Chapter 296-126 WAC
STANDARDS OF LABOR FOR THE PROTECTION OF THE SAFETY, HEALTH AND WELFARE OF EMPLOYEES FOR ALL OCCUPATIONS SUBJECT TO CHAPTER 49.12 RCW

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WAC

296-126-001 Applicability.
296-126-002 Definitions.
296-126-010 Exceptions to minimum wage rate—Special certificates.
296-126-015 Wage rates under special certificates.
296-126-020 Minimum wages—Minors.
296-126-021 Minimum wages—Commissions and piecework.
296-126-022 Gratuities.
296-126-023 Payment interval.
296-126-025 Deductions from final wages.
296-126-028 Wage deductions during on-going employment.
296-126-030 Adjustments for overpayments.
296-126-040 Statements furnished.
296-126-050 Personnel files.
296-126-070 Prohibited action.
296-126-080 Posting of order.
296-126-090 Hours.
296-126-092 Meal periods—Rest periods.
296-126-094 General duty—Working conditions.
296-126-130 Variance.
296-126-200 Applicability.
296-126-202 Definitions.
296-126-204 Minimum wage.
296-126-206 Limitation on number of employees paid in Counselor I and Counselor II rates.
296-126-208 Premium pay for resident counselor staff occupations.
296-126-210 Board, lodging, and other services.
296-126-212 Travel expenses.
296-126-214 Records.
296-126-216 Agreements.
296-126-218 Work permits.
296-126-220 Minors' occupations.
296-126-222 Sanitation and safety.
296-126-226 Penalties.

Reviser's note: For industrial welfare committee appeal procedures, see also chapter 296-129 WAC.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

296-126-060 Minor work permits. [Order 74-9, § 296-126-060, filed 3/13/74, effective 4/15/74.] Repealed by WSR 10-04-092, filed 2/2/10, effective 3/15/10. Statutory Authority: Chapter 49.12 RCW.

296-126-096 Lifting. [Order 76-15, § 296-126-096, filed 5/17/76.] Repealed by WSR 10-04-092, filed 2/2/10, effective 3/15/10. Statutory Authority: Chapter 49.12 RCW.

296-126-098 Wearing apparel. [Statutory Authority: RCW 49.12.091 (as amended by RCW 43.22.282). WSR 97-01-124, § 296-126-098, filed 12/19/96, effective 1/19/97; Order 76-15, § 296-126-098, filed 5/17/76.] Repealed by WSR 98-14-041, filed 6/24/98, effective 7/25/98. Statutory Authority: RCW 49.12.091 and 1998 c 334.

296-126-140 Appeal procedures. [Order 74-9, § 296-126-140, filed 3/13/74, effective 4/15/74.] Repealed by WSR 97-17-064, filed 8/18/97, effective 9/18/97.

296-126-224 Wearing apparel. [Statutory Authority: RCW 49.12.091. WSR 78-03-004 (Order 78-1), § 296-126-224, filed 2/3/78.] Repealed by WSR 97-01-124, filed 12/19/96, effective 1/19/97. Statutory Authority: RCW 49.12.091 (as amended by RCW 43.22.282).

WAC 296-126-001 Applicability. (1) These rules apply to employers and employees in the state as defined in RCW 49.12.005 (3) and (4).

(2) These rules do not apply to:

(a) Newspaper vendors or carriers;

(b) Domestic or casual labor in or about private residences; or

(c) Agricultural labor as defined in RCW 50.04.150.

Note 1: Public employers and employees should review RCW 49.12.005 (3)(a) and (b) and WAC 296-126-002(2) to determine applicability.

Note 2: For a variance from the rules under this chapter, see WAC 296-126-130.

[Statutory Authority: RCW 49.46.170(2). WSR 24-20-113, s 296-126-001, filed 10/1/24, effective 11/1/24. Statutory Authority: Chapter 49.12 RCW. WSR 10-04-092, § 296-126-001, filed 2/2/10, effective 3/15/10; Order 74-9, § 296-126-001, filed 3/13/74, effective 4/15/74.]

WAC 296-126-002 Definitions. (1) "Employer" means 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, unless exempted by chapter 49.12 RCW or these rules. For purposes of these rules, the state or its political subdivisions, municipal corporations, or quasi-municipal corporations (collectively called "public employers") are considered to be "employers" and subject to these rules in the following manner:

(a) Before May 20, 2003, public employers are not subject to these rules unless the rules address:

(i) Sick leave and care of family members under RCW 49.12.265 through 49.12.295.

