\$ 277,391,846

3.1.3 Reduced Flu Contagion in the Workplace

Because influenza (the flu) is highly contagious and accounts for most of illness-related employment absences, the impact of paid sick days on transmission of the flu virus is expected to have a large influence on this rule-making analysis. By a very low estimate, **five percent** of healthy working adults will get the flu in a given flu season²³. Studies find that workers with the flu miss **one to five days of work**. Most of employees out sick with the flu are attended by a caregiver, with an average work-loss of **0.4** days per caregiver²⁴. Workers with the flu also incur costs for doctor visits, hospitalizations in some cases, and purchase of prescription and non-prescription medications and other treatments.

According to Centers for Disease Control and Prevention, seasonal influenza-related deaths are deaths that occur in people for whom seasonal influenza infection was likely a contributor to the cause of death, but not necessarily the primary cause of death.²⁵ For this reason, costs of influenza-related deaths are excluded from this benefit analysis.

Table 16: Cost Savings From Reduced Flu Contagion in Workplace		
Factor	Value	Notes / Source
Workers Currently Affected by the rule in Washington State	608,177	24% of Washington State workers excluding cities of Seattle, Tacoma, and Spokane. Based on the Bureau of Labor Statistics (BLS) percentage estimate of employees not having paid sick leave benefits in the Pacific Region. https://www.bls.gov/news.release/pdf/ebs2.pdf
Affected Workers Mean Hourly Wage	\$ 13.32	L&I estimate.
Affected Workers Average Daily Work Hours	8	L&I estimate.
Average Cost of Benefits and Payroll Taxes	31.7%	BLS Employer Costs for Employee Compensation – March 2017. https://www.bls.gov/news.release/pdf/ecec.pdf
Flu Illness Rate	5%	U.S. Influenza Surveillance Report.
Contagion rate (i.e., each co-worker’s chance of contracting the flu)	18%	U.S. Influenza Surveillance Report.
Assumed number of close daily work contacts	5	U.S. Influenza Surveillance Report.

²³ U.S. Influenza Surveillance Report
<https://www.cdc.gov/flu/weekly/index.htm>

²⁴ Washington State 2015-2016 Influenza Surveillance Report
<http://www.doh.wa.gov/Portals/1/Documents/5100/420-100-FluUpdateSeason2016.pdf>

²⁵ Centers for Disease Control and Prevention
<https://www.cdc.gov/>

Table 16: Cost Savings From Reduced Flu Contagion in Workplace		
Factor	Value	Notes / Source
Number of missed workdays per infected co-worker	2	U.S. Influenza Surveillance Report.
Average Cost of Doctor's Visit	\$ 100	L&I estimate.
Average Cost of Prescription Drugs	\$ 50	L&I estimate.
Average Cost of Over the Counter Flu Drugs	\$ 10	L&I estimate.
Factor	Value	
Estimated Number of Workers Subject to Flu each year (5% of workers currently affected by the rule)	30,409	
Estimated Number of Infected Workers as a result of a Sick worker in the Workplace Due to the Lack of Paid Sick Leave Policy (Assuming 18% Contagion Rate & 5 Daily Work Contacts)	27,368	
Yearly Expected Number of WA Workers Infected with a Flu Per Season	57,777	
Cost of 2 missed workdays	\$ 16,216,754	
Cost of 2 Days 50% Lost Productivity on return to work	\$ 8,108,377	
Cost of 0.4 Missed Workday Hours for Employed Caregivers of Ill Workers	\$ 3,243,351	
Cost of Doctor's Visit (Assuming 25% will go to the doctor)	\$ 1,444,422	
Cost of Drugs (Prescription & Over the Counter)	\$ 1,299,979	
Expected Reduction in Flu Contagion Costs Due the Proposed Rule	\$ 30,312,883	

3.1.4 Reduced Expenditure for Short-term Nursing Home Stays

Approximately **34.2 million** Americans have provided unpaid care to an adult age 50 or older in 2015, or approximately 11 percent of the population.²⁶ Workers with the flexibility to provide informal care for elderly, disabled, and medically fragile relatives because of the option of taking paid sick leave may be able to reduce expenditures for health care, including paid care at home or in nursing homes.

