



ADMINISTRATIVE POLICY

STATE OF WASHINGTON DEPARTMENT OF LABOR AND INDUSTRIES EMPLOYMENT STANDARDS

**TITLE: PAID SICK LEAVE – NORMAL
HOURLY COMPENSATION**

NUMBER: ES.B.2

**CHAPTER: [RCW 49.46.210\(1\)\(i\)](#)
[WAC 296-128-670](#)**

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This policy provides guidance on normal hourly compensation under [WAC 296-128-600\(10\)](#), as it pertains to the use of paid sick leave under [RCW 49.46.020](#). Normal hourly compensation means the hourly rate that an employee would have earned for the time during which the employee used paid sick leave. All employees covered under the Minimum Wage Act [RCW 49.46](#) are entitled to accrue and use paid sick leave and to be compensated at their normal hourly compensation rate while using paid sick leave.

1. What must an employer pay an employee who uses paid sick leave?

For each hour of paid sick leave used, an employer must either pay an employee the employee's normal hourly compensation rate or the state minimum hourly wage rate (established in [RCW 49.46.020](#)), whichever is greater. See [RCW 49.46.210\(1\)\(i\)](#). Normal hourly compensation means the hourly rate that an employee would have earned for the time during which the employee used paid sick leave. See [WAC 296-128-600\(10\)](#).

2. In what increments may employees use paid sick leave?

Employers must allow employees to use paid sick leave in increments consistent with their payroll system and practices, but cannot require employees to use paid sick leave in increments greater than one hour. See [WAC 296-128-630\(4\)](#). If an employer has a payroll system or practice that tracks in increments less than one hour, the employee must be paid consistent with that increment. For example, for an employee that works for an employer that tracks hours worked for payroll purposes in 15-minute increments, the employer must let its employees take

leave in 15-minute increments. The employer must also compensate employees at a rate no less than 1/4th of their normal hourly compensation for each 15 minutes of paid sick leave used.

Additional guidance related to paid sick leave increments of use can be found in Section 5 of [Administrative Policy ES.B.1](#) (“Paid Sick Leave Frequently Asked Questions”).

3. How must an employer calculate an employee’s normal hourly compensation?

An employer must calculate an employee's normal hourly compensation using a reasonable calculation based on the hourly rate that an employee would have earned for the time during which the employee used paid sick leave. See [WAC 296-128-670\(2\)](#). Once an employer calculates the employee’s normal hourly compensation, the employer must multiply this amount by the total amount of paid sick leave time used in order to determine the compensation the employee is entitled to receive for the use of paid sick leave. An employer must use a consistent methodology when calculating the normal hourly compensation of similarly-situated employees. See [WAC 296-128-670\(4\)](#).

4. What earnings must an employer include when calculating an employee’s normal hourly compensation?

Employers must include the following earnings when calculating an employee’s normal hourly compensation, if the employee would have earned such amounts during the time the employee used paid sick leave: the employee’s hourly rate of pay, salaries, piece-rate earnings, commissions, non-discretionary bonuses, and differential rates of pay. See [WAC 296-128-600\(10\)](#).

A “non-discretionary” bonus is any bonus which is promised to employees upon hiring or is the result of an agreement that includes, but is not limited to, inducing the employees to work more steadily, more rapidly, more efficiently, or more accurately. If a bonus is based on work performance or production, it is considered a non-discretionary bonus.

“Differential rates of pay” include different rates normally paid for the same work performed under differing conditions (such as a night or weekend shift), hazard pay (a higher rate for time spent working in hazardous conditions), and call-back pay (higher rates for working outside of normal hours).

5. What earnings do not have to be included when calculating an employee’s normal hourly compensation?

An employer is not required to include tips, gratuities, service charges, holiday pay, or other premium rates when calculating an employee’s normal hourly compensation, unless an employer policy or a collective bargaining agreement requires such earnings be included. See [WAC 296-128-600\(10\)](#). “Premium rates,” which may be excluded from a normal hourly compensation calculation, include expense reimbursements, discretionary bonuses, and gifts for special occasions.