(ii) Parental leave under RCW 49.12.350 through 49.12.370.

(iii) Compensation for required employee uniforms under RCW 49.12.450.

(iv) Employers' duties towards volunteer firefighters and reserve officers under RCW 49.12.460.

(b) On or after May 20, 2003, public employers are subject to these rules only if these rules do not conflict with the following:

(i) Any state statute or rule.

(ii) Any local resolution, ordinance, or rule adopted before April 1, 2003.

(2) "Employee" means an employee who is employed in the business of his employer whether by way of manual labor or otherwise. "Employee" does not include:

(a) Any individual registered as a volunteer with a state or federal volunteer program or any person who performs any assigned or authorized duties for an educational, religious, governmental or nonprofit charitable corporation by choice and receives no payment other than reimbursement for actual expenses necessarily incurred in order to perform such volunteer services;

(b) Any individual employed in a bona fide executive, administrative or professional capacity or in the capacity of outside salesperson;

(c) Independent contractors where said individuals control the manner of doing the work and the means by which the result is to be accomplished.

(3) "Employ" means to engage, suffer or permit to work.

(4) "Adult" means any person eighteen years of age or older.

(5) "Minor" means any person under eighteen years of age.

(6) "Student learner" means a person enrolled in a bona fide vocational training program accredited by a national or regional accrediting agency recognized by the United States Office of Education, or authorized and approved by the Washington state commission for vocational education, who may be employed part time in a definitely organized plan of instruction.

(7) "Learner" means a worker whose total experience in an authorized learner occupation is less than the period of time allowed as a learning period for that occupation in a learner certificate issued by the director pursuant to regulations of the department of labor and industries.

(8) "Hours worked" shall be 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.

(9) "Conditions of labor" shall mean and include the conditions of rest and meal periods for employees including provisions for per-

sonal privacy, practices, methods and means by or through which labor or services are performed by employees and includes bona fide physical qualifications in employment, but shall not include conditions of labor otherwise governed by statutes and rules and regulations relating to industrial safety and health administered by the department.

(10) "Department" means the department of labor and industries.

(11) "Director" means the director of the department of labor and industries or the director's designated representative.

[Statutory Authority: Chapter 49.12 RCW. WSR 10-04-092, § 296-126-002, filed 2/2/10, effective 3/15/10; Order 76-15, § 296-126-002, filed 5/17/76; Order 74-9, § 296-126-002, filed 3/13/74, effective 4/15/74.]

WAC 296-126-010 Exceptions to minimum wage rate—Special certificates. (1) The director may issue a special certificate to an employer authorizing the employer to pay the following employees at a wage rate that is less than the applicable minimum wage rate:

(a) A trainee or learner not subject to the jurisdiction of the Washington state apprenticeship and training council under chapter 49.04 RCW; or

(b) A student learner.

(2) The director shall fix the reduced minimum wage and issue a special certificate only where the director determines that an employer has applied for it in good faith.

(3) The director shall fix the duration of the validity of the certificate.

[Statutory Authority: RCW 49.46.170(2). WSR 24-20-113, s 296-126-010, filed 10/1/24, effective 11/1/24. Statutory Authority: Chapter 49.12 RCW. WSR 10-04-092, § 296-126-010, filed 2/2/10, effective 3/15/10; Order 74-9, § 296-126-010, filed 3/13/74, effective 4/15/74.]

WAC 296-126-015 Wage rates under special certificates. Employers shall compute the wage rates under special certificates as follows:

(1) Learners: At 85 percent of the applicable minimum wage rate.

(2) Student-learner: At 75 percent of the applicable minimum wage rate.

Note: See chapter 49.46 RCW and chapter 296-128 WAC for minimum wage laws.

[Statutory Authority: RCW 49.46.170(2). WSR 24-20-113, s 296-126-015, filed 10/1/24, effective 11/1/24. Statutory Authority: Chapter 49.12 RCW. WSR 10-04-092, § 296-126-015, filed 2/2/10, effective 3/15/10.]

WAC 296-126-020 Minimum wages—Minors. Except where a higher minimum wage is required by Washington state or federal law:

(1) Every employer shall pay to each of his or her employees who have reached their 16th or 17th year of age a rate of pay per hour which is equal to the hourly rate required by RCW 49.46.020 for employees 18 years of age or older, whether computed on an hourly, commission, piecework, or other basis, except as may be otherwise provided under this chapter.