²⁶ Caregiving in the U.S. 2015 Report
<http://www.aarp.org/content/dam/aarp/ppi/2015/caregiving-in-the-united-states-2015-report-revised.pdf>

Table 17: Cost Savings From Reduced Expenditures for Short-term Nursing Home Stays		
Factor	Value	Notes / Source
Workers Currently Affected by the Rule in Washington State	608,177	24% of Washington State workers excluding cities of Seattle, Tacoma, and Spokane. Based on the Bureau of Labor Statistics (BLS) percentage estimate of employees not having paid sick leave benefits in the Pacific Region. https://www.bls.gov/news.release/pdf/ebs2.pdf
Average cost of one day of Nursing Home Stay, Semi-private Room	\$ 222	Caregiving in the U.S. 2015 Report http://www.aarp.org/content/dam/aarp/ppi/2015/caregiving-in-the-united-states-2015-report-revised.pdf
Estimated Average Length of Nursing Home Stay	2 Days	AARP Public Policy Institute; Understanding the Impact of Family Caregiving on Work http://www.aarp.org/content/dam/aarp/research/public_policy_institute/ltc/2012/understanding-impact-family-caregiving-work-AARP-ppi-ltc.pdf
National Rate of Adult Caregivers for Elderly/Disabled Family Member	11%	Caregiving in the U.S. 2015 Report http://www.aarp.org/content/dam/aarp/ppi/2015/caregiving-in-the-united-states-2015-report-revised.pdf
Expected Reduction in Nursing Home Stays Cost Due to the Proposed Rule		
Low	Median	High
Assuming 7% of Adult Caregivers	Assuming 11% of Adult Caregivers	Assuming 15% of Adult Caregivers
\$ 18,902,156	\$ 29,703,389	\$ 40,504,621

3.1.5 Estimated total quantifiable benefits of the proposed rules

Using a conservative methodology described above, the department estimates the total quantifiable probable benefits of this proposal to be in a range of **\$326.61 million** to **\$348.21 million** per year.

3.2 Qualitative benefits

Due to limited time and data availability, the department does not attempt to monetize all the reduction in costs associated with lost jobs and wages due to the lack of a paid sick leave policy prior to the proposed rule, nor do we try to quantify the benefits of the improved financial stability, social status, and economic well-being of Washington State’s affected workers as a result of the proposed rule. While

these qualitative benefits are difficult to measure, their values and impacts on the entire society may be very significant, thus they need to be addressed.

In addition to what has been outlined in the quantitative benefits section, below we provide a brief discussion of some other qualitative benefits that may influence employers, employees and the society as a whole.²⁷

3.2.1 Lost wages

With a paid sick leave policy in place, workers will not be suspended or fired for missing work without authorization when they are sick or a family member needs care. This will save the unexpected loss of wages and will keep relatively low wage workers employed and productive.

3.2.2 Reduced reliance on social welfare and unemployment programs

Workers who lose their jobs because of having inadequate paid sick days or because of a lack of a paid sick leave policy in their place of employment will be less likely to lose their jobs under the proposed rule, which will make them less reliant on public assistance such as social welfare and unemployment programs.

3.2.3 Increased financial stability and economic well-being of families

When incomes are not interrupted by unpaid leave, families experience greater financial stability and economic well-being.

3.2.4 The value of workers and their family members feeling better

Better health due to access to paid sick days under the proposed rule will improve quality of lives for workers and their families.

3.2.5 Social impacts on families when workers cannot take time needed to provide care

When parents cannot stay home to care for sick children, older siblings may be kept out of school to care for their younger siblings. These school absences may affect school performance and may have long-range impacts on the older childrens' education and future work productivity.

3.2.6 Health care impacts from keeping children at home when they have contagious diseases

Keeping children at home when they have contagious diseases like the flu can prevent illness and work absence among their schoolmates, schoolmates' parents, and school staff and faculty. Preventing children from being disease vectors in schools and day cares can significantly reduce workplace absence and productivity effects among adults as well.

3.2.7 Reduced expenditures for treating victims of contagious diseases

Paid sick days that allow ill workers to stay home can have very important public health impacts by limiting the spread of contagious diseases. This analysis included an analysis to quantify benefits from reduced flu contagion in the workplace. However, due to limited time and data availability, the analysis

²⁷ White House Council of Economic Affairs, The Economics of Paid and Unpaid Sick Leave https://obamawhitehouse.archives.gov/sites/default/files/docs/leave_report_final.pdf

did not quantify benefits of limiting the spread of other contagious diseases on employers, employees, and on public health, such as reduced expenditures for treating victims of norovirus outbreaks in nursing homes.

CHAPTER 4: LEAST BURDENSOME ALTERNATIVE ANALYSIS

L&I is required to determine the contents of the proposed rule are the least burdensome set of requirements that still achieve the goals and objectives of the authorizing statute.

4.1 WAC 296-128-010 and WAC 296-128-760, Employers' Responsibilities of Recordkeeping, Notification and Reporting to Employees

The proposed rules for recordkeeping, notification, and reporting are the least burdensome alternatives to achieve the general goals and specific objectives of the initiative.

At present, employers with employees who are subject to RCW 49.46.020 must keep records of hours worked each workday and total hours worked each workweek, as well as total wages paid each pay period (among other recordkeeping requirements at WAC 296-128-010). These existing recordkeeping requirements are amended to require records documenting sick leave accrued, used, and paid to employees. The rules do not prescribe a particular method of notification or recordkeeping, allowing for employers to add this information to their existing practices and systems for paying employees and to limit such additional recordkeeping requirements to only those which are necessary to ensure employer compliance.

