Chapter 296-122 WAC
AGRICULTURAL EMPLOYMENT OF MINORS

NEW SECTION

WAC 296-122-005 Applicability. These standards, adopted pursuant to sections 83 through 86, chapter 380, Laws of 1989, shall apply to persons employed in agricultural labor as defined in RCW 50.04.150 and WAC 296-122-010. The standards in this chapter shall apply only to minors employed in agricultural labor. The standards in this chapter do not apply to the immediate family members of the officers of any business engaged in agricultural production of crops or livestock.

NEW SECTION

WAC 296-122-010 Definitions. (1) A "minor" is a person, employed in agricultural labor, who is under the age of 18.

(2) "Agricultural labor" is defined as services performed:

(a) On a farm, in the employ of any person, in connection with the cultivation of the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and furbearing animals and wildlife, or in the employ of the owner or tenant or other operator of a farm in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment; or

(b) In packing, packaging, grading, storing, or delivering to storage, or to market or to a carrier for transportation to market, any agricultural or horticultural commodity; but only if such service is performed as incident to ordinary farming operations.

(c) "Agricultural labor" does not include employment in commercial packing houses, commercial storage establishments, commercial canning, commercial freezing, or any other commercial processing with respect to services performed in connection with the cultivation, raising, harvesting, and processing of oysters or raising and harvesting of mushrooms or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.

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

(4) "Director" means the director of the department of labor and industries.

(5) "Employ" means to engage, suffer, or permit to work in agricultural labor.

(6) "Employee" means any person employed by an employer, except those who are members of the immediate family of an employer.

(7) "Employer" means any person, firm, corporation, partnership, business trust, legal representative, or other business entity that engages in any agricultural activity in this state and employs one or more employees.

(8) "Nonschool week" means a week where the minor's school is not in session.

(9) "School holiday" means a day of a school week on which the minor's school is scheduled to be closed.

(10) "School vacation" means the spring break, winter break, and summer break of the minor's school.

(11) "School week" means any week the minor's school is in session and students are required to attend for at least one day or a partial day.

(12) "Serious physical harm" means an injury that involves permanent disability or a disability of a limited nature, chronic irreversible illness, or an injury or reversible illness resulting in hospitalization.

NEW SECTION

WAC 296-122-020 Age of employment. No minor under the age of 14 shall be employed in agriculture at any time except as follows: Minors 12 and 13 years of age may be employed in the hand harvest of berries, bulbs, and cucumbers and in the hand cultivation of spinach during weeks when school is not in session.

NEW SECTION

WAC 296-122-030 Employment records. (1) Before hiring a minor, an employer must obtain:

(a) A minor work permit endorsement on the business license of the location where the minor will work;

(b) A completed parent/school authorization form for each minor or a parent authorization for summer work form if hired during summer vacation; and

(c) Proof of age which lists the date of birth for each minor. Acceptable forms of proof of age include, but are not limited to:

(i) Birth certificate;

(ii) Driver's license;

(iii) Notarized statement from a parent/guardian;

(iv) Federal identification, such as a passport;

(v) Insurance policy at least one year old indicating the date of birth; and

(vi) Completed federal employment eligibility verification (Form I-9).

(2) An employer must create a file for each minor, which may be physical or electronic. The file must be maintained for three years from the last date of the minor's employment, and must include:

(a) Copies of all completed parent/school authorization forms with any attachments;

(b) Copies of any proof of age documents;

(c) Copies of any variances obtained according to the requirements of this chapter.

(3) These records must be kept safe and accessible at the place of employment or at a central recordkeeping office where such records are customarily maintained.

NEW SECTION

WAC 296-122-040 Permits to employ minors. (1) Before employing a minor, an employer must obtain a minor work permit endorsement approved by the department and issued by the state business licensing service. An employer must obtain and keep a current minor work permit endorsement for each location where minors are employed. A single minor work permit endorsement will authorize the employer to employ any number of minor workers at the location specified on the business license with the minor work permit endorsement.

(2) Minor work permit endorsements may include restrictions, consistent with this chapter, on minors' working conditions.

(3) A minor work permit endorsement shall expire on the last day of the month one year from the date of issue, or upon the expiration date shown on the employer's most recently issued business license document, whichever comes first.

NEW SECTION

WAC 296-122-050 Revocation of permits. (1)(a) The department shall revoke an employer's minor work permit endorsement and prohibit the employer from obtaining a minor work permit for no less than 12 months if:

(i) The employer has been issued a safety and health citation under RCW 49.17.120 containing one or more violations under RCW 49.17.180 (1), (2), (4), or (5), or any citation and notice of assessment containing one or more violations of any of the requirement of this chapter, or applicable order, where one or more of the violations caused serious physical harm or death to a minor; or

(ii) An order has been issued immediately restraining an employer's condition, practice, method, process, or means in the workplace pursuant to RCW 49.30.060 and this chapter or RCW 49.17.130 or 49.17.170.

(b) Following a revocation under this subsection, a minor work permit endorsement may not be reissued to an employer unless the employer has not been issued a citation for any violations of the provisions identified in (a)(i) of this subsection for at least 12 months.

(2) The department may refuse to issue or renew, revoke, suspend, or modify an employer's minor work permit endorsements if it finds:

(a) A condition related to the permit's issuance has not been satisfied;

(b) The employer violated any requirements of this chapter; or

(c) A condition that is or could be detrimental to the health, safety, or welfare of a minor. In this case, the department may issue an order of immediate restraint revoking, suspending, or modifying an employer's minor work permit endorsement. If the employer appeals the

department's action, the order of immediate restraint will remain in force until the employer's appeal is resolved.

NEW SECTION

WAC 296-122-060 Parental and school authorization. (1) An employer must have a completed parent/school authorization form, or a completed parent authorization for summer work form, on file for each minor before the minor may begin work, unless the minor has been emancipated by court order. To be valid, a parent/school authorization form must be on a form supplied by the department and completed and signed by the employer, the minor, an official from the minor's school, and the minor's parent or legal guardian.

(2) All parent/school authorization forms expire each year on the 30th day of September.

(3) Employers must complete their section of the parent/school authorization form before sending the form to the minor for completion. Upon the minor's completion, the form must be submitted to the minor's school and the minor's parent or legal guardian.

(4) When completing the parent/school authorization form, the employer must provide the following information:

(a) The location of the minor's workplace(s);

(b) A description of the minor's duties;

(c) The earliest and latest hours the minor would be working;

(d) The total number of hours the minor would work per week;

(e) The employer's unified business identifier (UBI) number; and

(f) The employer's signature or the signature of their authorized agent.

(5) A minor must provide the following personal information on the parent/school authorization form:

(a) Name;

(b) Address;

(c) Date of birth, accompanied by proof of age as specified in WAC 296-122-030;

(d) Whether they are employed at any other job(s) and the total number of hours worked at that job(s); and

(e) Their signature.

(6) If a minor will be working during the school year, an authorized school official from the minor's school must:

(a) Indicate that the school authorizes (or does not authorize) the minor to work according to the terms listed by the employer; and

(b) Sign the form as the school's authorized agent.

(7) Neither parent nor school authorization is required for minors who are emancipated by court order.

(8) School approval must be based upon:

(a) Maintaining an acceptable level of scholastic achievement;

(b) Maintaining good school attendance; and

(c) Making satisfactory progress toward graduation.

(9) A parent or legal guardian of a minor must:

(a) Indicate that they authorize (or do not authorize) the minor to work according to the terms listed by the employer;

(b) Sign the form.

(10) A parent, legal guardian, or school may revoke authorization at any time by simply notifying the other parties to the authorization.

NEW SECTION

WAC 296-122-070 Parent/school authorization—Minor not attending school or living with parent/guardian. (1) A parent or guardian must certify a minor's nonenrolled status if the minor is:

(a) Living with a parent or legal guardian;

(b) No longer enrolled in school; and

(c) Has not obtained a certificate of educational competence according to RCW 28A.305.190 or is not enrolled in a bona fide college program.

(2) If a minor is living independently of a parent or legal guardian and is not enrolled in school, the minor must:

(a) Certify that they are living independently of a parent or guardian;

(b) Certify their nonenrolled status;

(c) Provide the name and location of the last school attended; and

(d) Provide the name and address or telephone number of an adult emergency contact other than the minor's employer. This contact person must certify that the minor is living independently of a parent or legal guardian.

(3) If a minor is living independently and is enrolled in school, the minor must:

(a) Certify that they are living independently of a parent or guardian; and

(b) Provide the name and address or telephone number of an adult emergency contact other than the minor's employer. This contact person must certify that the minor is living independently of a parent or legal guardian.

NEW SECTION

WAC 296-122-080 Minimum wages—Minors. Except where a higher minimum wage is required by Washington state or federal law:

(1) Every employer shall pay to each employee who has reached their 16th or 17th year of age a rate of pay per hour which is equal to the hourly rate required by RCW 49.46.020 for employees 18 years of age or older, whether computed on an hourly, commission, piecework, or other basis, except as may be otherwise provided under this chapter.