(2) Every employer shall pay to each of his or her employees who have not reached their 16th year of age a rate of pay per hour that is not less than 85 percent of the hourly rate required by RCW 49.46.020 for employees 18 years of age or older whether computed on an hourly, commission, piecework, or other basis, except as may be otherwise provided under this chapter.

[Statutory Authority: RCW 49.46.170(2). WSR 24-20-113, s 296-126-020, filed 10/1/24, effective 11/1/24. Statutory Authority: RCW 43.22.270 and 1988 c 236. WSR 89-10-014 (Order 88-32), § 296-126-020, filed 4/24/89, effective 6/1/89; Order 74-9, § 296-126-020, filed 3/13/74, effective 4/15/74.]

WAC 296-126-021 Minimum wages—Commissions and piecework. Where employees are paid on a commission or piecework basis, wholly or partially,

(1) The amount earned on such basis in each work-week period may be credited as a part of the total wage for that period; and

(2) The total wages paid for such period shall be computed on the hours worked in that period resulting in no less than the applicable minimum wage rate.

[Order 74-9, § 296-126-021, filed 3/13/74, effective 4/15/74.]

WAC 296-126-022 Gratuities. For the purposes of these regulations, gratuities received by employees shall not be considered a part of the minimum wage.

[Order 74-9, § 296-126-022, filed 3/13/74, effective 4/15/74.]

WAC 296-126-023 Payment interval. (1) This rule shall apply to employers and employees subject to chapter 49.12 RCW.

Note: Employers and employees not subject to this regulation may still be subject to the payment interval requirements of WAC 296-128-035 or 296-131-010.

(2) Definitions:

(a) "Monthly interval" means a one-month time period between established pay days.

(b) "Pay day" means a specific day or date established by the employer on which wages are paid for hours worked during a pay period.

(c) "Payment interval" means the amount of time between established pay days. A payment interval may be daily, weekly, bi-weekly, semi-monthly or monthly.

(d) "Pay period" means a defined time frame for which an employee will receive a paycheck. A pay period may be daily, weekly, bi-weekly, semi-monthly or monthly.

(3) An employer shall pay all wages owed to an employee on an established regular pay day at no longer than monthly payment intervals. If federal law provides specific payment interval requirements that are more favorable to an employee than the payment interval requirements provided under this rule, federal law shall apply.

(4) If an employer pays wages on the basis of a pay period that is less than a month, the employer shall establish a regular pay day

no later than ten calendar days after the end of the pay period, unless expressly provided otherwise by law.

Example 1: Employer establishes a weekly pay period. The workweek is from Sunday January 1 through Saturday January 7. Unless a different payment interval applies by law, the employer must pay wages no later than January 17.

Example 2: Employer establishes two semi-monthly pay periods (the first pay period covers the 1st day of the month to the 15th day of the month; the second pay period covers the 16th day of the month to the last day of the month). Unless a different payment interval applies by law, the employer must pay wages no later than the 25th day of the current month for the first pay period, and no later than the 10th day of the following month for the second pay period.

(5) If an employer pays wages on the basis of a monthly pay period, the employer may establish a regular payroll system under which wages for work performed by an employee during the last seven days of the monthly pay period may be withheld and included with the wages paid on the pay day for the next pay period.

Example: Employer establishes a monthly pay period starting on the 1st day of each month with an established pay day on the last day of the month. In a thirty-one-day month, unless a different payment interval applies by law, the employer must pay wages for work performed between the 1st and 24th days of the month on the established pay day (the last day of the month). The employer may pay wages for work performed between the 25th and 31st days of the current month on the following month's pay day (which means that the employer would pay wages for work performed between the 25th and 31st days of the current month, and the 1st and 24th days of the following month, on the following month's pay day).

If pay period is:	Then pay day must be no later than:	And employer must pay wages for at least:
Monthly, starting on 1st day of the month	Last day of the month	1st day of the month - 24th day of the month

(6) An employer shall pay overtime wages owed to an employee on the regular pay day for the pay period in which the overtime wages were earned. If the correct amount of overtime wages cannot be determined until after such regular pay day, the employer may establish a separate pay day for overtime wages; however, the payment of overtime wages may not be delayed for a period longer than that which is reasonably necessary for the employer to compute and arrange for payment of the amount due, and overtime wages must be paid by the regular pay day following the next pay period.

