

Adult Entertainment Establishments

WAC 296-128-90010 Definitions

- (1) "Adult entertainment" has the same meaning as in RCW 49.17.470.
- (2) "Adult entertainment establishment" or "establishment" has the same meaning as in RCW 49.17.470.
- (3) "Entertainer" means any person who provides adult entertainment within an adult entertainment establishment, whether or not a fee is charged or accepted for entertainment and whether or not the person is an employee under RCW 49.46.010.
- (4) "Leasing fee" means a fee, charge, or other request for money from an entertainer by an establishment in exchange for the entertainer's access or use of the establishment premises or for allowing an entertainer to conduct entertainment on the premises.

WAC 296-128-90020 Leasing fee and other fee requirements

- (1) Any leasing fee or other fee charged by an establishment to an entertainer must:
 - (a) Apply equally to all entertainers in a given establishment;
 - (b) Be stated in a written contract; and
 - (c) Continue to apply for a period of not less than three months with effective dates.
- (2) An establishment may not charge an entertainer:
 - (a) Any fees or interest for late payment or nonpayment of any fee;
 - (b) A fee for failure to appear at a scheduled time;
 - (c) Any fees or interest that result in the entertainer carrying forward an unpaid balance from any previously incurred leasing fee;
 - (d) Any leasing fee in an amount greater than the entertainer receives during the applicable period of access to or usage of the establishment premises; or
 - (e)(i) Within an eight-hour period, any leasing fee that exceeds:
 - (A) The lesser of \$150 or 30 percent of amounts collected by the entertainer, excluding amounts collected for adult entertainment provided in a private performance area; and
 - (B) 30 percent of amounts collected by the entertainer for adult entertainment provided in a private performance area.
 - (ii) If an establishment charges an entertainer a leasing fee, the contract must include a method for estimating the total amount collected by the entertainer in any eight-hour period for the purposes of this subsection (e).
- (3) This section does not prevent an establishment from providing leasing discounts or credits to encourage scheduling or charge leasing fees that vary based on the time of day.

Commented [OBE(1)]: PLACEHOLDER: What should be included in "amounts collected" by an entertainer?

Commented [OBE(2)]: PLACEHOLDER: Are there preferred methods for estimating the total "amounts collected" in an 8 hour period?

WAC 296-128-90030 Tips and gratuities

- (1) Entertainers are not required to surrender any tips or gratuities.
- (2) An establishment may not take adverse action against an entertainer in response to the entertainer's use of, collection of, or refusal to surrender tips or gratuities.

WAC 296-128-90040 Written contracts of leasing fees- Administrative requirements

- (1) Any leasing fee or other fee charged by an establishment to an entertainer must be stated in a written contract.
- (2) If the establishment charges leasing fees, the written contract must include a method for estimating the total amount collected by the entertainer in any eight-hour period for the purposes of calculating maximum leasing fee rates.
- (3) Failing to comply with this section is an administrative violation.

WAC 296-128-90050 Required Signage-Administrative requirements

- (1) All establishments must display signage in areas designated for entertainers that communicate:
 - (a) Entertainers are not required to surrender any tips or gratuities; and
 - (b) An establishment may not take adverse action against an entertainer in response to the entertainer's use or collection of tips or gratuities.
- (2) Failing to comply with this section is an administrative violation.

WAC 296-128-90060 Written Notice of Reason for Termination or Refusal to Rehire-Administrative requirements

- (1) An establishment must provide an entertainer with written notice of the reason or reasons for any termination or refusal to rehire the entertainer.
- (2) An establishment must provide the written notice to the entertainer within 10 business days of the termination or refusal to rehire the entertainer.
- (3) Failing to comply with this section is an administrative violation.

WAC 296-128-90070 Retaliation

- (1) It is unlawful for an establishment to interfere with, restrain, or deny the exercise of any entertainer right provided under or in connection with chapter 49.46.XXX RCW or associated rules.
- (2) It is unlawful for an establishment to adopt or enforce any policy that may lead to or result in any termination or other adverse action against an entertainer for exercising their rights under chapter 49.46.XXX RCW and associated rules.

(3) It is unlawful for an establishment to take any adverse action against an entertainer because the entertainer has exercised their rights provided under chapter 49.46 RCW XXX RCW or associated rules. Such rights include, but are not limited to: Tips and gratuities; filing an action, or instituting or causing to be instituted any proceeding under or related to chapter 49.46.XXX RCW; or testifying or intending to testify in any such proceeding related to any rights provided under chapter 49.46.XXX RCW or associated rules.