(2) Every employer shall pay to each employee who has not reached their 16th year of age a rate of pay per hour that is not less than 85 percent of the hourly rate required by RCW 49.46.020 for employees 18 years of age or older, whether computed on an hourly, commission, piecework, or other basis, except as may be otherwise provided under this chapter.

NEW SECTION

WAC 296-122-090 Hours of work for minors in agriculture. (1) Minors legally required to attend school may not be employed during school hours except by special permission from school officials as provided in RCW 28A.225.010 and 28A.225.080.

(2)(a) Minors under the age of 16 may work the following hours during school weeks:

(i) A maximum of three hours per day on school days and otherwise a maximum of eight hours per day;

(ii) A maximum of 21 hours per week;

(iii) No earlier than 7:00 a.m. on school days and otherwise no earlier than 5:00 a.m. Minors employed in animal agriculture or whose employment in crop production requires daily attention to irrigation may be employed beginning at 6:00 a.m.; and

(iv) No later than 8:00 p.m. on days preceding a school day and otherwise no later than 9:00 p.m.

(b) Minors under the age of 16 may work the following hours during nonschool weeks:

(i) A maximum of eight hours per day;

(ii) A maximum of 40 hours per week;

(iii) No earlier than 5:00 a.m.; and

(iv) No later than 9:00 p.m.

(3)(a) Minors who are 16 and 17 years of age may work the following hours during school weeks:

(i) A maximum of four hours per day on school days and otherwise a maximum of eight hours per day;

(ii) A maximum of 28 hours per week;

(iii) No earlier than 5:00 a.m.; and

(iv) No later than 9:00 p.m. on more than two consecutive nights preceding a school day and otherwise no later than 10:00 p.m.

(b) Minors who are 16 and 17 years of age may work the following hours during nonschool weeks:

(i) A maximum of 10 hours per day;

(ii) A maximum of 50 hours per week. Minors who are 16 and 17 years of age may work up to 60 hours per week in the mechanical harvest of peas, wheat, and hay;

(iii) No earlier than 5:00 a.m.; and

(iv) No later than 9:00 p.m. on more than two consecutive nights preceding a school day and otherwise no later than 10:00 p.m.

(4) Except for minors employed in dairy or livestock production, in the harvest of hay, or whose employment in crop production requires daily attention to irrigation, no minor shall be employed more than six days in any one week.

(5) Sixteen- and 17-year-old minors who were issued a certificate of educational competence pursuant to RCW 28A.305.190, are enrolled in a bona fide college program, are enrolled in a career and technical education program and the work is performed for an employer approved by the program, or are shown as a parent on a valid certificate of birth may work as would be permitted during nonschool weeks. For the purpose of this section, "career and technical education program" refers to a work-based learning program approved by the office of the superintendent of public instruction or the minor's school district including, but not limited to, core plus programs.

(6) The provisions of this section shall not apply to minors 16 years of age and older emancipated by court order.

NEW SECTION

WAC 296-122-100 Meal and rest periods. (1) Every employee employed more than five hours shall receive a meal period of at least 30 minutes. Employees working 11 or more hours in a day shall be allowed at least one additional 30-minute meal period.

(2) Every employee shall be allowed a rest period of at least 10 minutes, on the employer's time, in each four-hour period of employment. For purposes of computing the minimum wage on a piecework basis, the time allotted an employee for rest periods shall be included in the number of hours for which the minimum wage must be paid.

NEW SECTION

WAC 296-122-110 Prohibited and hazardous employment. (1) Employment in the following agricultural occupations is prohibited for minors under the age of 16:

(a) Operating a tractor of over 20 PTO horsepower, or connecting or disconnecting an implement or any of its parts to or from such a tractor.

(b) Operating or assisting to operate (including starting, stopping, adjusting, feeding, or any other activity involving physical contact associated with the operation) any of the following machines:

(i) Corn picker, cotton picker, grain combine, hay mower, forage harvester, hay baler, potato digger, or mobile pea viner;

(ii) Feed grinder, crop dryer, forage blower, auger conveyor, or the unloading mechanism of a nongravity-type self-unloading wagon or trailer; or

(iii) Potato combine.

(c) Working on a farm in a yard, pen, or stall occupied by a:

(i) Bull, boar, or stud horse maintained for breeding purposes; or

(ii) Sow with suckling pigs, or cow with newborn calf (with umbilical cord present).

(d) Felling, bucking, skidding, loading, or unloading timber with butt diameter of more than six inches.

(e) Driving a bus, truck, or automobile when transporting passengers, or riding on a tractor as a passenger or helper.

(f) Working inside:

(i) A fruit, forage, or grain storage designed to retain an oxygen deficient or toxic atmosphere;

(ii) An upright silo within two weeks after silage has been added or when a top unloading device is in operating position;

(iii) A manure pit; or

(iv) A horizontal silo while operating a tractor for packing purposes.

(g) Working in any manufacturing occupation.

(h) Working in any processing operations, including food processing.

(i) Working in transportation, warehouse, and storage or construction.

(j) Work in or about engine or boiler rooms.

(k) Work in freezers, meat coolers, and all work in preparing meats for sale. (Wrapping, sealing, labeling, weighing, pricing, and stocking are permitted if work is performed away from meat-cutting and preparation areas.)

(l) Loading and unloading goods or property onto or from conveyors.

(2) Employment in the following occupations in agriculture is prohibited to all minors:

(a) Handling, mixing, loading, or applying (including cleaning or decontaminating equipment, disposal or return of empty containers, or serving as a flagman for aircraft applying) agricultural chemicals classified under the federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 135 et seq.) as Category I of toxicity, identified by the word "poison" and the "skull and crossbones" on the label; or Category II of toxicity, identified by the word "warning" on the label.

(b) Handling or using a blasting agent including, but not limited to, dynamite, black powder, sensitized ammonium nitrate, blasting caps, and primer cord.

(c) Transporting, transferring, or applying anhydrous ammonia.

(d) Work involving the operation or repair, oiling, cleaning, adjusting, or setting up of any power driven wood working machines.

(e) Work involving the operation or repair, oiling, cleaning, adjusting, or setting up of power driven metal forming, punching, and shearing machines.

(f) Work involving the operation or repair, oiling, cleaning, adjusting, or setting up of power-driven circular saws, band saws, guillotine shears, chain saws, reciprocating saws, wood chippers, and abrasive cutting discs.

(g) Work involving slaughtering, meat packing, or processing and rendering.

(h) Work involving roofing or work on or about a roof.

(i) Work involving mechanical excavation.

(j) Work involving wrecking and demolition.

(k) Work in any place where a strike or lockout exists.

(l) Operating or assisting to operate (including starting, stopping, adjusting, feeding, or any other activity involving physical contact associated with the operation) power-driven earthmoving machines including, but not limited to, trenchers, power post-hole diggers, power post drivers, or nonwalking type rotary tillers.

(m) Occupations involving operation or repair, oiling, cleaning, adjusting, or setting up of power-driven hoisting apparatuses. This includes, but is not limited to, forklifts.

(n) Working from a ladder or scaffold (painting, repairing, or building structures, pruning trees, picking fruit, etc.) at a height of over 10 feet.

(3) No minor shall be permitted to ride in or work in the vicinity of a vehicle driven by any person who is under the age of 16 or anyone who does not possess a valid driver's license.

(4) No minor shall be employed in agriculture in the harvest of any crop to which agricultural chemicals described in subsection (2)(a) of this section have been applied, prior to the expiration of the preharvest interval or within 14 days after the application if no preharvest interval has been established.

NEW SECTION

WAC 296-122-120 Lifting. Where weights in excess of 20 pounds are to be lifted, carried, pushed, or pulled as a normal part of an employee's responsibility, the employer shall instruct minors on correct weight lifting techniques prior to the commencement of work and display a poster developed by the department illustrating correct weight lifting techniques.

NEW SECTION

WAC 296-122-130 Variances. (1) Upon written application from an employer or an organization representing employers, a variance permitting employment of minors otherwise prohibited under WAC 296-122-110 may be granted for good cause shown. The application must specify the reasons why the variance request should be granted. The employer or the organization representing employers shall give written notice to the employees so that they may submit their views to the department on any variance request.

(2) The department may grant the variance request if the employer possesses a valid minor work permit endorsement and the department determines the employer demonstrates good cause. The department may request or receive additional information from the employer or other interested parties when reviewing a variance application.

(3) "Good cause" shall mean those situations in which the employer demonstrates:

(a) The granting of the variance would not have a harmful effect upon the health, safety, or welfare of the minor employees involved;

(b) The granting of the variance would not have a deleterious effect on school attendance or the academic performance of minors; and

(c) The variance is necessary to meet usual crop cultural or harvest requirements.