At present, employers must provide employees with notice of their rates of pay and hours worked at each payment interval. The language of the initiative requires employers to notify employees about their rates of accrual and balances for paid sick leave. Again, the rules do not proscribe a particular method of notification or recordkeeping. Because employers should have notice requirements in place already, the least burdensome alternative is to require employers to simply add accrual and leave balances to their existing practices and systems for paying employees.

Employees must be aware of the available amount of paid sick leave accrued when faced with deciding whether to take paid sick leave, go to work sick, or work without pay. In addition, employees must be aware of when paid sick leave has been deducted from their balance to ensure they are paid the appropriate hours of leave and hours worked.

4.2 WAC 296-128-630 Paid sick leave usage and WAC 296-128-640 Variance from required increments of paid sick leave usage

The proposed rules for required increments of paid sick leave usage and variance from required increments of paid sick leave usage are the least burdensome alternatives to achieve the general goals and specific objectives of the initiative.

WAC 296-128-630 requires paid sick leave to be provided in increments consistent with the employer's payroll system and practices but not exceeding 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 also allow employees to use paid sick leave in fifteen-minute increments. The default is one hour for those employers who track increments of work for the purposes of compensation in one-hour or greater increments.

Recognizing that different industries and employers could have difficulty complying with the increments of use requirement set forth in WAC 296-128-630(4), L&I created a variance process in rule to mitigate the impact to employers. The variance rule provides employers with the opportunity to obtain a variance permitting them to provide leave in smaller increments if the employer can show good cause that providing leave in the required pay increments is not feasible. The variance rule allows for certain employers to achieve compliance in a way that fits their business model. Among other things, this rule is intended to cover situations where it may be physically impossible for an employer to allow an employee to return to work if the employee misses any part of their shift.

The variance rule allows L&I 60 days to review the request; however, L&I may extend the time under certain circumstances. In rare circumstances where an immediate action is necessary, a temporary variance may be issued to cover the time L&I reviews the requests and makes a determination as to whether good cause exists for issuing a variance.

Lastly, the required increments of use rule also reduces the likelihood employees will be required to use more sick leave than needed. Requiring employees to take more paid sick leave than they need to use on any given occasion leaves less paid sick leave available for future needs and is inconsistent with the goals and objectives of the initiative.

4.3 WAC 296-128-660 Verification for absences exceeding three days

The proposed rules for verification for absences exceeding three days are the least burdensome alternatives to achieve the general goals and specific objectives of the initiative.

The initiative does not require employers to verify whether an absence from work is for an authorized purpose. In order to encourage workers to use leave as the statute directs, but to protect employers from misuse of leave while meeting the demands of the workplace, L&I crafted a flexible rule preserving an employer's right to verify that leave is used for an authorized purpose.

The proposed rule includes a provision addressing situations where there is an unreasonable burden or expense on the employee that is the least burdensome alternative as it provides the employer and employee with flexibility. Rather than automatically requiring an employer pay all or a part of the costs associated with obtaining medical verification when doing so places an unreasonable burden or expense on the employee, the proposed rule provides the employer and employee with flexibility to identify 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. One option an employer may consider is mitigating the employee's out-of-pocket expense.

In instances where an employer and employee disagree on the existence of an unreasonable burden or expense resulting from a verification requirement for absences exceeding three days, the rule sets forth options for the employer and employee to seek assistance from L&I.

4.4 Multiple WACs, Paid Sick Leave Policies

The proposed rules do not require employers to have written policies unless employers choose to require employees to give reasonable notice before paid sick leave is used, choose to require employees to provide verification for use of paid sick leave, choose to establish a shared leave program, or choose to frontload paid sick leave. Since these are not required elements of the rules, written policies are needed to ensure employees understand how the employer's administration of the optional features of the initiative and rules are carried out.

To mitigate any potential costs the policy requirements may create, L&I proposed WAC 296-128-610, providing for sample policies that will meet its standard for compliance with these rules.

CHAPTER 5: CONCLUSION

There is always some degree of uncertainty in anticipating what the costs and benefits of a proposed rule will ultimately be. That said, within the constraints of our resources, we have attempted to provide estimates that are as accurate as possible by performing a comprehensive analysis that is data-driven and evidence-based.

As mentioned in both the cost and benefit sections, L&I estimates the total compliance costs on all affected businesses across the state range from \$55.22 million to \$61.51 million annually for the required elements. Including the costs of optional programs, the total annual costs range from **\$69.81 million to \$96.71 million** each year. While the total probable benefit to the entire society that can be quantified is estimated at **\$326.61 million to \$348.21 million** per year. In addition to quantifiable benefits, there are additional qualitative benefits as described in the benefits section.

