

## I-1433 Draft Proposed Rules (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.
- 2) "Citation" means a written determination by the department that an employee's non-monetary rights provided under chapter 49.46 RCW have been violated.
- 3) "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 workplace.
- 4) "Department" means the department of labor and industries.
- 5) "Director" means the director of the department of labor and industries, or the director's authorized representative.
- 6) "Employee" has the same meaning as RCW 49.46.010(3).
- 7) "Employer" has the same meaning as RCW 49.46.010(4).
- 8) "Frontloading" means providing an employee with paid sick leave before it has accrued at the rate required by RCW 49.46.210(1)(a).
- 9) "Health-related reason" means a serious public health concern that could result in exposure to an infectious agent, biological toxin, or hazardous material.
- 10) "Hours worked" 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 workplace. 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).
- 13) "Normal hourly compensation" means the hourly rate that an employee would have earned for the time during which the employee used paid sick leave. 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 rates.

- 14) "Regular and normal wage" has the same meaning as normal hourly compensation.
  - 15) "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 non-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 non-monetary chapter 49.46 RCW rights.
  - 16) "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.
  - 17) "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(b) and 49.46.210(c).
  - 18) "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.
  - 19) "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.
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#### **WAC 296-128-610**

##### **Accrual.**

- 1) 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 must allow employees to carry over at least forty hours of accrued, unused paid sick leave to the following year. 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.
- 4) 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.

- 5) "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.
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## **WAC 296-128-620**

### **Usage.**

- 1) An employee is entitled to use paid sick leave for the authorized purposes outlined in RCW 49.46.210(b) and 49.46.210(c). For the purposes of RCW 49.46.210(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 paid sick leave beginning on the ninetieth calendar day after the commencement of his or her employment. Employers may allow employees to use paid sick leave prior to the ninetieth calendar day following the commencement of his or her employment.
- 3) After the ninetieth calendar day following the commencement of his or her employment, accrued paid sick leave shall be made available to employees for use no later than one calendar month after the date of accrual.
- 4) Unless subject to the provisions outlined in subsection (5) of this section, employers must allow employees to use paid sick leave in one-hour increments. An employer may allow an employee to use paid sick leave in increments of less than one hour.
- 5) If an employer can demonstrate that providing paid sick leave in one-hour increments would pose an undue hardship on the employer, the employer may require an employee to use accrued paid sick leave in increments of more than one hour, but no more than four hours. For the purposes of this section, "undue hardship" means significant difficulty for an employer's business and includes consideration of the impracticability of permitting paid sick leave to be taken in one-hour 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**

### **Reasonable notice.**

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.

- 1) If the need for paid sick leave is foreseeable, an employer may require an employee to submit a request at least seven calendar days, but not more than fourteen calendar days, in advance of using paid sick leave.
- 2) If the need for paid sick leave is unforeseeable, the employee must give notice to the employer as soon as practicable, but no later than the end of the first day the employee takes such paid sick leave.
- 3) 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.

- 4) 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.
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## **WAC 296-128-640**

### **Verification.**

- 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(b) and 49.46.210(c).
- 2) If an employer requests verification for use of paid sick leave under RCW 49.46.210(b) and 49.46.210(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. Written policies or collective bargaining agreements outlining an employer's requirement to provide verification must:
  - a) Identify the timeframe in which the employee must provide verification;
  - b) Prescribe consequences resulting from an employee's failure or delay in providing such verification; and
  - c) Be readily available upon request.
- 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 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(b) and 49.46.210(c), an 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.
- 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 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.

- 5) If an employer requires verification that the use of paid sick leave is for an authorized purpose under RCW 49.46.210(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(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.
  - 6) If an employer requires verification for the use of paid sick leave 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.
  - 7) 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.
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#### **WAC 296-128-650**

##### **Rate of pay.**

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.
- 2) For an employee who is paid solely on a commission or piece rate basis, 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. 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, 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.
- 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. An employer must apply a consistent methodology when calculating the normal hourly compensation of similarly-situated employees.

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#### **WAC 296-128-660**

##### **Payment of paid sick leave.**

Unless verification for absences exceeding three days is required by the 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.

