CONCISE EXPLANATORY STATEMENT
Chapter 296-128 WAC – Minimum Wages
Public Hearings: August 8, August 16, August 17, and August 29, 2017
Adoption: October 17, 2017
Effective: January 1, 2018

Table of Contents

I. Purpose of Rulemaking

The purpose of this rulemaking is to implement, carry out, and enforce Initiative 1433, passed in November 2016. Initiative 1433 requires employers to provide paid sick leave to employees beginning on January 1, 2018. In addition to the paid sick leave rules, the department is amending rules to update outdated language concerning persons with disabilities to "People-first" language.

A. Background

On November 8, 2016, Washington voters approved Initiative Measure No. 1433 (I-1433), a ballot measure concerning labor standards. I-1433 was codified under chapter 49.46 RCW.

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

In addition, I-1433 directed the Department of Labor & Industries (the department) to adopt and implement rules to carry out and enforce the Initiative, including but not limited to procedures for notification to employees and reporting regarding paid sick leave, and protecting employees from retaliation for the lawful use of paid sick leave and exercising other rights under chapter 49.46 RCW.

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

B. Summary of the rulemaking activities

Department staff held one informational kickoff meeting and three well-attended stakeholder meetings to discuss draft versions of the rules prior to filing the CR-102. Stakeholders were able to participate in person, by phone, or through the I-1433 engagement website, designed to enhance public participation and transparency in the rulemaking process. The engagement site provides stakeholders with a single location for: providing feedback and reviewing feedback submitted by other stakeholders on draft proposed versions of the rules; locating pertinent documents, such as the most updated version of the draft rule language, the text of I-1433, and stakeholder meeting agendas; and a timeline which outlines next steps in the rulemaking process.

To create preliminary draft rules to present to stakeholders in April, the department researched paid sick leave statutes and ordinances currently in place in a variety of jurisdictions and gleaned pertinent language that responded to the directives in I-1433. The department used input contributed by stakeholders during the process to prepare each draft of the proposed rule language. While many questions were resolved during the process, the department continued working with stakeholders to address stakeholder concerns and refine the language of the rules.

Where the rules require an employer to have a written policy, the department will, in consultation with employee and employer representatives, develop sample policies and policy templates which meet the standard for compliance. The sample policies will be available to employers to use in their workplace.

II. Changes to the Rules

The following are the changes other than editing between the proposed rule and the rule as adopted.

WAC 296-128-600 [Definitions]

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

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

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

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

- Subsection (1) - The department updated the term "may" to "shall" in order to be consistent with the requirement set forth in subsection (5).
- Subsection (5) – The department updated the term "will" to "shall" to reflect consistency in the use of terminology throughout the rules.

WAC 296-128-650 [Reasonable notice]

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

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

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

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

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

III. Comments on Proposed Rules

The purpose of this section is to respond to the oral and written comments received through the public comment period and at the public hearing.

A. Comment Period

The public comment period for this rulemaking began July 5, 2017, and ended September 1, 2017. The department received 46 written comments.

B. Public Hearings

Location	Number Attended	Number Testified
August 8, 2017 - Tumwater	78	11
August 16, 2017 - Spokane	75	3
August 17, 2017 - Pasco	61	10
August 29, 2017 - Everett	75	10

C. Summary of Comments Received on the Proposed Rules and Department Response

The department has analyzed all the comments received on the proposed rule in detail and responses to these comments by category are listed below. While this list represents the majority of all the comments, some individual comments may

not be listed if the issue raised and response provided are adequately represented and additional entries would be duplicative.

Stakeholder Comments	Department Response
General	
1. We specifically request that you please consider rules that work in conjunction with the already established state and federal family medical leave laws and Labor and Industries' existing process for returning injured workers back to their jobs of injury	The department updated the rules to address concerns associated with the intersection of the requirements set forth in I-1433 and existing leave laws.
2. We know there are 40 jurisdictions throughout the country including now seven states that have paid sick and safe leave. We appreciate that you've pulled from the best of those policies, and we also appreciate that once we are done with this process, we will hopefully have a model policy for other states and municipalities to use	Comment noted.
3. Government cannot mandate benefits and arbitrarily assign a wage increase. It may seem like a kind thing to do, but actually hurts workers	I-1433 passed by a vote of the people on November 8, 2016. The department is tasked with drafting rules which interpret the law as passed by voters.
4. [We] would like to commend you on your process you used to promulgate the rules necessary to implement the new sick leave provisions enacted by Initiative 1433. While we have already seen some and we expect many further lessons to be learned as this new law is implemented and dealt with at the bargaining table, we did want to recognize your open and fair process	Comment noted.
5. Expression of disappointment from a process standpoint that the enforcement rules aren't part of this rulemaking	The department originally intended to complete the rulemaking in a single filing. However, given the scope and scale of the rulemaking that addressed employer requirements and employee rights, the department wanted to ensure that enough time was available to engage stakeholders in development of the enforcement language. To

	that end, the department elected to separate the rulemaking into two processes.
6. [We] would like to thank you for your diligence in soliciting feedback relative to the implementation of Initiative 1433. We understand this is not an easy assignment and appreciate the time taken by your agency to coordinate and facilitate public hearings and the preceding overview of the proposed rules	Comment noted.
7. Concerns that the new law renders human resource professionals personally liable for how the leave entitlements are administered	I-1433 was codified into the existing Minimum Wage Act (chapter 49.46 RCW). I-1433 did not amend the definition of "employer" under RCW 49.46. The definition of employer "includes any individual, partnership, association, corporation, business trust, or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee." Whether or not human resource professionals are personally liable for noncompliance with how paid sick leave entitlements are administered is fact-specific and dependent on such professionals meeting the definition of "employer", as defined above and under case law addressing personal liability.
8. Request that the rules be implemented by October 1st so that there is time for an orderly transition with all parties involved	Recognizing that all parties involved need time to understand the new requirements prior to the January 1, 2018, effective date, the department worked to develop the rule language as quickly as possible.
9. We appreciate the transparent stakeholder process that the Department of Labor & Industries held before the publication of the CR-102. The process resulted in a fairly polished draft rule contained in the CR-102	Comment noted.
WAC 296-128-600 Definitions	
10. Add a definition of "policy" to this section of the rules	The department received a request to define "policy" in the definition section of the rules, due to potential confusion regarding whether an employer must have one written policy for all employees in all operational units where these rules set forth requirements for an

	employer to have a written policy. It is the department's interpretation that an employer may have different written policies across operational units, so long as such policies are not in violation of chapter 49.46 RCW, and all applicable rules.
11. Clarify how sick leave will be transferred between school districts	RCW 49.46.210(1)(k) requires that "[w]hen there is a separation from employment and the employee is rehired within twelve months of separation by the same employer, whether at the same or a different business location of the employer, previously accrued unused paid sick leave shall be reinstated…" The transferability of paid sick leave between school districts is dependent upon whether the school districts are considered the same employer.
12. Clarify when/if premium/differential pay are included in the definition of normal hourly compensation	"Normal hourly compensation" is defined in the rules and means the hourly rate that an employee would have earned for the time during which the employee used paid sick leave. For employees who use paid sick leave for hours that would have been overtime hours if worked, employers are not required to apply overtime standards to an employee's normal hourly compensation. Normal hourly compensation does not include tips, gratuities, service charges, holiday pay, or other premium rates, unless the employer or a collective bargaining agreement allow for such considerations. However, where an employee's normal hourly compensation is a differential rate, meaning a different rate paid for the same work performed under differing conditions (e.g., a night shift), the differential rate is not a premium rate.
13. Provide more definition of who is a "public official"	"Public official" is a generally recognized term referring to a person holding a position of public trust in or under an executive, legislative, or judicial office of a local, state, or federal governmental entity.
14. Provide a definition of "de facto parent"	It is the department's interpretation that "de facto parent" was included under the definition of "family member" at RCW 49.46.210(2) to capture situations where an individual has not assumed an "in loco parentis" status, but may be offering support and guidance similar to those expected of a legal parent or guardian.

15. Exempting student employees of higher education institutions from the definition of "employee" in these rules, and to provide broader exemptions to include students in general who are not generally employed to pursue the employer's interests, but are employed in their capacity as students, and their work is more in the form of financial aid to them 16. Amend WAC 296-128-600 to state the following: "Employee" has the same meaning as RCW 49.46.010(3), except a student employed by an institution of higher education who is exempt from civil service rules as defined by WAC 357-04-040 will not be considered an employee for the purposes of these rules 17. Exempt substitute teachers from the definition of "employee" in these rules 18. Exempt seasonal employees and agricultural workers from the definition of "employee" for the paid sick leave portion of the law 19. Exempt on-call and substitute workers from the definition of "employee" in these rules 20. Clarification regarding if the definition of "employee" applies to minor workers	I-1433 was codified into the existing Minimum Wage Act (chapter 49.46 RCW). I-1433 did not amend the definition of "employee" under chapter 49.46 RCW, and therefore the same historical definitions apply for entitlement to paid sick leave. As a result, if an individual meets the definition of "employee" then the protections of the Minimum Wage Act apply to such employee. The definition of "employee" exempts sixteen categories of workers from the protections of the Minimum Wage Act. Such exemptions do not contemplate an employee's status as part-time, full-time, seasonal, or temporary. Additionally, the definition of employee does not have a categorical exemption for minors, students, and substitute teachers. However, it is possible for such workers to meet other exemptions from the definition of employee. Please see Employment Standards Administrative Policy ES.A.1 for more information on employee exemptions under the Minimum Wage Act. The department cannot amend existing statutes through rulemaking. Amending the definition of "employee" would require a statute change by a vote of the legislature and signature of the governor, or another initiative.
21. Change the definition for "absences exceeding three days" to mean three calendar days, not three consecutive days an employee is scheduled to work 22. The proposed rules definition of "three days" as three scheduled days of work is inconsistent with the plain meaning of "three days" found in the text of Initiative	RCW 49.46.210(1)(g) states that "[f]or absences exceeding three days, an employer may require verification that an employee's use of paid sick leave is for an authorized purpose." WAC 296-128-600(1) does not define "three days", but rather "*absences exceeding* three days" (emphasis added). A common definition of absence is the "failure to be present at a usual or expected place." See e.g., Merriam-Webster