(4) Upon application from an employer or an organization representing employers a variance permitting employment of minors otherwise prohibited under these rules may be granted by the director or an authorized representative of the director in response to a weather emergency.

(5) The department may grant a variance request for the prohibited duties described in WAC 296-122-110 (1)(a) through (d) and (2)(d) through (i) for a minor employed as a vocational agriculture student-learner when each of the following requirements are met:

(a) The student-learner is enrolled in a vocational education training program in agriculture under a recognized state or local educational authority, or in a substantially similar program conducted by a private school;

(b) Such student-learner is employed under a written agreement which provides that the work of the student-learner is incidental to training; that such work shall be intermittent, for short periods of time, and under the direct and close supervision of a qualified and experienced person; that safety instruction shall be given by the school and correlated by the employer with on-the-job training; and that a schedule of organized and progressive work processes to be performed on the job have been prepared;

(c) Such written agreement contains the name of the student-learner, and is signed by the employer and by a person authorized to represent the educational authority or school; and

(d) Copies of each such agreement are kept on file by both the educational authority or school and by the employer.

(6)(a) Before granting a variance for a duty prohibited by WAC 296-122-110 under subsection (5) of this section, the department shall:

(i) Conduct a safety and health consultation at the worksite; and

(ii) Consult with the employer on the types of tools, equipment, and practices permitted under the variance.

(b) The department may consider the consultation requirement in (a) of this subsection complete if the employer is renewing a variance that expired within the same academic school year, or has an active variance, for the exact same prohibited tools, equipment, or occupation.

(7) The department may not grant variances for any occupation prohibited by the United States Department of Labor.

(8) Each variance will expire upon the expiration of the minor work permit endorsement that was in effect at the time the variance was issued unless the variance was issued with an earlier expiration date.

(9) The department may revoke, suspend, or modify an employer's variance if it finds:

(a) A condition related to its issuance has not been satisfied;

(b) The employer violated any requirement of this chapter; or

(c) An existing condition that is or could be detrimental to the health, safety, or welfare of a minor including an adverse impact upon their school attendance or performance.

NEW SECTION

WAC 296-122-140 Special variance. (1) Sixteen- and 17-year-old minors may work the following hours up to a maximum of six hours per day on any school day preceding another school day, provided the minor has a complete special variance included on the parent/school authorization form.

(2) Sixteen- and 17-year-old minors must follow all other hours of work requirements specified in WAC 296-122-090.

(3) To be valid, a special variance must be signed on a parent/school authorization form completed in accordance with WAC 296-122-090. The special variance must be signed by the minor's parent or guardian and the minor's authorized school official.

(4) In evaluating requests for special variances, a school must consider at least the following factors:

(a) Does the employer hold a current valid minor work permit endorsement?

(b) What is the student's attendance pattern?

(c) Is the student making satisfactory academic progress?

(d) Will the student still have opportunities to participate in extracurricular activities?

(e) How many school nights will the student work?

(f) How late in the evening will the student work?

(g) How long a shift will the student work?

(h) How sound is the student's rationale for requesting a variance from the work hour restrictions?

(5) Special variances expire at the termination of the school year. Employers must request a special variance at the beginning of each new school year.

(6) A parent, legal guardian, or school may revoke a special variance at any time by simply giving written notification to the other parties to the variance.

NEW SECTION

WAC 296-122-150 Retaliation. (1) An employer may not retaliate, discharge, or otherwise discriminate against an employee because the employee has filed any complaint, or instituted or caused to be instituted any proceeding under this chapter, or has testified or is about to testify in any such proceeding, or because of the exercise by such employee on behalf of themselves or others of any right afforded by this chapter.

(2) The department may enforce allegations of retaliation by an employee who believes they were subject to retaliation under WAC 296-128-770 through 296-128-800.

NEW SECTION

WAC 296-122-160 Enforcement authority. (1) In order to carry out the purposes of this chapter, the director or the director's authorized representative is authorized:

(a) To enter without delay any work site or area or other environment where work is performed by an employee or where employment records are, or are required to be, maintained; and

(b) To inspect, transcribe, and copy all pertinent records, and to inspect and investigate any such place of employment and all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein, and to question privately any employer, owner, operator, agent, or employee.

(2) The director or their authorized designated representative may initiate an investigation without an employee's complaint to ensure compliance with the chapter. The director may also initiate an investigation when the director otherwise has reason to believe that a violation has occurred.

(3) An employer who fails to allow adequate inspection of records in an inspection by the department within a reasonable time may not use such records in any appeal to challenge the correctness of any citation and notice issued by the department.

(4) The department may request an employer perform a self-audit of any records relating to this chapter which must be provided within a reasonable time. Reasonable timelines will be specified in the self-audit request. The department must determine reasonable time based on the number of affected employees and the period of time covered by the self-audit. The records examined by the employer in order to perform the self-audit must be made available to the department upon request.

(5) Upon the department's request, an employer must notify affected employees in writing that the department is conducting an investigation. The department may require the employer to include a general description of the investigation, including the allegations, as part of the notification. The employer may consult with the department to provide the information for the description of the notification of investigation.

NEW SECTION

WAC 296-122-170 Enforcement—Civil penalties. (1)(a) If the department finds that an employer has violated any of the requirements of this chapter or any variance granted under this chapter, a citation and notice of assessment stating the violations must be issued to the employer. The citation and notice of assessment must be in writing, describing the nature of the violation including reference to the standards, rules, or orders alleged to have been violated. The citation and penalty assessment must be given to the highest management official available at the workplace or be mailed to the employer at the workplace. In addition, the department shall mail a copy of the citation and penalty assessment to the central personnel office of the employer. Citations issued under this section must be posted at or near the place where the violation occurred.

(b) A first-time citation for failure to obtain a minor work permit or parental or school authorization, for failure to maintain records, or for a violation deemed nonserious by the department must state a specific and reasonable time for abatement of the violation to allow the employer to correct the violation. The department may waive or reduce a civil penalty assessed for a first-time violation under this subsection if the director determines that the employer has taken corrective action to resolve the violation.

(c) The employer must be assessed a civil penalty in accordance with RCW 49.30.060 (2)(c) and as published by the department.

(d) If the director, or the director's designee, finds that an employer has committed a serious or repeated violation of any of the requirements of this section or any applicable rule or order, the employer is subject to an additional civil penalty, in accordance with RCW 49.30.060 (2)(d) and as published by the department, each subsequent day the violation continues. For the purposes of this subsection, a serious violation exists if death or serious physical harm has resulted or is imminent from a condition that exists, or from one or more practices, means, methods, operations, or processes that have been adopted or are in use by the employer, unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation.

(e) The department shall consider the following factors when determining the amount of any penalty assessment under this section:

(i) Whether the violation was committed willfully or the violation is a repeat violation;

(ii) The size of the employer;

(iii) The age of the minor;

(iv) The gravity of the violation;

(v) The hazards created by the violation;

(vi) The penalties for comparable violations under federal law;

(vii) The penalty amount necessary to deter future noncompliance;

(viii) Ensuring the penalty amount is consistent with the purposes of this chapter; and

(ix) Any other factor warranting an adjustment in the penalty as deemed appropriate by the department.

(2) In addition to any other authority provided in this section, if, upon inspection or investigation, the director, or the director's designee, believes that an employer has violated any of the requirements of this section or any applicable rule or order governing the employment of minors, and that the violation creates a danger from which there is a substantial probability that death or serious physical harm could result to a minor employee, the director, or the director's designee, may issue an order immediately restraining the condition, practice, method, process, or means creating the danger in the workplace. An order issued under this subsection may require the employer to take steps necessary to avoid, correct, or remove the danger and may prohibit the presence of a minor in locations or under conditions where the danger exists.

(3) A person who gives advance notice, without the authority of the director, of an inspection to be conducted under this chapter shall be assessed a civil penalty of not more than $1,000.

(4) The employer shall pay the amount assessed under this section within 30 days of receipt of the penalty assessment or notify the director of the employer's intent to appeal the citation or the penalty assessment under this section. If an employer fails to pay an assessment under this section after it has become a final and unappealable order, or after the court has entered final judgment in favor of the department, the director may initiate collection procedures in accordance with RCW 49.48.086.

(5) Penalties assessed under this section shall be paid to the director and deposited into the general fund.

NEW SECTION

WAC 296-122-180 Appeals. (1) Any person aggrieved by an action taken or decision made by the department under this chapter may appeal the action or decision to the director by filing notice of the appeal with the director within 30 days of the department's action or decision.

(2) A notice of appeal filed under this section stays the effectiveness of a citation or notice of the assessment of a penalty pending review of the appeal by the director, but such appeal does not stay the effectiveness of an order of immediate restraint issued under this chapter.

(3) Upon receipt of an appeal, a hearing must be held in accordance with chapter 34.05 RCW.

(4) The director shall issue all final orders after the hearing.

(5) The final orders are subject to appeal in accordance with chapter 34.05 RCW.

