

I-1433 Draft Proposed Rules v.2 (Pre-102)

WAC 296-128-600

Definitions.

- 1) "Absences exceeding three days" means absences exceeding three consecutive days an employee is scheduled to work. For example, assume an employee is scheduled to work on Mondays, Wednesdays, and Fridays, and then the employee uses paid sick leave for any portion of those three work days in a row. If the employee uses paid sick leave again on the following Monday, the employee would have absences exceeding three days. ~~"Citation" means a written determination by the department that an employee's rights under chapter 49.46 RCW, and all applicable rules, that are not enforced pursuant to WAC 296-128-XXX or WAC 296-128-770, have been violated non-monetary rights provided under chapter 49.46 RCW have been viola~~
- 2) "Commencement of his or her employment" means no later than the beginning of the first day on which the employee is authorized or required by the employer to be on duty on the employer's premises or at a prescribed work place.
- 3) "Department" means the department of labor and industries.
- 4) "Director" means the director of the department of labor and industries, or the director's authorized representative.
- 5) "Employee" has the same meaning as RCW 49.46.010(3).
- 6) "Employer" has the same meaning as RCW 49.46.010(4).
- 7) "Frontloading" means providing an employee with paid sick leave before it has accrued at the minimum rate required by RCW 49.46.210(1)(a).
- ~~8) "Good cause" means those situations where the employer can justify the variance and can prove that the variance does not have a harmful effect on the health, safety, and welfare of the employees involved.~~
- ~~9)8) "Health-related reason" means a serious public health concern that could result in bodily injury or exposure to an infectious agent, biological toxin, or hazardous material. Health-related reason does not include closures for inclement weather.~~
- ~~10)9) "Hours worked" shall be interpreted in the same manner as WAC 296-126-002(8). means hours during which an employee is authorized or required by the employer to be on duty on the employer's premises or at a prescribed work place. This includes all regular and overtime hours.~~
- ~~11) "Non-monetary violation" means a violation of an employee's rights under chapter 49.46 RCW that does not include wages as defined at RCW 49.46.010(7), or other monies owed to the employee (e.g. tips and service charges).~~

- ~~12) "Non wage monetary violation" means a violation of an employee's rights under chapter 49.46 RCW that directly impacts monies owed to an employee but are not part of the employee's wages as defined at RCW 49.46.010(7).~~
- ~~10) "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 does not include overtime, holiday pay, or other premium rates, but may be allowed by the employer. Upon mutual agreement by an employee and employer, or as defined by a collective bargaining agreement, normal hourly compensation may include overtime, holiday pay, or other premium rat~~
- ~~13)11) "Regular and normal wage" has the same meaning as normal hourly compensation.~~
- ~~—"Repeat willful violator" means any employer that has been the subject of a final and binding citation for a willful violation of one or more rights under chapter 49.46 RCW, and all applicable rules, that are not enforced pursuant to WAC 296-128-XXX or WAC 296-128-770non-monetary chapter 49.46 RCW rights, within three years of the date of issuance of the most recent citation for a willful violation of one or more such rights. non-monetary chapter 49.46 RCW rights.~~
- ~~14) "Required increments" means the increments of use for which an employer must allow employees to use paid sick leave, defined as increments greater.~~
- ~~15) "Successor" means any person to whom an employer quitting, selling out, exchanging, or disposing of a business sells or otherwise conveys in bulk and not in the ordinary course of the employer's business, more than fifty percent of the property, whether real or personal, tangible or intangible, of the employer's business.~~
- ~~16)12) "Verification" means evidence that establishes or confirms that an employee's use of paid sick leave is for an authorized purpose under RCW 49.46.210(1)(b) and 49.46.210(1)(c).~~
- ~~17) "Willful" means a knowing and intentional action that is harmful to an employee, and that is neither accidental nor the result of a bona fide dispute.~~
- ~~18)13) "Workweek" means a fixed and regularly recurring period of one hundred sixty-eight hours, or seven consecutive twenty-four hour periods. It may begin on any day of the week and any hour of the day, and need not coincide with a calendar week.~~

WAC 296-128-610

Paid sick leave accrual.

- 1) Employees accrue paid sick leave for all hours worked. An employee must accrue at least one hour of paid sick leave for every forty hours worked as an employee. Accrual of paid

~~sick leave may not be capped, and employees must accrue paid sick leave for all hours worked.~~ Employers may provide employees with a more favorable paid sick leave accrual rate.