1433, as codified in RCW 49.46.210 23. It's clear from the initiative language that absences are for days on which the employee is scheduled for work, not calendar days. Employees are not "absent" on days they are not expected to be at work	dictionary https://www.merriam-webster.com/dictionary/absence. As a result, the department's definition of "absences exceeding three days" to mean "absences exceeding three consecutive days an employee is required to work" is consistent with RCW 49.46.210(1)(g) because it only counts days that an employee is required to work.
WAC 296-128-610 Requirements for a written policy – Duty of the department to provide sample policies	
24. The rules should allow for operational units within the same employer to establish their own policies for paid leave use that fit with their individual operational requirements	An employer may have different written policies across operational units, so long as such policies are not in violation of chapter 49.46 RCW, and all applicable rules.
25. Consider whether the term should be referred to as "employee representative" instead of "worker representative"	The department updated the rule language to reflect this change. The use of the term "employee" is more consistent with the language throughout the rules.
26. Initiative 1433 did not require the development and updating of policies by employers, and the rules should not add this new requirement on employers	The department recognizes that many employers are required to comply with multiple sets of rules at both the state and local level. The department attempted to complement the rules for I-1433 with rules existing at the municipal level in Washington State. For example, the City of Tacoma mandates establishment of policies for a number of practices beyond what is required by the city's ordinance, and are discretionary by the employer. Such practices include requirements around verification and shared leave, which closely reflect the requirements set forth in these rules.
27. Concern that an employer's adaptation of the department's sample policy, or a policy created entirely from scratch by an employer, may lead to a derivative dispute about whether the employer's policy is adequate	The department will develop and provide sample policies on its website which meet the standard for compliance with these rules. An employer's adaptation of the department's sample policies, or policies created by an employer, may meet the department's standard for compliance with these rules. To comply with the department's standard of compliance, such employer-created or modified policies will need to meet the specific provisions of the rule(s) which prescribe such policy requirements.

WAC 296-128-620 Paid sick leave accrual	
28. Cap paid sick leave annual use and accrual	I-1433 states that an employee must accrue at least one hour of paid sick leave for every forty hours worked as an employee (see RCW 49.46.210(1)(a)). To cap an employee's annual accrual for hours worked would conflict with the plain language of the statute. RCW 49.46.210(1)(d) states that "an employee is entitled to use accrued paid sick leave beginning on the ninetieth calendar day after the commencement of his or her employment." I-1433 is otherwise silent on the issue of capping use, but allowing a cap on use would be inconsistent with the intent of making paid sick leave available for use by an employee after they accrue it.
29. State that paid sick leave does not accrue for any hours worked over 40 hours in a seven-day workweek	Please see the department's response to question 28.
30. Clarify if hours accrued by a substitute teacher as a variable hour employee need to be kept separate from those hours accrued if the employee is hired into a regular position	If an employee is hired into a "regular" position where they are exempt from the definition of "employee" under chapter 49.46 RCW, they would not be entitled to use the accrued, unused paid sick leave earned during the time they were non-exempt. However, an employer may allow an employee to use such accrued, unused paid sick leave after they are hired into an exempt position. Additionally, the employer must maintain a record of the hours of paid sick leave earned by the employee in the variable hour position for 12 months following the date the employee becomes exempt in the event the employee reverts to a position where they meet the definition of "employee" under chapter 49.46 RCW.
31. Clarify whether or not employers may offer employees the option to cash out their accrued, unused balances at year end	RCW 49.46.210(1)(j) states that "[u]nused paid sick leave carries over to the following year, except that an employer is not required to allow an employee to carry over paid sick leave in excess of forty hours." An employer may elect to cash out an employee's accrued, unused paid sick leave balance which *exceeds* 40 hours.

32. Clarify whether or not an employer may provide "premium pay" (e.g. payment of an amount equal to or greater than the value of paid sick leave hours at a frequency at least equal to the rate at which the state's paid sick leave would accrue) if the employer also continues to allow unpaid leave according to all the other conditions and protections provided by state law	I-1433 states that "every employer shall provide each of its employees paid sick leave…" at a rate of "at least one hour of paid sick leave for every forty hours worked as an employee" (see RCW 49.46.210(1)(a)). An employer may not provide a payment in lieu of the employee accruing paid sick leave under the language of the statute.
33. When an employer offers a greater accrual than required by the initiative, clarification on if the accruals can be looked at for a full-year period, or for a monthly period or a pay period	Employers have discretion on how to provide paid sick leave accruals which are more generous than those required by RCW 49.46.210(1)(a), as long as the employer does the following: (1) meets the requirement to provide paid sick leave to its employees at a rate of at least one hour of paid sick leave for every forty hours worked as an employee; and (2) makes accrued paid sick leave accrued under RCW 49.46.210(1)(a) available to employees for use in a manner consistent with the employer's established payment interval or leave records management system, no later than one month after the date of accrual.
WAC 296-128-630 Paid sick leave usage	
34. Increase minimum increments to one hour, and allow employers to implement longer increments via written policy through the variance process 35. The rule should provide a default increment of use of between four and eight hours, or the length of a shift, whichever is less 36. Increments of use should not be less than the amount of accrual. The initiative requires accrual to be no less than in one-hour increments, as should the increments of use 37. The department should allow employers to require employees to use paid sick leave in increments of one to four hours	I-1433 is silent on the minimum increments of use an employer is required to allow their employees to use their accrued, unused paid sick leave. As a result, the department looked to the local jurisdictions in the state which have already addressed this issue. The City of Tacoma's increment of use rule states that "[a]n Employee may use Paid Leave in one hour increments, unless the Employer establishes a written minimum use policy, subject to the Fair Labor Standards Act." The City of Seattle's 2016 Labor Standards Amendments require "for employees covered by the overtime requirements of state and federal laws, accrued paid sick time and paid safe time shall be used in the smaller of hourly increments or, if feasible by the employer's payroll system, increments that round to the nearest quarter of an hour." The department drafted the increments of use requirement, outlined in WAC 296-128-630(4), in consideration of Tacoma and Seattle's

38. Prior to the CR-102, the department stated that they wanted to have use of sick leave track when employees are scheduled. That is a far preferable outcome than what you have proposed, which is that it be tracked in increments on which people are paid 39. Make the increments of use be eight hours or the length of a shift, whichever is less 40. A percentage of the total number of hours worked for a specific week would be sufficient and simpler for increments of use	requirements, but provided for employers to obtain a variance from the increments of use requirement for "good cause." It would be inconsistent with the intent of I-1433 to "provide reasonable paid sick leave for employees to care for the health of themselves and their families" if employers were allowed to require employees to use paid sick leave in increments inconsistent with WAC 296-128-630(4). If an employer can establish that compliance with the requirements for increments of use are infeasible, and that granting a variance does not have a significant harmful effect on the health, safety, and welfare of the involved employees ("good cause"), the employer may request a variance from the requirement set forth under WAC 296-128-630(4).
41. Require employers to allow carryover of paid sick leave only in instances where the employer does not frontload paid sick leave to the employee	RCW 49.46.210(1)(j) states that "unused paid sick leave carries over to the following year, except that an employer is not required to allow an employee to carry over paid sick leave in excess of forty hours." Any language in the rules that would permit employers to limit carryover of paid sick leave below forty hours would conflict with the plain language of the statute.
42. Allow employers to require employees to use paid sick leave in increments consistent with the employer's existing sick leave policies	Please see the department's response to questions 34-40.
43. The collective bargaining agreement is the most appropriate venue to define the increment of use	Please see the department's response to questions 34-40.
44. Explain how leave can be used for an absence on a day for which the employee is not scheduled to work	An employee may use paid sick leave for an absence on a day for which they were required to work. Situations where an employee is required to work could include, but are not limited to, an employee with a scheduled shift, an employee who is on call and required to report to work if contacted by their employer, or an employee who is required to attend employer-mandated training.
45. Define how variable hour employees (substitutes, coaches, student employees) are to use accrued sick	Please see the department's response to question 44.

leave	
46. Concerns with the intersection of Washington State ferry employee contracts, which do not allow paid sick leave usage until six months after continuous employment	The definition of "employee" under the Minimum Wage Act (chapter 49.46 RCW) exempts "[a]ll vessel operating crews of the Washington state ferries operated by the department of transportation." RCW 49.46.010(3)(m). As a result, bona fide vessel-operating crew members of the Washington State Ferries are not entitled to the protections of the Minimum Wage Act (including paid sick leave), and contracts between such crew members and their employer are allowed to deviate from the paid sick leave requirements of the Minimum Wage Act. This exemption applies only to "vessel operating crews" of the Washington State Ferries, and other workers for the ferry system may be considered "employees" entitled to the protections of the Minimum Wage Act. For employees subject to the Minimum Wage Act, RCW 49.46.210(1)(d) sets forth a minimum standard that "an employee is entitled to use accrued paid sick leave beginning on the ninetieth calendar day after the commencement of his or her employment." This minimum standard overrides any contrary agreements or employer policies, which require a greater waiting period than that provided by the statute.
WAC 296-128-640 Variance from required increments of paid sick leave usage	
47. Allow collective bargaining agreements to be a valid reason for requesting a variance 48. Allow for a variance to the increment of use requirements to be negotiated via collective bargaining agreement	The rules state "[t]he existence of a collective bargaining agreement which sets forth increments of use may be used as a factor in determining good cause for granting a variance from the increments required by WAC 296-128-630(4)." The existence of a collective bargaining agreement itself is not grounds for approval of a variance application, but the department will consider such an agreement as a factor during the review of such an application.
49. Addition of a variance in the rule for construction work, as defined in WAC 296-155-012	The department has adopted an approach that allows a variance to be granted when the required increments of use would be infeasible and

