



ADMINISTRATIVE POLICY
STATE OF WASHINGTON
DEPARTMENT OF LABOR AND INDUSTRIES
EMPLOYMENT STANDARDS

TITLE: CONSTRUCTION INDUSTRY
PAID SICK LEAVE REQUIREMENTS

NUMBER: ES.B.3

CHAPTER: [RCW 49.46](#)
[WAC 296-128](#)

ISSUED: 12/19/2024

SEE ALSO: [ES.B.1](#)
[ES.B.2](#)

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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 intends to provide guidance on paid sick leave requirements specific to the construction industry.

[RCW 49.46.200](#) and [49.46.210](#) mandate employers provide paid sick leave to non-exempt employees. The mandate to provide paid sick leave applies to employers doing business in Washington, including employers in the construction industry. There are additional paid sick leave requirements for construction industry employers.

Separation Requirements: If a construction worker is employed for less than 90 days before separating from employment, the construction worker's employer must pay out the balance of the construction worker's accrued and unused paid sick leave. See [RCW 49.46.210\(1\)\(l\)](#) and [WAC 296-128-600](#). This provision does not apply to residential construction workers.

Payouts before Usage: Typically, employers cannot payout an employee's sick leave before it is used. However, in certain circumstances, [RCW 49.46.180](#) allows construction industry employers to payout sick leave to construction workers before usage who are covered by a collective bargaining agreement.

This guidance is specific to the construction industry and is supplemental to guidance provided in Administrative Policy [ES.B.1](#), Paid Sick Leave – Frequently Asked Questions, Administrative Policy [ES.B.2](#), Paid Sick Leave – Normal Hourly Compensation, and all related paid sick leave rules.

1. Separation Requirements.

Construction workers employed by construction industry employers for less than 90 days before separation from employment must be paid the balance of their accrued and unused paid sick leave following separation. See [RCW 49.46.210\(1\)\(l\)](#) and [WAC 296-128-690](#).

If the construction worker was employed 90 days or more, the construction industry employer does not need to pay out accrued and unused sick leave to the construction worker following separation, but may choose to do so. See [RCW 49.46.210\(1\)\(I\)](#).

“Separation” and “separates from employment” mean the end of the last day an employee or construction worker is authorized or required by the employer to be on duty on the employer's premises or at a prescribed workplace. See [WAC 296-128-600\(15\)](#).

A. Which employers and employees are subject to the separation requirements?

Construction industry employers must pay the balance of a construction worker's accrued and unused paid sick leave following separation if the construction worker was employed for less than 90 days.

“Construction worker” means a worker who performed service, maintenance, or construction work on a jobsite, in the field or in a fabrication shop using the tools of the worker's trade or craft. See [RCW 49.46.210\(1\)\(I\)\(ii\)\(A\)](#) and [WAC 296-128-600\(4\)](#).

“Construction industry employer” means an employer in the industry described in North American industry classification system industry code 23, except for residential building construction code 2361. See [RCW 49.46.210\(1\)\(I\)\(ii\)\(B\)](#) and [WAC 296-128-600\(3\)](#). This means that if an employer's employees perform work solely described under industry code 23 then they are exempt from the separation requirements.

B. Do I have to pay out sick leave for both involuntary and voluntary separations?

Yes. Construction workers who quit or are terminated are entitled to this payout regardless of the circumstances of their separation.

C. Do I have to pay out sick leave if a worker is placed on stand-by for unemployment?

Generally, no. If the construction worker employer has requested stand-by for a construction worker who has a probable return-to-work date and the worker actually returns to employment, the requirements would not apply to a worker placed on stand-by for unemployment. However, if the construction worker does not return to work, the employer must pay out any sick leave when stand-by ends.

D. If our business does not denominate itself under NAICS Code 23, but has a worker who engages in construction work described in NAICS 23, does our business have to pay out sick leave following separation?

Construction industry employers must pay out sick leave to construction workers, employed for less than 90 days, following a separation.

Regardless of how the business chooses to denominate itself, “construction industry employer” means an employer in the industry described in North American industry classification system industry code 23, except for residential building construction code 2361. See [RCW 49.46.210\(1\)\(I\)\(ii\)\(B\)](#) and [WAC 296-128-600\(3\)](#).