- 2) Paid sick leave for existing employees will accrue for all hours worked beginning January 1, 2018. For employees hired after January 1, 2018, accrual begins at the commencement of his or her employment.
 - 3) Employers are not required to allow employees to accrue paid sick leave for hours paid when not working. For example, employers are not required to allow employees to accrue paid sick leave during vacation, paid time off, or while using paid sick leave.
 - 4) Employers must allow employees to carry over at least forty hours of accrued, unused paid sick leave to the following year. ~~Employers may can cap carryover of accrued, unused paid sick leave to the following year at forty hours.~~ For example, if an employee accrues fifty-two hours of paid sick leave in a year, and carries over forty hours of unused paid sick leave to the following year, accrual of paid sick leave in the subsequent year would be in addition to the forty hours previously accrued and carried over. ~~Employers may allow for a more generous carryover of accrued, unused paid sick leave to the following year.~~
 - 5) Employers may cap carryover of accrued, unused paid sick leave to the following year at forty hours. Employers may allow for a more generous carryover of accrued, unused paid sick leave to the following year.
- 5)6) “Year,” for purposes of this section, means calendar year, fiscal year, benefit year, employment year, or any other fixed consecutive twelve-month period established by the employer or collective bargaining agreement, and used in the ordinary course of the employer’s business for the purpose of calculating wages and benefits. Unless otherwise established by the employer, “year” is defined as calendar year.
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WAC 296-128-620

Paid sick leave usage.

- 1) An employee is entitled to use paid sick leave for the authorized purposes outlined in RCW 49.46.210(1)(b) and 49.46.210(1)(c). ~~For the purposes of RCW 49.46.210(1)(b)(iii), closure of an employee’s place of business, or closure of an employee’s child’s school or place of care for a health related reason does not include closures for inclement weather.~~
- 2) An employee is entitled to use accrued, unused paid sick leave beginning on the ninetieth calendar day after the commencement of his or her employment. Employers may allow employees to use accrued, unused paid sick leave prior to the ninetieth calendar day following the commencement of his or her employment.

2)3) On the ninetieth calendar day following the commencement of his or her employment, accrued paid sick leave ~~shall~~must be made available to employees for use in a manner consistent with the employer's established payment interval, but not to exceed one month~~no later than one calendar month~~ after the date of accrual.

4) Unless a greater increment is approved by a variance as provided by WAC 296-128-630,
eEmployers must allow employees to use paid sick leave in ~~the~~increments of not greater than the following: ~~hour.~~

a) One hour; or

b) If an employer tracks compensation for employees in increments of less than ~~an~~one hour, then the employer must allow employees to use paid sick leave consistent with such increments. For example, if an employer's payroll system tracks increments of work for ~~the purpose of compensation purposes in fifteen~~15-minute increments, then the employee must be ~~permitted~~allowed to use paid sick leave in ~~15~~fifteen-minute increments.

a) Factors to consider in determining whether the use of paid sick leave in one-hour increments imposes an undue hardship on the employer include, but are not limited to:

- i. The number of persons employed or working at the particular worksite and their qualifications or ability to timely relieve the employee using paid sick leave given the employer's operations;
- ii. The total number of persons employed by the employer;
- iii. The number, type and geographic separateness of the employer's worksites; and
- iv. The effect of providing paid sick leave in one-hour increments on worksite operations involving: the startup or shutdown of machinery in continuous operation industrial processes; intermittent and unpredictable workflow not in the control of the employer or employee; the perishable nature of materials used on the job; the perishable or live nature of products being harvested or processed; the time-sensitive or high volume nature of the employer's operations, if such operations have a direct impact on the public; and the safety and health of other employees, patients, clients or the public.

b) If an employer requires employees to use paid sick leave in more than one-hour increments, the employer must have a written policy or collective bargaining agreement which outlines the rules for increments of use, and provides the employer's rationale for the existence of an undue hardship. An employer must make this information readily available to all employees.

c) Employers may request a compliance opinion letter from the department. An employer's request for a compliance opinion letter must include:

- i. A justification which demonstrates that providing paid sick leave in one-hour increments would pose an undue hardship on the employer; and

- ii. ~~A draft copy of the employer's written policy which outlines the requirements of employees to use paid sick leave in increments of more than one hour.~~
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WAC 296-128-630

Variance from required increments of paid sick leave usage.