	when it would not have a significant harmful effect on the health, safety, and welfare of the involved employees. The allowance for an industry-wide variance could allow for variances under circumstances where neither of these elements are met.
50. For employers whose employees are not covered by a collective bargaining agreement, allow such employers to secure a variance via a "group ask" as opposed to having employers applying for a variance one by one	In order to ensure that approval of a variance from the required increments of use do not have a harmful effect on the health, safety, and welfare of the involved employees, the department will require that variance applications be submitted by each individual employer.
51. More details need to be provided on the variance process	The department is working to develop a variance application employers can use when submitting a request for a variance from the required increments of use.
52. Clarification is needed on what it means to "have a significant harmful effect on the health, safety, and welfare of the involved employees"	The department will evaluate potential harmful effects on the health, safety, and welfare of the involved employees on a case-by-case basis.
53. Provide clarification on what would qualify as "good cause" for granting a variance	The department will determine whether "good cause" exists on a case-by-case basis, analyzing the specific circumstances of each variance request.
WAC 296-128-650 Reasonable notice	
54. In instances where the need for paid sick leave is unforeseeable, and the employee is unable to provide notice prior to the start of their shift, require employees to explain how the impracticability of providing notice is caused by the illness	The department interprets impracticability to relate to the nature of the illness, such as the circumstance where there is a sudden onset of the condition or illness for which the paid sick leave is needed or if the health condition itself prevents the employee from providing notice.
55. Concern that the allowance that a "person can notify on behalf of the employee" is overly broad and could be abused. Suggestion to work with stakeholders to identify reasonable limits on who can notify on behalf of an employee	The language addressing who can submit notification to the employer on the employee's behalf is intended to account for situations where an employee may not be able to provide notice on their own behalf.
56. Suggest updating the language to state that "employers may require employees to provide notice of foreseeable paid sick leave when the employee is aware of the need	The rule states that "the employee must provide notice at least ten days, or as early as practicable, in advance of the use of paid sick leave." The intent of the rule is to establish a requirement for

to take such leave"	employees to provide notice not less than 10 days in advance of the use of paid sick leave when it is foreseeable, but establishes that a best practice should be the employee providing notice as soon as practicable.
WAC 296-128-660 Verification for absences exceeding three days	
57. Allow employers to require verification for use of paid sick leave for absences less than three days in instances of perceived patterns of abuse 58. Request to add language which gives employers discretion to determine when validation of an illness is required	RCW 49.46.210(1)(g) states "[f]or absences exceeding three days, an employer may require verification that an employee's use of paid sick leave is for an authorized purpose." An employer may not require verification for use of paid sick leave for absences less than three days under the language of the statute. The rule reflects the intent of the statute.
59. State in rule that an employer requiring a doctor's note shall not be considered an unreasonable burden or expense on the employee	RCW 49.46.210(1)(g) states that "[a]n employer's requirements for verification may not result in an unreasonable burden or expense on the employee, and may not exceed privacy or verification requirements otherwise established by law." The rule allows a balanced approach because the requirement of a doctor's note, or other requirement for verification, may be an unreasonable burden or expense under certain circumstances.
60. Provide specific guidance on what is considered an "unreasonable burden or expense on the employee"	Please see the department's response to question 59.
61. The rules should reflect that the initiative required that any verification not create an unreasonable burden. Jurisdictions like Seattle and Massachusetts have addressed this by sharing the costs between employees and employers, while other jurisdictions like California and Spokane require no verification at all	The rules grant employees the ability to provide explanation to their employer if the employer requires verification for absences exceeding three days, and the employee anticipates that the requirement will result in an unreasonable burden or expense. After the employee submits to their employer an explanation of how the employer's requirement creates an unreasonable burden or expense on the employee, the employer must make a reasonable effort to identify and provide alternatives to the employee for meeting the verification

	requirement. This could include the employer mitigating the employee's out-of-pocket expenses associated with obtaining medical verification.
62. Initiative 1433 allows employers to seek verification, provided the requirements do not exceed the privacy or verification requirements otherwise established by law. The various other laws addressing verification or certification for absences related to health conditions allow substantially more information than is contemplated by the proposed regulation	The department updated the rules to address concerns associated with the intersection of the requirements set forth in I-1433 and existing leave laws.
63. If employers are prohibited from requiring an employee using paid sick leave to provide verification that includes a description of the nature of the condition, as provided in the proposed regulations, then employers will be impeded from complying with the responsibilities and rights under the Family and Medical Leave Act, Washington Family Leave Act, Washington Family Care Act, and Americans with Disabilities Act 64. The definition of "absences exceeding three days" precludes an employer from seeking verification consistent with the rights provided under the Family and Medical Leave Act when the use of paid sick leave is also covered by the Family and Medical Leave Act	Please see the department's response to question 62.
65. The statute grants employers the right to require verification and does not require the use of a written policy to accomplish that end. The requirement for a written policy should be removed from the proposed rule	Please see the department's response to question 26.
66. Request for the department to consider language with requirements along the same lines as the City of Tacoma, which allows employers to set their own policies for verification, but requires that employers accept a	The rules grant employees the ability to provide explanation to their employer if the employer requires verification for absences exceeding three days, and the employee anticipates that the requirement will result in an unreasonable burden or expense. After the employee

written certification from employees stating that they used their paid sick leave for an authorized purpose under the statute	submits to their employer an explanation of how the employer's requirement creates an unreasonable burden or expense on the employee, the employer must make a reasonable effort to identify and provide alternatives to the employee for meeting the verification requirement. A reasonable effort by the employer could include the employer accepting oral or written explanation provided by the employee which states that the employee's use of paid sick leave was for an authorized purpose under RCW 49.46.210 (1)(b) or (c).
67. The fact that an employee has to pay a copay is not an unreasonable burden in the context of his rule. It is, in fact, the contemplated burden	Please see the department's response to question 59.
68. Clarification on what constitutes an "unreasonable burden or expense" if an employer provides its employees with health insurance	Please see the department's response to question 59.
69. Include language that allows employers to ask for verbal verification from the employee starting the first day paid sick leave is used	Please see the department's response to questions 57 and 58.
WAC 296-128-670 Rate of pay for use of paid sick leave	
70. Adopt the same definition of "regular rate of pay" that exists under the Fair Labor Standards Act	RCW 49.46.210(1)(i) requires that "[f]or each hour of paid sick leave used, an employee shall be paid the greater of the minimum hourly wage rate established in this chapter or his or her *normal hourly compensation"* (emphasis added). To adopt the definition of "regular rate of pay" that exists under the Fair Labor Standards Act would be inconsistent with this language in the statute.
71. Overtime is no different than a potential temporary upgrade or premium, therefore additional hourly wage premiums should be treated in the same way – not included	Many premium rates do not have to be included in the calculation of "normal hourly compensation." "Normal hourly compensation" means the hourly rate that an employee would have earned for the time during which the employee used paid sick leave. For employees who use paid sick leave for hours that would have been overtime hours if worked, employers are not

	required to apply overtime standards to an employee's normal hourly compensation. Normal hourly compensation also does not include tips, gratuities, service charges, holiday pay, or other premium rates, unless the employer or a collective bargaining agreement allow for such considerations. However, where an employee's normal hourly compensation is a differential rate, meaning a different rate paid for the same work performed under differing conditions (e.g., a night shift), the differential rate is not a premium rate. WAC 296-128-600(10).
72. More clearly define pay fluctuation. It is difficult to ascertain if the intent of the rule is to include upgrade pay received when an employee is placed in a higher level position due to the incumbent taking a paid time off day, or if it is just applicable when an employee is temporarily assigned for a longer duration in a higher paying position	For an employee whose rate of pay fluctuates, the employer must provide the employee with paid sick leave at their "normal hourly compensation". WAC 296-128-600(10). WAC 296-128-670(d)(i) and (ii) provide examples of calculations to arrive at an employee's normal hourly compensation where an employee's hourly rates of pay are known for fluctuating pay rates and where an employee's hourly rates of pay are unknown for fluctuating pay rates.
73. Clarification on how an employer is to pay an employee's normal hourly compensation when an employee is paid both prevailing wages and non-prevailing wages	Where an employee is paid both prevailing wages and non-prevailing wages, and where such wages are not uniform, the employer may use the calculations outlined at WAC 296-128-670(d)(i) and (ii) to determine the employee's normal hourly compensation for each hour of paid sick leave used.
74. Request for more of a look-back strategy for determining normal hourly compensation to see an average of what's been paid over the past	WAC 296-128-670 contains several examples of calculations to determine normal hourly compensation where the employer may use a look-back strategy to arrive at the proper calculation. Please see the examples of calculations for employees paid partially or wholly on a commission basis, employees paid partially or wholly on a piece rate basis, and where the employee's hourly rate of pay fluctuates and the employer cannot identify the hourly rates of pay for which the employee would have earned if the employee reported to work.