(6) Orders not appealed within the time period specified in chapter 34.05 RCW are final and binding.

NEW SECTION

WAC 296-122-190 Severability. If any provision of the rules in this chapter, or their application to any person or circumstance is held invalid, the remainder of these rules or their application of the provision to other persons or circumstances is not affected.

AMENDATORY SECTION (Amending WSR 93-01-068, filed 12/11/92, effective 3/1/93)

WAC 296-125-015 Definitions. For the purposes of this chapter:

(1) "Department" means the Washington state department of labor and industries.

(2) "Employ" means to engage, suffer or permit to work, and includes entering into any arrangement, including a contract, whether implied, express, oral, or written, with a minor whereby the minor works in house-to-house sales except when a minor is working in house-to-house sales for her or his parent or stepparent. The term "employ" does not include newspaper vendors or carriers, the use of domestic or casual labor in or about private residences, agricultural labor as defined by RCW 50.04.150, or the use of voluntary or donated services performed for an educational, charitable, religious, or nonprofit organization and without expectation or contemplation of compensation for the services performed.

(3) "Employee" means any minor employed by an employer, including minors who work pursuant to any arrangement, including contract, whether implied, express, oral, or written in house-to-house sales, but does not include newspaper vendors or carriers, domestic or casual labor in or about private residences, minors employed in agricultural labor as defined by RCW 50.04.150, or minors employed for house-to-house sales by their parents or stepparents.

(4) "Employer" means any person, association, partnership, private or public corporation that employs or exercises control over the wages, hours, working conditions, or workplace of a minor, and for purposes of house-to-house sales includes any distributor or other person, association, partnership, private or public corporation that enters into any arrangement, including contract, whether implied, express, oral, or written, with a minor whereby the minor works in house-to-house sales; but does not include employers of agricultural labor as defined by RCW 50.04.150, employers of newspaper vendors or carriers, employers of casual labor in or about the employers' private residences, parents or stepparents employing their own minor children for house-to-house sales, the state, a state institution, a state agency, a political subdivision of the state, a municipal corporation, or a quasi-municipal corporation.

(5) "House-to-house sales" means a sale or other transaction in consumer goods, the demonstration of products or equipment, the obtaining of orders for consumer goods, or the obtaining of contracts for services, in which an employee personally solicits the sale or transaction at a place other than the place of business of the employer or the residence of the employee.

(6) "Minor" means a person under the age of ((~~eighteen years~~)) 18.

(7) "Nonschool week" means a week where the minor's school is not in session.

(8) "School holiday" means a day of a school week on which the minor's school ((~~at which a minor employee is enrolled~~)) is scheduled to be closed. ((~~If a minor employee is not enrolled in school, school holidays shall be determined by the schedule of the public school district in which the minor resides.~~

~~(8)~~)) (9) "School vacation" means the spring break, winter break, and summer break of the minor's school ((~~at which a minor employee is~~

~~enrolled, or if not enrolled the public school district in which a minor resides~~)).

((~~(9)~~)) (10) "School week" means any week where the minor's school is in session and students are required to attend for at least one day or a partial day.

(11) "Serious physical harm" means an injury that involves permanent disability or a disability of a limited nature, chronic irreversible illness, or an injury or reversible illness resulting in hospitalization.

(12) "Transport" means the conveyance, provision of a means of conveyance, or reimbursement or payment for the cost of conveyance at the direction or under the control of an employer or an employer's agent.

((~~(10)~~)) (13) "Workplace" means any worksite, premises, or location where minors work.

AMENDATORY SECTION (Amending WSR 93-01-068, filed 12/11/92, effective 3/1/93)

WAC 296-125-018 Minimum age for employment. ((~~(1)~~)) Pursuant to RCW 26.28.060, a written order issued by a judge of a superior court of the county in which a minor lives is a prerequisite to the hiring, not otherwise prohibited by federal law, of any minor under the age of ((~~fourteen~~)) 14 for any labor in or in connection with any store, shop, factory, mine, or inside employment other than inside employment connected with farm or housework.

((~~(2) No employer shall employ a minor under the age of sixteen in house-to-house sales, unless the department has granted a variance to an employer for that specific purpose.~~))

NEW SECTION

WAC 296-125-031 Hiring minors—Recordkeeping. (1) Before hiring a minor, an employer must obtain:

(a) A minor work permit endorsement on the business license of the location where the minor will work;

(b) A completed parent/school authorization form for each minor or a parent authorization for summer work form if the minor is hired during summer vacation; and

(c) Proof of age which lists the date of birth for each minor. Acceptable forms of proof of age include, but are not limited to:

(i) Birth certificate;

(ii) Driver's license;

(iii) Notarized statement from a parent/guardian; and

(iv) Federal identification, such as a passport.

(2) If employing minors for house-to-house sales, an employer must satisfy the special requirements in WAC 296-125-091 for that activity.

(3) An employer must create a file for each minor, which may be physical or electronic. The file must be maintained for three years from the last date of the minor's employment, and must include:

(a) Copies of all completed parent/school authorization forms with any attachments;

(b) Copies of any proof of age documents; and

(c) Copies of any variances obtained according to the requirements of this chapter.

(4) These records must be kept safe and accessible at the place of employment or at a central recordkeeping office where such records are customarily maintained.

NEW SECTION

WAC 296-125-041 Minor work permits. (1) Before employing a minor, an employer must obtain and keep current a minor work permit endorsement approved by the department and issued by the state business licensing service. An employer must obtain and keep a current minor work permit endorsement for each location where minors are employed. A single minor work permit endorsement will allow an employer to employ any number of minors at the location specified on the business license with the minor work permit endorsement.

(2) Minor work permit endorsements may include restrictions, consistent with this chapter, on minors' working conditions.

(3) A minor work permit endorsement shall expire on the last day of the month one year from the date of issue, or upon the expiration date shown on the employer's most recently issued business license document, whichever comes first.

NEW SECTION

WAC 296-125-051 Minor work permit—Revocation. (1)(a) The department shall revoke an employer's minor work permit endorsement and prohibit the employer from obtaining a minor work permit endorsement for no less than 12 months if:

(i) The employer has been issued a safety and health citation under RCW 49.17.120 containing one or more violations under RCW 49.17.180 (1), (2), (4), or (5) or any citation and notice of assessment containing one or more violations of RCW 49.12.121 or 49.12.123 or any applicable rule or order, where one or more of the violations caused serious physical harm or death to a minor; or

(ii) An order has been issued immediately restraining an employer's condition, practice, method, process, or means in the workplace pursuant to RCW 49.12.390 and this chapter or RCW 49.17.130 or 49.17.170.

(b) Following a revocation under this subsection, a minor work permit endorsement may not be reissued to an employer unless the employer has not been issued a citation for any violations of the provisions identified in (a)(i) of this subsection for at least 12 months.

(2) The department may refuse to issue or renew, revoke, suspend, or modify an employer's minor work permit endorsement if it finds:

(a) A condition related to the permit's issuance has not been satisfied;

(b) The employer violated any requirements of this chapter; or

(c) A condition that is or could be detrimental to the health, safety, or welfare of a minor. In this case, the department may issue an order of immediate restraint revoking, suspending, or modifying an employer's minor work permit endorsement. If the employer appeals the department's action, the order of immediate restraint will remain in force until the employer's appeal is resolved.

NEW SECTION

WAC 296-125-061 Parent/school authorization. (1) An employer must have a completed parent/school authorization form, or a completed parent authorization for summer work form, on file for each minor before the minor may begin work, unless the minor has been emancipated by court order. To be valid, a parent/school authorization form must be on a form supplied by the department and completed and signed by the employer, the minor, an official from the minor's school, and the minor's parent or legal guardian.

(2) All parent/school authorization forms expire each year on the 30th day of September.

(3) Employers must complete their section of the parent/school authorization form before sending the form to the minor for completion. Upon the minor's completion, the form must be submitted to the minor's school and the minor's parent or legal guardian.

(4) When completing the parent/school authorization form, the employer must provide the following information:

(a) The location of the minor's workplace(s);

(b) A description of the minor's duties;

(c) The earliest and latest hours the minor would be working;

(d) The total number of hours the minor would work per week;

(e) The employer's unified business identifier (UBI) number; and

(f) The employer's signature or the signature of their authorized agent.

(5) A minor must provide the following personal information on the parent/school authorization form:

(a) Name;

(b) Address;

(c) Date of birth, accompanied by proof of age as specified in WAC 296-125-031;

(d) Whether they are employed at any other job(s) and the total number of hours worked at that job(s); and

(e) Their signature.

(6) If a minor will be working during the school year, an authorized school official from the minor's school must:

(a) Indicate that the school authorizes (or does not authorize) the minor to work according to the terms listed by the employer; and

(b) Sign the form as the school's authorized agent.

(7) If a minor begins work during a school vacation and wishes to continue working after school resumes, the employer must obtain school approval before the minor can continue.

