



## ADMINISTRATIVE POLICY

### STATE OF WASHINGTON DEPARTMENT OF LABOR AND INDUSTRIES EMPLOYMENT STANDARDS

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**TITLE:** INDUSTRIAL WELFARE ACT:  
APPLICATIONS, EXEMPTIONS, AND  
INTERPRETATIONS

**NUMBER:** ES.C.1

**CHAPTER:** [RCW 49.12](#)  
[WAC 296-126](#)  
[WAC 296-125](#)  
[WAC 296-131](#)  
[WAC 296-130](#)

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#### ADMINISTRATIVE POLICY DISCLAIMER

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.

This document is effective as of the date of print and supersedes all previous interpretations and guidelines. Changes may occur after the date of print due to subsequent legislation, administrative rule, or judicial proceedings. The user is encouraged to notify the Program Manager to provide or receive updated information. This document will remain in effect until rescinded, modified, or withdrawn by the Director or his or her designee.

This policy addresses the general application of the Industrial Welfare Act and its rules. It also explains various exemptions and the department's interpretations related various provisions. The department has the authority to investigate wages, hours and conditions of labor when RCW 49.12 applies. See [RCW 49.12.041](#) and [RCW 49.12.091](#).

#### **1. The Department Has Authority to Investigate and Regulate Conditions of Labor under the Industrial Welfare Act (IWA).**

The department has the authority to investigate wages, hours and conditions of labor. "Conditions of labor" regulated by [RCW 49.12](#) and rules adopted under it include:

- Requirements for employing minors, persons under 18 years of age.
- Meal and rest periods.
- Provisions for personal privacy.
- Employee access to personnel files.
- Family care.
- Wearing apparel, including uniforms.
- Provisions for volunteer firefighters when they are fighting a fire and cannot report to work for their regularly scheduled shifts.

“Conditions of labor” do *not* include conditions or practices subject to WISHA (safety and health) statutes or rules.

## **2. When does the Industrial Welfare Act, the Chapter 49.12 RCW, apply?**

The IWA generally regulates hours worked and conditions of labor and other wage issues that are not specifically covered by [RCW 49.46](#), the Minimum Wage Act, and other statutes relating to payment of wages, i.e., [RCW 49.48](#) or [RCW 49.52](#). [WAC 296-126](#), Standards of Labor, generally contains rules promulgated subject to [RCW 49.12](#). All of these rules have the same force of law as the provisions of RCW 49.12 itself.

## **3. Definition of “Employee.”**

Employees are those “employed in the business of their employer,” regardless of the type of work they perform, except those employees who are exempt under [RCW 49.12.005\(4\)](#) or [RCW 49.12.185](#). However, some workers are exempt from certain rules under the IWA, but are still covered by IWA’s general provisions. See [WAC 296-126-001](#), [-002](#), and [WAC 296-125-015\(2\)](#). “Employee” does not include an individual who is at least sixteen years old but under twenty-one years old, in his or her capacity as a player for a junior ice hockey team that is a member of a regional, national, or international league and that contracts with an arena owned, operated, or managed by a public facilities district created under chapter [36.100](#) RCW.

## **4. Definition of “Employ.”**

“Employ” means to engage, suffer or permit to work. See [RCW 49.46.010\(2\)](#) and [WAC 296-126-002\(3\)](#). See Administrative Policy [ES.C.2](#). “Hours Worked.”

## **5. Which employers are subject to RCW 49.12?**

Generally, an “employer” under RCW 49.12 is “any person, firm, corporation, partnership, business trust, legal representative, or other business entity which engages in any business, industry, profession, or activity in this state and employs one or more employees, and includes the state, any state institution, state agency, political subdivisions of the state, and any municipal corporation or quasi-municipal corporation.” See [RCW 49.12.005\(4\)](#).

## **6. Which employees are subject to the protections of RCW 49.12?**

Unless specifically exempted, the protections of the Industrial Welfare Act apply to all employees who are employed by employers who are subject to [RCW 49.12](#).