Additionally, an employer is not required to calculate an employee’s normal hourly compensation using state overtime standards. Under Washington law, overtime compensation of at least 1.5 times the employee’s regular rate of pay is due when an employee has worked in excess of 40 hours in a seven-day workweek. See [RCW 49.46.130](#). Paid sick leave hours are not considered hours worked. See Administrative Policy [ES.C.2](#) (“Hours Worked”). Accordingly,

employers are not required to apply state overtime standards to paid sick leave hours that would have been overtime hours worked had the employee worked.

6. What rates have to be included in determining an employee’s normal hourly compensation when the employee is required to work a prevailing wage job?

The “prevailing rate of wage” includes the rate of hourly wage, usual benefits, and overtime paid in the locality. See [RCW 39.12.010](#)(1). Normal hourly compensation means the hourly rate that an employee would have earned for the time during which the employee used paid sick leave. See [WAC 296-128-600](#)(10). When an employee is scheduled to work a prevailing wage job and uses paid sick leave, an employer is required to pay the hourly wage component of the prevailing wage rate, but is not required to pay the usual benefits or overtime portion of the prevailing wage rate.

7. What if an employer does not know how many hours an employee would have worked during the time period the employee uses paid sick leave?

For employees who are scheduled to work a shift of indeterminate length (for example, a shift that is defined by business needs rather than by a specific number of hours), the employer may look to the total hours worked by a replacement employee in the same or similar shift. See [WAC 296-128-670](#)(3). If there is no replacement employee to compare to, the employer can use the average number of hours the employee using the paid sick leave typically works during a similar shift. The employer would then calculate the normal hourly compensation for the employee that used paid sick leave, as detailed in this policy.

EXAMPLE 7-1: Katy works as a line cook at a restaurant in Shelton. Every Friday, Katy reports to work at 4:00 p.m. and is relieved of work duties at the end of the dinner rush. Depending on the Friday, Katy could be relieved of duties anywhere between 8:00 p.m. and 11:00 p.m. When Katy uses paid sick leave for her Friday shift, her employer can look to the total hours worked by a replacement line cook in the same shift in order to determine the total number of hours that Katy would have worked had she not used paid sick leave. Her employer would then calculate Katy’s normal hourly compensation, as detailed in this policy.

EXAMPLE 7-2: Ruth works as a bus driver whose normally assigned route circulates between Bellevue and Redmond. She works Monday through Friday and all of her shifts are scheduled for eight hours, although the length of her shifts may vary depending on how long it takes her to complete the last cycle of her route at the end of her shift. When Ruth uses paid sick leave to cover for an entire shift on a Thursday, her employer looks back at the average amount of hours Ruth worked for all Thursday shifts within the past 90 days to determine how many hours of paid sick leave Ruth is entitled to use to cover the absence.

Examples of How to Calculate Normal Hourly Compensation

The following examples show how an employer can comply with the requirement to provide a reasonable calculation of normal hourly compensation under different compensation structures. An employer may establish its own reasonable calculation method by policy or collective bargaining agreement if its methodology complies with the paid sick leave statutes and regulations, but only if it uses a consistent methodology when calculating the normal hourly compensation for similarly situated employees.

8. UNIFORM HOURLY RATES

State Minimum Wage

An employer must pay the state minimum hourly wage for each hour of paid sick leave used if the state minimum wage is the only compensation the employee would have earned from the employer during the time paid sick leave is used.

EXAMPLE 8-1: Ana works in Pullman and is paid the 2020 state minimum hourly wage of \$13.50. Ana receives no additional compensation from her employer. When Ana uses paid sick leave in 2020, her employer must pay \$13.50 for each hour of paid sick leave she uses.

Municipal Minimum Wage

An employer must pay the applicable municipal minimum hourly wage for each hour of paid sick leave used if this rate is the only compensation the employee earns from the employer.

EXAMPLE 8-2: Ahmed works in Seattle for a large employer with more than 501 employees. Ahmed is paid the applicable Seattle minimum hourly wage of \$16.39 in the year 2020. Ahmed receives no additional compensation from his employer for each hour of work. When Ahmed uses paid sick leave in 2020, his employer must pay \$16.39 for each hour of paid sick leave he uses.

Hourly Wage Higher than Minimum Wage

If an employer pays a single agreed hourly wage higher than the minimum wage rate then the employer must pay the higher agreed rate for any paid sick leave an employee uses.

