ADMINISTRATIVE POLICY

STATE OF WASHINGTON
DEPARTMENT OF LABOR AND INDUSTRIES
EMPLOYMENT STANDARDS

TITLE: **COLLECTIVE BARGAINING AGREEMENTS, EMPLOYMENT AGREEMENTS, AND POLICIES** **NUMBER:** **ES.A.6**

CHAPTER: **RCW 49.46, WAC 296-128**

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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.

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This policy provides guidance on the Minimum Wage Act and Industrial Welfare Act's application to collective bargaining agreements, employments agreements, and policies.

1. Minimum Wage and Overtime Application to Provisions in Collective Bargaining Agreements and Other Employment Agreements and Policies.

A collective bargaining agreement (CBA) or other employment agreement may provide an employee with more than the amounts they are entitled to receive under the Minimum Wage Act (MWA), but it cannot be used as a justification to provide workers with less than what they are entitled receive to under the MWA.

Provisions of a CBA covering specific requirements for wage compensation of MWA-entitled employees must provide at least the minimum hourly wage for each hour worked, and provide for payment of at least one and one-half times the employee's regular rate of pay for hours worked over forty in a seven-day workweek. *See* RCW 49.46.020 and RCW 49.46.130.

2. Paid Sick Leave Application to Provisions in Collective Bargaining Agreements and Other Employment Agreements and Policies.

Provisions of a CBA or employer policy regarding paid sick leave for MWA-entitled employees must also provide paid sick leave at least equal to the requirements outlined in RCW 49.46.200, RCW 49.46.210, and WAC 296-128-600 through WAC 296-128-760.

The administrative rules for the MWA's paid sick leave requirements (WAC 296-128-600 through WAC 296-128-760) contain several provisions related to CBAs and written employment policies, including:

2.1 Defining "year." If an employer uses a fixed, consecutive, twelve-month period other than a calendar year for the purpose of calculating wages and benefits, a CBA or policy may define "year" for the purposes of paid sick leave accrual and carry over. Unless otherwise established by the employer, the default definition of "year" is calendar year. *See* WAC 296-128-620(6).

2.2 Usage. WAC 296-128-630(4) requires an employer to allow an employee to use paid sick leave in increments consistent with the employer's payroll system and practices, not to exceed one hour. Employees must be allowed to use paid sick leave in these increments, unless the department has approved a variance as provided by WAC 296-128-640. In the event a CBA sets forth increments of use of paid sick leave that differ from the WAC 296-128-630(4) requirements, the department may consider the provisions of the CBA as a factor when determining whether good cause exists to issue a variance under WAC 296-128-640(1).

2.3 Reasonable Notice. An employer may require an employee to give reasonable notice of an absence of work for the use of paid sick leave. In order to do so, a CBA or written policy must outline the requirements for providing reasonable notice and those requirements must comply with RCW 49.46.210(1)(f) and WAC 296-128-650. An employer must notify an employee of any such provisions prior to requiring the employee to provide reasonable notice. An employer must make such provisions readily available to all employees. *See* WAC 296-128-650 and Administrative Policy ES.B.1, "Paid Sick Leave Frequently Asked Questions." The employer may choose to utilize the department's Reasonable Notice for the Use of Paid Sick Leave sample policy.

2.4 Verification. If an employer requires an employee to provide verification that an employee's use of paid sick leave is for an authorized purpose for absences exceeding three days, a CBA or written policy must outline the requirements for providing such verification—including the employee's right to assert that the verification requirement results in an unreasonable burden or expense. An employer must notify the employee of such provisions prior to requiring the employee to provide verification and must make such CBA or written policy readily available to all employees. The CBA or written policy may also define the time period after which paid sick leave is used for an authorized purpose under RCW 49.46.210(1)(b) that an employee must provide verification to the employer, provided that the time period is not less than ten calendar days following the first day upon which the employee used paid sick leave. *See* WAC 296-128-660 and Administrative Policy ES.B.1, "Paid Sick Leave Frequently Asked Questions." The employer may choose to utilize the department's Verification for the Use of Paid Sick Leave sample policy.