Based on these results, L&I concludes that the probable benefit of the proposed rule outweighs the probable cost. Therefore, the proposal is economically feasible.

CHAPTER 6: REFERENCES

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Appendix 1

Table 18. Identification of significant legislative rules or the reason why the rule is not a significant legislative rule or exempt.

<u>Proposed Rule Language</u>	<u>Category of Rule</u>
<p>Amended WAC 296-128-010 Records Required. (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)</p>	<p>Significant legislative rule</p>
<p>WAC 296-128-600 Definitions. (Not listed)</p>	<p>Exempt</p> <ul style="list-style-type: none"> • RCW 34.05.328(5)(b)(iii) – definition consistent with the language of the statute • RCW 34.05.328(5)(b)(iii) – definition consistent with language in other state rule • RCW 34.05.328(5)(c)(ii) – interpretation of statute language
<p>WAC 296-128-610 Requirements for a written policy-Duty of the Department to provide sample policies. (Not listed)</p>	<p>Significant legislative rule <i>(no associated costs to employers)</i></p>
<p>WAC 296-128-620 Paid sick leave accrual</p>	
<p>(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 favorable paid sick leave accrual rate.</p>	<p>Exempt</p> <ul style="list-style-type: none"> • RCW 34.05.328(5)(b)(iii) and RCW 34.05.328(5)(v) - Consistent with the language of the statute under RCW 49.46.210(1)(a) and RCW 49.46.210(1)(e)
<p>(2) Paid sick leave for existing employees will accrue for all hours worked beginning January 1, 2018. For employees hired after January 1, 2018, accrual begins at the commencement of his or her employment.</p>	<p>Exempt</p> <ul style="list-style-type: none"> • RCW 34.05.328(5)(b)(iii) and RCW 34.05.328(5)(v) -

	Consistent with the language of the statute under RCW 49.46.210(1)
(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.	Exempt <ul style="list-style-type: none"> • RCW 34.05.328(5)(b)(iii) and RCW 34.05.328(5)(v) - Consistent with the language of the statute under RCW 49.46.210(5)(1)(a) • RCW 34.05.328(5)(c)(ii) – Interpretation of statute language
(4) Employers must allow employees to carry over at least forty hours of accrued, unused paid sick leave to the following year. For example, if an employee accrues fifty-two hours of paid sick leave in a year, and 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 previously accrued and carried over.	Exempt <ul style="list-style-type: none"> • RCW 34.05.328(5)(b)(iii) and RCW 34.05.328(5)(v) - Consistent with the language of the statute under RCW 49.46.210(1)(j)
(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.	Exempt <ul style="list-style-type: none"> • RCW 34.05.328(5)(b)(iii) and RCW 34.05.328(5)(v) - Consistent with the language of the statute under RCW 49.46.210(1)(j) and RCW 49.46.210(1)(e) • RCW 34.05.328(5)(c)(ii) – Interpretation of statute language
(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 the employer or 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, “year” is defined as calendar year.	<ul style="list-style-type: none"> • RCW 34.05.328(5)(c)(ii) – Interpretation of statute language
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(b) and 49.46.210(c).	Exempt <ul style="list-style-type: none"> • RCW 34.05.328(5)(b)(iii) and RCW 34.05.328(5)(v) - Consistent with the language of the statute under RCW 49.46.210(b) and RCW49.46.210(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	Exempt <ul style="list-style-type: none"> • RCW 34.05.328(5)(b)(iii) and RCW 34.05.328(5)(v) -

<p>accrued unused paid sick leave prior to the ninetieth calendar day following the commencement of his or her employment.</p>	<p>Consistent with the language of the statute under RCW 49.46.210(1)(d) and RCW49.46.210(1)(e)</p>
<p>(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.</p>	<p>Exempt</p> <ul style="list-style-type: none"> • RCW 34.05.328(5)(b)(iii) and RCW 34.05.328(5)(v) - Consistent with the language of the statute under RCW 49.46.210(1)(d) • RCW 34.05.328(5)(c)(ii) – Interpretation of statute language
<p>(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.</p>	<p>Significant Legislative Rule</p>
<p>WAC 296-128-640 - Variance from required increments of paid sick leave usage.</p>	
<p>(1) The department may grant a variance from the requirements under WAC 296-128-620(4) for good cause. Good cause means situations where the employer can establish that compliance with the requirements for increments of use are infeasible, and that granting the variance does not have a significant harmful effect on the health, safety, and welfare of the employees involved.</p>	<p>Optional requirement/not a significant legislative rule</p>
<p>(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:</p> <ul style="list-style-type: none"> (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: <ul style="list-style-type: none"> (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; 	<p>Optional requirement/not a significant legislative rule</p>

