ADMINISTRATIVE POLICY

STATE OF WASHINGTON
DEPARTMENT OF LABOR AND INDUSTRIES
EMPLOYMENT STANDARDS

TITLE:	**VARIANCES FROM THE INDUSTRIAL WELFARE ACT**	**NUMBER:**	**ES.C.9**
CHAPTER:	**RCW 49.12**	**REPLACES:**	**ES-028**
		ISSUED:	**1/2/2002**

ADMINISTRATIVE POLICY DISCLAIMER

This policy is designed to provide general information in regard to the current opinions of the Department of Labor & Industries on the subject matter covered. This policy is intended as a guide in the interpretation and application of the relevant statutes, regulations, and policies, and may not be applicable to all situations. This policy does not replace applicable RCW or WAC standards. If additional clarification is required, the Program Manager for Employment Standards should be consulted.

This document is effective as of the date of print and supersedes all previous interpretations and guidelines. Changes may occur after the date of print due to subsequent legislation, administrative rule, or judicial proceedings. The user is encouraged to notify the Program Manager to provide or receive updated information. This document will remain in effect until rescinded, modified, or withdrawn by the Director or his or her designee.

RCW 49.12.105 allows an employer to apply to the director (or designee) for a variance from department rules and regulations, adopted under the Industrial Welfare Act, Chapter 49.12 RCW, which establishes standards for wages, hours or conditions of employment. The department has no authority to issue a variance from the statutory provisions of RCW 49.12, only from the rules contained in WAC 296-126. RCW 49.12.105.

When an employer has shown good cause, the director may issue a variance. "Good cause" is defined in WAC 296-126-130. The director's order of variance will spell out the employer's obligation, and the employer must comply with the terms of the order if different than the standards in RCW 49.12, WAC 296-126 and WAC 296-125. Non-compliance with the terms of the order will be treated the same as non-compliance with the provisions of RCW 49.12 and the corresponding rules.

The director may terminate and revoke the variance at any time, as long as the employer is given 30 days notice. An employer does not have specific appeal rights from the revocation of the variance as the statute containing appeal rights (RCW 49.12.162) has been repealed. An employer may still have general appeal rights under the Administrative Procedure Act (Chapter 34.05 RCW) that allows for judicial review of various types of agency action. See RCW 34.05.570.