- 1) The department may grant a variance from the requirements under WAC 296-128-620(4) for good cause. Good cause means situations where the employer can establish that compliance with the requirements for increments of use are infeasible, and that granting the variance does not have a significant harmful effect on the health, safety, and welfare of the employees involved.
- 2) An employer may seek a variance from the requirement to provide employees with paid sick leave in increments greater than the increments required by WAC 296-128-620(4) by submitting a written application to the director. The application must contain the following:
 - a) A justification for the variance request, which demonstrates that there is good cause for providing paid sick leave in increments greater than the increments required by WAC 296-128-620(4);
 - b) The group of employees for whom the variance is sought; and
 - c) Evidence that the employer provided to the employees or to their representatives the following:
 - i. The intent to submit a variance;
 - ii. A copy of the requested variance; and
 - iii. The director's address or phone number or other contact information.
- 3) The director may allow the employer and any involved employee, or their representatives, the opportunity for oral presentation whenever circumstances of the particular application warrant such additional procedure.
- 4) After reviewing the application, the director shall grant the variance if the director determines that there is good cause for allowing an employer to provide paid sick leave in increments greater than the increments required by WAC 296-128-620(4).
- 5) The variance order shall state the following:
 - a) The paid sick leave increments that apply;
 - b) The stated basis for a finding of good cause;
 - c) The group of employees impacted; and
 - d) The period of time for which the variance will be valid.
- 6) The director may revoke or terminate the variance order at any time after giving the employer at least thirty days' notice before revoking or terminating the order.

7) The director may issue a temporary variance valid for no more than thirty calendar days when the employer demonstrates good cause and where immediate action is necessary pending further review by the director. An employer need not meet the requirement in subsection (2)(b) of this section in order to be granted a temporary variance.

8) If an employer obtains a variance under these rules, the employer must provide employees with information about the increments of use requirements provided in the variance at the commencement of his or her employment, and must make this information readily available to all employees.

WAC 296-128-640

Reasonable notice.

- 1) An employer may require employees to give reasonable notice of an absence from work for the use of paid sick leave. Employers may require employees to comply with the employer's notification policies, as long as such policies do not interfere with an employee's lawful use of paid sick leave.
- 2) ~~If the need for paid sick leave is foreseeable, an employer may not require an employee to submit provide a request notice at least seven calendar days, but not more than fourteen ten calendar days, in advance of using paid sick leave.~~ If the need for paid sick leave is foreseeable, the employer may require advance notice from the employee. The notice should be provided as early as practicable, but the employer cannot require the notice be provided more than fourteen calendar days in advance of the use of paid sick leave.
- 3) If the need for paid sick leave is unforeseeable, the employee must ~~give~~ provide notice to the employer as soon as possible before the scheduled start of his or her shift, unless it is not practicable to do so. ~~as soon as practicable, but no later than the end of the first day the employee takes such paid sick leave.~~ In the event an employee is incapable of providing notice to their employer, ~~the~~ an employee's designee may provide notice on behalf of the employee. ~~before the scheduled start of the employee's shift, unless it is not practicable to do so.~~
- 4) If an employer requires employees to give reasonable notice of an absence from work for the use of paid sick leave for an authorized purpose under the Domestic Violence Leave Act, any such reasonable notice requirements must comply with the provisions outlined in WAC 296-135-060.
- 5) Employers must have a written policy or collective bargaining agreement outlining any requirements of an employee to give reasonable notice for the use of paid sick leave, and must make notification of such policy or agreement, prior to requiring an employee to

provide reasonable notice. An employer must make this information readily available to all employees.

WAC 296-128-650

Verification for absences exceeding three days.