(8) School approval must be based upon:
(a) Maintaining an acceptable level of scholastic achievement;
(b) Maintaining good school attendance; and
(c) Making satisfactory progress toward graduation.
(9) A parent or legal guardian of a minor must:
(a) Indicate that they authorize (or do not authorize) the minor to work according to the terms listed by the employer; and
(b) Sign the form.
(10) A parent, legal guardian, or school may revoke authorization at any time by simply notifying the other parties to the authorization.

NEW SECTION

WAC 296-125-071 Parent/school authorization—Minor not attending school or living with parent/legal guardian. (1) A parent or legal guardian must certify a minor's nonenrolled status if the minor is:
(a) Living with a parent or legal guardian;
(b) No longer enrolled in school; and
(c) Has not obtained a certificate of educational competence according to RCW 28A.305.190 or is not enrolled in a bona fide college program.
(2) If a minor is living independently of a parent or legal guardian and is not enrolled in school, the minor must:
(a) Certify that they are living independently of a parent or legal guardian;
(b) Certify their nonenrolled status;
(c) Provide the name and location of the last school attended; and
(d) Provide the name and address or telephone number of an adult emergency contact other than the minor's employer. This contact person must certify that the minor is living independently of a parent or legal guardian.
(3) If a minor is living independently of a parent or legal guardian and is enrolled in school, the minor must:
(a) Certify that they are living independently of a parent or legal guardian; and
(b) Provide the name and address or telephone number of an adult emergency contact other than the minor's employer. This contact person must certify that the minor is living independently of a parent or legal guardian.

NEW SECTION

WAC 296-125-081 Minimum wages—Minors. Except where a higher minimum wage is required by Washington state or federal law:
(1) Every employer shall pay to each of their employees who have reached their 16th or 17th year of age a rate of pay per hour which is equal to the hourly rate required by RCW 49.46.020 for employees 18 years of age or older, whether computed on an hourly, commission,

piecework, or other basis, except as may be otherwise provided under this chapter.

(2) Every employer shall pay to each of their employees who have not reached their 16th year of age a rate of pay per hour that is not less than 85 percent of the hourly rate required by RCW 49.46.020 for employees 18 years of age or older whether computed on an hourly, commission, piecework, or other basis, except as may be otherwise provided under this chapter.

NEW SECTION

WAC 296-125-091 House-to-house sales. (1) No minor under the age of 16 may be employed in house-to-house sales.

(2)(a) Each employer of minors in house-to-house sales, or person seeking to advertise to employ a person in house-to-house sales with an advertisement specifically stating a minimum age requirement that is under the age of 21, shall receive and maintain from the department a valid house-to-house sales registration certificate prior to employing a 16- or 17-year-old minor for house-to-house sales and prior to advertising for employment.

(b) Employers also must obtain and maintain a valid minor work permit endorsement, pursuant to WAC 296-125-041, and parent/school authorization forms, pursuant to WAC 296-125-061, prior to employing minors for house-to-house sales. If an employer seeks to transport a minor out of the state of Washington for house-to-house sales, the employer must obtain and keep on file express written authorization from each minor's parent or legal guardian to transport each minor worker out of the state for house-to-house sales.

(c) A valid registration certificate and a valid minor work permit must remain in full force and effect at all times that minors are employed by the employer. When duly issued by the department, and unless modified, suspended, or revoked, such a certificate will authorize the employer to employ any number of 16- or 17-year-old minors for house-to-house sales in accordance with the provisions of this chapter and in accordance with any limitations listed on the certificate.

(3)(a) The employer shall ensure that there is one adult supervisor for every five minor employees employed in house-to-house sales during all work hours. A supervisor may not supervise more than one group of five minor employees.

(b) The employer shall ensure that each supervisor of minor employees is a responsible adult who is at least 21 years of age.

(c) The employer shall ensure that each supervisor has contact, personally or verbally, with each minor employee at least once every 15 minutes. The contact with minor employees may be made by remote means such as telephone or walkie-talkie, but in any case shall be of such a nature as to provide assurance of the minor's health, safety, and welfare. The employer shall ensure that each supervisor is within one-half mile of each supervised minor employee during all working hours.

(d) The employer shall ensure that each minor employee is returned by the employer or its agent to the minor's home or initial point of contact promptly at the end of the minor's work hours. If the minor is returned to the initial point of contact, the employer shall ensure that the location selected is one in which the minor's safety

is the first and foremost consideration. Minors shall be protected from risks of injury including, but not limited to, moving vehicles.

(4) Minors may not be employed in house-to-house sales prior to 7:00 a.m. or after 9:00 p.m., nor during school hours. In addition, employers of minors in house-to-house sales must comply with the further requirements of WAC 296-125-101, concerning maximum number of hours per day and per week, and WAC 296-125-121, concerning mandatory rest and meal breaks.

(5)(a) An employer shall issue to each minor employed in house-to-house sales an identification card with the employee's picture. The identification cards issued shall be exclusively from forms obtained in blank from the department.

(b) An identification card shall be in the possession of each minor employed in house-to-house sales during all working hours, and shall be shown to each customer or potential customer.

(6) At least one copy of a valid house-to-house sales registration certificate shall be posted in plain view of all employees at the employer's primary place of business within the state of Washington.

(7) House-to-house sales registration certificates shall be valid until the expiration of the employer's minor work permit endorsement. The filing of an application for renewal of registration does not result in an automatic extension of the one-year registration period. The department may refuse to renew a registration certificate if the department finds that a condition of the previous registration period has not been satisfied, that the employer has violated the requirements of this chapter, or that any other condition exists that is or could be detrimental to the health, safety, or welfare of a minor.

(8) The department may revoke, suspend, or modify an employer's registration for house-to-house sales if the department finds that a condition of registration is not being satisfied, that the employer has violated the requirements of this chapter, or that any other condition exists which is or could be detrimental to the health, safety, or welfare of a minor. In the event the department finds that a condition exists which is or could be detrimental to the health, safety, or welfare of a minor, the department may take emergency action to revoke or suspend a house-to-house sales registration; in such instances, an appeal of the department's action shall not stay the revocation, suspension, or modification during the pendency of the appeal.

(9) An appeal of an action by the department to refuse to issue or renew, or to revoke, suspend, or modify an employer's house-to-house sales registration must be filed in writing with the director of the department within 30 days of the department's action. Such appeal shall be conducted in accordance with the rules of practice and procedure established in WAC 296-125-201. Such appeal shall not stay the effectiveness of an emergency action taken by the department pursuant to this section.

NEW SECTION

WAC 296-125-101 Hours of work for minors. (1)(a) Minors under the age of 16 may work the following hours during school weeks:

(i) A maximum of three hours per day on any school day preceding another school day or otherwise a maximum of eight hours per day;

(ii) A maximum of six days per week;

(iii) A maximum of 16 hours per week;

(iv) No earlier than 7:00 a.m.;

(v) No later than 7:00 p.m. on any day preceding a school day;

(vi) No later than 9:00 p.m. on Fridays, Saturdays, and the day preceding a school holiday or vacation, provided that minors employed past 8:00 p.m. in service occupations shall be supervised by a responsible adult employee who is on the premises at all times; and

(vii) Not during school hours.

(b) Minors under the age of 16 may work the following hours during nonschool weeks:

(i) A maximum of eight hours per day;

(ii) A maximum of six days per week;

(iii) A maximum of 40 hours per week;

(iv) No earlier than 7:00 a.m.; and

(v) No later than 9:00 p.m. provided that minors employed past 8:00 p.m. in service occupations shall be supervised by a responsible adult employee who is on the premises at all times.

(2)(a) Sixteen- and 17-year-old minors may work the following hours during school weeks:

(i) A maximum of four hours per day on any school day preceding another school day or otherwise a maximum of eight hours per day;

(ii) A maximum of six days per week;

(iii) A maximum of 20 hours per week;

(iv) No earlier than 7:00 a.m.;

(v) No later than 10:00 p.m. on any day preceding a school day;

(vi) No later than midnight on Fridays, Saturdays, and the day preceding a school holiday or vacation, provided that minors employed past 8:00 p.m. in service occupations shall be supervised by a responsible adult employee who is on the premises at all times; and

(vii) Not during school hours.

(b) Sixteen- and 17-year-old minors may work the following hours during nonschool weeks:

(i) Maximum of eight hours per day;

(ii) Maximum of six days per week;

(iii) Maximum of 48 hours per week;

(iv) No earlier than 5:00 a.m.; and

(v) No later than 12:00 a.m. provided that minors employed past 8:00 p.m. in service occupations shall be supervised by a responsible adult employee who is on the premises at all times, and except no later than 9:00 p.m. for minors employed in house-to-house sales.