	Additionally, the department has committed to developing an administrative policy that provides examples of how to calculate normal hourly compensation.
WAC 296-128-680 Payment of paid sick leave	No comments received.
WAC 296-128-690 Separation and reinstatement of accrued paid sick leave upon rehire	
75. Reduce the period of eligibility for reinstatement of accrued paid sick leave following separation to six months instead of 12	RCW 49.46.210(1)(k) states "[w]hen there is a separation from employment and the employee is rehired within twelve months of separation by the same employer, whether at the same or a different business location of the employer, previously accrued unused paid sick leave shall be reinstated…" The department may not reduce the period of eligibility for reinstatement of accrued paid sick leave following separation to less than 12 months, because such a rule would conflict with the statute.
76. Ensure the RCW's that govern K-12 education sick leave provisions, including but not limited to sick leave cash outs, are taken into consideration	RCW 49.46.210(1)(k) states that an employer is not required "[t]o provide financial or other reimbursement for accrued and unused paid sick leave to any employee upon the employee's termination, resignation, retirement, or other separation from employment." The rule allows an employer to choose to reimburse an employee for any portion of their accrued, unused paid sick leave at separation, but requires that any terms for reimbursement "…must be mutually agreed upon in writing by both the employer and the employee, unless the right to such reimbursement is set forth elsewhere in state law or through a collective bargaining agreement."
WAC 296-128-700 Paid time off (PTO) programs	
77. Require compliance with the requirements set forth in these rules only for the first 40 hours of PTO used each year	RCW 49.46.210(1)(a) provides that an employee must accrue at least one hour of paid sick leave for every forty hours worked as an employee and does not provide a cap on accrual of paid sick leave. The requirements set forth in RCW 49.46.200 and 49.46.210 apply to all

	paid sick leave accrued under RCW 49.46.210(1)(a) and the department's rules reflect this statutory requirement.
78. Language which curbs the effects of vacation accounts being converted into PTO programs needs to be included in the rules	An employer must provide paid sick leave consistent with RCW 49.46.200 and 49.46.210, and all applicable rules, regardless of how it is designated. RCW 49.46.210(1)(e) states that "[e]mployers are not prevented from providing more generous paid sick leave policies or permitting use of paid sick leave for additional purposes." Vacation leave is not a separate employee right currently protected by law.
79. Some employers under the PTO scenario could be blending other earning formulas for other leave categories, such as vacation. As a result, they could be shortchanging the one hour per 40 formula by saying that employees are earning time off in another category. But that category was intrinsically intended to align and maintain with their schedule of vacation for years of service	Please see the department's response to question 78.
80. Recommendation to expand language in the PTO section of the rules to include "other alternative or comparable plans that provide for an hourly contribution"	RCW 49.46.210 states that beginning on January 1, 2018, employers must provide each of its employees paid sick leave. The requirement to provide paid sick leave cannot be waived by the employee, and must be paid to the employee by the employer at a rate at least equal to the employee's normal hourly compensation for each hour of paid sick leave used.
81. Request to designate a limited number of accrued PTO hours as paid sick leave versus the entire amount in a PTO bank	An employer may choose to designate a limited number of accrued PTO hours as being available for use by an employee for the purposes authorized under RCW 49.46.210(1)(b) and (c), as long as such hours meet or exceed the requirements set forth in RCW 49.46.200 and 49.46.210, and all applicable rules. If an employer has a PTO program that does not distinguish between the types of leave, and tracks the accrual and usage separately, the employer must ensure all leave complies with WAC 296-128-660 (verification for absences exceeding three days), WAC 296-128-750 (employee use of paid sick leave for unauthorized purposes), and WAC 296-128-770(2) (retaliation – absence control policies) when the employee uses PTO leave for a

	purpose authorized by RCW 49.46.210(1)(b) and (c) for all leave provided.
82. Add a provision that states that the requirements set forth in WAC 296-128-660, 296-128-750, and 296-128-770(2) and (3) only apply to the hours that would accrue if the employer had a sick leave program instead of a PTO program	Please see the department's response to question 81.
83. Clarify how the notification requirements interact with PTO programs that do not differentiate between paid sick leave and vacation leave being used	Please see the department's response to question 81.
84. Request to insert an additional clause in WAC 296-128-700 indicating that existing employer PTO reporting to employees about their PTO balances is sufficient and also satisfies the other provisions that deal with notification to employees about the amount of sick leave that they have	Employers can keep their existing practices for reporting PTO balances to employees regarding the amount of paid sick leave available for use if such practices meet or exceed the notification requirements set forth under chapter 49.46 RCW, and all applicable rules.
WAC 296-128-710 Shared leave	
85. Further consideration needs to be made regarding the allowance of a shared leave program but not a premium pay program	RCW 49.46.210(1)(a) states that an employee must accrue at least one hour of paid sick leave for every forty hours worked as an employee. An employer may not provide payment in lieu of the employee accruing paid sick leave under the statute. RCW 49.46.210(1)(e) states that "[e]mployers are not prevented from providing more generous paid sick leave policies or permitting use of paid sick leave for additional purposes." The department interprets this provision to allow an employee to donate paid sick leave to a co-worker through a shared leave program.
86. Clarify if accrued sick leave can be used for leave sharing and define parameters of its use	RCW 49.46.210(1)(e) states that "[e]mployers are not prevented from providing more generous paid sick leave policies or permitting use of paid sick leave for additional purposes." Employees may donate paid sick leave to a co-worker through a shared leave program under this provision. WAC 296-128-710 provides guidance on the requirements

	for establishment of a shared leave program which utilizes paid sick leave.
WAC 296-128-720 Shift swapping	
87. Suggestion to an add overtime clause which states that swapping shifts cannot result in overtime for an employee	Employers are not required to allow employees to swap shifts in lieu of using available paid sick leave for missed hours or shifts that qualify for the use of paid sick leave. If an employer allows shift swapping, the employer may have a policy in place disallowing employees to swap shifts if such shift swapping results in an employee working overtime, but must still allow the employee to use available, accrued paid sick leave. If an employee working a swapped shift results in overtime hours worked, the employer must count such hours for the purposes of the employee's paid sick leave accrual, and the employer is not relieved of their obligation to provide overtime compensation to the employee pursuant to RCW 49.46.130.
88. Provide guidance on whether or not the provisions contained in the City of Tacoma's paid leave ordinance addressing shift swapping for eating/drinking establishments is permitted under state regulation	Under the Paid Sick and Safe Time ordinance in the City of Tacoma, if an employee of an eating and/or drinking establishment accepts and works substitute hours or shifts provided by their employer "…[t]he employer may deduct the amount of time worked during the substitute shift or the amount of time requested for paid leave, whichever is smaller, from the employee's accrued leave time." RCW 49.46.210(1)(i), provides that "[f]or each hour of paid sick leave used, an employee shall be paid the greater of the minimum hourly wage rate established in this chapter or his or her normal hourly compensation." An employer may not reduce an employee's paid sick leave bank for hours the employee actually worked under the statute.
WAC 296-128-730 Frontloading	
89. Clarification on whether a signed acknowledgement from the employee stating that they have gone through the orientation process will be considered an agreement between the employee and the employer	A signed acknowledgment from an employee may satisfy the requirements set forth in chapter 49.46 RCW and WAC 296-128-730(4) if the acknowledgement contains the information that notifies

	employees of the employer's frontloading policy before the employer provides the frontloaded leave to the employee.
WAC 296-128-740 Third-party administrators	
90. Not allowing employers to require employees to provide the nature of the condition for use of paid sick leave will impact the ability of employers to provide short- and long-term disability administration by third-party administrators	The department updated the rules to address concerns associated with the intersection of the requirements set forth in I-1433 and existing leave laws. Certification requirements for use of other leave types which allow employers to seek additional information (including the nature of the condition) are permitted.
WAC 296-128-750 Employee use of paid sick leave for unauthorized purposes	
91. Expand the definition of "misuse"	The rules do not provide a definition for "misuse," as this term is not used in chapter 49.46 RCW, or any of the applicable rules.
92. Allow employers to deduct paid sick leave paid to an employee that was unauthorized or conferred in error if the employer can demonstrate the employee was not entitled to use paid sick leave for the absence	If an employer can demonstrate that an employee's use of paid sick leave was for a purpose not authorized under RCW 49.46.210(1)(b) and (c), the employer may withhold payment for the use of paid sick leave for such hours, but may not subsequently deduct those hours from an employee's legitimately accrued, unused paid sick leave hours during ongoing employment. Any deductions from an employee's wages due to paid sick leave being conferred in error, or in situations where an employer can demonstrate that an employee's use of paid sick leave was for an unauthorized purpose, must satisfy legal requirements for deductions from wages. Please see RCW 49.52.060 and WAC 296-126-028 (deductions during ongoing employment), RCW 49.48.010 and WAC 296-126-025 (deductions from final wages), and WAC 296-126-030 (adjustments for overpayments).
93. It is possible that an employee who uses paid sick leave for an unauthorized purpose may be paid for the improperly claimed sick leave before the abuse is	Please see the department's response to question 92.

discovered. In such a situation, it appears that an employer can do nothing because the employee has already been paid, but the employer is precluded from deducting the improperly claimed hours from accrued leave	
94. The proposed rules should allow employers the legal authority to remedy employee use of paid sick leave for unauthorized purposes by providing employers with the legal authority to remedy the situation through reinstituting the amount of improperly used leave back into the employee's bank of unused leave and deducting the amount improperly paid from the employee's current paycheck	Please see the department's response to question 92.
WAC 296-128-760 Employer notification and reporting to employees	
95. The notification requirements identified in these rules as being the responsibility of employers are the responsibility of the department under the initiative	The department's rulemaking mandate at RCW 49.46.810 states that "[the department] must adopt and implement rules to carry out and enforce [this act], including but not limited to procedures for notification to employees and reporting regarding sick leave." This rulemaking mandate, when read in the larger context of I-1433, requires the department to adopt rules for employers to follow regarding procedures for notification to employees and reporting regarding paid sick leave. RCW 49.46.210(1) states that "every employer shall provide each of its employees paid sick leave…" Additionally, RCW 49.46.210(1)(i) states that "[t]he employer is responsible for providing regular notification to employees about the amount of paid sick leave available to the employee." While the notification and reporting requirements are the responsibility of the employer, the department has engaged

	stakeholders in an inclusive rulemaking process, including circulation of draft proposed rules prior to the department filing the formal CR-102. The department has also increased staff to help coordinate outreach regarding I-1433's paid sick leave requirements, has modified existing workplace rights posters, and will develop administrative policies and a model employer-notification policy, which will be available on the website.
96. The notice requirement should be satisfied through compliance with the employment law poster requirement	The department has, in WAC 296-128-760(1)(c), committed to developing "…sample notification policies which meet the department's standard for compliance…" with the notification requirements, and will make such sample policies available on the department's website.
97. The department should provide a sample notice of the new paid sick leave, how hours accrue, etc., and encourage, but not require, employers to use the department-prepared notices to fulfill this provision	Please see the department's response to question 96.
98. Request to only require small businesses to provide this notice quarterly to their workers, not monthly	The requirements set forth RCW 49.46.200 and 49.46.210 do not differentiate based on business size. The applicability of such requirements are based on the definition of "employer", as defined at RCW 49.46.010(4).
99. Request to include language that does not require employers to provide individual notification of each employee both at hire and then periodically	In order for employees to be made aware of their right to paid sick leave, the department drafted WAC 296-128-760(1), which requires that employers provide employees with initial notification "of their entitlement to paid sick leave, the rate at which the employee will accrue paid sick leave, the authorized purposes under which paid sick leave may be used, and that retaliation by the employer for the employee's lawful use of paid sick leave…is prohibited." Such a notification requirement is consistent with I-1433's mandate that employers must provide their employees with paid sick leave. Periodic notification is a statutory requirement. RCW 49.46.210(1)(i) states that "[t]he employer is responsible for providing regular notification to employees about the amount of paid sick leave available