- 1) For absences exceeding three days, an employer may require verification that an employee's use of paid sick leave is for an authorized purpose under RCW 49.46.210(1)(b) and 49.46.210(1)(c).
- ~~2) If an employer requests-requires verification for use of paid sick leave under RCW 49.46.210(1)(b) and 49.46.210(1)(c), the employer must have a written policy or collective bargaining agreement outlining any such requirements, and must make notification of such policy or agreement, prior to requiring an employee to provide verification. An employer must make this information readily available to all employees. Written policies or collective bargaining agreements outlining an employer's requirement for employees to provide verification must:~~
 - ~~3) Identify the timeframe in which the employee must provide verification;~~
 - ~~4) Prescribe consequences resulting from an employee's failure or delay in providing such verification; and~~
 - ~~5) 2) Be readily available upon request.~~
 - ~~6) 3) An employer may require an employee to provide verification from a health care provider for paid sick leave absences exceeding three days. If an employer requires ~~the an~~ an employee to provide verification from a health care provider identifying the need for use of paid sick leave for an authorized purpose under RCW 49.46.210(1)(b) and 49.46.210(1)(c), ~~an the~~ the employer must not require that the information provided explain the nature of the condition. If the employer obtains any health information about an employee or an employee's family member, the employer must treat that information in a confidential manner consistent with applicable federal, state, and local medical privacy laws.~~
 - ~~7) 4) Employer-required verification may not result in an unreasonable burden or expense on the employee.~~
 - a) If an employer requires verification, and the employee anticipates that the requirement will result in an unreasonable burden or expense, the employee must be allowed to submit a written justification to the employer which explains why the employee cannot comply with the verification requirement.
 - b) Upon receipt of an employee's written justification, the employer must review the employee's justification. If upon review by the employer, the employer agrees that the verification requirement is an unreasonable burden or expense to the employee, the

employer ~~may provide the employee with additional options for meeting the verification requirement~~ must make a reasonable effort to identify alternatives for the employee to meet the employer's verification requirements. One alternative an employer must consider is allowing an employee to submit a personal written statement addressing the need for use of paid sick leave.

- 6) If an employer requires verification that the use of paid sick leave is for an authorized purpose under RCW 49.46.210(1)(b), verification must be provided to the employer within a reasonable time period. For employee use of paid sick leave under RCW 49.46.210(1)(b), "reasonable time period" is a period of time defined by an employer policy or collective bargaining agreement, but may not be less than ten calendar days.
- 7) If an employer requires verification ~~for that~~ the use of paid sick leave is for an authorized purpose under the Domestic Violence Leave Act, any such verification requirements must comply with the provisions outlined in WAC 296-135-070.
- 8) For use of paid sick leave for purposes authorized under the Family Medical Leave Act (FMLA), verification requirements outlined under FMLA supersede the requirements set forth in this section.

WAC 296-128-660

Rate of pay for use of paid sick leave.

When using paid sick leave:

- 1) An employee is not entitled to lost tips, gratuities, or service charges, and must be paid at the normal hourly compensation that would have been earned during the time ~~the~~ paid sick leave is ~~taken used, or the applicable minimum wage, whichever is greater.~~
- 2) For an employee who is paid ~~solely~~ on a commission or piece-rate basis, the normal hourly compensation must be calculated using a reasonable calculation of the wages the employee would have earned if the employee had worked. An employer who calculates normal hourly compensation for an employee paid on a commission or piece-rate basis by using the average hourly rate of pay in the current or preceding pay period, whichever yields the higher hourly rate, would meet this requirement. ~~the employee must be paid his or her normal hourly compensation or the minimum wage, whichever is greater. To determine normal hourly compensation for an employee who is paid solely on a commission or piece rate basis, the employer must use the hourly rate the employee earned during the most recent pay period prior to the employee using paid sick leave.~~
- 3) For nonexempt employees paid a salary, normal hourly compensation is determined by dividing the ~~amount of earnings received per workweek by the total number of hours~~

~~worked during that workweek~~ annual salary by fifty-two to get the weekly salary, and then dividing the weekly salary by the employee's normal scheduled hours of work. Normal hourly compensation for nonexempt employees paid a salary may not be less than the minimum wage.

- 4) If an employee's hourly rate of pay fluctuates, and the employer can identify the hourly rates of pay for which the employee was scheduled work, the normal hourly compensation must be equal to the scheduled hourly rates of pay the employee would have earned during the period in which paid sick leave is ~~taken used~~. If the hourly rates of pay for which the employee was scheduled to work cannot be determined, the normal hourly compensation must be calculated by using a reasonable calculation of the wages the employee would have earned if the employee had worked. An employer who calculates this by using the average hourly rate of pay in the current or preceding month, whichever yields the higher ~~st~~ hourly wage rate, would meet this requirement.
- 5) For employees who are scheduled to work a shift of indeterminate length (e.g. a shift that is defined by business needs rather than a specific number of hours), the employer must determine normal hourly compensation for paid sick leave based on hours worked by a replacement employee in the same shift or similarly-situated employees who worked that same or similar shift in the past.
- 5)6) An employer must apply a consistent methodology when calculating the normal hourly compensation of similarly-situated employees.

WAC 296-128-670

Payment of paid sick leave.

