



# RULE-MAKING ORDER PERMANENT RULE ONLY

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

CODE REVISER USE ONLY

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STATE OF WASHINGTON  
FILED

DATE: December 19, 2017

TIME: 11:08 AM

WSR 18-01-111

**Agency:** Department of Labor and Industries

**Effective date of rule:**

**Permanent Rules**

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

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

- Yes  No If Yes, explain:

**Purpose:** The purpose of this rulemaking is to adopt rules pertaining to the enforcement directives related to the implementation of Initiative 1433, An Act Related to Fair Labor Standard. Initiative 1433 passed on November 8, 2016, and requires, in part, employers provide paid sick leave to employees beginning on January 1, 2018. Initiative 1433 directs the Department to adopt and implement rules to carry out and enforce the act.

The effective date of January 1, 2018, is allowed under RCW 34.05.380(3), as this adoption is required by statute.

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

- New:
- WAC 296-128-780 Enforcement-Retaliation
  - WAC 296-128-790 Enforcement-Retaliation-Civil penalties
  - WAC 296-128-800 Enforcement- Retaliation-Appeals
  - WAC 296-128-810 Enforcement-Paid sick leave
  - WAC 296-128-820 Enforcement-Tips and service charges
  - WAC 296-128-830 Enforcement-Complaints alleging a violation of other rights under chapter 49.46 RCW-  
Duty of department to investigate-Citations-Civil penalties
  - WAC 296-128-840 Complaints alleging a violation of other rights under chapter 49.46 RCW- Administrative  
appeals
  - WAC 296-128-850 Complaints alleging a violation of other rights under chapter 49.46 RCW-Collection  
procedures
  - WAC 296-128-860 Severability clause

Repealed: n/a

Amended: n/a

Suspended: n/a

**Statutory authority for adoption:** RCW 49.46.810

**Other authority:** RCWs 49.46.005, 49.46.020, 49.46.090, 49.46.100, 49.46.120, 49.46.200, 49.46.210, 49.46.810, 49.46.820, and 49.46.830

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

Adopted under notice filed as WSR 17-20-080 on October 3, 2017 (date).

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

**WAC 296-128-780 [Enforcement – Retaliation]**

- Subsection (5) – The department added “at its discretion” and “may” to reinforce that the department providing an employer with notice of its intent to issue a citation and notice of assessment, and potentially providing up to 30 days to take corrective action to remedy a retaliatory action, is discretionary.

**WAC 296-128-790 [Enforcement – Retaliation – Civil penalties]**

- Subsection (4) – The department added clarifying language which indicates that the collection of unpaid citations and notices of assessment will be for “amounts owed.”

**WAC 296-128-800 [Enforcement – Retaliation – Appeals]**

- Subsection (9) – The department added “Director’s” to specify that the language in this subsection specifically addresses an order issued by the Director of the Department of Labor & Industries.

**WAC 296-128-810 [Enforcement – Paid sick leave]**

- Subsection (2)(b) – The department added “whichever is greater” to indicate that the department, under this subsection, has the authority to order payment from the employer to an employee at their normal hourly compensation for each hour of paid sick leave that the employee would have used or been reasonably expected to use, whichever is greater, during the period of noncompliance, not to exceed an amount the employee would have otherwise accrued.
- Subsection (4) – The department added clarifying language to reflect that in addition to requiring a noncompliant employer to provide an employee access to paid sick leave they would have accrued absent the employer’s noncompliance, the department can also require the employer to pay to the employee their normal hourly compensation for hours of paid sick leave that would have accrued during the period of noncompliance.

**WAC 296-128-820 [Enforcement – Tips and service charges]**

- The department has updated the language to better align with enforcement of complaints pursuant to the procedures outlined in the Wage Payment Act, RCW 49.48.082 through 49.48.087.

**WAC 296-128-840 [Complaints alleging a violation of other rights under chapter 49.46 RCW – Administrative appeals]**

- Subsection (6) – The department omitted language to reflect that the language in this subsection applies to those circumstances specifically when penalties, not earnings, are assessed.

**WAC 296-128-860 [Severability clause]**

- The department added language to reflect that the severability clause applies to all rules drafted in accordance with chapter 49.46 RCW, not just the language which addresses enforcement of RCW 49.46.200 and 49.46.210.

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

Name:

Address:

Phone:

Fax:

TTY:

Email:

Web site:

Other:

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

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

**The number of sections adopted in order to comply with:**

Federal statute:	New	___	Amended	___	Repealed	___
Federal rules or standards:	New	___	Amended	___	Repealed	___
Recently enacted state statutes:	New	<u>9</u>	Amended	___	Repealed	___

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

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

New	___	Amended	___	Repealed	___
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**The number of sections adopted in order to clarify, streamline, or reform agency procedures:**

New	___	Amended	___	Repealed	___
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**The number of sections adopted using:**

Negotiated rule making:	New	___	Amended	___	Repealed	___
Pilot rule making:	New	___	Amended	___	Repealed	___
Other alternative rule making:	New	___	Amended	___	Repealed	___

**Date adopted:** December 19, 2017

**Name:** Joel Sacks

**Title:** Director

**Signature:**