	to the employee." WAC 296-128-760(2) provides clarity on how an employer can meet this obligation through regular notification to employees.
WAC 296-128-770 Retaliation	
100. Allow employers to take disciplinary action when employees call in sick prior to or following long holiday weekends or preplanned vacation time	An employer may discipline an employee if the employee misuses sick leave provided under the initiative, but there is no presumption of abuse based on the timing of the use of paid sick leave provided by the statute or rules.
101. Where paid time off programs exist, allow employers to use an "occurrence system", provided a certain number of occurrences are exempt from discipline	RCW 49.46.210(4) states that "[a]n employer may not adopt or enforce any policy that counts the use of paid sick leave time as an absence that may lead to or result in discipline against the employee." Establishment of an occurrence system which counts any use of accrued, paid sick leave as an absence for which disciplinary action is taken by the employer would violate the statute.
102. Request to incorporate a provision similar to what is included within the Family Care Act, which gives the employers authority to apply attendance policies in situations where there is a substantiated abuse of the sick leave provisions	An employer may discipline an employee in specific instances where the employee used paid sick leave for a purpose not authorized under the statute. The law does not allow an employer to assume that such employee is abusing paid sick leave for each subsequent use of paid sick leave after the initial disciplinary action.
103. The rule on retaliation should make clear that when an employer is following its published policies on absence notification and leave verification, and the policies are otherwise in compliance with the rules, that following those policies is per se, not retaliation	When an employer is following its published policies, and the policies comply with the rules, then following such policies would likely not result in retaliation since compliant policies would be an accurate reflection of an employee's lawful rights under chapter 49.46 RCW, and all applicable rules.
104. WAC 296-128-770(2) and (3) should explicitly state that discipline or adverse actions are only prohibited for legitimate use of paid sick leave	WAC 296-128-770(2) states that it is unlawful for an employer to adopt or enforce "any policy that counts the use of paid sick leave for a purpose *authorized* under RCW 49.46.210(1)(b) and (c) as an absence that may lead to or result in discipline by the employer against the employee" (emphasis added). Similarly, WAC 296-128-770(3) states that "[i]t is unlawful for an employer to take any adverse action against

	an employee because the employee has exercised their *rights* provided under chapter 49.46 RCW" (emphasis added).
105. The department should place the applicable legal standards, such as the burden of proof, what establishes a prima facie case, burden-shifting, and a non-exhaustive list of factors that establish retaliation, either in the regulation itself, in the department's published administrative guidance, or in its operations manual	The rules include a non-exhaustive list of situations where an employer may have taken adverse action against an employee for an employee's exercise of their chapter 49.46 RCW rights. See WAC 296-128-770(4). The department will set forth guidance in its operations manual to address a variety of enforcement requirements related to retaliation, including the applicable legal standards.
106. WAC 296-128-770(3) is too narrowly written. It should protect former employees from retaliation. It should protect employees who are perceived to have made a complaint or have been cooperating with a complaint. The provision should explicitly protect employees from retaliatory acts taken against their family members because of protected activity these employees engaged in, and because of an employees' participation in a protected activities under these provisions, even when that protected activity was in support of another employees' exercise of legal rights	RCW 49.46.210(4) states that "[a]n employer may not discriminate or retaliate against an employee for his or her exercise of any rights under this chapter including the use of paid sick leave." This includes employees who allege they were subject to retaliation by an employer, but are no longer employed by such employer. WAC 296-128-770(3) provides examples of rights provided to the employee under chapter 49.46 RCW, but it is not an exhaustive representation of all employee rights.
107. "Adverse action" should have broad scope, in line with the interpretation of Title VII anti-retaliation provision, to include any action that could dissuade a reasonable worker from exercising their rights under the statute	WAC 296-128-770(4) provides examples of "adverse action," but it is not an exhaustive representation of actions that if taken, or threatened, could be identified as an "adverse action."
108. Concern that an attendance-driven production, performance bonus policy may be in violation of the new law	If such a policy does not count an employee's use of accrued paid sick leave for an authorized purpose under RCW 49.46.210(1)(b) and (c) as an absence that would impact the their ability to receive an attendance-driven production bonus, the bonus policy may comply with chapter 49.46 RCW. However, if such a bonus policy counts the exercise of an employee's right to use paid sick leave as an absence that would impact the employee's eligibility to receive such a bonus, or would otherwise dissuade a reasonable employee from exercising their right to use accrued, unused paid sick leave, then the policy would not comply.

Other	
109. Allow employers to deduct paid sick leave balances first for absences which are covered under both RCW 49.46.210 and the Washington Family Care Act	The Family Care Act protections apply to paid sick leave provided under RCW 49.46.210, as well as all other leave that meets the statutory definition of "sick leave or other paid time off." RCW 49.12.270(1). Employers must allow an employee the use of any or all of the employee's *choice* of sick leave or other paid time off for Family Care Act purposes. Under the Family Care Act, Employers may not require employees to select sick leave provided under RCW 49.46.210 before drawing on other available leave because such a policy would violate the employee's right to choose among "any or all" available leave. The department cannot promulgate a rule that contradicts the Family Care Act's choice of leave provision.
110. Provide guidance on the interaction of RCW 49.46.200 and 210, and all applicable rules, with other leave laws (Paid Family and Medical Leave, Family and Medical Leave Act, workers' compensation, Family Care Act, Pregnancy Disability Act, Washington Family Leave Act)	Whether the protections of an individual law apply depends on whether the requirements for coverage are met. If the provisions of one or more of the laws apply, the protections and benefits of the laws run concurrently and the more favorable provision or provisions would apply. The department has existing guidance that outlines how various leave laws apply in Washington State. The department will provide further guidance through administrative policies and FAQs available on the department's website.
111. Provide an exemption from RCW 49.46.200 and 210, and all applicable rules, on the basis of a valid collective bargaining agreement 112. Allow a collective bargaining agreement in effect prior to January 1, 2017, that provided less paid sick leave than required under the law, to remain in effect until the next negotiated collective bargaining agreement after January 1, 2018 113. Consideration of an exemption for collective bargaining agreements that meet or exceed the intent of the	I-1433 was codified into the existing Minimum Wage Act (chapter 49.46 RCW). RCW 49.46.090 was amended to state that "[a]ny employer who pays an employee less than the *amounts* to which such employee is entitled under or by virtue of this chapter, shall be liable to such employee affected for the full amount *due to such employee under this chapter…"* (emphasis added). RCW 49.46.090 also states that [a]ny agreement between such employee and the employer *allowing the employee to receive* less than *what is due under this chapter* shall be no defense to such action" (emphasis added). RCW 49.46.110 states that "[n]othing in this chapter shall be deemed to interfere with, impede, or in any way diminish the right of

initiative, and all applicable rules, with regard to paid time off banks, paid time off cash outs, and determination of assigned rates of pay 114. Add a provision that exempts public employers who are subject to an unexpired collective bargaining agreement (provided such employers provide paid sick leave benefits that meet or exceed the requirements under the initiative, and all applicable rules, as of January 1, 2018,) or delays the effective date of the regulations until the effective date of the next collective bargaining agreement to enable employers to negotiate the impacts of the regulations with unions 115. Proposed inclusion of an exemption in the WAC for public sector organizations covered by existing labor agreements that substantially provide similar accruals under the law, similar to existing WAC 296-126-130(8)(b)	employees to bargain collectively with their employers through representatives of their own choosing in order to establish wages or other conditions of work *in excess of the applicable minimum* under the provisions of this chapter" (emphasis added). I-1433 did not provide an exemption from the requirements set forth in RCW 49.46.200 and 49.46.210 for the existence of a valid collective bargaining agreement, and employers therefore must comply with all provisions of the statute. There is no waiver available which allows for the effective date of such requirements to extend beyond January 1, 2018.
116. Allow employers to verify when employees may safely return to work ("fitness for duty" certification)	I-1433 does not preclude an employer's ability to verify when an employee may safely return to work (require a "fitness for duty" certification) if the right to require such verification is provided elsewhere in local, state or federal law.
117. The department should provide free consultation services to small businesses regarding compliance with the initiative, and all applicable rules	The department is developing a number of resources for all employers, including administrative guidance, sample policies, and frequently asked questions. The department will also be available to provide consultation to employers, and to answer questions.
118. Clarify whether or not employers may offer employees the option to cash out their accrued, unused leave at other times (e.g. upon request of the employee)	An employer may offer employees the option to cash out their accrued, unused paid sick leave: (1) at the end of the year for unused paid sick leave accruals in excess of the forty-hour carryover requirement set forth in RCW 49.46.210(1)(j); and (2) at the time of separation, subject to the requirements set forth in WAC 296-128-690(2)(a) and (b). The intent of I-1433 states that "[i]t is in the public interest to provide

	reasonable paid sick leave for employees to care for the health of themselves and their families." The department will be working with employee and employer representatives to determine if additional circumstances exist where cash outs may be permissible.
119. Clarify whether or not employers may offer employees the option to cash out the value of their accrued, unused hours if they continue to provide unpaid leave which otherwise meets the requirements of state law	Please see the department's response to question 118.
120. Clarify whether or not an employer can offer premium pay to employees who voluntarily report for assignment or otherwise do not have defined work shifts 121. Clarify whether or not an employer can offer premium pay to on-call or per diem staff, and if so, under what conditions 122. Clarify whether or not an employer can offer premium pay in lieu of benefits to short-term temporary workers whose tenure will be limited to less than 90 days	I-1433 states that "every employer shall provide each of its employees paid sick leave…" at a rate of "at least one hour of paid sick leave for every forty hours worked as an employee" (see RCW 49.46.210(1)(a)). An employer who provides any payment in lieu of the employee accruing paid sick leave would be in direct conflict with the statute. I-1433 was codified into the existing Minimum Wage Act (chapter 49.46 RCW), and did not amend the definition of "employee" under chapter RCW 49.46. Therefore, the existing definitions apply to the entitlement to paid sick leave. As a result, if an individual meets the definition of "employee", then the protections of the Minimum Wage Act apply to such employee. The definition of "employee" exempts sixteen categories of workers from the protections of the Minimum Wage Act. Such exemptions do not contemplate an employee's status as part-time, full-time, seasonal, or temporary.
123. Provide guidance on whether or not the requirements set forth in the initiative, and all applicable rules, would apply to paid sick leave accruals in excess of the accruals required by the initiative	RCW 49.46.200 and 49.46.210 prescribe minimum standards for paid sick leave. The minimum standards of accrual of paid sick leave (at least one hour for every forty hours worked) are subject to the requirements set forth at RCW 49.46.200 and 49.46.210, and all applicable rules. Accruals that are more generous than at least one hour of paid sick leave for every forty hours worked would not be subject to the requirements set forth at RCW 49.46.200 and 49.46.210, and all applicable rules.