## **7. Which employers are not subject to RCW 49.12?**

The following employers are exempt from the provisions of RCW 49.12 and the department’s rules:

**7.1 Sheltered Workshops.** None of the provisions of this chapter apply to sheltered workshops per [RCW 49.12.091](#).

**7.2 Tribal Enterprises.** The department’s interpretation is that none of the provisions of [RCW 49.12](#) apply to tribal enterprises operating within the confines of their tribal lands.

**7.3. Employers Exempted by Variance.** Employers who have been granted a variance may be exempt from the rules contained within [WAC 296-126](#), which was adopted under RCW 49.12. The department has no authority to grant a variance from the statutory provisions of RCW 49.12. See [RCW 49.12.105](#). See [Administrative Policy ES.C.9, "Variances from Industrial Welfare Act,"](#) for detailed discussion of application for, granting of, and termination of variances under RCW 49.12.

An employer who has been granted a variance must comply with the terms of the variance. Non-compliance with the terms of the variance is treated in the same manner as a violation of the IWA and corresponding WACs.

## **8. Which individuals are exempt from the protections provided by RCW 49.12 and WAC 296-126?**

**8.1 Newspaper Vendors or Carriers.** The department construes the definition of newspaper vendors or carriers narrowly and does not include magazine carriers or vendors, those who distribute advertising circulars, or those who sell or distribute literature at sporting events, etc. See [RCW 49.12.185](#); [WAC 296-126-001\(2\)\(a\)](#).

**8.2 Casual Laborers in and about Private Residences.** Domestic and casual workers in or about private residences are exempt from. [RCW 49.12.185](#); [WAC 296-126-001\(2\)\(b\)](#).

**8.3 Agricultural Workers.** Agricultural workers are exempt under [RCW 49.12.185](#), but there are separate employment standards for agricultural workers in [RCW 49.30](#) and [WAC 296-131](#).

**8.4 Independent Contractors.** "Independent contractors" who control the work and the means by which the result is to be accomplished, are exempt from the protections of the IWA. A true independent contractor is not "employed" by an employer. However, an employer cannot avoid conforming to the IWA and related rules by merely referring to someone as an "independent contractor." Whether an individual is an independent contractor or an employee must be carefully evaluated on a case-by-case basis.

**8.5 Volunteers.** Any individuals registered as volunteers with a state or federal volunteer program, or any person who performs assigned or authorized duties for an educational, religious, governmental or nonprofit charitable organization by choice and receives no payment other than reimbursement for actual expenses necessary to performing the volunteer services. Educational, charitable, or religious nonprofit organizations must be registered under the requirements of the Secretary of State. Volunteers are not allowed in a "for-profit" business. Any individual, partnership, association, corporation, business trust, or any person or group of persons acting directly or indirectly in the interest of an employer that is a "for profit" business and who permits any individual to work, is subject to the provisions of the IWA.

## **9. Are bona fide executive, administrative, professional, computer professional or outside sales employees covered by RCW 49.12 and WAC 296-126?**

Bona fide executive, administrative, professional, computer professional or outside sales employees are not exempt under the statutory provisions of the IWA, but are exempt from

certain rules under the IWA. See [WAC 296-126-002\(2\)](#) and [WAC 296-128-510, -520, -530, -535, -540](#) for definitions. See Administrative Policy [ES.A.9.3 - 9.7](#) for detailed interpretations of these terms.

#### **10. Employers Have a General Duty to Provide Workplace Conditions that Do Not Endanger Employee Health, Safety and Welfare.**

Employers subject to the IWA must maintain workplace conditions to a level that will not endanger the health, safety or welfare of employees and to provide facilities, equipment, practices, methods, operations and procedures that adequately protect employees' health, safety and welfare under [WAC 296-126-094](#).