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#### **WAC 296-128-670**

##### **Reinstatement 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, 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 for accrued, unused paid sick leave to the employee.
  - 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 agreed upon in writing by both the employer and employee.
    - b) If an employee is rehired within twelve months of separation by the same employer, the employer must reinstate any paid sick leave accrued but not previously provided to the employee through financial or other reimbursement at the time of separation.
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## **WAC 296-128-680**

### **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 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;
    - d) Access to use PTO leave for all purposes authorized under RCW 49.46.210(b) and 49.46.210(c); and
    - e) Employer notification and recordkeeping requirements.
  - 2) If an employee chooses to use his or her universal PTO balances for purposes other than those authorized under RCW 49.46.210(b) and 49.46.210(c), and the need for use of paid sick leave later arises when no additional PTO has accrued, employers are not required to provide any additional paid leave as long as the employer's universal PTO program complies with the provisions of RCW 49.46.200 and 49.46.210, and all applicable rules.
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## **WAC 296-128-690**

### **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. 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 unused paid sick leave to a coworker for uses authorized under RCW 49.46.210(b) and 49.46.210(c), and outlines any such requirements. Employers must make notification 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 296-128-700**

**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 296-128-710**

**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 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 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 such policy or agreement prior to frontloading an employee paid sick leave, and must make this information readily available to all employees.
  - 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 296-128-720**

### **Third party administrators.**

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.

- 1) 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 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 paid sick leave for use by the employee when the employee is working for any employers in the same third party administrator network.
  - 2) 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 296-128-730**

### **Disciplinary action.**

- 1) If an employee uses paid sick leave for a purpose not authorized under RCW 49.46.210(b) and 49.46.210(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.
  - 2) 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.
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## **WAC 296-128-740**

### **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 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 296-128-750**

### **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.
- 2) 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) Adverse action means any action taken or threatened by an employer against an employee, 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.
- 4) 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.
- 5) 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.
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## **WAC 296-128-760**

### **Enforcement – Non-wage monetary violations.**

If an employee files a complaint with the department alleging a non-wage monetary violation of his or her rights under chapter 49.46 RCW, the department will investigate the complaint pursuant to the procedures outlined in the Wage Payment Act, RCW 49.48.082 through 49.48.087. Examples of non-wage monetary violations include, but are not limited to, failure to pay an employee paid sick leave at his or her normal hourly compensation, and failure to pay an employee a service charge designated as being payable to the employee servicing the customer.

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## **WAC 296-128-770**

### **Enforcement – Complaints alleging a non-monetary violation – Duty of department to investigate – Citations – Civil penalties.**

- 1) If an employee files a complaint with the department alleging a non-monetary violation of his or her rights under chapter 49.46 RCW, the department will investigate the complaint. Unless otherwise resolved, the department will issue either a citation or a closure letter no later than sixty days after the date on which the department received the complaint. The department may extend the time period by providing advance written notice to the employee and the employer setting forth good cause for an extension of the time period and specifying the duration of the extension. The department may not investigate any alleged non-monetary violation of rights under chapter 49.46 RCW that occurred more than three years before the date that the employee filed the complaint. The department will send the citation or the closure letter to both the employer and the employee by service of process or using a method by which the mailing can be tracked or the delivery can be confirmed to their last known addresses.
- 2) If the department determines that the non-monetary violation of rights under chapter 49.46 RCW was a willful violation, and the employer fails to take corrective action, the department may order the employer to pay the department a civil penalty as specified in (a) of this subsection.
  - a) A civil penalty for a willful violation of non-monetary rights under chapter 49.46 RCW will be one thousand dollars for each willful violation. For a repeat willful violator, the civil penalty will not be less than two thousand dollars for each repeat willful violation, but no greater than twenty thousand dollars for each repeat willful violation.
  - b) The department may not assess a civil penalty if the employer reasonably relied on:
    - i. A rule related to any non-monetary rights under chapter 49.46 RCW;
    - ii. A written order, ruling, approval, opinion, advice, determination, or interpretation of the director; or
    - iii. An interpretive or administrative policy issued by the department and filed with the office of the code reviser. In accordance with the department's retention schedule obligations under chapter 40.14 RCW, the department will maintain a complete and accurate record of all written orders, rulings, approvals, opinions, advice, determinations, and interpretations for purposes of determining whether an employer is immune from civil penalties under (b)(ii) of this subsection.
  - c) The department will waive any civil penalty assessed against an employer under this section if the employer is not a repeat willful violator, and the director determines that the employer has taken corrective action to resolve the non-monetary violation within ten

business days of the employer's receipt of the citation and civil penalty from the department.