	If employers choose not to apply the same rules to that leave it must be tracked, and employers should make their employees aware that accruals in addition to the one hour for every forty hours worked standard (RCW 49.46.210(1)(a)) are not subject to the rights and requirements of RCW 49.46.200 and 49.46.210, and the applicable rules.
124. Everything after WAC 296-128-275 is under the header "Employment of Student Workers. This causes unnecessary confusion, as WAC 296-128-400 is about minors, and WAC 296-128-500-560 are about executive, administrative, professional, and outside salesman employees. There should be headings inserted into WAC 296-128 at section 400, section 500, and then again at section 600	Pursuant to this comment, the department will be adding headings to WAC 296-128.
125. Provide greater explanation or understanding of how the statute, and all applicable rules, interact with workers' compensation, including time-loss benefits	Time-loss compensation and other workers' compensation benefits are paid according to the Industrial Insurance Act and existing rules and policies. The interaction between the new paid sick leave requirements and workers' compensation benefits will be dependent on the specific facts of individual cases. The department will provide additional guidance in an administrative policy regarding the use of paid sick leave in situations where a workers' compensation claim also exists.
126. Concerns associated with the nomadic nature of workers in the construction industry, with employees moving between employers, and competition across state lines	I-1433 was codified into the existing Minimum Wage Act (chapter 49.46 RCW), and did not amend the definition of "employee" under chapter RCW 49.46. Therefore, the existing definitions apply for entitlement to paid sick leave. As a result, if an individual meets the definition of "employee" then the protections of the Minimum Wage Act apply to such employee. Under case law, the protections of the Minimum Wage Act apply to "Washington-based" employees. If an employer has a Washington-based employee, such employee is entitled to the protections of the Washington Minimum Wage Act (including paid sick leave). The

	department has committed to developing an administrative policy clarifying frequently asked questions surrounding this concept.
127. Clarification on how to address situations where a replacement worker is called in to cover an employee who has requested to be out on paid sick leave, but subsequently shows up to work	The initiative does not permit employers to require employees to use accrued paid sick leave. But in many cases, an employer may rely on an employee's assertion of the need to use paid sick leave and subsequently schedule a replacement worker. These situations will handled on a case-by-case basis.
128. Under the Employee Retirement Income Security Act (ERISA), an employee benefit plan includes any benefit or arrangement that provides benefits in the event of sickness, accident, disability, death, and unemployment. Paid sick leave is certainly a benefit that comes under the jurisdiction of ERISA. Clarification is needed on whether the initiative, and all applicable rules, are preempted by ERISA	The Employee Retirement Income Security Act (ERISA) preempts "any and all State laws insofar as they may now or hereafter relate to any employee benefit plan" covered by ERISA, with certain exceptions. 29 U.S. Code § 1144(a). Paid sick leave is not an "employee benefit plan" covered by ERISA, but rather a minimum standard of employment within the state of Washington. I-1433 amended RCW 49.46.005 (Declaration of necessity and police power – Conformity to modern labor standards) to state the following: • "(2) Since the enactment of Washington's original minimum wage act, the legislature and the people have repeatedly amended this chapter to establish and enforce modern fair labor standards, including periodically updating the minimum wage and establishing the forty-hour workweek and the right to overtime pay" and • "(3) The people hereby amend this chapter to conform to modern fair labor standards by establishing a fair minimum wage and the right to paid sick leave to protect public health and allow workers to care for the health of themselves and their families." It is well established that states can provide minimum labor standards, as Washington is now the seventh state with minimum paid sick leave protections.

129. Request for clarification on the interaction between SeaTac Proposition 1 and the initiative, and all applicable rules, specifically as it pertains to SeaTac's requirement that all accrued, unused paid sick leave at the end of a calendar year be cashed out	RCW 49.46.210(1)(j) states that "*[u]nused paid leave carries over to the following year*, except that an employer is not required to allow an employee to carry over paid sick leave in excess of forty hours" (emphasis added). An employer may disallow an employee's carryover of accrued, unused paid sick in excess of 40 hours. However, employers may not cash out an employee's accrued, unused paid sick leave balances less than 40 hours under the language of the statute.
130. Clarify whether an employer can create two banks of leave, one for sick leave under the state law that meets the requirement under the state law, and a second set of sick leave, or a PTO bank that allows for different rules to apply	An employer may choose to establish multiple banks of paid sick leave, as long as one of the paid sick leave banks meets all requirements set forth in RCW 49.46.200 and 49.46.210, and all applicable rules.

D. Summary of Comments Received on the Preliminary Cost-Benefit Analysis and Small Business Economic Impact Statement and Department Response

Stakeholder Comments	**Department Response**
1. Provide a full cost-benefit analysis once the enforcement mechanisms are complete. The department cannot make correct determinations about potential costs and benefits of the rules until enforcement mechanisms are in place. 2. We appreciate that the Department has acknowledged that these proposed regulations are a "significant legislative rule" as defined by RCW 34.05.328. We remain concerned, however, that the requirements of requirements of RCW 34.05.328(1) have not been addressed in the context of the enforcement scheme contemplated by the Department, which is not yet at the CR-102 phase. Some of the issues specifically required to be addressed by RCW 34.05.328(1) -- certainly at the least, a full cost-benefit analysis determining that the	The enforcement rules are being adopted in a separate rulemaking (proposed rules filed under Washington State Register (WSR) 07-20-080). This rulemaking is to adopt and implement rules to carry out the substantive requirements of I-1433, and includes an assessment of the costs of the substantive requirements. Because the separate enforcement rulemaking addresses the administrative enforcement provisions of I-1433, and not the substantive requirements of I-1433, there are no costs of compliance to employers under the enforcement rules. The proposed enforcement rules are the procedural requirements related to the investigation of complaints, issuance of civil penalties, appeals of department decisions, and collections. The enforcement rules are consistent with RCW 49.46.810, and the requirements for investigations, civil penalties, appeals, and

<table>
<tr>
<td>benefits of the rule are greater than its costs -- cannot be fully performed until the multiple discretionary decisions involved in formulating enforcement mechanisms are known. All of the requirements of RCW 34.05.328 must be supported by sufficient analysis so as to persuade a reasonable person that all of these determinations are justified. The failure to conduct the required analysis will render the Proposed Regulations invalid.</td>
<td>collections under the Wage Payment Act (RCW 49.48.083 through 49.48.086), or are interpretative of provisions of I-1433 and the Wage Payment Act.</td>
</tr>
<tr>
<td>3. L&I's assumption that businesses last for five years on average is faulty. According to BLS data, nearly 70% of Washington private establishments are five years or older, and more than one quarter are 20 years or older. The median age of establishments is nine years and the average age is much higher. Because initial startup costs for compliance will be much higher than ongoing costs for businesses of all sizes, this faulty assumption drives up the cost estimates.

4. In order to calculate annualized costs, L&I assumes that businesses in Washington State only survive for five years. However, BLS data by establishment age presents a very different picture. In March 2016 in Washington, 35% of businesses were five years old or less, while 65% of businesses were more than five years old. Moreover, 50% of businesses were 10 years old or older, and 26% of businesses were more than 20 years old.

More than a quarter of the businesses in operation in the state have been in existence for more than two decades, and would not be affected over the long run by one-time costs, like changing payroll systems or writing a new paid sick leave policy.</td>
<td>The estimated average lifespan of businesses should be based on the survival rate of businesses (percentage of businesses opening in a specific year that are still operating after a given period of time) by each opening year, not the number or share of businesses by age. According to the establishment age and survival data from BLS (https://www.bls.gov/bdm/us_age_naics_00_table7.txt and https://www.bls.gov/bdm/wa_age_total_table7.txt), the five-year survival rate ranged from 45.6% to 51.1% nationwide and 37.9% to 47.9% for Washington businesses. When combined with L&I's internal administrative data on business profiles, the average of five- year lifespan for a typical business is a reasonable assumption.