E. What are the recordkeeping requirements for a construction industry employer?

Construction industry employers should keep records in accordance with [WAC 296-128-010](#), including:

- Dates of payment and the pay period covered by payment;
- Paid sick leave accruals each month, and any unused paid sick leave available for use by an employee;
- Paid sick leave reductions each month including, but not limited to: Paid sick leave used by an employee, paid sick leave donated to a co-worker through a shared leave program, or paid sick leave not carried over to the following year ("year" as defined in [WAC 296-128-620\(6\)](#));
- The date of commencement of their employment, as defined in [WAC 296-128-600\(2\)](#);
- Paid sick leave paid out to a construction worker following separation from employment; and
- Any date(s) of separation from employment, as defined in [WAC 296-128-600\(15\)](#).

2. Paying Sick Leave Before Usage to Construction Workers Covered by a Collective Bargaining Agreement (CBA).

[RCW 49.46.180](#) allows a construction worker covered by a CBA to receive payment for paid sick leave before usage under the terms of a CBA if certain requirements are met.

A. Which employees can receive payment for paid sick leave before usage under the terms of a CBA, as provided in RCW 49.46.180?

Construction workers covered by a compliant CBA in accordance with [RCW 49.46.180](#) and all applicable rules can receive payment for paid sick leave before usage.

“Construction worker covered by a collective bargaining agreement (CBA)” means a worker who performed service, maintenance, or construction work on a job site, in the field or in a fabrication shop using the tools of the worker's trade or craft who is covered by a collective bargaining agreement, provided that the union signatory to the collective bargaining agreement is:

- An approved referral union program authorized under [RCW 50.20.010](#) and in compliance with [WAC 192-210-110](#);
- The collective bargaining agreement establishes equivalent sick leave provisions, as provided in [RCW 49.46.180\(2\)](#); and
- The requirements of [RCW 49.46.200](#) through [49.46.830](#) are expressly waived in the collective bargaining agreement in clear and unambiguous terms or in an addendum to an existing agreement including an agreement that is open for negotiation provided the sick leave portions were previously ratified by the membership.

This does not include employees who are not directly engaged in construction work itself, such as nonexempt administrative staff.

B. I pay construction workers covered by a CBA for paid sick leave before it is used as required by RCW 49.46.180. Do I have to meet the separation payout requirements?

Under most circumstances, no. However, if the applicable construction worker separates before 90 days of employment and has any outstanding balance of accrued sick leave that has not been paid yet, the payment is owed following separation. See [WAC 296-128-760](#).

C. Do I have additional recordkeeping requirements if I pay construction workers covered by a CBA for paid sick leave before it is used?

Yes. Construction industry employers must keep records of paid sick leave payments to construction workers covered by a collective bargaining agreement (CBA) before usage as provided under [RCW 49.46.180](#), and any remaining leave which remains after payment. See [WAC 296-128-010](#).

3. Rehire Requirements for Construction Workers.

A. What are a construction industry employer's paid sick leave obligations when it rehires construction workers after they have previously separated from employment?

When a construction worker, who did not reach their 90th calendar day of employment before their separation, is rehired within 12 months of separation whether at the same or a different business location of the employer, any sick leave previously paid out following separation does not need to be reinstated. However, the previous period of employment must be counted for purposes of determining the date upon which the worker is entitled to start using newly accrued paid sick leave. See [WAC 296-128-765](#).

If the construction worker reached their 90th calendar day of employment before separation, any previously accrued and unused paid sick leave must be available for use upon rehire.

B. What are a construction industry employer's paid sick leave obligations when it rehires construction workers covered by a CBA after they have previously separated from employment?

If a construction worker covered by a CBA is rehired within 12 months after separation by the same employer, whether at the same or a different business location, was paid their paid sick leave before usage under [RCW 49.46.180](#), and still had protected accrued, unused sick leave available for use, the accrued, unused sick leave must be reinstated upon rehire. Any portion of sick leave already paid during a previous period of employment does not have to be paid again when used during reemployment. See [WAC 296-128-760](#).

If a construction worker covered by a CBA:

B.1. Reached the 90th day of employment or more before separation from employment and is rehired within 12 months of separation, whether at the same or a different business location of the employer, and was paid their paid sick leave before usage under [RCW 49.46.180](#), the construction worker covered by a CBA must have their accrued, unused sick leave reinstated and they are eligible to use any previously accrued sick leave immediately upon rehire. Because they were previously paid for the accrued leave, the leave does not need to be paid again.

B.2. Did not reach the 90th calendar day of employment prior to separation and is rehired within 12 months of separation, whether at the same or a different business location of the employer, and was paid their paid sick leave before usage under [RCW 49.46.180](#), the construction worker covered by a CBA must have their accrued, unused sick leave reinstated and the previous period of employment must be counted for purposes of determining the date upon which they are entitled to use their accrued, unused sick leave.

B.3. Is not rehired within 12 months of separation then the rehire requirements do not apply.