#### **11. Employment of Minors.**

The department has adopted standards that apply for employment of minors. These include standards regarding hours of work, rest and meal break requirements, and prohibited duties. See [WAC 296-125](#). For-profit businesses and nonprofit organizations are subject to the Minor Work Regulations, but public employers are exempt from the requirements of the Minor Work Regulations (See [WAC 296-125-015 \(4\)](#)). The agricultural employment of minors is covered under [RCW 49.30](#) and [WAC 296-131](#).

#### **12. Meal and Rest Periods.**

Meal and rest periods are considered conditions of labor. Employees who are protected by the IWA are entitled to meal and rest breaks as set forth in [WAC 296-126-092](#). The department's policies on meal and rest breaks are addressed in detail in Administrative Policy [ES.C.6.1](#).

#### **13. Employee Access to Personnel Records.**

Employees who are protected by the IWA have the right to view their personnel records at least annually, per [RCW 49.12.240](#) through 260. This right is considered a condition of labor, subject to investigation by the department. See Administrative Policy [ES.C.7, "Employee Access to Personnel Files"](#).

#### **14. Family Care.**

The Washington Family Care Act allows employees to take any paid leave offered by their employer to provide treatment or supervision for a child with a health condition and care for a qualifying family member with a serious or emergency health condition. For the purposes of the Family Care Act and applicable rules, workers who perform work in an executive, administrative, professional, or outside sales capacity are employees. For more information about the application of the Family Care Act and rules, see RCW [49.12.265](#) through [-295](#), [WAC 296-130](#), and Administrative Policy [ES.C.10](#), "Frequently Asked Questions About the Family Care Act."

#### **15. Wearing Apparel and Uniforms.**

Employers are required to furnish or compensate employees for uniforms they are required to wear. [RCW 49.12.450](#). For further guidance about what constitutes a uniform see administrative policies [ES.C.8.1](#) and [ES.C.8.2](#).

## **16. Variances.**

The department may issue variances to relieve employers from certain obligations imposed by department rules governing certain wages, hours, and conditions of employment if an employer shows good cause. See [RCW 49.12.105](#) and [WAC 296-126-130](#). The department cannot, by variance, waive the obligations found in the statute. See Administrative Policy [ES.C.9, "Variances from the Industrial Welfare Act"](#).

## **17. Recordkeeping Requirements.**

Employers who are subject to the IWA must keep and produce certain records. See Administrative Policy [ES.D.1, "Recordkeeping and Access to Payroll Records \(Non-agricultural Employment\)"](#).

## **18. Volunteer Firefighters, Reserve Officers and Civil Air Patrol Members.**

[RCW 49.12.460](#) provides that employers may not discharge or discipline an employee who is also a civil air patrol member because of leave taken related to an emergency service operation or a volunteer firefighter because of leave taken related to "an alarm or fire or an emergency call." This applies only when volunteer firefighters:

- 1) Voluntarily perform, regardless of reimbursement, any assigned or authorized duties on behalf of or at the direction of a firefighting or emergency response unit of a city, county, fire district, regional fire protection district, port district, or the state, including but not limited to service pursuant to [RCW 43.43.960](#) through [43.43.975](#);
- 2) Have notified their employer of their firefighter status and intent to serve as a volunteer if already at the place of employment when called to serve as a volunteer; or if not already at the place of employment when called to serve as a volunteer, has been ordered to remain at their position by their commanding authority at the scene of a fire.
- 3) Have been ordered to remain at their position by the commanding authority at the scene of the fire.

An aggrieved employee may make complaints of discharge or discipline to the department within 90 days of the alleged violation. The department will investigate and determine whether this law has been violated and send a determination to the complainant and to the employer within 90 days of receipt of the complaint. If the department determines a violation has occurred and the employer fails to reinstate the employee or withdraw the disciplinary action within 30 days, the remedy for the volunteer firefighter is to bring action against the employer in superior court.

## **19. Definition of "Industrial Welfare Committee."**

"Industrial welfare committee" or "committee" means the director of the Department of Labor and Industries and his or her designee or authorized representative when used in [RCW 49.12](#) or related rules and policies.