Unless verification for absences exceeding three days is required by ~~the~~ an employer, the employer must pay paid sick leave to an employee no later than the payday for the pay period in which the paid sick leave was used by the employee. If verification is required, paid sick leave must be paid to the employee no later than the payday for the pay period during which verification is provided to the employer by the employee.

WAC 296-128-680

Separation and Rreinstatement of accrued paid sick leave upon rehire.

- 1) When an employee separates from employment and is rehired within twelve months of separation by the same employer, whether at the same or a different business location of the employer, the employer must comply with the provisions of RCW 49.46.210(1)(k). If an

employee separates from an employer, the employer is not required to provide financial or other reimbursement to the employee for accrued, unused paid sick leave.

- 2) An employer may choose to reimburse an employee for any portion of his or her accrued, unused paid sick leave at the time the employee separates from employment.
 - a) If an employer chooses to reimburse an employee for any portion of his or her accrued, unused paid sick leave at the time the employee separates from employment, any such terms for reimbursement must be mutually agreed upon in writing by both the employer and the employee.
 - b) If an employee is rehired within twelve months of separation by the same employer, whether at the same or a different business location of the employer, the employer must reinstate any accrued and unused paid sick leave. ~~accrued but~~ An employer need not restore any hours of paid sick leave previously provided to the employee through financial or other reimbursement at the time of separation as long as the value of the paid sick leave was established and paid at a rate that was at least equal to the employee's normal hourly compensation. at the time of separation.
- 3) When there is a separation from employment and the employee is rehired within twelve months of separation by the same employer, whether at the same or a different business location of the employer, an employee who reached the ninetieth calendar day of employment prior to separation shall have his or her previously accrued, unused paid sick leave balance immediately restored upon rehire. If the employee did not reach the ninetieth calendar day of employment prior to separation, the previous period of employment must be counted for purposes of determining the employee's entitlement to use paid sick leave.
- 3)4) If the period of time an employee separates from employment extends into a subsequent year ("year" as defined at WAC 296-128-610(6)), the employer is not required to reinstate more than forty hours of the employee's accrued, unused paid sick leave.

WAC 296-128-690

Universal paid time off (PTO) programs.

- 1) Paid time off (PTO) provided to employees by an employer's universal PTO program (e.g. a program that combines vacation leave, sick leave, and other forms of leave into one pool), created by employer policy or collective bargaining agreement, satisfies the requirement to provide paid sick leave if the PTO program or policy complies with, meets or exceeds the provisions of RCW 49.46.200 and 49.46.210, and all applicable rules, including:

- a) Accrual of PTO leave at a rate of not less than one hour for every forty hours worked as an employee;
 - b) Payment for PTO leave at the employee's normal hourly compensation;
 - c) Carryover of at least forty hours of accrued, unused PTO leave to the following year ("year" as defined at WAC 296-128-610(6));
 - d) Access to use PTO leave for all purposes authorized under RCW 49.46.210(1)(b) and 49.46.210(1)(c); and
 - e) Employer notification and recordkeeping requirements set forth in WAC 296-128-010 and 296-128-750.
- 2) If an employee chooses to use his or her universal PTO balances for purposes other than those authorized under RCW 49.46.210(1)(b) and 49.46.210(1)(c), and the need for use of paid sick leave later arises when no additional PTO has accrued, the employers are-is not required to provide any additional paid leave as long as the employer's universal PTO program complies with/meets or exceeds the provisions of RCW 49.46.200 and 49.46.210, and all applicable rules.
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WAC 296-128-700

Shared leave.

An employer may establish a shared paid sick leave program in which an employee may choose to donate paid sick leave to a coworker subject to the following provisions:-

- 1) If an employer chooses to establish a shared paid sick leave program, the employer must have a written policy or collective bargaining agreement which specifies that an employee may donate accrued, unused paid sick leave to a coworker for uses authorized under RCW 49.46.210(1)(b) and 49.46.210(1)(c), and outlines any such requirements.
 - 1)2) Employers must make notification/notify employees of such policy or agreement, prior to allowing an employee to donate or use shared paid sick leave. An employer must make this information readily available to all employees.
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WAC 296-128-710

Shift swapping.

- 1) An employer may not require, as a condition of an employee using paid sick leave, that the employee search for or find a replacement worker to cover the hours during which the employee is using paid sick leave.