(3) Sixteen- and 17-year-old minors may work during the hours their neighborhood public school is in session if:

(a) The minor is attending an alternative, private, or other school that is not the local public school in the area where the minor lives. In such cases, the minor may not work during the hours that school the minor attends is in session;

(b) The minor is enrolled in a worksite learning program and has been released early by their school to begin work for an employer participating in the worksite learning program;

(c) The minor is receiving home-based instruction, and their parent or legal guardian has submitted a home-based instruction notification to the local public school district as required by RCW 28A.200.010 (1)(a); or

(d) The minor has otherwise been excused by their school district superintendent or the superintendent's authorized representative.

(4) Sixteen- and 17-year-old minors who have been issued a certificate of educational competence pursuant to RCW 28A.305.190, are

enrolled in a bona fide college program, are enrolled in a state-approved career and technical education program, or are shown as the parent on a valid certificate of birth may work as would be permitted during nonschool weeks. For the purpose of this section, "state-approved career and technical education program" refers to a worksite learning course approved by the office of the superintendent of public instruction or the minor's school district, with a fully executed worksite learning agreement including, but not limited to, core plus programs. For the purpose of this section, "core plus programs" refer to verified core plus programs, approved by the office of the superintendent of public instruction, and verified by the local school district reporting.

NEW SECTION

WAC 296-125-111 Meal and rest breaks—Minors under the age of 16. (1)(a) Minors under the age of 16 must not work more than four consecutive hours without being given a meal break.

(b) Meal breaks must be uninterrupted and at least 30 minutes in length. Meal breaks must be separate and distinct from, and in addition to, the rest breaks mandated by this section.

(2) Rest breaks must be at least 10-minutes in length and be given on the business' time.

(3) Minors under the age of 16 must not work more than two consecutive hours without receiving either a meal break or a rest break.

NEW SECTION

WAC 296-125-121 Meal and rest breaks—Sixteen- and 17-year-old minors. (1)(a) Sixteen- and 17-year-old minors must not work more than five consecutive hours without receiving a meal break.

(b) Meal breaks must be uninterrupted and at least 30 minutes in length. Meal breaks must be separate and distinct from, and in addition to, the rest breaks mandated by this section.

(2)(a) When working four or more hours, 16- and 17-year-olds must receive a rest break at least 10-minutes in length. Rest breaks must be given on the business's time.

(b) Sixteen- and 17-year-old minors must not work more than three hours without receiving a rest break.

NEW SECTION

WAC 296-125-131 Prohibited and hazardous employment—All minors. The following employments and occupations are prohibited for all minors.

(1) Occupations in or about plants or establishments manufacturing or storing explosives or articles containing explosive components.

(2) Occupations of motor-vehicle driver and outside helper. Incidental and occasional driving by 17-year-olds is permissible if all of the following criteria are met: The minor holds a state driver's license valid for the type of driving involved in the job performed and the minor has no record of any moving violations at the time of hire; driving is restricted to daylight hours; such driving is only occasional, and is incidental to the minor's employment; the automobile or truck does not exceed 6,000 pounds gross vehicle weight; the minor has completed a state-approved driver education course; and the vehicle is equipped with seat belts and the employer has instructed the minor that such belts must be used. The driving does not involve: The towing of vehicles; route deliveries or route sales; the transportation for hire of property, goods, or passengers; urgent, time-sensitive deliveries; or the transporting at any one time of more than three passengers, including the employees of the employer; the driving performed by the minor does not involve more than two trips away from the primary place of employment in any single day for the purpose of delivering goods of the minor's employer to a customer or for the purpose of transporting passengers; the driving takes place within a 30 mile radius of the minor's place of employment; occupations involving occasional operation of a bus are prohibited.

(3) All mining occupations.

(4) Occupations involving forest fire fighting and forest fire prevention, timber tract occupations, forestry service occupations, logging occupations, and occupations in the operation of any sawmill, lath mill, shingle mill, or cooperage-stock mill.

(5) Occupations involving operation or repair, oiling, cleaning, adjusting, or setting up of any power-driven wood-working machines.

(6) Occupations involving potential exposure to radioactive substances and to ionizing radiations.

(7) Occupations involving operation or repair, oiling, cleaning, adjusting, or setting up of power-driven hoisting apparatuses. This includes, but is not limited to, cranes, derricks, elevators, high-lift trucks, forklifts, hoists, and manlifts, but shall not include work in proximity to a ski-lift apparatus.

(8) Occupations involving operation or repair, oiling, cleaning, adjusting, or setting up of power-driven metal-forming, punching, and shearing machines.

(9) Occupations in the operation of power-driven meat-processing machines and occupations involving slaughtering, meat and poultry packing, processing, or rendering.

(10) Occupations involving operation or repair, oiling, cleaning, adjusting, or setting up of power-driven bakery machines.

(11) Occupations involving operation or repair, oiling, cleaning, adjusting, or setting up of power-driven paper-balers or other balers, garbage-compactors, trash-compactors or other compactors, and power-driven paper-products machines.

(12) Occupations involved in the manufacturing of brick, tile, and kindred products.

(13) Occupations involving operation or repair, oiling, cleaning, adjusting, or setting up of power-driven circular saws, band saws, guillotine shears, chain saws, reciprocating saws, wood chippers, and abrasive cutting discs.

(14) Occupations involved in wrecking, demolition, and shipbreaking operations.

(15) Occupations in roofing operations and work on or about a roof.

(16) Occupations in excavation operations.

(17) Occupations involving operation or repair, oiling, cleaning, adjusting, or setting up of or working in proximity to earth-moving machines or other heavy equipment including, but not limited to, graders, bulldozers, earth compactors, backhoes, excavators and tractors. Working in proximity shall mean working within the radius of movement of any portion of the machinery where one could be struck or otherwise injured.

(18) Work in establishments or workplaces being picketed during the course of a labor dispute.

(19) Work as a nurse's aide/assistant; unless the minor is a student in a bona fide state-certified nursing training program or has successfully completed such a program.

(20) Work as a maid or bellhop in motels or hotels, unless the minor is accompanied by a responsible adult whenever the work requires the minor to enter an assigned guest room, whether or not it is occupied at the time the minor is in the room. Minors may work in unassigned, unoccupied guest rooms unaccompanied by an adult.

(21) Work in sauna or massage parlors, body painting or tattoo studios, or adult entertainment establishments.

(22) Duties involving the wearing of personal protective equipment as required by chapters 296-24 and 296-62 WAC as related to exposure to the hazards in subsection (25) of this section or hazardous noise exposure per chapter 296-817 WAC; except those duties where the only requirement is the wearing of gloves, boots, or eye protection if the duty is not otherwise prohibited by this section or by WAC 296-125-141. This subsection prohibitions shall not apply if a minor is a student in a bona fide health care career training or vocational education program or has successfully completed such a program.

(23) Occupations involving firefighting and fire suppression duties.

(24) Occupations where there is a risk of exposure to bodily fluids or transmission of infectious agents including, but not limited to, hepatitis and HIV, in accordance with standards established by chapter 296-823 WAC (Occupational exposure to bloodborne pathogens), including lab work which entails the cleaning of medical equipment used to draw or store blood or other contaminated tissue; duties which involve venipuncture; and duties involving work with laundry from health care facilities; unless the minor is a student in a bona fide health care career training or vocational education program or has successfully completed such a program. State-certified lifeguards with first-aid training are exempt.

(25) Duties involving exposure to asbestos; or exposure to hazardous substances which are considered to be carcinogenic, corrosive, highly toxic, toxic sensitizers, or which have been determined to cause reproductive health effects or irreversible end organ damage; or exposure to atmospheric conditions that are immediately dangerous to life or health, including oxygen-deficient atmospheres. This does not include the handling of such substances in sealed containers in retail situations. This subsection prohibitions shall not apply to any consumer product or hazardous substance, as those terms are defined by the Consumer Product Safety Act (15 U.S.C. 2051 et seq.) and the federal Hazardous Substances Act (15 U.S.C. 1261 et seq.) and those statutes' regulations, where the employer of a minor can demonstrate that a product or substance is used in the workplace in the same manner as normal consumer use, and which use results in a duration and frequency of exposure that is not greater than exposures experienced by consum-

ers using the product or substance in conformity with the manufacturer's instructions, provided that such exposures are not otherwise prohibited by subsection (22) of this section.

(26) In selling to passing motorists on the public right-of-way candy, flowers, or other merchandise or commodities. Selling to motorists from a window counter is not prohibited.

(27) Occupations as a flagger on any public road or highway and work which involves directing moving motor vehicles in or around warehouses or loading/unloading areas including, but not limited to, loading docks, transfer stations, or landfills.

(28) Work performed in or about boiler or engine rooms.

(29) All work performed more than 10 feet above ground or floor level.

(30) Work in freezers, meat coolers, and all work in preparing meats for sale (wrapping, sealing, labeling, weighing, pricing, and stocking are permitted if work is performed away from meat-cutting and preparation areas). Occasional entry into freezers or coolers only momentarily to retrieve items shall not be prohibited.