## **20. Relationship between Industrial Welfare Act and Minimum Wage Act (MWA).**

The IWA and MWA both address conditions of employment such as wages, hours, and other working conditions, but many sections of IWA significantly pre-date Washington's adoption of

the Minimum Wage Act. The Minimum Wage Act provides additional protections that are often more specific, including minimum wage rates, overtime requirements, and paid sick leave. See [RCW 49.46](#) and Administrative Policy [ES.A.1](#). If a provision of the MWA conflicts with a provision of the IWA or [WAC 296-126](#), the most protective provision applies. See [RCW 49.46.120](#) and Administrative Policy [ES.A.7](#), “More Favorable Laws”.

## **21. The department has the authority to investigate and regulate hours worked under the Industrial Welfare Act.**

“Hours worked” is considered to mean all hours during 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. See [WAC 296-126-002](#)(8). “Hours worked” includes all time worked whether it is a full hour or less. See Administrative Policy [ES.C.2](#), “Hours Worked”.

## **22. The department’s authority over hours worked include investigations of excessive overtime.**

Employees protected by the IWA may complain to the department that “the number of hours or other matters relating to overtime employment is detrimental to the health, safety or welfare of the employee.” The department may investigate such complaints and issue findings and conclusions. If the circumstances are found to be detrimental to the health, safety or welfare of the employee, the Director *may* make additional rules or revise existing rules to address the conclusions of the investigation. See [WAC 296-126-090](#).

## **23. What if there is a Collective Bargaining Agreement in effect?**

The IWA recognizes that employees may collectively bargain with their employers with representatives of their own choosing concerning wages or standards or conditions of employment. [RCW 49.12.187](#). The wages and working conditions included in a collective bargaining agreement cannot be less than that provided under the IWA, except employers and employees in the construction trades may negotiate meal and rest periods negotiated under the provisions of the National Labor Relations Act. See Administrative Policies [ES.A.6](#), “Collective Bargaining Agreements,” [ES.C.6.1](#), “Meal and Rest Periods for Non-agricultural Workers Age 18 and over,” and [ES.C.6.2](#), “Agricultural Labor Standards - Meal Periods, Rest Periods, and Rates of Pay.”

The IWA and its related rules apply to public employers only if those rules do not conflict with any state statute or rule. Employees of public employers may also enter into collective bargaining contracts, labor/management agreements, or other mutually agreed to employment agreements that specifically vary from or supersede, in part or in total, the rules regarding meal and rest periods.

Employees in the construction trades, i.e., laborers, carpenters, sheet metal, ironworkers, etc. may bargain with their employers under provisions of the National Labor Relations Act for terms of the CBA to include rest and meal periods that may vary from the requirements of [WAC 296-126-092](#). See Administrative Policies [ES.A.6](#), “Collective Bargaining Agreements” and [ES.C.6.1](#), “Meal and Rest Periods for Non-agricultural Workers Age 18 and over.”

## **24. An Employee Can Bring a Lawsuit for Unpaid Wages or the Department May Seek Unpaid Wages on the Employee's Behalf.**

If the violation by the employer is failure to pay the minimum wage set forth in [RCW 49.46.020](#) or others working at a special wage rate set by the department, employees have a private right of civil action to collect their unpaid wages, costs, and attorney fees.

The department may bring such an action on the employees' behalf. The department has authority to order payment of all wages owed workers and institute actions necessary for collection. See [RCW 49.48.040](#). RCW 49.46.090 provides employees the right to seek unpaid wages, costs and attorney fees through private right of civil action. The Department has authority to bring such an action on the employees' behalf. See [RCW 49.46.090](#) and [RCW 49.48.040](#).

## **25. Employees Have the Right of Private Action to Enforce Provisions of RCW 49.12 Even If No Wages Are Owed.**

Employees have the right of private action to enforce the various provisions of [RCW 49.12](#) and corresponding rules relating to wages, hours and conditions of employment (including meal and rest periods, right to examine personnel records, right to examine employment records, right to a workplace that does not endanger health, safety or welfare, etc.), regardless of whether the employee has a cause of action for unpaid wages.