(4) Adverse action means any action taken or threatened by an establishment against an entertainer for the entertainer's exercise of rights under chapter 49.46.XXX RCW or associated rules, that may include, but is not limited to:

- (a) Denying use of or delaying payments;
- (b) Altering rates of pay;
- (c) Threatening to take, or taking, action based upon the immigration status of an entertainer or an entertainer's family member;
- (d) Terminating or suspending;
- (e) Reducing the number of work hours for which the entertainer is scheduled;
- (f) Altering the entertainer's preexisting schedule; or
- (g) Preventing an entertainer from working in any other lawful occupation or business.

Commented [OBE(3)]: PLACEHOLDER: Are any other examples of adverse actions we should add?

WAC 296-128-90080 Enforcement- Compensation

(1) The department may enforce any amounts owed under RCW 49.46.XXX as a wage payment requirement under the provisions of RCW 49.46.XXX, 49.48, and associated rules.

(2) If an entertainer files a complaint with the department alleging amounts due as a result of a violation of RCW 49.46.XXX and associated rules, the department will investigate the complaint under RCW 49.48.082 and this section. Alleged violations include, but are not limited to leasing fees, improper deductions, or any other amounts owed to an entertainer.

(3) Unless otherwise resolved, the department shall issue either a citation and notice of assessment or a determination of compliance. The department may not investigate any alleged violation that occurred more than three years before the date that the entertainer filed the complaint. The department shall send the citation and notice of assessment or the determination of compliance to both the establishment and the entertainer 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.

(4) If the department determines that an establishment has violated a requirement of RCW 49.46.XXX or associated rules and issues to the establishment a citation and notice of assessment, the department may order the establishment to pay entertainers all amounts owed, including interest of one percent per month on all amounts owed, to the entertainer. The amounts and interest owed must be calculated from the first date amounts were owed to the entertainer, except that the department may not order

the establishment to pay any amounts and interest that were owed more than three years before the date the complaint was filed with the department.

(5) If the department determines that the violation of rights under chapter 49.46.XXX RCW or associated rules was a willful violation, and the establishment fails to take corrective action, the department may order the establishment to pay the department a civil penalty as specified in (a) of this subsection.

(a) A citation assessing a civil penalty for a willful violation of such rights will be \$1,000 or an amount equal to ten percent of the total amount of unpaid wages, whichever is greater, for each willful violation. For a repeat willful violator, the citation assessing a civil penalty will not be less than \$2,000, but no greater than \$20,000 for each repeat willful violation.

(b) The department may not issue a citation assessing a civil penalty if the establishment reasonably relied on:

(i) A written order, ruling, approval, opinion, advice, determination, or interpretation of the director; or

(ii) 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 establishment is immune from civil penalties under (b) of this subsection.

(c) The department may, at any time, waive or reduce a civil penalty assessed under this section.

(d) The department will deposit civil penalties paid under this section in the supplemental pension fund established under RCW 51.44.033.

(6) During any investigation under RCW 49.46.XXX, if the department discovers information suggesting additional violations of any requirements of RCW 49.46.XXX or any associated rules, the department may investigate and take appropriate enforcement action without any additional complaint. The department may also initiate an investigation on behalf of one or more entertainers for a violation of any requirements of RCW 49.46.XXX or any associated rules, when the director otherwise has reason to believe that a violation may have occurred or will occur.

(7) The department may conduct a consolidated investigation for any alleged violations identified under RCW 49.46.XXX, or associated rules, when there are common questions of law or fact involving entertainers for the same establishment.

(8) The department may, for the purposes of enforcing RCW 49.46.XXX or any associated rules, issue subpoenas to compel the attendance of witnesses or parties and the production of documents, administer oaths and examine witnesses under oath, take depositions, and seek affidavits or other verifications. The department may request an establishment perform a self-audit of any records. The results or conclusions of the self-audit must be provided to the department within a reasonable time. Reasonable timelines will be specified in the self-audit request. The records examined by the establishment in order to perform the self-audit must be made available to the department upon request.

(9) For purposes of this section, the following definitions apply:

(a) "Repeat willful violator" means any establishment that has been the subject of a final and binding citation for a willful violation of one or more rights under chapter 49.46.XXX RCW, and all applicable rules, within three years of the date of issuance of the most recent citation for a willful violation of one or more such rights.

(b) "Willful" means a knowing and intentional action that is neither accidental nor the result of a bona fide dispute.

WAC 296-128-90090 Enforcement—Administrative violations.