Example: Employer establishes two semi-monthly pay periods. The first pay period covers work performed from the 1st day of the month to the 15th day of the month with the pay day of the 25th; the second pay period covers the 16th day of the month with the pay day of the 10th of the following month. An employee works overtime in each of the pay periods. Unless a different payment interval applies by law, the employer must pay overtime wages no later than the 10th day of the following month for the overtime earned during the first pay period, and no later than the 25th day of the following month for the overtime earned during the second pay period.

If pay period is:	And if pay day for regular wages is:	Then pay day for overtime wages must be no later than:
1st of the month - 15th day of the month	25th of the month	10th of the following month
16th of the month - 30th or 31st of the month	10th of the following month	25th of the following month

(7) Mailed paychecks shall be postmarked no later than the established pay day. If the established pay day falls on a weekend day or holiday when the business office is not open, mailed paychecks shall be postmarked no later than the next business day. Employers that pay employees by direct deposit or other electronic means shall ensure that such wage payments are made and available to employees on the established pay day.

(8) These rules may be superseded by a collective bargaining agreement negotiated under the National Labor Relations Act, 29 U.S.C. Sec. 151 et seq., the Public Employees' Bargaining Act, RCW 41.56.010 et seq., or the Personnel System Reform Act, RCW 41.80.001 et seq., if the terms of, or recognized custom and practice under, the collective bargaining agreement prescribe specific payment interval requirements for employees covered by the collective bargaining agreement; provided, that:

(a) All regular wages (whether paid on an hourly, salary, commission, piece rate, or other basis) shall be paid to employees covered by the collective bargaining agreement ("covered employees") at no longer than monthly intervals;

(b) All other wages (including overtime, bonus pay, and other categories of specialty pay in addition to regular wages) are paid in accordance with the payment interval requirements applicable to covered employees under the terms of, or recognized custom and practice under, the collective bargaining agreement; and

(c) The employer pays regular wages to covered employees at no less than the applicable minimum wage rate.

[Statutory Authority: Chapters 49.12, 49.30, and 49.46 RCW. WSR 07-03-145, § 296-126-023, filed 1/23/07, effective 3/1/07. Statutory Authority: RCW 43.22.270, 49.12.020, 49.12.091, 49.12.050, 49.46.020 and 49.46.070. WSR 89-22-016 (Order 89-16), § 296-126-023, filed 10/24/89, effective 11/24/89; Order 74-9, § 296-126-023, filed 3/13/74, effective 4/15/74.]

WAC 296-126-025 Deductions from final wages. (1) An employer may deduct any portion of an employee's final wages and may reduce the employee's final gross wages below the state minimum wage that is in effect at the time the work is performed, if the deduction is for any of the following:

(a) Required by state or federal law; or

(b) For medical, surgical, or hospital care or service. No deductions may be made for these services if covered under RCW 51.48.050; or

Example. During the final pay period, the business paid a worker's medical costs for an injury not related to the employee's job du-

ties and deducted the amount from final wages to repay those costs to the employer.

(c) To satisfy a court order, judgment, wage attachment, trustee process, bankruptcy proceeding, or payroll deduction notice for child support payments.

(2) The following deductions must be specifically agreed upon orally or in writing by the employee or employer and may reduce the employee's final gross wages below the state minimum wage that is in effect at the time the work is performed, if the deduction is for any of the following:

(a) For pension, medical, dental, or other benefit plans when such agreements have been specifically agreed upon orally or in writing in advance by the employee and employer.

Example 1. Insurance premium: An employee and employer may have entered into an oral or written agreement in advance for deductions for monthly medical premiums.

Example 2. Retirement plan: The employee chose a 401K pension plan and agreed orally or in writing to a payroll deduction for the specified amount to participate in that plan.

(b) For a payment to a creditor or third party if the employee authorizes it orally or in writing in advance to pay a sum for the benefit of the employee. The creditor or third party can be the employer of the employee.

Example 1. Assignment to third party: An employee may request orally or in writing for the employer to withhold four hundred dollars from the final paycheck for an automobile loan to be paid directly to the employee's financial institution by the employer.

Example 2. Employee loan: The employer loaned the employee three hundred dollars and charged reasonable interest. A written agreement with the terms of repaying the loan at fifty dollars per pay period through payroll deductions was made in writing and in advance between the employer and employee. The agreement also contained a provision that if the employee left the employer's employment for any reason, any balance due on the loan could be withheld from the final paycheck. Note: Employers are advised to check with the United States Department of Labor, Wage and Hour Division and the Internal Revenue Service regarding application of federal laws on charging interest.