- 2) Upon mutual agreement by the employer and employee(s) involved, an employee may work additional hours or shifts, or trade shifts with another employee, in lieu of using available paid sick leave for missed hours or shifts that qualify for the use of paid sick leave.
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WAC 296-128-720

Frontloading.

- 1) An employer may, but is not required to, frontload paid sick leave to an employee in advance of accrual.
 - 2) If an employer allows employees to use frontloaded paid sick leave, the employer must ensure that [such frontloaded paid sick leave complies with the provisions of RCW 49.46.200 and 49.46.210, and all applicable rules. an employee's frontloaded paid sick leave is at least equal to one hour of paid sick leave for every forty hours worked as an employee.](#)
 - 3) ~~If an employer allows employees to use frontloaded paid sick leave, the employer must have a written policy or collective bargaining agreement which addresses [the requirements for use of frontloaded paid sick leave](#), including, but not limited to, what happens if the employee is discharged or terminates employment prior to accruing paid sick leave equivalent to the amount of paid sick leave advanced by the employer and used by the employee. An employer must [make notification of notify employees of](#) such policy or agreement prior to frontloading an employee paid sick leave, and must make this information readily available to all employees.~~
 - ~~3)4) [An employer may not make a deduction from an employee's final wages for frontloaded paid sick leave used prior to accrual unless there is a specific agreement in place with the employee allowing for such a deduction. Such deductions must also meet the requirements set forth in RCW 49.48.010 and WAC 296-126-025.](#)~~
 - ~~4) [If an employee has used frontloaded paid sick leave, and is discharged or terminates employment in advance of accruing such paid sick leave, an employer may deduct from the employee's final wages the equivalent amount of paid sick leave for which the employee used and was compensated for prior to accrual. Such deductions must be agreed upon orally or in writing by the employee and employer, and meet the requirements set forth in RCW 49.48.010 and WAC 296-126-025.](#)~~
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WAC 296-128-730

Third party administrators.

- 1) Employers may contract with a third party administrator in order to administer the paid sick leave requirements under RCW 49.46.200 and 49.46.210, and all applicable rules.
 - 2) Employers are not relieved of their obligations under RCW 49.46.200 and 49.46.210, and all applicable rules, if they elect to contract with a third party administrator in order to administer paid sick leave requirements. With the consent of employers, third party administrators may pool an employee's accrued, unused paid sick leave from multiple employers as long as the rate of accrual is at least equal to one hour of paid sick leave for every forty hours worked as an employee. For example, if a group of employers have employees who perform work for various employers at different times, the employers may choose to contract with a third party administrator to track the hours worked and rate of accrual for paid sick leave for each employee, and pool such accrued, unused paid sick leave for use by the employee when the employee is working for any employers in the same third party administrator network.
 - 3) A collective bargaining agreement may outline the provisions for an employer to use a third party administrator as long as such provisions meet all paid sick leave requirements under RCW 49.46.200 and 49.46.210, and all applicable rules.
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WAC 296-128-740

Disciplinary action.

- 1) An employer may not adopt or enforce any policy that counts the use of paid sick leave for a purpose authorized under RCW 49.46.210(1)(b) and 49.46.210(1)(c) as an absence that may lead to or result in discipline against the employee.
- 2) If an employee uses paid sick leave for a purpose not authorized under RCW 49.46.210(1)(b) and 49.46.210(1)(c), an employer may discipline the employee for misuse of paid sick leave. Disciplinary actions shall not include deductions from an employee's legitimately accrued or donated paid sick leave hours. If an employer establishes that an employee's use of paid sick leave was for a purpose not authorized under RCW 49.46.210(1)(b) and 49.46.210(1)(c), the employer may withhold payment of such paid sick leave for such hours, but then may not also subsequently deduct those hours from an employee's legitimately accrued, unused or donated paid sick leave hours.
- 3) If an employer withholds payment or takes any other disciplinary actions for the use of paid sick leave for purposes not authorized under RCW 49.46.210(1)(b) and 49.46.210(1)(c), the employer must provide notification to the employee. If the employee contends that the use of paid sick leave was for an authorized purpose, and the employee and employer cannot reach a mutual agreement to resolve the issue, the employee may file a complaint with the department.

~~4) An employer must have an existing written policy or collective bargaining agreement which outlines disciplinary actions that may be taken for an employee's use of paid sick leave for a purpose not authorized under RCW 49.46.210(b) and 49.46.210(c), and must make notification of such policy or agreement, prior to taking disciplinary action against an employee who uses paid sick leave for a purpose not authorized under RCW 49.46.210(b) and 49.46.210(c). An employer must make this information readily available to all employees.~~

WAC 296-128-750

Employer notification and reporting to employees.