<p>(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</p> <p>(iv) The department's address and phone number, or other contact information.</p>	
<p>(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 review process whenever circumstances of the particular application warrant it.</p>	<p>Optional requirement/not a significant legislative rule</p>
<p>(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.</p>	<p>Optional requirement/not a significant legislative rule</p>
<p>(5) Variances will 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:</p> <p>(a) The paid sick leave increments of use approved in the variance;</p> <p>(b) The basis for a finding of good cause;</p> <p>(c) The group of employees impacted; and</p> <p>(d) The period of time for which the variance will be valid, not to exceed three years from the date of issuance.</p>	<p>Optional requirement/not a significant legislative rule</p>
<p>(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.</p>	<p>Optional requirement/not a significant legislative rule</p>
<p>(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.</p>	<p>Optional requirement/not a significant legislative rule</p>
<p>(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.</p>	<p>Optional requirement/not a significant legislative rule</p>

<p>(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.</p>	<p>Optional requirement/not a significant legislative rule</p>
<p>(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.</p>	<p>Optional requirement/not a significant legislative rule</p>
<p>WAC 296-128-650 Reasonable notice.</p>	
<p>(1) An employer may require employees to give reasonable notice of an absence from work for the use of paid sick leave. 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.</p>	<p>Exempt</p> <ul style="list-style-type: none"> • RCW 34.05.328(5)(b)(iii) and RCW 34.05.328(5)(v) - Consistent with the language of the statute under RCW 49.46.210(1)(f)
<p>(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.</p>	<p>Optional requirement/not a significant legislative rule</p>
<p>(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 scheduled 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.</p>	<p>Optional requirement/not a significant legislative rule</p>
<p>(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, any such reasonable notice requirements must comply with the provisions outlined in WAC 296-135-060.</p>	<p>Exempt</p> <ul style="list-style-type: none"> • RCW 34.05.328(5)(b)(iii) and RCW 34.05.328(5)(v) - Consistent with the language of the statute under RCW 49.46.210(1)(c) • RCW 34.05.328(5)(b)(iii) and RCW 34.05.328(5)(v) - Consistent with the language state law under RCW 49.76.040 and WAC 296-135-060
<p>(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</p>	<p>Optional requirement/not a significant legislative rule</p>

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.	
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 49.46.210(1)(c).	Exempt <ul style="list-style-type: none"> • RCW 34.05.328(5)(b)(iii) and RCW 34.05.328(5)(v) - Consistent with the language of the statute under RCW 49.46.210(1)(g)
(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.	Optional requirement/not a significant legislative rule
(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 information about an employee or an employee's family member, the employer must treat such information in a confidential manner consistent with applicable privacy laws. If an employer requires the 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(b) and 49.46.210(c), an employer must not require that the information provided explain the nature of the condition.	Exempt <ul style="list-style-type: none"> • RCW 34.05.328(5)(b)(iii) and RCW 34.05.328(5)(v) - Consistent with the federal law
(4) Employer-required verification may not result in an unreasonable burden or expense on the employee.	Exempt <ul style="list-style-type: none"> • RCW 34.05.328(5)(b)(iii) and RCW 34.05.328(5)(v) - Consistent with the language of the statute under RCW 49.46.210(1)(g)
(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: <ol style="list-style-type: none"> That the employee's use of paid sick leave was for an authorized purpose under RCW 49.46.210 (1)(b) or (c); and How the employer's verification requirement creates an unreasonable burden or expense on the employee. 	Optional requirement/not a significant legislative rule

<p>(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 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 could include, but is not limited to:</p> <p>(i) Accepting the explanation provided by the employee, as outlined in (a)(i) of this subsection, as a form of verification which meets the employer's verification requirement;</p> <p>(ii) Mitigating the employee's out-of-pocket expenses associated with obtaining medical verification; or</p> <p>(iii) Accepting an employee's written justification identifying that the employee's use of paid sick leave was for a purpose authorized under RCW 49.46.210 (1)(b) and (c) as a form of verification which meets the employer's verification requirement.</p> <p>(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:</p> <p>(i) The employer and employee may consult with the department regarding the verification requirement; and</p> <p>(ii) The employee may file a complaint with the department.</p> <p>Employer-required verification may not result in an unreasonable burden or expense on the employee.</p>	
<p>(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.</p> <p>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.</p>	<p>Exempt</p> <ul style="list-style-type: none"> • RCW 34.05.328(5)(b)(iii) and RCW 34.05.328(5)(v) - Consistent with the language of the statute under RCW 49.46.210(1)(g) <p>Optional requirement/not a significant legislative rule</p>
<p>(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.</p>	<p>Exempt</p> <ul style="list-style-type: none"> • RCW 34.05.328(5)(b)(iii) and RCW 34.05.328(5)(v) - Consistent with the language of the statute under RCW 49.46.210(1)(c) • RCW 34.05.328(5)(b)(iii) and RCW 34.05.328(5)(v) - Consistent with the state