(1) If an entertainer files a complaint with the department alleging a violation of any administrative requirement of RCW 49.46.XXX or any associated rules, the department will investigate the complaint under RCW 49.46.XXX. Alleged violations include, but are not limited to, failure of an establishment to comply with: signage requirements of RCW 49.46.XXX(5) and notice requirements of RCW 49.46.XXX(6) and associated rules.

(2) The department may not investigate any such alleged violation of rights that occurred more than three years before the date that the entertainer filed the complaint.

(3) If an entertainer files a timely complaint with the department, the department will investigate the complaint and issue either a citation assessing a civil penalty or a closure letter, unless the complaint is otherwise resolved.

(4) If the department's investigation finds that an entertainer's allegation cannot be substantiated, the department will issue a closure letter to the entertainer and the establishment detailing such finding.

(5) If the department's investigation finds that the establishment violated an administrative requirement, and the complaint is not otherwise resolved, the department may, at its discretion, notify the establishment that the department intends to issue a citation and notice of assessment. The department may provide up to thirty days after the date of such notification for the establishment to take corrective action to remedy the violation. If the complaint is not otherwise resolved, then the department shall issue a citation and notice of assessment. The department's citation and notice of assessment may:

(a) Order the establishment to provide written notices of reasons for the termination or refusal to rehire an entertainer;

(b) Order the establishment to cease using any written contracts, policies, or notices that are in violation of RCW 49.46.XXX;

(c) Order the establishment to update and correct any written contracts, policies, or notices that are in violation of RCW 49.46.XXX;

(d) For the first violation, order the establishment to pay the department a civil penalty; and

(e) For a repeat violation, order the establishment to pay the department up to double the last civil penalty issued.

(6) If the department determines that the violation of rights under chapter 49.46.XXX RCW or associated rules was a willful violation, and the establishment fails to take corrective action, the department may order the establishment to pay the department a civil penalty as specified in (a) of this subsection.

(a) A citation assessing a civil penalty for a willful violation of such rights will be \$1,000 or an amount equal to ten percent of the total amount of unpaid wages, whichever is greater, for each willful violation. For a repeat willful violator, the citation assessing a civil penalty will not be less than \$2,000, but no greater than \$20,000 for each repeat willful violation.

(b) The department may not issue a citation assessing a civil penalty if the establishment reasonably relied on:

(i) A written order, ruling, approval, opinion, advice, determination, or interpretation of the director; or

(ii) 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 establishment is immune from civil penalties under (b) of this subsection.

(c) The department may, at any time, waive or reduce a civil penalty assessed under this section.

(d) The department will deposit civil penalties paid under this section in the supplemental pension fund established under RCW 51.44.033.

(7) The department will send notice of a citation assessing a civil penalty or the closure letter to both the establishment and the entertainer 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.

(8) During any investigation under RCW 49.46.XXX, if the department discovers information suggesting additional violations of any requirements of RCW 49.46.XXX or any associated rules, the department may investigate and take appropriate enforcement action without any additional complaint. The department may also initiate an investigation on behalf of one or more entertainers for a violation of any requirements of RCW 49.46.XXX or any associated rules, when the director otherwise has reason to believe that a violation may have occurred or will occur.

(9) The department may conduct a consolidated investigation for any alleged administrative violations identified under RCW 49.46.XXX, or associated rules, when there are common questions of law or fact involving entertainers for the same establishment.

(10) The department may, for the purposes of enforcing RCW 49.46.XXX or any associated rules, issue subpoenas to compel the attendance of witnesses or parties and the production of documents, administer oaths and examine witnesses under oath, take depositions, and seek affidavits or other verifications. The department may request an establishment perform a self-audit of any records. The results or conclusions of the self-audit must be provided to the department within a reasonable time. Reasonable timelines will be specified in the self-audit request. The records examined by the establishment in order to perform the self-audit must be made available to the department upon request.

(11) For purposes of this section, the following definitions apply:

(a) "Repeat willful violator" means any establishment that has been the subject of a final and binding citation for a willful violation of one or more rights under chapter 49.46.XXX RCW, and all applicable rules, within three years of the date of issuance of the most recent citation for a willful violation of one or more such rights.

(b) "Willful" means a knowing and intentional action that is neither accidental nor the result of a bona fide dispute.

WAC 296-128-90110 Enforcement—Retaliation.

(1) An entertainer who believes that they were subject to retaliation by their establishment, as defined in WAC 296-128-90010, for the exercise of any entertainer right under chapter 49.46.XXX RCW, may file a complaint with the department within one hundred eighty days of the alleged retaliatory action. The department may, at its discretion, extend the one hundred eighty-day period on recognized equitable principles or because extenuating circumstances exist. For example, the department may extend the one hundred eighty-day period when there is evidence that the establishment may have concealed or misled the entertainer regarding the alleged retaliatory action.