EXAMPLE 8-3: Tamiko works at a retail outlet in North Bend and is paid \$16.00 per hour by their employer for each hour of work. Tamiko receives no additional compensation from their employer for their work. When Tamiko uses paid sick leave, their employer must pay Tamiko \$16.00 for each hour of paid sick leave used.

9. MORE THAN ONE HOURLY RATE OF PAY

When employees are paid more than one hourly wage rate, including when an employee is paid a shift differential or premium, employers must calculate a normal hourly compensation rate that takes the different rates into account. The following examples provide reasonable calculations of normal hourly compensation for an employee who has multiple rates of pay. The first example addresses when the rates of pay can be identified for the time period the employee uses paid

sick leave. The second example addresses a circumstance when the rates of pay cannot be identified for the time period the employee uses paid sick leave. See [WAC 296-128-670\(2\)\(d\)](#).

Known Hourly Rates

If an employee’s hourly rates are known, an employer may calculate an employee’s normal hourly compensation by calculating scheduled hourly rates of pay the employee would have earned during the period in which paid sick leave is used. See [WAC 296-128-670\(2\)\(d\)\(i\)](#).

EXAMPLE 9-1: Joaquín works as an electrician and is based in Aberdeen. Joaquín is typically assigned to electrical projects throughout Grays Harbor County, but every Wednesday his employer requires him to perform 2 hours of clerical work in addition to 6 hours of electrical work. Joaquín’s rate of pay is \$30.00 per hour when he is working on electrical projects, and \$15.00 per hour when performing clerical tasks. Joaquín uses paid sick leave for an authorized purpose on a Wednesday, and misses 8 hours of work. On the Wednesday that Joaquín misses 8 hours of work, he would have received \$210.00 for his work (($\$30.00/\text{hr.} \times 6$) + ($\$15.00/\text{hr.} \times 2\text{hr.}$)). Joaquín should receive at least \$210.00 for using 8 hours of paid sick leave.

Unknown hourly rates

If an employee’s hourly rates are unknown, an employer may calculate an employee’s normal hourly compensation by using a calculation based on the employee’s average hourly rate of pay in the current or preceding 30 days, whichever yields the higher hourly rate. See [WAC 296-128-670\(2\)\(d\)\(ii\)](#). “Current 30 days” means the 30 calendar days immediately before the date the employee uses paid sick leave. “Preceding 30 days” means the 30 calendar days prior to the beginning of the “current 30 days.”

EXAMPLE 9-2: Binh works at a restaurant in Seattle. Binh’s employer compensates her at various rates, depending on the tasks she performs. Binh earns \$16.00 per hour when she is waiting on customers, \$16.50 per hour when she is cooking, and \$17.00 per hour performing routine clerical tasks. Binh and her employer typically cannot predict which tasks she will be performing at the start of a work day, and these tasks are rarely scheduled in advance. On October 15th, Binh uses paid sick leave for an authorized purpose and misses 8 hours of work.

During the current 30 days (Sept. 14 – Oct. 14), Binh earned a total of \$2600.00 and worked 155 hours. Binh’s regular rate of pay during the current 30 days is \$16.77 per hour ($\$2600.00 / 155$). During the preceding 30 days (Aug. 13 – Sept. 13), Binh earned a total of \$2650.00 and worked 163 hours. Binh’s regular rate of pay during the preceding 30 days is \$16.26 ($\$2650.00 / 163$). The higher of these two regular rates (\$16.77/hr) should be used as Binh’s normal hourly compensation for her use of paid sick leave on October 15th. Using this example, Binh will receive \$134.16 for using 8 hours of paid sick leave on October 15th.

	Amounts Earned	Hours Worked	Compensation
Current 30 Days	\$2600.00	155	\$16.77/hr.

Preceding 30 days	\$2650.00	163	\$16.26/hr.
Normal Hourly Compensation = The greater of the two above rates = \$16.77/hr.			

\$16.77/hr (normal hourly compensation) x **8** (hours of paid sick leave used) = **\$134.16**

10. COMMISSIONS

For an employee paid partially or wholly on a commission basis, an employee's normal hourly compensation may be calculated by dividing the employee's total earnings by the total hours worked in the full pay periods in the prior ninety days of employment. See [WAC 296-128-670\(2\)\(a\)](#). A full pay period is one that begins and ends within the 90-day period. The following calculations are examples for determining normal hourly compensation for employees paid partially and wholly on a commission basis.