2.5 Reimbursement. If an employer chooses to reimburse an employee for any portion of their accrued, unused paid sick leave at the time the employee separates from employment, the terms of this reimbursement must be mutually agreed upon and set forth in writing. A CBA may satisfy these requirements. *See* WAC 296-128-690(2)(a).

2.6 Paid Time Off Programs. A CBA or written policy that provides for a paid time off (PTO) program (*e.g.*, a program that combines vacation leave, sick leave, or other forms

of leave into one pool) satisfies the requirement to provide paid sick leave if the PTO program meets or exceeds the relevant provisions of the MWA, and all applicable rules. *See* WAC 296-128-700 and Administrative Policy ES.B.1, "Paid Sick Leave Frequently Asked Questions."

2.7 Shared Paid Sick Leave. An employer may establish a shared paid sick leave program in a CBA or written policy. An employer must notify employees of the CBA or written policy before allowing an employee to donate or use shared paid sick leave, and must make such provisions readily available to employees. *See* WAC 296-128-710(2) and Administrative Policy ES.B.1, "Paid Sick Leave Frequently Asked Questions." The employer may choose to utilize the department's Shared Paid Sick Leave Program sample policy.

2.8 Frontloading. If an employer frontloads paid sick leave to an employee in advance of accrual, the employer must have a CBA or written policy, which addresses the requirements for use of frontloaded paid sick leave. An employer must notify employees of such CBA or written policy prior to frontloading paid sick leave, and must make this information readily available to all employees. *See* WAC 296-128-730 and Administrative Policy ES.B.1, "Paid Sick Leave Frequently Asked Questions." The employer may choose to utilize the department's Frontloaded Paid Sick Leave sample policy.

2.9 Third-Party Administrators. If an employer chooses to contract with a third-party administrator to administer the paid sick leave requirements, a CBA may outline the provisions for the use of the third-party administrator. *See* WAC 296-128-740(3).

2.10 Retaliation. It is unlawful for an employer to adopt or enforce any policy—including any CBA provision—that counts the use of paid sick leave for a purpose authorized under RCW 49.46.210 (1)(b)(c) as an absence that may lead to or result in discipline by the employer against the employee. *See* WAC 296-128-770.

3. How do the Minimum Wage Act requirements for construction trades differ?

In some circumstances, CBA provisions may allow payment of sick leave at the normal hourly compensation before usage occurs. Such CBA provisions must meet all requirements in RCW 49.46.180 through 49.46.830.

4. What is the relationship between the Industrial Welfare Act and a collective bargaining agreement (CBA)?

The Industrial Welfare Act (IWA) and related rules establish a minimum standard for working conditions for all covered employees working for both public sector and private sector businesses in the state, including non-profit organizations that employ workers.

Provisions of a CBA covering specific requirements for conditions of work under RCW 49.12 or its regulations must be at least equal to or more favorable than the provisions of these standards except for:

- Construction trades for rest and meal periods
- Public employers for meal and rest periods

5. How do the IWA requirements for construction trades differ?

RCW 49.12.187 allows the meal and rest break rules as applied to employees in the construction trades to be superseded by a collective bargaining agreement negotiated under the national labor relations act, 29 U.S.C. Sec. 151 et seq. The terms of the CBA must provide rest and meal periods and set forth the conditions for the rest and meal periods, but the conditions for meal and rest periods may vary from the requirements of WAC 296-126-092.

6. How do the requirements for public employers differ?

Effective May 20, 2003, the legislature amended RCW 49.12 to include "the state, any state institution, state agency, political subdivisions of the state, and any municipal corporation or quasi-municipal corporation." Thus it brought public employees under all of the protections of the IWA, including the meal and rest period regulations, WAC 296-126-092. *See* Administrative Policy ES.C.6.1, "Meal and Rest Periods for Non-agricultural Workers Age 18 and Over."

The IWA and its related rules apply to public employers only if those rules do not conflict with any state statute or rule. It does not apply to public employers with a local resolution, ordinance, or rule adopted by the local legislative authority that was in effect prior to April 1, 2003 regarding meal and rest periods.

Employees of public employers may enter into CBAs, labor/management agreements, or other mutually agreed-to employment agreements with their public employers that specifically vary from or supersede, in part or in total, rules regarding meal and rest periods.