	law language under RCW 49.76.040 and WAC 296-135-070
(7) For use of paid sick leave for purposes authorized under the federal Family and Medical Leave Act (FMLA), an employer may require verification from an employee that complies with the FMLA's certification requirements.	Exempt <ul style="list-style-type: none"> • RCW 34.05.328(5)(b)(iii) and RCW 34.05.328(5)(v) - Consistent with the federal law
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.	Exempt <ul style="list-style-type: none"> • RCW 34.05.328(5)(b)(iii) and RCW 34.05.328(5)(v) - Consistent with the language of the statute under RCW 49.46.200 and RCW 49.46.210(1)(i)
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: <p>(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;</p> <p>(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;</p> <p>(c) For nonexempt employees 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;</p> <p>(d) For an employee whose hourly rate of pay fluctuates:</p> <p>(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;</p> <p>(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.</p>	Exempt <ul style="list-style-type: none"> • RCW 34.05.328(5)(b)(iii) and RCW 34.05.328(5)(v) - Consistent with the language of the statute under RCW 49.46.200 and RCW 49.46.210(1)(i) • RCW 34.05.328(5)(c)(ii) – Interpretation of statute language
3) For nonexempt employees paid a salary, normal hourly compensation is determined by dividing the annual salary by fifty-two	Exempt <ul style="list-style-type: none"> • RCW 34.05.328(5)(b)(iii) and RCW 34.05.328(5)(v) -

<p>to get the weekly salary, and then dividing the weekly salary by the employee’s normal scheduled hours worked.</p>	<p>Consistent with the language of the statute under RCW 49.46.200 and RCW 49.46.210(1)(i)</p> <ul style="list-style-type: none"> • RCW 34.05.328(5)(c)(ii) – Interpretation of statute language
<p>4) An employer must apply a consistent methodology when calculating the normal hourly compensation of similarly situated employees.</p>	<p>Exempt</p> <ul style="list-style-type: none"> • RCW 34.05.328(5)(b)(iii) and RCW 34.05.328(5)(v) - Consistent with the language of the statute under RCW 49.46.200 and RCW 49.46.210(1)(i) • RCW 34.05.328(5)(c)(ii) – Interpretation of statute language
<p>WAC 296-128-680 Payment of paid sick leave.</p>	
<p>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, 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.</p>	<p>Exempt</p> <ul style="list-style-type: none"> • RCW 34.05.328(5)(c)(ii) – Interpretation of statute language • RCW 34.05.328(5)(b)(iii) and RCW 34.05.328(5)(v) - Consistent with the state law language of the statute under WAC 296-126-023
<p>WAC 296-128-690 Separation and Reinstatement of accrued paid sick leave upon rehire.</p>	
<p>(1) When an employee separates from employment and is rehired within twelve months of separation by the same employer, whether at the same or 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 an employer, the employer is not required to provide financial or other reimbursement for accrued, unused paid sick leave to the employee.</p>	<p>Exempt</p> <ul style="list-style-type: none"> • RCW 34.05.328(5)(b)(iii) and RCW 34.05.328(5)(v) - Consistent with the language of the statute under RCW 49.46.210(1)(k) • RCW 34.05.328(5)(c)(ii) – Interpretation of statute language
<p>(2) An employer may choose to reimburse an employee for any portion of his or her accrued, unused paid sick leave at the time the employee separates from employment. established and paid at a rate that was at least equal to the employee’s normal hourly compensation.</p>	<p>Exempt</p> <ul style="list-style-type: none"> • RCW 34.05.328(5)(b)(iii) and RCW 34.05.328(5)(v) - Consistent with the language of the statute under RCW 49.46.210(1)(k) • RCW 34.05.328(5)(c)(ii) – Interpretation of statute language