- 1) Employers must notify each employee of his or her entitlement to paid sick leave, the rate at which the employee will accrue paid sick leave, the authorized purposes under which paid sick leave may be used, and that retaliation by the employer for the employee's lawful use of paid sick leave and other rights provided under chapter 49.46 RCW, and all applicable rules, is prohibited.
 - a) Employers must provide such notification in written or electronic form, and must make this information readily available to all employees.
 - b) For employees hired on or after January 1, 2018, notification of an employee's paid sick leave rights must be made no later than the commencement of his or her employment. For existing employees as of January 1, 2018, the employer must make notification to the employee of his or her paid sick leave rights no later than March 1, 2018.
 - 2) Not less than monthly, employers must provide each employee with written or electronic notification detailing the amount of paid sick leave accrued and the paid sick leave reductions since notification was last made, and any unused paid sick leave available for use by the employee. Employers may satisfy the notification requirements by providing this information in regular payroll statements.
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WAC 296-128-760

Retaliation.

- 1) It is unlawful for an employer to interfere with, restrain, or deny the exercise of any right provided under or in connection with chapter 49.46 RCW. This means an employer may not use an employee's exercise of any of the rights provided under chapter 49.46 RCW as a negative factor in any employment action such as evaluation, promotion, or termination, or

otherwise subject an employee to discipline for the use of any rights provided under chapter 49.46 RCW.

~~1)2)~~ It is unlawful for an employer to adopt or enforce any policy that counts the use of paid sick leave for a purpose authorized under RCW 49.46.210(1)(b) and 49.46.210(1)(c) as an absence that may result in an adverse action by the employer against the employee.

~~2)3)~~ It is unlawful for an employer to take any adverse action against an employee because the employee has exercised his or her rights provided under chapter 49.46 RCW. Such rights include, but are not limited to: filing an action, or instituting or causing to be instituted any proceeding under or related to chapter 49.46 RCW; exercising his or her right to paid sick leave, minimum wage, and overtime; or testifying or intending to testify in any such proceeding related to any rights provided under chapter 49.46 RCW.

~~3)~~

4) Adverse action means any action taken or threatened by an employer against an employee for his or her exercise of chapter 49.46 RCW rights, which may include, but is not limited to:

- a) Denying use of, or delaying payment for, paid sick leave, minimum wages, overtime wages, all tips and gratuities, and all service charges, except those service charges itemized as not being payable to the employee or employees servicing the customer;
- b) Terminating, suspending, demoting, or denying a promotion;
- c) Reducing the number of work hours for which the employee is scheduled;
- d) Altering the employee's pre-existing work schedule; ~~and~~

e) Reducing the employee's rate of pay; and

~~e)f) Reporting an employee, or threatening to report, an employee or employee's family member to immigration authorities. Threatening to take, or taking action, based upon the immigration status of an employee or an employee's family member.~~

~~1) A complaint to the department alleging a retaliatory act by an employer against an employee for his or her exercise of chapter 49.46 RCW rights will be enforced as a non-monetary violation. Depending on the effect of the retaliatory act against the employee, additional enforcement action may be taken. For example, if an employer retaliates against an employee for using paid sick leave by reducing the employee's wages for hours already worked, the employee may have a wage payment remedy under the Wage Payment Act, RCW 49.48.082 through 49.48.087, and the employer could be subject to a penalty. The employer may also be assessed an additional civil penalty pursuant to the enforcement measures for non-monetary violations for the retaliatory act against the employee.~~

~~2) An employee who believes that he or she has been retaliated against by his or her employer may file a complaint with the department within six months after an alleged retaliatory act occurs.~~

(Adding this content to an existing WAC)

Recordkeeping.

To meet the requirements for recordkeeping, WAC 296-128-010 will be amended to include the following additional language:

- 12) Paid sick leave accruals for each pay period month, and any unused paid sick leave available for use by an employee;
- 13) Paid sick leave reductions for each pay period month, including but not limited to: paid sick leave used by an employee, paid sick leave donated to a coworker through a shared leave program, or paid sick leave not carried over to the following year (“year” as defined at WAC 296-128-610(65));
- 14) The date of commencement of his or her employment, as defined at WAC 296-128-600(23);