Commissions Plus Hourly Wage

EXAMPLE 10-1: Michelle works at a furniture store in Moses Lake. Michelle receives compensation for her work at the state minimum wage of \$13.50/hr in 2020, as well as routine commissions for mattress sales. Michelle uses paid sick leave for an authorized purpose on a day when she could have earned commissions on mattress sales, and misses 8 hours of work.

In the three full pay periods in the prior 90 days of employment, Michelle worked 528 hours (66 days at 8 hours per day). Michelle also received \$1220.00 in commissions during this period, for a total of \$8,347.00 received. Using this example, Michelle's normal hourly compensation is \$15.81 per hour (\$8,348.00 / 528) and she should receive \$126.48 for 8 hours of paid sick leave used.

Type of Compensation	Calculation	Total Compensation
Hourly earnings	\$13.50/hr × 528 hours worked	\$7,128.00
Commissions	N/A	\$1,220.00
	Total earnings	\$8,348.00
Normal hourly compensation = \$8,348.00 ÷ 528 hours worked = \$15.81/hr		

\$15.81 (normal hourly compensation) x **8** (hours of paid sick leave used) = **\$126.48**.

Commissions Only

EXAMPLE 10-2: María works at an automotive dealership in Port Angeles. María is paid wholly on a commission basis, as she receives a percentage of the final sale price for

each car she sells. María uses paid sick leave for an authorized purpose, and misses 8 hours of work.

In the three full pay periods in the prior 90 days of employment, María worked 512 hours (64 days at 8 hours per day). María was paid \$8,675 in commissions during this period. The normal hourly compensation for María is \$16.94 per hour (\$8,675 / 512). María should receive at least \$135.52 for 8 hours of sick leave used.

	Hours worked in full pay periods in last 90 days	Compensation
Hours Worked and Commissions Received	512	\$8,675
Normal hourly compensation = \$8,675 ÷ 512 hours worked = \$16.94/hr		

\$16.94 (normal hourly compensation) x **8** (hours of paid sick leave used) = **\$135.52**.

11. PIECE RATES

For an employee paid partially or wholly on a piece rate basis, an employee's normal hourly compensation may be calculated by dividing the total earnings by the total hours worked in the most recent workweek in which the employee performed identical or substantially similar work to the work they would have performed had they not used paid sick leave. See [WAC 296-128-670\(2\)\(b\)](#).

Piece Rates plus Hourly Wage

EXAMPLE 11-1: James works on various construction projects in Pierce County as a drywall installer. James receives compensation for his work at a rate of \$24.00 per hour, as well as \$10.00 for each 100 square feet of drywall installed. James uses paid sick leave for an authorized purpose during a shift where he was to install drywall in an apartment building under construction, and misses 10 hours of work.

The most recent workweek where James performed identical or substantially similar work to the work he was to perform was the last workweek, when he installed drywall at the same apartment building. During that workweek, James worked 40 hours at his hourly rate of \$24.00 per hour for a total of \$960.00. James also installed 1000 square feet of drywall during that time, and earned an additional \$100.00. James earned a total of \$1060.00 in the prior workweek performing identical work. Using this example, the normal hourly compensation for James' use of paid sick leave is \$26.50 per hour (\$1060.00 / 40). James should receive \$265.00 for using 10 hours of paid sick leave.

	Hours worked and Rates of Pay in most recent workweek performing similar/identical duties	Compensation
Hourly Wages	40 hours worked at \$24.00 per hour	\$960.00
Piece Rate Wages	1000 sq. ft. at \$10.00 per sq. ft.	\$100.00
Total Earnings		\$1060

Normal Hourly Compensation = \$1060.00 ÷ 40 hours worked = \$26.50

\$26.50 (normal hourly compensation) x **10** (hours of paid sick leave used) = **\$265.00**.

Piece Rates Only

EXAMPLE 11-2: Sara works for an agricultural employer that grows strawberries and blueberries in Yakima County. Strawberry harvest is in mid-June, and the blueberry harvest is in late August. Sara’s employer pays her \$2.00 per pound for strawberries harvested and \$4.00 per pound of blueberries harvested. Sara’s employer also pays her for piece-rate downtime in accordance with [Administrative Policy ES.C.6.2](#). Sara uses paid sick leave for an authorized purpose during the second week of the blueberry harvest, and misses 6 hours of work.