<p>(a) If an employer chooses to reimburse an employee for any portion of his or her 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 employee.</p>	<p>Optional requirement/not a significant legislative rule</p>
<p>(b) If an employee is rehired within twelve months of separation by the same employer, whether at the same or different business location of the employer, the employer must reinstate any accrued and unused paid sick leave. An employer need not restore 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</p>	<p>Exempt</p> <ul style="list-style-type: none"> • RCW 34.05.328(5)(b)(iii) and RCW 34.05.328(5)(v) - Consistent with the language of the statute under RCW 49.46.210(1)(k) • RCW 34.05.328(5)(c)(ii) – Interpretation of statute language
<p>3) When there is a separation 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 his or her previously accrued, unused paid sick leave balance immediately restored 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 employee’s entitlement to use paid sick leave.</p>	<p>Exempt</p> <ul style="list-style-type: none"> • RCW 34.05.328(5)(b)(iii) and RCW 34.05.328(5)(v) - Consistent with the language of the statute under RCW 49.46.210(1)(k) • RCW 34.05.328(5)(c)(ii) – Interpretation of statute language
<p>(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. If the period of time an employee separates from employment extends into a subsequent year (“year” as defined at WAC 296-128-610(6)), the employer is not required to reinstate more than forty hours of the employee’s accrued, unused paid sick leave.</p>	<p>Significant legislative rule <i>(costs not accounted separately, incorporated into notification section)</i></p>
<p>(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.</p>	<p>Exempt</p> <ul style="list-style-type: none"> • RCW 34.05.328(5)(b)(iii) and RCW 34.05.328(5)(v) - Consistent with the language of the statute under RCW 49.46.210(1)(k) • RCW 34.05.328(5)(c)(ii) – Interpretation of statute language
<p>WAC 296-128-700-Paid time off (PTO) programs.</p>	
<p>(1) Paid time off (PTO) provided to employees by an employer’s universal PTO program (e.g. a program that combines vacation leave, sick leave, and other forms of leave into one pool), created by employer policy or collective bargaining agreement, satisfies the requirement to provide paid sick leave if the PTO program or policy meets or exceeds the provisions of RCW</p>	<p>Exempt</p> <ul style="list-style-type: none"> • RCW 34.05.328(5)(c)(ii) – interpretation of statute language • RCW 34.05.328(5)(b)(iii) and RCW 34.05.328(5)(v) -

<p>49.46.200 and 49.46.210, and all applicable rules, including</p> <p>(a) Accrual of PTO leave at a rate of not less than one hour for every forty hours worked as an employee;</p> <p>(b) Payment for PTO leave at the employee’s normal hourly compensation;</p> <p>(c) Carryover of at least forty hours of accrued, unused PTO leave to the following year as defined at WAC 296-128-610(6);</p> <p>(d) Access to use PTO leave for all purposes authorized under RCW 49.46.210(1)(b) and 49.46.210(1)(c); and</p> <p>(e) Employer notification and recordkeeping requirements set forth in WAC 296-128-010 and 296-128-750.</p>	<p>Consistent with the statute language under RCW 49.46.210(1)(e)</p>
<p>(2) If an employee chooses to use their universal PTO balances for purposes other than those authorized under RCW 49.46.210(1)(b) and 49.46.210(1)(c), and the need for use of paid sick leave later arises when no additional PTO has accrued, the employer is not required to provide any additional paid leave as long as the employer’s universal PTO program meets or exceeds the provisions of RCW 49.46.200 and 49.46.210, and all applicable rules.</p>	<p>Exempt</p> <ul style="list-style-type: none"> • RCW 34.05.328(5)(c)(ii) – interpretation of statute language • RCW 34.05.328(5)(b)(iii) and RCW 34.05.328(5)(v) - Consistent with the statute language under RCW 49.46.210(1)(e)
<p>WAC 296-128-710-Shared Leave.</p>	
<p>An employer may establish a shared paid sick leave program in which an employee may choose to donate paid sick leave to a coworker subject to the following provisions:</p> <p>(1) If an employer chooses to establish a shared paid sick leave program, the employer must have a written policy or collective bargaining agreement which specifies that an employee may donate accrued, unused paid sick leave to a coworker for uses authorized under RCW 49.46.210(1)(b) and 49.46.210(1)(c), and outlines any such requirements.</p> <p>(2) Employers 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.</p>	<p>Optional requirement/not a significant legislative rule</p>
<p>WAC 296-128-720 -Shift swapping.</p>	
<p>(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.</p>	<p>Exempt</p> <ul style="list-style-type: none"> • RCW 34.05.328(5)(b)(iii) and RCW 34.05.328(5)(v) - Consistent with the statute language under RCW 49.46.210(1)(h)
<p>(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.</p>	<p>Exempt</p> <ul style="list-style-type: none"> • RCW 34.05.328(5)(b)(iii) and RCW 34.05.328(5)(v) - Consistent with the statute language under RCW 49.46.210(1)(h)

	<ul style="list-style-type: none"> • RCW 34.05.328(5)(c)(ii) – interpretation of statute language
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.	<p>Exempt</p> <ul style="list-style-type: none"> • RCW 34.05.328(5)(b)(iii) and RCW 34.05.328(5)(v) - Consistent with the statute language under RCW 49.46.210(1)(a)
(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.	<p>Exempt</p> <ul style="list-style-type: none"> • RCW 34.05.328(5)(b)(iii) and RCW 34.05.328(5)(v) - Consistent with the statute language under RCW 49.46.210(1)(a) • RCW 34.05.328(5)(c)(ii) – interpretation of statute language
<p>(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.</p> <p>(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.</p> <p>(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.</p>	<p>Exempt</p> <ul style="list-style-type: none"> • RCW 34.05.328(5)(b)(iii) and RCW 34.05.328(5)(v) - Consistent with the statute language under RCW 49.46.210(1)(a) • RCW 34.05.328(5)(b)(iii) and RCW 34.05.328(5)(v) - Consistent with state law language under WAC 296-126-028 • RCW 34.05.328(5)(c)(ii) – interpretation of statute language
(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.	Optional requirement/not a significant legislative rule
(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	<p>Exempt</p> <ul style="list-style-type: none"> • RCW 34.05.328(5)(b)(iii) and RCW 34.05.328(5)(v) - Consistent with the statute