(31) Service occupations if a minor works past 8:00 p.m., unless the minor is supervised by a responsible adult employee who is on the premises at all times.

NEW SECTION

WAC 296-125-141 Prohibited and hazardous employment—Special restrictions for minors under the age of 16. Employment of minors under age 16 is subject to the following additional restrictions. They are prohibited from working:

(1) In any manufacturing operations.

(2) In any processing operations (including, but not limited to, filleting of fish, dressing poultry, cracking nuts, commercial processing, canning, freezing or drying of foods, laundering as performed by commercial laundries and dry cleaning). Minors may perform clerical tasks so long as the work is not prohibited by subsection (3) of this section.

(3) In occupations requiring the performance of duties in work rooms or workplaces where goods are manufactured, mined, or otherwise processed.

(4) In occupations involving the operation, tending, setting up, adjusting, cleaning, oiling, or repairing of all hoisting apparatuses.

(5) In occupations involving operation or repair, oiling, cleaning, adjusting, or setting up of or working in proximity to any power-driven machinery.

(6) In occupations involving operation of motor vehicles and service as helpers on such vehicles.

(7) In occupations involving outside window washing.

(8) In occupations involving the use of ladders, scaffolds, or their substitutes.

(9) In occupations involving baking.

(10) In occupations involving cooking.

(11) In occupations involving youth peddling or the holding, wearing, or waving of signs, merchandise, costumes, sandwich boards, or placards in order to attract potential customers, except when per-

formed inside of, or directly in front of, the employer's establishment providing the product, service, or event being advertised.

(12) In occupations involving loading and unloading goods or property onto or from motor vehicles and railroad cars.

(13) In occupations involving loading and unloading goods or property onto or from conveyors.

(14) In occupations involving catching and cooping of poultry in preparation for transport or for market.

(15) In any public messenger service including, but not limited to, work that is performed by foot, bicycle, or public transportation.

(16) In the following occupations, except minors may perform office work related to the occupations if none of the minor's work is performed on trains, motor vehicles, aircraft, vessels, or other media of transportation or at the actual site of construction operations:

(a) Transportation of persons or property by rail, highway, air, water, pipeline, or other means;

(b) Warehouse and storage;

(c) Communications and public utilities;

(d) Construction, including demolition and repair.

(17) In maintenance or repair work of retail, food service, or gasoline service station establishments.

(18) In occupations involving work in the operation of amusement parks, street carnivals, and traveling shows.

NEW SECTION

WAC 296-125-151 Variances. (1) An employer may seek a variance from the requirements under this chapter by submitting a written application to the department. The application must specify the reasons why the variance request should be granted.

(2) The department may grant the variance request if the employer possesses a valid minor work permit endorsement and the department determines the employer demonstrates good cause. The department may request or receive additional information from the employer or other interested parties when reviewing a variance application.

(3) "Good cause" means situations and circumstances where the employer demonstrates the variance will not be harmful to the health, safety, and welfare (including school attendance and performance) of the minor(s) affected. "Good cause" may also include the financial need of the minor's family or an exceptional or special talent manifested by the minor.

(4)(a) The department may grant a variance request for the prohibited duties described in WAC 296-125-131 (5), (8), (9), (11), (13), (15), (16), and (23) for 16- and 17-year-old minors employed as apprentices or student-learners.

(b) Minors employed as apprentices must be employed under the following conditions:

(i) The apprentice is employed in a craft recognized as an apprenticeable trade;

(ii) The work of the apprentice in the prohibited duty is incidental to their training, is intermittent and for short periods of time, and is under the direct and close supervision of a journeyman as a necessary part of such apprentice training; and

(iii) The apprentice is registered with the Washington state apprenticeship and training council.

(c) Minors employed as student-learners must be enrolled in a course of study and training in a cooperative vocational training program under a recognized state or local educational authority or in a course of study in a substantially similar program conducted by a private school, provided that the student-learner is employed under a written agreement which provides:

(i) That the work of the student-learner in the prohibited duty shall be incidental to the training;

(ii) That such work shall be intermittent and for short periods of time, and under the direct and close supervision of a qualified and experienced person;

(iii) That safety instruction shall be given by the school and correlated by the employer with on-the-job training;

(iv) That a schedule of organized and progressive work processes to be performed on the job shall have been prepared;

(v) Such written agreement contains the name of the student-learner, and is signed by the student, parent, employer and by a person authorized to represent the educational authority;

(vi) Copies of each such agreement are kept on file by both the educational authority or school and by the employer.

(5)(a) Before granting a variance for a duty prohibited by WAC 296-125-131 under subsection (4) of this section, the department shall:

(i) Conduct a safety and health consultation at the worksite; and

(ii) Consult with the employer on the types of tools, equipment, and practices permitted under the variance.

(b) The department may consider the consultation requirement in (a) of this subsection complete if the employer is renewing a variance that expired within the same academic school year, or has an active variance, for the exact same prohibited tools, equipment, or occupation.

(6) The department may not grant variances for any hour of work or occupation prohibited by the United States Department of Labor.

(7) Each variance will expire upon the expiration of the minor work permit endorsement that was in effect at the time the variance was issued unless the variance was issued with an earlier expiration date.

(8) The department may revoke, suspend, or modify an employer's variance if it finds:

(a) A condition related to its issuance has not been satisfied;

(b) The employer violated any requirement of this chapter; or

(c) An existing condition that is or could be detrimental to the health, safety, or welfare of a minor including an adverse impact upon their school attendance or performance.

NEW SECTION

WAC 296-125-161 Special variance. (1) Sixteen- and 17-year-old minors may work the following hours, provided the minor has a complete special variance included on the parent/school authorization form:

(a) Up to a maximum of 28 hours per week; and

(b) Up to a maximum of six hours per day on any school day preceding another school day.

(2) Sixteen- and 17-year-old minors must follow all other hours of work requirements specified in WAC 296-125-101.

(3) To be valid, a special variance must be signed on a parent/school authorization form completed in accordance with WAC 296-125-061. The special variance must be signed by the minor's parent or guardian and the minor's authorized school official.

(4) In evaluating requests for special variances, a school must consider at least the following factors:

(a) Does the employer hold a current valid minor work permit endorsement?

(b) What is the student's attendance pattern?

(c) Is the student making satisfactory academic progress?

(d) Will the student still have opportunities to participate in extracurricular activities?

(e) How many school nights will the student work?

(f) How late in the evening will the student work?

(g) How long a shift will the student work?

(h) How sound is the student's rationale for requesting a variance from the work hour restrictions?

(5) Special variances expire at the termination of the school year. Employers must request a special variance at the beginning of each new school year.

(6) Special variances will not be granted for 16-year-old and 17-year-old minors working in house-to-house sales.

(7) A parent, legal guardian, or school may revoke a special variance at any time by simply giving written notification to the other parties to the variance.

NEW SECTION

WAC 296-125-171 Retaliation. (1) An employer may not retaliate, discharge, discriminate, or otherwise take any adverse action against an employee because the employee has filed any complaint, or instituted or caused to be instituted any proceeding under this chapter, or has testified or is about to testify in any such proceeding, or because of the exercise by such employee on behalf of themselves or others of any right afforded by this chapter.

(2) The department may enforce allegations of retaliation against an employee under the provisions provided in WAC 296-128-770 through 296-128-800.

NEW SECTION

WAC 296-125-181 Department enforcement authority. (1) To enforce the requirements of this chapter, the director or the director's authorized representatives can, without delay:

(a) Enter any workplace where work is or has been performed by a minor, or where employment records are, or are required to be maintained;

(b) Inspect, transcribe, and copy all pertinent records;

(c) Inspect and investigate any workplace and all pertinent conditions, structures, machines, apparatus, devices, equipment, supplies, and materials located there; and

(d) Question privately any employer, owner, operator, agent, or employee.

(2) The director or their authorized designated representative may initiate an investigation without an employee's complaint to ensure compliance with the chapter. The director may also initiate an investigation when the director otherwise has reason to believe that a violation has occurred.

(3) An employer who fails to allow adequate inspection of records in an inspection by the department within a reasonable time may not use such records in any appeal to challenge the correctness of any citation and notice issued by the department.

(4) The department may request an employer perform a self-audit of any records relating to this chapter which must be provided within a reasonable time. Reasonable timelines will be specified in the self-audit request. The department must determine reasonable time based on the number of affected employees and the period of time covered by the self-audit. The records examined by the employer in order to perform the self-audit must be made available to the department upon request.

(5) Upon the department's request, an employer must notify affected employees in writing that the department is conducting an investigation. The department may require the employer to include a general description of the investigation, including the allegations, as part of the notification. The employer may consult with the department to provide the information for the description of the notification of investigation.