The most recent workweek in which Sara performed identical or substantially similar work to the work she would have performed during the time she used paid sick leave was the last workweek, when she was also harvesting blueberries. During that workweek, Sara harvested 150 lbs of blueberries during 36 hours of work. During that workweek, Sara also experienced 4 hours of piece-rate downtime, for which she was compensated \$13.50 per hour. For her work in this workweek, Sara earned a total of \$654.00. Using this example, the normal hourly compensation for Sara’s use of paid sick leave is \$654.00 / 40 = \$16.35 per hour. Sara should receive \$98.10 for using 6 hours of paid sick leave.

	Hours worked in most recent workweek performing similar/identical duties	Rates of pay during the most recent workweek performing similar/identical duties	Compensation
Piece-Rate Active Time	36	150 lbs x \$4.00	\$600
Piece-Rate Downtime	4	\$13.50	\$54
Total Earnings			\$654
Normal Hourly Compensation = \$654 ÷ 40 hours worked = \$16.35			

\$16.35 (normal hourly compensation) x **6** (hours of paid sick leave used) = **\$98.10**

EXAMPLE 11-3: Petyr works for mid-sized manufacturing company in Okanogan. Petyr’s employer pays him between \$40 and \$75 for each airplane component he assembles, depending on the specific component being assembled that week. Petyr uses paid sick leave for an authorized purpose for the entirety of his components-building shift, and misses 9 hours of work.

The most recent workweek where Petyr performed identical or substantially similar work to the work he was to perform was the last workweek, when he assembled airplane components for his employer at a rate of \$50 per component. During that workweek, Petyr worked 40 hours and assembled 18 components. Petyr earned a total of \$900 in

the prior workweek performing identical work. Using this example, the normal hourly compensation for Petyr’s use of paid sick leave is \$22.50 per hour (\$900 / 40). Petyr should receive \$202.50 for using 9 hours of paid sick leave.

	Hours worked in most recent workweek performing similar/identical duties	Rates of pay during the most recent workweek performing similar/identical duties	Compensation
Piece-Rate Earnings	40	18 x \$50	\$900
Normal Hourly Compensation = \$900 ÷ 40 hours worked = \$22.50			

\$22.50 (normal hourly compensation) x **9** (hours of paid sick leave used) = **\$202.50**

12. SALARIES

For non-exempt employees paid a salary, normal hourly compensation may be calculated by dividing the annual salary by 52 to determine the weekly salary, and then dividing the weekly salary by the employee's normal scheduled hours of work for each workweek. See [WAC 296-128-670\(1\)\(c\)](#). For employers that pay non-exempt salaried employees their salary regardless of the hours actually worked (if less than 40 hours in a seven-day workweek), the employee is not entitled to additional compensation for the use of paid sick leave.

EXAMPLE 12-1: Yasmin works 40 hour workweeks as a customer service representative in Spokane. For her work, Yasmin is paid a salary of \$3,000.00 per month, which equates to a yearly salary of \$36,000 per year. Yasmin uses paid sick leave for an authorized purpose, and misses 8 hours of work.

The normal hourly compensation for Yasmin may be determined by dividing her yearly salary of \$36,000 by 52 weeks to determine Yasmin’s weekly salary, which is \$692.31. This weekly salary can then be divided by Yasmin’s normal scheduled hours of work per week (40 hours), which equals \$17.31 per hour. Using this example, Yasmin should receive at least \$138.48 for the use of 8 hours of paid sick leave.

	Calculation	Compensation
Annual salary	N/A	\$36,000
Weekly salary	\$36,000 ÷ 52 weeks	\$692.31
Normal hourly compensation = \$692.31 ÷ 40 hours worked = \$17.31		

\$17.31 (normal hourly compensation) x **8** (hours of paid sick leave used) = **\$138.48**

EXAMPLE 12-2: Brent works as a part time hockey coach at a junior high school in Tumwater. He is paid a yearly salary of \$20,000 for twenty hours of work per week during the school year. Brent uses 20 hours of sick leave for an authorized purpose

during one week of the school year but receives his regular salary for the week. Brent is not entitled to additional compensation for taking sick leave because his employer did not reduce his normal paycheck when he took leave.