



Cost-Benefit Analysis

Labor Standards for Adult Entertainment Establishments *Chapter 296-128 WAC, Minimum wages*

I. Introduction

Administrative Procedure Act Requirements

The Administrative Procedure Act (APA) requires that, before adopting a significant legislative rule, the Department of Labor & Industries (L&I) must analyze the probable costs and benefits of the rule, and determine that the benefits are greater than its costs, taking into account both the qualitative and quantitative benefits and costs. [RCW 34.05.328(1)(d)]

RCW 34.05.328(5)(c)(iii) defines a "significant legislative rule" as a rule, other than a procedural or interpretive rule, that:

- Adopts substantive provisions of law pursuant to delegated legislative authority, the violation of which subjects a violator of such rule to a penalty or sanction;
- Establishes, alters, or revokes any qualification or standard for the issuance, suspension, or revocation of a license or permit; or
- Adopts a new, or makes significant amendments to, a policy or regulatory program.

Under certain circumstances, a rule or rule component is exempt from this requirement.

Proposed New Section in Rules

L&I is proposing to add to the following chapter rules relating to labor standards for adult entertainers.

- Chapter 296-128 WAC, Minimum Wages

The proposed rules concerning labor standards for adult entertainers are important for the protection of adult entertainers by providing them with certain rights relating to the following:

- Leasing fee caps
- Written contracts
- Tips and gratuities
- Signage
- Written notices for termination and refusal to rehire
- Retaliation protections
- Enforcement provisions

II. Probable Costs and Benefits of the Proposed Rule Sections

The proposed rule sections are interpretive and significant in circumstances where the rule “adopts a new, or make significant amendments to, a policy or regulatory program”. The proposed rule sections do not subject a violator to a civil penalty unless the violation was willful and the establishment fails to take corrective action.

As outlined in the chart below, there are no anticipated costs to comply with the rule.

Proposed WAC Sections	
WAC 296-128-90010(1), (2), (5), (6)	Exempt from Cost Benefit requirement under RCW 34.05.328(5)(b)(iii) - Rules adopting or incorporating by reference without material change.
WAC 296-128-90010(3), (4), and (7)	These definitions are explanatory and provide L&I’s interpretation for the term in chapter 49.46 RCW used in and throughout the rules and do not independently impose a penalty or sanction on a person or entity.
WAC 296-128-90020	This section is explanatory and provides L&I’s interpretation of RCW 49.46.360(3) and do not independently impose a penalty or sanction on a person or entity.
WAC 296-128-90030	This section provides L&I’s interpretation of RCW 49.46.360(5) and (7). The rule could impose a penalty on an establishment. RCW 49.46.360(7) allows L&I to enforce subsection (5) under the provisions of the chapter and any applicable rules. The section does not create an additional cost of compliance for employers, as payments are only required in the event of a violation.
WAC 296-128-90040(1), (3), and (5)	These subsections provide L&I’s interpretation of RCW 49.46.360 (2)(b) and (3)(e)(ii) and do not independently impose a penalty or sanction on a person or entity.
WAC 296-128-90040(2)	This subsection provides L&I’s interpretation of RCW 49.46.360(2)(b) and (3)(e)(ii) and could impose a penalty on an establishment. The section does not create an additional cost of compliance for employers, as payments are only required in the event of a violation.
WAC 296-128-90040(5)	This subsection provides recordkeeping requirements that could impose a penalty on an establishment. The subsection creates no cost for establishments because written contracts are required by statute. Creating additional documents for estimating the total amounts is optional, therefore there is no cost associated with compliance for establishments to also maintain such records.
WAC 296-128-90050	This section provides L&I’s interpretation of RCW 49.46.360(5) and (7) and does not independently impose a penalty or sanction on a person or entity.
WAC 296-128-90060(1)	This subsection provides L&I’s interpretation of RCW 49.46.360(6) and (7) and does not independently impose a penalty or sanction on a person or entity and does not impose costs to employers for the inclusion of applicable date(s) on the written notices because such

