

WAC 296-128-700 Paid time off (PTO) programs. (1) A PTO program is a program that combines more than one type of leave, including all paid sick leave, into one bank of leave (i.e., a program that combines vacation leave, or other discretionary forms of leave, and paid sick leave into one bank). Paid time off (PTO) provided to employees by an employer's PTO program satisfies the requirement to provide paid sick leave if:

(a) The PTO program meets or exceeds the provisions of RCW 49.46.200 and 49.46.210, and all applicable rules including, but not limited to:

(i) Accrual of PTO leave at a rate of not less than one hour for every 40 hours worked as an employee;

(ii) Payment for PTO leave at the greater of the minimum hourly wage rate established by RCW 49.46.020 or the normal hourly compensation;

(iii) Carryover of at least 40 hours of accrued, unused PTO leave to the following year ("year" as defined at WAC 296-128-620(6));

(iv) Access to all PTO leave in the bank on the same terms for all the purposes authorized under RCW 49.46.210 (1)(b) and (c) except as provided in subsection (2) of this section;

(v) Recordkeeping requirements set forth in WAC 296-128-010 and 296-128-755; and

(b) The employer notifies the employee of their intention to utilize the PTO program in order to meet paid sick leave requirements under RCW 49.46.210.

(2) An employer may include more generous PTO (leave in excess of the accrual requirements) that is not subject to RCW 49.46.200 and 49.46.210, and all applicable rules, in the same leave bank as state paid sick leave compliant with RCW 49.46.200 and 49.46.210, and all applicable rules if:

(a) The compliant sick leave meets all the requirements of subsection (1) of this section independently of any more generous leave provided under an employer policy or CBA;

(b) The compliant paid sick leave is tracked separately;

(c) There is no requirement for the employee to use their protected leave for more generous purposes (purposes not authorized under RCW 49.46.210 (1)(b) and (c), such as vacation leave) before accessing the more generous PTO leave for more generous purposes; and

(d) If there is no policy that encourages the employee to use their protected leave for more generous purposes (purposes not authorized under RCW 49.46.210 (1)(b) and (c), such as vacation leave) before accessing the more generous PTO leave for more generous purposes.

(3) If an employee chooses to use their PTO leave for purposes other than those authorized under RCW 49.46.210 (1)(b) and (c), and the need for use of paid sick leave later arises when no additional PTO leave is available, the employer is not required to provide any additional PTO leave to the employee as long as the employer's PTO program meets or exceeds the provisions of RCW 49.46.200 and 49.46.210, and all applicable rules.

(4) If an employer utilizes a PTO program to meet or exceed the provisions of RCW 49.46.200 and 49.46.210 for construction workers, the balance of the PTO must be paid out to any qualifying construction workers covered under RCW 49.46.210 (1)(1) (effective January 1, 2024), following separation.

[Statutory Authority: Chapter 49.46 RCW. WSR 23-24-044, § 296-128-700, filed 11/30/23, effective 1/1/24. Statutory Authority: RCW 49.46.810. WSR 17-21-092, § 296-128-700, filed 10/17/17, effective 1/1/18.]