NEW SECTION

WAC 296-125-191 Department enforcement—Civil penalties. (1)(a) If the department finds that an employer has violated any of the requirements of this chapter or a variance granted under this chapter, a citation and notice of assessment stating the violations shall be issued to the employer. The citation and notice of assessment shall be in writing, describing the nature of the violation including reference to the standards, rules, or orders alleged to have been violated. The citation and penalty assessment must be given to the highest management official available at the workplace or be mailed to the employer at the workplace. In addition, the department shall mail a copy of the citation and penalty assessment to the central personnel office of the employer. Citations issued under this section must be posted at or near the place where the violation occurred.

(b) A first-time citation for failure to obtain a minor work permit endorsement or parental or school authorization, for failure to maintain records, or for a violation deemed nonserious by the department must state a specific and reasonable time for abatement of the violation to allow the employer to correct the violation. The department may waive or reduce a civil penalty assessed for a first-time violation under this subsection if the director determines that the employer has taken corrective action to resolve the violation.

(c) The employer must be assessed a civil penalty in accordance with RCW 49.12.390 (1)(c) and as published by the department.

(d) If the department finds that an employer has committed a serious or repeated violation of the requirements of RCW 49.12.121 or 49.12.123, or any rule or order adopted or variance granted under RCW 49.12.121 or 49.12.123, the employer is subject to an additional civil penalty, in accordance with RCW 49.12.390 (1)(d) and as published by the department, for each subsequent day the violation continues. For the purposes of this subsection, a serious violation shall be deemed to exist if death or serious physical harm has resulted or is imminent from a condition that exists, or from one or more practices, means, methods, operations, or processes that have been adopted or are in use by the employer, unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation.

(e) The department shall consider the following factors when determining the amount of any penalty assessment under this section:

(i) Whether the violation was committed willfully or the violation is a repeat violation;

(ii) The size of the employer;

(iii) The age of the minor;

(iv) The gravity of the violation;

(v) The hazards created by the violation;

(vi) The penalties for comparable violations under federal law;

(vii) the penalty amount necessary to deter future noncompliance;

(viii) Ensuring the penalty amount is consistent with the purposes of this chapter; and

(ix) Any other factor warranting an adjustment in the penalty as deemed appropriate by the department.

(2) The employer shall pay the amount assessed under this section within 30 days of receipt of the penalty assessment or notify the director of the employer's intent to appeal the citation or the penalty assessment as provided in RCW 49.12.400. If an employer fails to pay an assessment under this section after it has become a final and unappealable order, or after the court has entered final judgment in favor of the department, the director may initiate collection procedures in accordance with RCW 49.48.086.

(3) In addition to any other authority provided in this section, if, upon inspection or investigation, the director, or director's designee, believes that an employer has violated RCW 49.12.121 or 49.12.123, or a rule or order adopted or variance granted under RCW 49.12.121 or 49.12.123, and that the violation creates a danger from which there is a substantial probability that death or serious physical harm could result to a minor employee, the director, or director's designee, may issue an order immediately restraining the condition, practice, method, process, or means creating the danger in the workplace. An order issued under this subsection may require the employer to take steps necessary to avoid, correct, or remove danger and may prohibit the presence of a minor in locations or under conditions where the danger exists.

(4) A person who gives advance notice, without the authority of the director, of an inspection to be conducted under this chapter shall be assessed a civil penalty of not more than $1,000.

(5) Penalties assessed under this section shall be paid to the director and deposited into the general fund.

NEW SECTION

WAC 296-125-201 Appeals. (1) A person, firm, or corporation aggrieved by an action taken or decision made by the department under this chapter may appeal the action or decision to the director by filing notice of the appeal with the director within 30 days of the department's action or decision.

(2) A notice of appeal filed under this section shall stay the effectiveness of a citation or notice of the assessment of a penalty pending review of the appeal by the director, but such appeal shall not stay the effectiveness of an order of immediate restraint issued under this chapter.

(3) Upon receipt of an appeal, a hearing shall be held in accordance with chapter 34.05 RCW.

(4) The director shall issue all final orders after the hearing.

(5) The final orders are subject to appeal in accordance with chapter 34.05 RCW.

(6) Orders not appealed within the time period specified in chapter 34.05 RCW are final and binding.

NEW SECTION

WAC 296-125-211 Severability. If any provision of the rules in this chapter, or their application to any person or circumstance is held invalid, the remainder of these rules or their application of the provision to other persons or circumstances is not affected.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 296-125-0200	If I plan to employ minors in my business, what general requirements do I have to satisfy?
WAC 296-125-0210	Do I need minor work permit endorsements for my business?
WAC 296-125-0211	What if I employ minors at several different workplaces?
WAC 296-125-0220	Are there working condition restrictions which may be placed on my minor work permit endorsements?
WAC 296-125-0221	Do my minor work permit endorsements expire?
WAC 296-125-0222	Can I renew my minor work permit endorsements?
WAC 296-125-0223	How long must my minor work permit endorsements stay in force?

WAC 296-125-0224	Do I need to post my minor work permit endorsements?
WAC 296-125-0230	Can the department of labor and industries refuse to issue or renew, revoke, suspend or modify my minor work permit endorsements?
WAC 296-125-0231	Can I appeal the department's refusal to issue or renew, or to revoke, suspend or modify my minor work permit endorsements?
WAC 296-125-024	House-to-house sales.
WAC 296-125-0260	If I employ minors, do I need authorization from the parent or school?
WAC 296-125-0261	Where can I obtain a parent/school authorization form?
WAC 296-125-0262	Do parent/school authorization forms expire?
WAC 296-125-0263	What information must a minor provide on the parent/school authorization form?
WAC 296-125-0264	What information must an employer provide on the parent/school authorization form?
WAC 296-125-0265	What information must a parent or legal guardian provide on the parent/school authorization form?
WAC 296-125-0266	What information must a school provide on the parent/school authorization form?
WAC 296-125-0267	What if a minor is no longer attending school?
WAC 296-125-0268	Can a parent, legal guardian or school revoke the work authorization previously given on the parent/school authorization form?
WAC 296-125-027	Hours of work for minors.
WAC 296-125-0275	When I employ minors, what recordkeeping requirements must I satisfy?
WAC 296-125-0280	What is the department's enforcement authority?
WAC 296-125-0285	What regulations apply to meal and rest breaks for my fourteen-year-old and fifteen-year-old minors?
WAC 296-125-0287	What regulations apply to meal and rest breaks for my sixteen-year-old and seventeen-year-old employees?
WAC 296-125-030	Prohibited and hazardous employment—All minors.

WAC 296-125-033	Prohibited and hazardous employment—— Special restrictions for minors under the age of 16.
WAC 296-125-043	Minimum wages——Minors.
WAC 296-125-0600	What is a variance?
WAC 296-125-0610	How do I obtain a variance?
WAC 296-125-0611	What does "good cause" mean?
WAC 296-125-0620	Are there special requirements that I must satisfy if I request a variance to employ minors under the age of sixteen in house-to-house sales?
WAC 296-125-0640	What criteria will be used to evaluate my variance request?
WAC 296-125-0650	Do my variances expire?
WAC 296-125-0651	Can my variances be renewed?
WAC 296-125-0660	Can the department of labor and industries revoke, suspend, or modify my variances?
WAC 296-125-0670	Can I appeal the department's action to revoke, suspend or modify my variances?
WAC 296-125-0700	What is a special variance?
WAC 296-125-0710	What criteria will be followed in evaluating my special variance request?
WAC 296-125-0720	How can a school district or individual private school qualify for participation in the special variance process?
WAC 296-125-0721	Where can a school district or individual private school obtain a copy of the special variance process enrollment form?
WAC 296-125-0722	In addition to completing the enrollment form, what other requirements must be satisfied before a school district or private school can participate in the special variance program?
WAC 296-125-0723	What is the employer's responsibility in providing information to the minor, the minor's parent or legal guardian, and school officials?
WAC 296-125-0730	What other information about special variance requests is important?
WAC 296-125-0740	What are the consequences of submitting an incomplete special variance request form?
WAC 296-125-0741	Can a school district or private school appeal the department's decision to revoke its participation in the special variance program?

WAC 296-125-0750	What are the criteria used by a school to evaluate special variance requests?
WAC 296-125-0760	Do special variances expire?
WAC 296-125-0770	Can the department of labor and industries revoke, suspend, or modify a special variance?
WAC 296-125-0771	Can the parties to a special variance revoke it?
WAC 296-125-0772	Can the department's action to refuse to issue or renew, revoke, suspend or modify a special variance be appealed?

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 296-128-400 Minors.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 296-131-100	Permits to employ minors.
WAC 296-131-105	Parental and school authorization.
WAC 296-131-110	Posting.
WAC 296-131-115	Age of employment.
WAC 296-131-117	Minimum wages—Minors.
WAC 296-131-120	Hours of work for minors in agriculture.
WAC 296-131-125	Prohibited and hazardous employment.
WAC 296-131-130	Recordkeeping.
WAC 296-131-135	Revocation of permits.
WAC 296-131-140	Variances.