- d) The department at any time may waive or reduce a civil penalty assessed under this section if the director determines that the employer has taken corrective action to resolve the non-monetary violation.
- e) The department will deposit civil penalties paid under this section in the supplemental pension fund established under RCW 51.44.033.
- 3) Payment of a civil penalty by an employer to the department will constitute a full and complete satisfaction by the employer of all non-monetary chapter 49.46 RCW requirements addressed in the citation.
- 4) The applicable statute of limitations for civil actions is tolled during the department's investigation of an employee's complaint against an employer. For the purposes of this subsection, the department's investigation begins on the date the employee files the complaint with the department and ends when:
  - a) The complaint is finally determined through a final and binding citation; or
  - b) The department notifies the employer and the employee in writing that:
    - i. The complaint has been otherwise resolved;
    - ii. The department accepts the employee's request to withdraw his or her complaint; or
    - iii. The complaint could not be substantiated after an investigation, as detailed in a closure letter.

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#### **WAC 296-128-780**

##### **Complaints alleging a non-monetary violation – Administrative appeals.**

- 1) A person, firm, or corporation aggrieved by a citation or an assessment of a civil penalty issued by the department under chapter 49.46 RCW may appeal the citation or the assessment of a civil penalty to the director by filing a notice of appeal with the director within thirty days of the department's issuance of the citation or the assessment of a civil penalty. A citation, or an assessment of a civil penalty not appealed within thirty days is final and binding, and not subject to further appeal.
- 2) A notice of appeal filed with the director under this section will stay the effectiveness of the citation or the assessment of a civil penalty pending final review of the appeal by the director as provided for in chapter 34.05 RCW.
- 3) Upon receipt of a notice of appeal, the director will assign the hearing to an administrative law judge of the office of administrative hearings to conduct the hearing and issue an initial order. The hearing and review procedures will be conducted in accordance with chapter

34.05 RCW, and the standard of review by the administrative law judge of an appealed citation or an appealed assessment of civil penalty will be de novo. Any party who seeks to challenge an initial order shall file a petition for administrative review with the director within thirty days after service of the initial order. The director will conduct administrative review in accordance with chapter 34.05 RCW.

- 4) The director will issue all final orders after appeal of the initial order. The final order of the director is subject to judicial review in accordance with chapter 34.05 RCW.
- 5) Orders that are not appealed within the time period specified in this section and chapter 34.05 RCW are final and binding, and not subject to further appeal.
- 6) An employer who fails to allow adequate inspection of records in an investigation by the department under this chapter within a reasonable time period may not use such records in any appeal under this section to challenge the correctness of any determination by the department of penalties assessed.

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**WAC 296-128-790**

**Complaints alleging a non-monetary violation – Employee termination of administrative action.**

- 1) An employee who has filed a complaint with the department alleging a non-monetary violation of chapter 49.46 RCW rights may ask to terminate the department's administrative action by providing written notice to the department within ten business days after the employee's receipt of the department's citation.
- 2) If the employee requests to terminate the department's administrative action:
  - a) The department may discontinue its action against the employer; and
  - b) The department may choose to vacate a citation already issued by the department to the employer.
- 3) Nothing in this section will be construed to limit or affect:
  - a) The right of any employee to pursue any judicial, administrative, or other action available with respect to an employer;
  - b) The right of the department to pursue any judicial, administrative, or other action available with respect to an employee that is identified as a result of a complaint; or
  - c) The right of the department to pursue any judicial, administrative, or other action available with respect to an employer in the absence of a complaint. For purposes of this subsection, "employee" means an employee other than an employee who has filed a complaint with the department, and who thereafter has asked to terminate the department's administrative action as provided in subsection (1) of this section.