<table>
<tr><th>Opening year</th><th>5-year survival rate-US</th><th>5-year survival rate-WA</th></tr>
<tr><td>1994</td><td>49.6%</td><td>42.5%</td></tr>
<tr><td>1995</td><td>48.8%</td><td>40.6%</td></tr>
<tr><td>1996</td><td>48.1%</td><td>43.5%</td></tr>
<tr><td>1997</td><td>47.6%</td><td>41.2%</td></tr>
<tr><td>1998</td><td>48.1%</td><td>40.4%</td></tr>
<tr><td>1999</td><td>48.2%</td><td>39.5%</td></tr>
<tr><td>2000</td><td>48.2%</td><td>38.6%</td></tr>
<tr><td>2001</td><td>48.1%</td><td>37.9%</td></tr>
<tr><td>2002</td><td>50.1%</td><td>39.5%</td></tr>
</table>
</td>
</tr>
</table>

To understand how these assumptions about business survival impact the annualized costs, Figure E compares the costs associated with reporting requirements annualized over 5, 10, and 20 years. Figure F compares the costs associated with notification requirements annualized over 5, 10, and 20 years. The annualized costs are lower for businesses with a 10- or 20-year lifespan than for the five-year lifespan that L&I assumes because there is more time over which the up-front costs are spread out.	<table><tr><td>2003</td><td>50.0%</td><td>37.9%</td></tr><tr><td>2004</td><td>48.4%</td><td>41.2%</td></tr><tr><td>2005</td><td>46.8%</td><td>41.8%</td></tr><tr><td>2006</td><td>45.4%</td><td>42.5%</td></tr><tr><td>2007</td><td>46.4%</td><td>40.3%</td></tr><tr><td>2008</td><td>47.8%</td><td>41.3%</td></tr><tr><td>2009</td><td>50.1%</td><td>47.9%</td></tr><tr><td>2010</td><td>51.1%</td><td>43.4%</td></tr><tr><td>2011</td><td>51.0%</td><td>43.1%</td></tr></table> We appreciate your effort in estimating the annualized costs for businesses with a 10-year and 20-year span, and we agree the annualized costs are lower using these methods than the five-year lifespan method. Based on the survival rates discussed above, we believe the choice of five-year lifespan for a typical Washington business is more accurate. Furthermore, what matters in the Cost-Benefit Analysis is the total costs for all affected businesses, not the cost for a certain group of businesses.
5. L&I assumes that 76% of workers outside Seattle, Tacoma, and Spokane have sick leave now, based on the overall BLS statistic for Pacific states. However, the 76% figure includes workers covered by municipal and state sick leave laws in Washington, Oregon, and California. A more appropriate figure to use would be 64% - the percentage of private sector workers nationally with paid sick leave.	As we mentioned in the CBA report, there was no such data for Washington or any other individual state. We can only rely on aggregated data for larger geographic areas. The reason that we chose the coverage rate of 76% for all civilian workers in the Pacific region, instead of a national average for private workers, is Washington is part of this region and is more similar to the adjacent states than others, such as those in Midwest or Southern regions. In addition, we do not want to exclude all public workers. If we look at the share of covered private workers in the Pacific region, it was 73% (BLS, March 2016), much closer to the percentage we chose than the national average. Therefore, we conclude this share is likely overestimated, but it is the best estimate we can make based on the information available.

6. The department correctly assumes that larger firms are more likely to provide benefits than small firms, the numbers of businesses with current Paid Sick Leave (PSL) policies by business size (detailed in Table 2) based on assumed percentage of workers with sick leave are incorrect. Not all employees of large firms have paid sick leave; rather, 20% of private sector workers in firms with 500+ workers, and 28% in firms with 100-499 workers lack sick leave, according to BLS. The number of businesses with 250+ employees without paid sick leave now is not zero, as the analysis assumes.

   If L&I assumed that an equal percentage of large and small businesses had no PSL policy, the methodology for calculating the percentage of businesses without a PSL policy would not be as significant. However, L&I concludes that 75% of businesses with 1-4 employees have no PSL policy, compared to 0% of businesses with 250+ employees. As a result, the per-employer costs assessed throughout the document are multiplied by a much larger number of small business than large businesses.

Thank you for your comments and suggestions. Based on further information we received after the first draft and your comments as well as others, we revised these coverage rates as follows:

Business Size	**# of total employment**	**% of workers that have access to PSL**	**# of total businesses in WA**	**Businesses with current PSL policies**	**Businesses W/O current PSL policies**
1-4 employees	218,345	40%	124,853	53,649	71,204
5-49 employees	1,004,521	65%	71,295	50,532	20,763
50-249 employees	835,768	80%	8,490	7,108	1,382
250+ employees	1,081,593	90%	1,353	1,218	135
All above	3,140,227	76%	205,991	112,507	93,484

7. L&I assumes that employers with an existing paid sick leave (PSL) policy are already in compliance with the proposed rules. Therefore, only employers without an existing paid sick leave policy are included in the cost assessments.
8. The existence of a current paid sick leave policy is not an accurate barometer of the extent to which a business will have to adopt new practices or adjust a current one. Many firms of every size level in fact have policies and procedures for sick leave in place, even though not all of their employees have sick leave, and many of those

For businesses that currently have PSL policies, we did estimate the compliance costs of updating their policies. Please see Table 12 from the Final Cost-Benefit Analysis for more details.

policies will have to be adjusted. For example, some common practices of businesses that offer paid sick leave will no longer be allowed under I-1433, such as enforcing attendance policies that penalize workers for using sick leave they have earned. Firms that offer benefits to full-time workers but not to part-time workers will also have to make adjustments. Full-time workers are more than twice as likely to have paid leave now as part time.	
9. Estimates of the amount of time necessary to comply with the proposed rules were supplied by a single source, the Thurston Economic Development Council (TEDC). No description of the process TEDC used to arrive at these figures is given. Asking input from Seattle, Tacoma, or Spokane where businesses have real-world experience with adjusting to a new paid sick leave law rather than relying on speculation might provide more accurate estimates. Indeed, when these cities adopted paid sick leave laws, initial projections of costs by some business-aligned groups proved to be overstated. The estimates for time needed to comply with requirements seem consistently too high. For example, while there is a cost for adjusting a payroll systems to track and report sick leave, for most businesses this will be a one-time upfront cost, and with some popular software packages this is as simple as turning on the paid leave feature and inputting the accrual rate. With most computer-based systems, once set up, calculating sick leave and generating a report will be automatic every time payroll is run, with no ongoing cost. Employers of every size, regardless of the technology	The TEDC Center for Business and Innovation provides counsels and advises businesses in all stages of development. The process used by the TEDC Center for Business and Innovation to derive their estimates included utilizing the experience and expertise of their business advisors who provide counseling and training to businesses in all stages of development and across many different industry sectors, focus groups, and one-on-one conversations with businesses. The TEDC Center for Business and Innovation provided a range of time estimates to represent different business capabilities. We appreciate that there are different perspectives on how much time it takes to do certain tasks. The data was developed to serve narrow purposes: the estimation of probable costs of the rules to compare to probable benefits; and the determination of the impact of the rules on small businesses so that any disproportionate impacts can be mitigated. Mitigation efforts are addressed in the Small Business Economic Impact Statement and include the development of sample written policies.

they use, already must pay their employees and track employee hours. Even calculating the hours of sick leave an employee had accrued on a hand held calculator and hand writing it on a piece of paper takes under 10 seconds per employee, not a full hour per month – with no upfront costs. The TEDC estimate for the amount of time businesses spend verifying and accounting for absences exceeding three days of two to two and a half hours per occurrence also defies commonsense and common practice. 10. Concerns the assumptions were based on input from a single Economic Development Council with "known opposition to pro-worker policies".	
11. On average, workers with paid sick leave use 2 to 4 days per year. There is no evidence that workers who gain sick leave as a result of public policy change use more than the national average. Thus, the department's assumption that workers will use two additional days (a 50% to 100% increase) because the proposed rules require leave be allowed in increments of an hour or less unless the employer gets a variance is not credible.	We agree that on average workers with paid sick leave use two-four days per year, and we consider the estimate of two additional sick leave requests (not necessarily two days) a conservative one. Therefore, it is more likely that this was underestimated rather than overestimated.
12. The assumption that employers of every size will apply for variances at the same rate also is not credible. For a small firm, the cost of applying for a variance will far exceed the cost of simply providing sick leave as the rules propose.	As shown on Table 8 of page 18 of the Final Cost-Benefit Analysis, the annualized cost of variance application per employer is very similar across all size groups and relatively small compared to the cost of providing paid sick leave. This cost is expected to further decline when the department develops more guidelines and resources that can help all types of businesses with variance applications. Therefore, there is no solid evidence that the share of employers applying for variances differs significantly by business size.
13. L&I produces estimates of the share of workers that have access to PSL policies by employer size based on	We appreciate your comment and effort to identify relevant data on the share of firms offering PSL benefits by size. While we acknowledge

trial-and-error data modeling. L&I economists used the total number of workers employed by businesses of each size category to find a percentage of workers with access to PSL for each size category that resulted in a total of 76% workers with PSL access (see Table 2 in the Preliminary Cost-Benefit Assessment).

In light of the absence of Washington State-specific data about the share of firms offering paid sick leave, a much better way to estimate the distribution of employers with PSL policies would be to use real data gathered at the national level. Figure A lists the actual distribution of workers with access to PSL.

Figure A. Share of firms offering paid sick days to full-time workers, by size of firm in 2016.

Business size	% of full-time workers with access to PSL
3-9 employees	66%
10-24 employees	69%
25-49 employees	73%
50-199 employees	73%
200-999 employees	84%
1,000-4,999 employees	87%
5,000+ employees	84%

L&I estimates that 25% of workers at the smallest businesses and 100% of workers at the largest businesses have access to PSL. The actual numbers are closer to 66% for the smallest businesses and 84% for the largest businesses. Although small businesses are the data you provide is credible and shows smaller disproportionality in PSL coverage between small and large businesses than our estimates, they only represent full-time workers. If we take into consideration part-time workers, the coverage rates are much lower. Due to the difference in grouping criteria and the fact that the states in the Pacific region normally have much higher coverage rates than the national average, there is no way to perfectly compare and match each group. For the small business cohort, our smallest employer group includes those with fewer than three employees. They account for a significant proportion of employer population but have substantially lower PSL coverage rates for their workers than other small businesses.