	<p>notices are already required by RCW 49.46.360(6). Establishments are not required to establish corrective action records, the establishment must simply maintain and provide any corrective action records they chose to create, so there is no additional cost.</p>
WAC 296-128-90060(2), (3), and (4)	<p>These subsections provide L&I's interpretation of RCW 49.46.360(6) and (7) and do not independently impose a penalty or sanction on a person or entity.</p>
WAC 296-128-90070	<p>This section provides L&I's interpretation of RCW 49.46.360(5) and (7). The rule could impose a penalty on an establishment. RCW 49.46.360(7) allows L&I to enforce subsection (5) under the provisions of the chapter and any applicable rules. The section does not create an additional cost of compliance for employers, as payments are only required in the event of a violation.</p>
WAC 296-128-90080(1), (2), (4), (6), (7), and (9)	<p>These subsections provide L&I's interpretation of RCW 49.46.360(7) and do not independently impose a penalty or sanction on a person or entity.</p>
WAC 296-128-90080(3) and (5)	<p>These subsections provide L&I's interpretation of RCW 49.46.360(7) and could impose a penalty on an establishment. RCW 49.46.360(7) allows L&I to enforce subsection (5) under the provisions of the chapter and any applicable rules. The subsections do not create an additional cost of compliance for employers, as payments are only required in the event of a violation.</p>
WAC 296-128-90080(8)	<p>This subsection provides L&I's interpretation of RCW 49.46.360(7), including the enforcement capability for L&I to request an establishment perform a self audit. The self-audit process is intended to reduce the cost and burden of an investigation thus, there is no cost associated with the rule.</p>
WAC 296-128-90090(1), (2), (3), (4), (7), (8), (9), and (11)	<p>These subsections provide L&I's interpretation of RCW 49.46.360(7) and do not independently impose a penalty or sanction on a person or entity.</p>
WAC 296-128-90090(5) and (6)	<p>These subsections provide L&I's interpretation of RCW 49.46.360(7) and could impose a penalty on an establishment. RCW 49.46.360(7) allows L&I to enforce subsection (5) under the provisions of the chapter and any applicable rules. The subsections do not create an additional cost of compliance for employers, as payments are only required in the event of a violation.</p>
WAC 296-128-90090(10)	<p>This subsection provides L&I's interpretation of RCW 49.46.360(7), including the enforcement capability for L&I to request an establishment perform a self audit. The self-audit process is intended to reduce the cost and burden of an investigation thus, there is no cost associated with the rule.</p>
WAC 296-128-90100(1), (2), (3), (4), (6), (7) and (8)	<p>These subsections provide L&I's interpretation of RCW 49.46.360(5) and (7) and do not independently impose a penalty or sanction on a person or entity. RCW 49.46.360(7) allows L&I to enforce subsection (5) under the provisions of the chapter and any applicable rules.</p>
WAC 296-128-90100(5) and (9)	<p>These subsections provide L&I's interpretation of RCW 49.46.360(5) and (7) and could impose a penalty on an establishment. RCW 49.46.360(7) allows L&I to enforce subsection (5) under the provisions of the chapter and any applicable rules. These subsections</p>

	do not create an additional cost of compliance for employers, as payments are only required in the event of a violation.
WAC 296-128-90110	This section provides L&I’s interpretation of RCW 49.46.360(7) and does not independently impose a penalty or sanction on a person or entity.
WAC 296-128-90120	This section provides L&I’s interpretation of RCW 49.46.360(7) and does not independently impose a penalty or sanction on a person or entity.
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The benefits of the proposed rule sections include increased labor protections for adult entertainers relating to their working conditions, leasing fees, written contracts, notices, tips and gratuities, and retaliation. The rule sections provide clear guidance to adult entertainment establishments and adult entertainers. L&I estimates that the proposed rules do not impose costs beyond those required by statute.

III. Cost-Benefit Determination

The proposed rule sections do not impose costs on adult entertainment establishments. Labor & Industries has assessed the proposed rule's impact on both the establishments and workers affected. According to L&I's estimation, the adopted changes will not result in any additional costs to the impacted parties. It is expected that the proposed amendments will provide clarity on the adult entertainment establishment requirements of RCW 49.46.360. As outlined in the preceding sections, the clarification will enhance comprehension of the rule, which will ultimately benefit the workers and establishments in Washington who are affected by it. It is anticipated that the benefits of this rule will outweigh any potential costs.