<p>deductions must also meet the requirements set forth in RCW 49.48.010 and WAC 296-126-025.</p>	<p>language under RCW 49.46.210(1)(a)</p> <ul style="list-style-type: none"> • RCW 34.05.328(5)(b)(iii) and RCW 34.05.328(5)(v) - Consistent with state law language under the statute language RCW 49.48.010 and WAC 296-126-025 • RCW 34.05.328(5)(c)(ii) – interpretation of statute language
<p>296-128-740- Third Party Administrators.</p>	
<p>(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.</p>	<p>Exempt</p> <ul style="list-style-type: none"> • RCW 34.05.328(5)(c)(ii) – Interpretation of statute language
<p>(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 in order 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 rate of accrual 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.</p>	<p>Exempt</p> <ul style="list-style-type: none"> • RCW 34.05.328(5)(c)(ii) – Interpretation of statute language
<p>(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.</p>	<p>Exempt</p> <ul style="list-style-type: none"> • RCW 34.05.328(5)(c)(ii) – Interpretation of statute language
<p>WAC 296-128-750-Employee use of paid sick leave for unauthorized purposes</p>	
<p>(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.</p>	<p>Exempt</p> <ul style="list-style-type: none"> • RCW 34.05.328(5)(b)(iii) and RCW 34.05.328(5)(v) - Consistent with the language of the statute under RCW 49.46.200 and RCW 49.46.210(1)(b) and RCW 49.46.210(1)(i)

	<ul style="list-style-type: none"> • RCW 34.05.328(5)(c)(ii) – interpretation of statute language
(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.	Significant legislative rule
WAC 296-128-760 - Employer notification and reporting to employees.	
<p>(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.</p> <p>(a) Employers must provide such notification in written or electronic form, and must make this information readily available to all employees.</p> <p>(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.</p>	Significant legislative rule
(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 notification was last made, 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.	Significant legislative rule
WAC 296-128-770 - Retaliation.	
(1) It is unlawful for an employer to interfere with, restrain, or deny the exercise of any 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 use of any rights provided under chapter 49.46 RCW.	<p>Exempt</p> <ul style="list-style-type: none"> • RCW 34.05.328(5)(b)(iii) and RCW 34.05.328(5)(v) - Consistent with the language of the statute under RCW 49.46.210(3) and (4) • RCW 34.05.328(5)(c)(ii) – Interpretation of statute language
(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 49.46.210(1)(c) as an absence that may result in an adverse action by the employer against the employee.	<p>Exempt</p> <ul style="list-style-type: none"> • RCW 34.05.328(5)(b)(iii) and RCW 34.05.328(5)(v) - Consistent with the

	<p>language of the statute under RCW 49.46.210(3) and (4)</p> <ul style="list-style-type: none"> • RCW 34.05.328(5)(c)(ii) – Interpretation of statute language
<p>(3) It is unlawful for an employer to take any adverse action against an employee because the employee has exercised his or her 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 his or her right to paid sick leave, minimum wage, and overtime; or testifying or intending to testify in any such proceeding related to any rights provided under chapter 49.46 RCW.</p>	<p>Exempt</p> <ul style="list-style-type: none"> • RCW 34.05.328(5)(b)(iii) and RCW 34.05.328(5)(v) - Consistent with the language of the statute under RCW 49.46.210(3) and (4) • RCW 34.05.328(5)(c)(ii) – Interpretation of statute language
<p>(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:</p> <p>(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;</p> <p>(b) Terminating, suspending, demoting, or denying a promotion;</p> <p>(c) Reducing the number of work hours for which the employee is scheduled;</p> <p>(d) Altering the employee's preexisting work schedule;</p> <p>(e) Reducing the employee's rate of pay; and</p> <p>(f) Threatening to take, or taking action, based upon the immigration status of an employee or an employee's family member.</p>	<p>Exempt</p> <ul style="list-style-type: none"> • RCW 34.05.328(5)(b)(iii) and RCW 34.05.328(5)(v) - Consistent with the language of the statute under RCW 49.46.210(3) and (4) • RCW 34.05.328(5)(c)(ii) – Interpretation of statute language