(2) If an entertainer files a timely complaint with the department alleging retaliation, the department will investigate the complaint and issue either a citation and notice of assessment or a determination of compliance, unless the complaint is otherwise resolved.

(3) The department may consider a complaint to be otherwise resolved when the entertainer and the establishment reach a mutual agreement to remedy any retaliatory action, or the entertainer voluntarily withdraws the complaint. Mutual agreements include, but are not limited to, rehiring, reinstatement, and payment of amounts due.

(4) If the department's investigation finds that the entertainer's allegation of retaliation cannot be substantiated, the department will issue a determination of compliance to the entertainer and the establishment detailing such finding.

(5) If the department's investigation finds that the establishment retaliated against the entertainer, and the complaint is not otherwise resolved, the department may, at its discretion, notify the establishment that the department intends to issue a citation and notice of assessment. The department may provide up to thirty days after the date of such notification for the establishment to take corrective action to remedy the retaliatory action. If the complaint is not otherwise resolved, then the department shall issue a citation and notice of assessment. The department's citation and notice of assessment may:

(a) Order the establishment to make payable to the entertainer earnings and other amounts that the entertainer did not receive due to the establishment's retaliatory action, including interest of one percent per month on all earnings and other amounts owed. The earnings, other amounts, and interest owed will be calculated from the first date amounts were owed to the entertainer;

(b) Order the establishment to restore the entertainer to the position held by the entertainer when the retaliation occurred, or restore the entertainer to an equivalent position with equivalent hours, schedule, benefits, pay, and other terms and conditions of entertainer's position;

(c) Order the establishment to cease using any policy that may lead to or result in discipline against the entertainer for exercising their rights under RCW 49.46.XXX and associated rules;

(d) Order the establishment to update and correct any written contracts, policies, or notices that are in violation RCW 49.46.XXX;

(e) For the first violation, order the establishment to pay the department a civil penalty as specified in WAC 296-128-790; and

(f) For a repeat violation, order the establishment to pay the department up to double the civil penalty as specified in WAC 296-128-790.

(6) The department will send the citation and notice of assessment or determination of compliance to both the establishment and entertainer 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.

(7) During an investigation of the entertainer's retaliation complaint, if the department discovers information suggesting alleged violations by the establishment of the entertainer's other rights under chapter 49.46 RCW, and all applicable rules, the department may investigate and take appropriate enforcement action without requiring the entertainer to file a new or separate complaint. If the department determines that the establishment violated additional rights of the entertainer under chapter 49.46 RCW, and all applicable rules, the establishment may be subject to additional enforcement actions for the violation of such rights. If the department discovers information alleging the establishment retaliated against or otherwise violated rights of other entertainers under chapter 49.46 RCW, and all applicable rules, the department may launch further investigation under chapter 49.46 RCW, and all applicable rules, without requiring additional complaints to be filed.

(8) The department may prioritize retaliation investigations as needed to allow for timely resolution of complaints.

(9) Nothing in WAC 296-128-90010 through 296-128-90110 impedes the department's ability to investigate under the authority prescribed in RCW 49.48.040.

(10) Nothing in WAC 296-128-90010 through 296-128-90110 precludes an entertainer's right to pursue private legal action.

WAC 296-128-90120 Administrative appeals.

(1) A person, firm, or corporation aggrieved by a citation or determination of compliance issued by the department under WAC 296-128-90090 through 296-128-90110 may appeal the citation or determination of compliance to the director by filing a notice of appeal with the director within thirty days of the department's issuance of the citation. A citation or determination of compliance 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 determination of compliance 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 determination of compliance 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 period specified in this section and chapter 34.05 RCW are final and binding, and not subject to further appeal.

(6) An establishment who fails to allow adequate inspection of records in an investigation by the department under WAC 296-128-90090 through 296-128-90110 within a reasonable time period may not use such records in any appeal under such rules to challenge the correctness of any determination by the department of amounts due and penalties assessed.

WAC 296-128-90130 Collection procedures.

Collections of unpaid citations assessing civil penalties will be handled pursuant to the procedures outlined in RCW 49.48.086.

WAC 296-128-90140

Severability clause.

If any provision of the rules in this chapter, or their application to any person or circumstance is held invalid, the remainder of these rules or their application of the provision to other persons or circumstances is not affected.