(3) An employer can deduct wages from an employee's final paycheck for the reasons in (a), (b), (c), and (d) of this subsection, but only when these incidents have occurred in the final pay period. An employer may not deduct wages from the final paycheck for incidents that occurred in previous pay periods under (a) through (d) of this subsection. None of the deductions contained in this subsection may reduce the employee's final gross wages below the state minimum wage that is in effect at the time the work is performed.

(a) For acceptance of a bad check or credit card, if it can be shown that the employee accepted the check or credit card in violation of procedures previously made known to the employee by the employer; or

(b) For any cash shortage from a cash register, drawer or portable depository provided for that purpose, if it can be shown that the employee has sole access to the cash and has participated in the cash accounting at the beginning of the employee's shift and again at the end of said shift; or

(c) For any cash shortage, walkout (failure of customer to pay), breakage, or loss of equipment, if it can be shown that the shortage,

walkout, breakage or loss was caused by a dishonest or willful act of the employee; or

(d) Deductions taken due to alleged employee theft are permissible only if it can be shown that the employee's intent was to deprive and that the employer filed a police report.

(4) It is the employer's responsibility to prove the existence of any agreement. Therefore, the department recommends that all agreements, policies, and procedures be in writing and signed by the affected employees.

(5) The employer must identify and record all wage deductions openly and clearly in employee payroll records.

Helpful information:

The following are examples of situations when deductions are allowed from the employee's final paycheck:

Example 1. Employee purchase of employer's goods or services: An employee worked for a tire store. The employee purchased tires from the store and entered into a written agreement with the employer to deduct an agreed amount each pay period until the debt was paid in full, and the agreement further specified that any remaining balance due at the time of termination could be withheld from the final paycheck. This type of deduction may reduce the employee's wage below the state minimum wage.

Example 2. Advance or draw on wages. An employee may obtain an advance or draw on wages. The employer may deduct the advance or draw from the employee's final paycheck. The employer must record the advance or draw in the employee's payroll records. This type of deduction may reduce the employee's wage below the state minimum wage.

Example 3. Cost of uniforms: An employee and employer may agree orally or in writing that the employer may deduct the cost of uniforms provided by the employer if the uniforms are not returned by the employee at the time of termination. This type of deduction cannot reduce the employee's wage below the state minimum wage.

Example 4. Cash shortages: In a grocery store, the employees and employer agreed orally or in writing that the employer could deduct wages for cash shortages that occurred in the final pay period if the employees had sole access to their cash registers during their shifts and participated in the employer's cash accounting procedures before and after their shifts.

[Statutory Authority: Chapters 49.12, 49.46, 49.48, 49.52 RCW, and RCW 43.22.270. WSR 05-24-019, § 296-126-025, filed 11/29/05, effective 1/1/06; Order 74-9, § 296-126-025, filed 3/13/74, effective 4/15/74.]

WAC 296-126-028 Wage deductions during on-going employment. (1) During an on-going employment relationship, an employer may deduct any portion of an employee's wages below the state minimum wage that is in effect at the time the work is performed if the deduction is for any of the following reasons:

(a) Required by state or federal law; or

(b) For medical, surgical, or hospital care or service; or

Example: The business paid a worker's medical costs for an injury not related to the employee's job duties and deducted the amount to repay those costs to the employer.

(c) To satisfy a court order, judgment, wage attachment, trustee process, bankruptcy proceeding, or payroll deduction notice for child support payments.

(2) During an on-going employment relationship, an employer may deduct wages when the employee expressly authorizes the deduction in writing and in advance for a lawful purpose for the benefit of the employee. These deductions may reduce the employee's gross wages below the state minimum wage.

Example 1. Employee purchase of employer's goods or services: An employee works for a tire store and wants to buy tires from the store. The employee can enter into a written agreement in advance with the employer to buy the tires through a payroll deduction. However, the employer must sell the tires to the employee for the same price or less than it would sell the tires to the customer.

Example 2. Employee loan: An employee worked for a hardware store and asked the employer for a loan. The employer loaned the employee money and charged reasonable interest. An agreement with the terms of repaying the loan and interest through payroll deductions was made in writing and in advance between the employer and employee.