Taking these into consideration, we revised the coverage rate for each group as follows:

National average from 2016 Kaiser study			L&I's revised estimates on covered Washington workers	
Business size (employees)	% of full-time workers with access to PSL	% of part-time workers with access to PSL	Business size (employees)	% of all-time workers with access to PSL
3-9	66%	22%	1-4	40%
10-24	69%	25%	5-49	65%
25-49	73%	34%		
50-199	73%	29%	50-249	80%
200-999	84%	53%		
1,000-4,999	87%	60%	250+	90%
5,000+	84%	63%		

less likely to have PSL policies than large businesses, the disproportionality is nowhere nearly as significant as L&I estimates.	
14. Most of the costs in the Preliminary Cost-Benefit Analysis are up-front, one-time expenses. The Preliminary Cost-Benefit Analysis reports annualized per-employer costs and annualized total costs for all employers of a given size. Annualized costs project the average of the initial expenses with the ongoing expenses over a given period of time. The annualized costs are not the same as employers' annual costs. In the first year of the policy's implementation, employers will need to spend more to bring their paid sick leave policies and payroll systems up to par. In future years, employers are subject to minimal costs to comply with the proposed rule. This is common sense. Once a paid sick leave policy is written and posted, it does not need to be rewritten. Once a payroll system is adjusted to track and report data, it tracks and reports whenever payroll is run with no added time or cost to the small business owner. This is also supported by L&I's data, when annualized costs are broken out into first year costs vs. ongoing costs. For example, Figure B compares the costs of reporting requirements, the biggest cost to employers, between year one and subsequent year. A small business owner using manual payroll (i.e. without a supportive	Thank you for your comments. We agree that most costs are upfront and one-time expenses, and this is indicated by our results in the report. One reason why we chose to annualize the cost is to accurately measure and reflect the average cost a typical business will incur each year over the whole lifespan, regardless of whether it is a new business or a business existing for a certain period of time. Another reason is in order to determine whether the benefits of this rule outweigh the total costs required by the Administrative Procedure Act (under RCW 34.05.328), we need to normalize both benefits and costs in order to make them comparable. One of the most common approaches to do this is to annualizing them. We agree with your comment that the distribution of costs are not evenly spread over the course of the five-year life cycle. In response to your comment, we have added information to the Final Cost-Benefit Analysis that shows the upfront costs versus on-going costs for the monthly reporting costs (Table 5b) and the notification requirement (page 6).

payroll system) would only need to spend $390 per year for reporting costs, compared to $455 - $585 in the first year. For other costs, the difference between one-time and ongoing expenses is even greater. For example, Figure C compares the upfront and ongoing costs of notification requirements. There are no ongoing costs associated with notifying employees about the paid sick leave policy. Figure D compares the upfront and ongoing costs of writing a paid sick leave policy. There are no ongoing costs associated with writing a policy or distributing it to employees.	
15. According to Table 7 in the Preliminary Cost-Benefit Analysis, the estimated time needed to complete a variance application, including the time needed to inform employees of the intent to apply for variance and distribute the variance application is 6-15 hours. Tasks pertaining to the proposed rule are completed at variable rates depending on business size, as listed in Table 3 in the Preliminary Cost-Benefit Analysis. Based on these data provided by L&I, the costs of variance applications should be as listed in Figure G. These are different calculations than the costs reported in Table 8 of the Preliminary Cost-Benefit Analysis. For example, for employers of 1-4 employees, the initial application cost in Figure G is $195-$487, whereas Table 8 lists this cost as $483-$1,207. Figure G. Cost of variance applications, using data from L&I Tables 3 and 7.	Thank you for your effort in verifying these numbers. We calculated these costs based on an additional assumption that the proportion of time needed to complete this task by external consultants or accountants are 50%, 20%, and 0% for businesses with fewer than 50 employees, 50-249, and 250 or more employees, respectively. We have added this information in the Final Cost-Benefit Analysis report (right before Table 7) for clarity. Based on this assumption and all others explained in Section 2.3.2 of the Cost-Benefit Analysis, the estimated costs match those in our report. The following table shows how the cost per hour is factored into the costs in Table 8 in the Cost-Benefit Analysis. Per employer cost of variance applications

Business size	Costs of variance applications				
	Initial application per-employer hours required	Cost per hour	Initial application per-employer cost	Renewal per-employer cost	Annualized per-employer cost
1-4 employees	6-15	$32.50	$195-$487	$20-$49	$36-$89
5-49 employees	6-15	$44.41	$266-$666	$27-$67	$49-$122
50-249 employees	6-15	$44.41	$266-$666	$27-$67	$49-$122
250+ employees	6-15	$44.41	$266-$666	$27-$67	$49-$122

Business size (# of employees)	Initial application hours required	Cost per hour	Initial application cost	Renewal cost	Annualized total cost
1-4	6-15	50%: $32.50 50%: $128.47	$483-$1,207	$48-$121	$89-$221
5-49	6-15	50%: $44.41 50%: $128.47	$519-$1,297	$52-$130	$95-$238
50-249	6-15	80%: $44.41 20%: $128.47	$367-$918	$37-$92	$67-$168
250+	6-15	100%: $44.41	$266-$666	$27-$67	$49-$122

16. L&I assumes that 2.5% of businesses, regardless of business size, will choose to apply for variance. There is no explanation given as to why larger businesses would not be more likely to apply than smaller businesses. Small businesses have less incentive to apply for variance because the costs of processing additional leave requests are less for employers with a smaller number of employees. Therefore, it would be reasonable to anticipate the variance application cost should apply to a smaller percentage of small businesses than large businesses.	While we agree that the costs of processing additional leave requests may be lower for employers with a smaller number of employees, other potential costs of not applying for variances may be higher for them compared to their larger counterparts. For example, the costs of adding replacement workers for short time increments are likely higher. Therefore, small businesses may have the same interest in applying for a variance as large businesses. Even if they do not, we do not know to what extent the difference is.
17. L&I projects that small businesses will depend on an external HR consultant (with an hourly rate of $128.47) to write the company's paid sick leave policy. This is not	The reason why smaller businesses will likely need external assistance to develop their companywide PSL policies is that this work is more complicated than the tasks of recordkeeping, notification, or reporting

consistent with the assumptions made throughout the rest of the document, and there is no explanation provided for the change. Additionally, L&I has committed to creating sample paid sick leave policies, with different versions depending on the types of rules employers wish to include, made available to businesses on its website. L&I has also committed to offering educational opportunities for new businesses, especially small businesses that do not have a policy and are not familiar with the law. There is no reason to expect that most small businesses would opt for an expensive HR consultant given the availability of sample paid sick leave policies and free L&I assistance.	historically required under the Minimum Wage Act and smaller businesses may not have sufficient and qualified internal resources. While L&I is committed to creating sample paid sick leave policies and providing other assistance, we are relying on the estimates provided by the TEDC that small businesses will need some external resources to perform this task, especially at the early stage of rule implementation. The same assumption is made to calculate the costs of a variance application, which is also considered a more complicated task administratively and legally than other tasks.
18. The per-employer cost for the required elements of the proposed rule for large businesses is approximately 17.0 to 19.2 times the unit cost for small businesses. For both the required and optional elements of the proposed rule, the per-employer cost for large businesses is approximately 13.7 to 17.9 times the unit cost for small businesses. Therefore, even taking the conclusions of L&I's Cost-Benefit Analysis, the impact on small businesses is less than the impact on large businesses.	We appreciate the additional information on per-employer cost you provided. This is another way to compare the average compliance cost among different businesses. The Regulatory Fairness Act requires that the unit cost be measured by cost per employee, cost per hour of labor, or cost per $100 of sales. *See* RCW 19.85.040. We use the cost per employee as the basis for comparing costs because this is the easiest option with best data available.
19. The department concedes that many likely benefits of paid sick leave are not quantified in the Preliminary Cost-Benefit Analysis. Those that are quantified are undervalued. As noted above, the draft Preliminary Cost-Benefit Analysis underestimates the share of workers without paid sick leave now. The department also provides no rationale for using the	While the $13.32 per hour average wage used to calculate the quantitative benefits may not be the best representation for the average hourly wage for all employees affected by the proposed rule, the department has opted for a two-prong approach because of the challenges associated with assessing the overall benefits of the Initiative.

average wage in food service – one of the lowest paying sectors – to quantify impacts. While paid leave is extremely rare in this industry absent laws requiring it, it is also rare in occupations closer to the average wage, including construction.	In the preliminary cost-benefit analysis under the benefits methodology and assumptions section the department recognizes that, "[i]t is practically unmanageable to separate the societal benefits of Initiative 1433 Part II (Establishing Fair Labor Standards by Requiring Employers to Provide Paid Sick Leave to Employees) implementation, and the benefits of the proposed rule under WAC 296-128. The proposed rule is believed to be an essential and necessary condition for implementing the paid sick leave policy in Washington State, through setting administrative procedures and standards for employers to follow in order to be able to implement what was required by the initiative. In other words, when it comes to assessing benefits we are unable to disentangle those that arise from the proposed rule versus the initiative and we assume that the benefits granted by the initiative are the benefits of the rule". For this specific reason, the department decided to be very conservative in estimating benefits, by making these two conservative assumptions: a) Excluding workers in the cities of Seattle, Tacoma, and Spokane from the benefits calculations, even though these workers might be subject to some of the benefits under the proposed rule, if the paid sick leave policies they are currently covered by are less generous than those stated under the initiative. b) Assuming an average wage of $13.32 an hour, using the weighted average of hourly wages for workers in food and beverage occupations by employment size in Washington State (as shown in detail in table 14 in the benefits section). According to the U.S. Bureau of Labor Statistics, paid sick leave is extremely rare in the service industry, among part-timers, and among those falling at the lowest earning percentile. These employees are believed to be the greatest beneficiaries the proposed rule. (Harvard Business Review; https://hbr.org/2015/01/who-has-paid-sick-leave-who-doesnt-and-whats-changing)

20. Concerns the department has failed to comply with the intent of the state's Regulatory Fairness Act with these rules as the Department has already identified that these rules will impose unmitigated higher costs to comply with these rules on small businesses.	Consistent with the intent and requirements of the Regulatory Fairness Act under Chapter 19.85 RCW, the department's Small Business Economic Statement describes the changes added to the rule language specifically to mitigate costs and several other steps the department is undertaking to mitigate the costs of the small businesses. Mitigation efforts are addressed in the Small Business Economic Impact Statement and include the development of sample written policies.
21. Concerns that WAC 296-128-660(4)(c) appears to invite treating the routine administration of a paid sick leave program as a dispute to be resolved by the Department and creates an undue expense that was not considered in the cost-benefit analysis.	WAC 296-128-660(4)(c) does not impose any requirements or costs on employers nor does this section create any administrative remedy that does not already exisit.