## **WAC 296-128-800**

### **Complaints alleging a non-monetary violation - Collection procedures.**

- 1) After a final order is issued under WAC 296-128-780, if an employer defaults in the payment of any civil penalty ordered by the department under WAC 296-128-770, the director may file with the clerk of any county within the state a warrant in the amount of the civil penalty plus any fees. The clerk of the county in which the warrant is filed will immediately designate a superior court cause number for the warrant, and the clerk will cause to be entered in the judgment docket under the superior court cause number assigned to the warrant, the name of the employer mentioned in the warrant, the amount of civil penalty due on it plus any fees, and the date when the warrant was filed. The aggregate amount of the warrant as docketed becomes a lien upon the title to, and interest in, all real and personal property of the employer against whom the warrant is issued, the same as a judgment in a civil case docketed in the office of the clerk. The sheriff will proceed upon the warrant in all respects and with like effect as prescribed by law with respect to execution or other process issued against rights or property upon judgment in a court of competent jurisdiction. The warrant so docketed is sufficient to support the issuance of writs of garnishment in favor of the state in a manner provided by law in case of judgment, wholly or partially unsatisfied. The clerk of the court is entitled to a filing fee which will be added to the amount of the warrant. A copy of the warrant will be mailed to the employer within three days of filing with the clerk.
- 2)
  - a) The director may issue to any person, firm, corporation, other entity, municipal corporation, political subdivision of the state, a public corporation, or any agency of the state, a notice and order to withhold and deliver property of any kind when he or she has reason to believe that there is in the possession of the person, firm, corporation, other entity, municipal corporation, political subdivision of the state, public corporation, or agency of the state, property that is or will become due, owing, or belonging to an employer upon whom a citation has been served by the department for civil penalties due to the department. The effect of a notice and order is continuous from the date the notice and order is first made until the liability out of which the notice and order arose is satisfied or becomes unenforceable because of lapse of time. The department will release the notice and order when the liability out of which the notice and order arose is satisfied or becomes unenforceable by reason of lapse of time and will notify the person against whom the notice and order was made that the notice and order has been released.
  - b) A person, firm, corporation, other entity, municipal corporation, political subdivision of the state, public corporation, or agency of the state upon whom service of a notice and order to withhold and deliver has been made will answer the notice within twenty days exclusive of the day of service, under oath and in writing, and will make true answers to the

matters inquired of in the notice and order. Upon service of the notice and order, if the party served possesses any property that may be subject to the claim of the department, the party will promptly deliver the property to the director. The director will hold the property in trust for application on the employer's indebtedness to the department, or for return without interest, in accordance with a final determination of a petition for review. In the alternative, the party will furnish a good and sufficient surety bond satisfactory to the director conditioned upon final determination of liability. If a party served and named in the notice fails to answer the notice within the time prescribed in this section, the court may render judgment by default against the party for the full amount claimed by the director in the notice, together with costs. If a notice is served upon an employer and the property subject to it is wages, the employer may assert in the answer all exemptions provided for by chapter 6.27 RCW to which the wage earner is entitled.

c) As an alternative to the methods of service described in this section, the department may electronically serve a financial institution with a notice and order to withhold and deliver by providing a list of its outstanding warrants, except those for which a payment agreement is in good standing, to the department of revenue. The department of revenue may include the warrants provided by the department in a notice and order to withhold and deliver served under RCW 82.32.235(3). A financial institution that is served with a notice and order to withhold and deliver under this subsection (2)(c) must answer the notice within the time period applicable to service under RCW 82.32.235(3).

- 3) In addition to the procedure for collection of civil penalties owed as set forth in this section, the department may recover civil penalties assessed under WAC 296-128-770 in a civil action brought in a court of competent jurisdiction of the county where the non-monetary violation is alleged to have occurred.
- 4) Whenever any employer quits business, sells out, exchanges, or otherwise disposes of the employer's business or stock of goods, any person who becomes a successor to the business becomes liable for the full amount of any outstanding civil penalty against the employer's business under this chapter if, at the time of the conveyance of the business, the successor has:
  - a) Actual knowledge of the fact and amount of the outstanding civil penalty; or
  - b) A prompt, reasonable, and effective means of accessing and verifying the fact and amount of the outstanding civil penalty from the department. If the civil penalty is not paid in full by the employer within ten days of the date of the sale, exchange, or disposal, the successor is liable for the payment of the full amount of the civil penalty, and payment thereof by the successor must, to the extent thereof, be deemed a payment upon the purchase price. If the payment is greater in amount than the purchase price, the amount of the difference becomes a debt due the successor from the employer.
- 5) This section does not affect other collection remedies that are otherwise provided by law.

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**(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, and any unused paid sick leave available for use by an employee;
- 13) Paid sick leave reductions for each pay period, 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(5));
- 14) The date of commencement of his or her employment, as defined at WAC 296-128-600(3);