Example 3. Employee benefits: Deductions have been specifically agreed upon orally or in writing in advance by the employee and employer for monthly pension, medical, dental, or other benefit plans.

Example 4. Creditor or third party: An agreement with a creditor or third party to withhold $400 from the final paycheck for an automobile loan to be paid directly to the employee's financial institution by the employer. The creditor or third party can be the employer of the employee.

(3) Neither the employer nor any person acting in the interest of the employer can derive any financial profit or benefit from any of the deductions under this regulation.

(4) For the purposes of this regulation, reasonable interest charged by the employer for a loan or credit extended to the employee is not considered to be of financial benefit to the employer. Note: Employers are advised to check with the United States Department of Labor, Wage and Hour Division and the Internal Revenue Service regarding application of federal laws on charging interest.

(5) The employer must identify and record all wage deductions openly and clearly in employee payroll records.

Helpful information:

The following are examples of situations when deductions are not allowed from the employee's wages during an on-going employment relationship:

Example 1. Customer's bad check or credit card: The amount of a customer's check that is returned for nonsufficient funds when an employee accepts a check in violation of established policies, or if an employee accepts a customer's bad credit card in violation of established policies.

Example 2. Shortage from cash register: The amount of a till shortage even when an employee participates in cash accounting at the beginning and end of their shift, has sole access to the cash register, and is short at the end of the shift.

Example 3. Customer walks out without paying: An unpaid bill when a customer leaves the restaurant without paying even when an employee is not watching their customers at a restaurant and ignores the fact the customers are finished dining and are ready for their check.

Example 4. Damage or loss: The cost for replacing broken glasses when the employee drops a tray of glasses when unloading the dishwasher.

[Statutory Authority: Chapters 49.12, 49.46, 49.48, 49.52 RCW, and RCW 43.22.270. WSR 05-24-019, § 296-126-028, filed 11/29/05, effective 1/1/06.]

WAC 296-126-030 Adjustments for overpayments. (1) An overpayment occurs when an employer pays an employee for:

(a) More than the agreed-upon wage rate; or

(b) More than the hours actually worked.

(2) Recouping the overpayment may reduce the employee's gross wages below the state minimum wage.

(3) An employer cannot recover an overpayment when the disputed amount concerns the quality of work.

(4) An employer can recover an overpayment from an employee's paycheck provided the overpayment was infrequent and inadvertent. Infrequent means rarely, not occurring regularly, or not showing a pattern. Inadvertent means an error that was accidental, unintentional, or not deliberately done. The burden of proving the inadvertent error rests with the employer who made the error. The employer has ninety days from the initial overpayment to detect and implement a plan with the employee to collect the overpayment. If the overpayment is not detected within the ninety-day period, the employer cannot adjust an employee's current or future wages to recoup the overpayment. Recouping of overpayments is limited to the ninety-day detection period.

(5) In the case of employees covered by an unexpired collective bargaining agreement that expires on or after January 1, 2006, in which overpayments are included in the terms of the collective bargaining agreement, the effective date of this rule shall be the later of:

(a) The first day following expiration of the collective bargaining agreement; or

(b) The effective date of the revised collective bargaining agreement.

Helpful information:

The following are examples of when overpayments may or may not be allowed:

Example 1. Allowed. Overpayment of agreed wage rate: An employee was paid an agreed rate of ten dollars per hour but received a paycheck at the rate of eleven dollars per hour. The employer provided documentation of the overpayment to the affected employee and adjusted the employee's next paycheck for the amount overpaid in the previous pay period.

Example 2. Allowed. Overpayment for hours worked: An employee worked seventy-two hours in the pay period, but the employee was paid for eighty hours for that period. The employer provided documentation of the overpayment to the affected employee and adjusted the employee's next paycheck for the eight hours overpaid in the previous pay period.

Example 3. Not allowed. Overpayment not detected within ninety days of first occurrence: An employer agreed to pay an employee ten dollars per hour, but when the first check was received, the amount paid was paid at eleven dollars per hour. The employee may or may not have brought it to the attention of the employer. Six months later the employer detected the overpayments and adjusted the employee's wages in the next paycheck for the entire amount of the overpayment. This is

not an allowable adjustment because it was not detected within ninety days from the first occurrence.

(6) The employer must provide advance written notice to the employee before any adjustment is made. The notice must include the terms under which the overpayment will be recouped. For example: One adjustment or a series of adjustments.

(7) The employer must provide documentation of the overpayment to the affected employee or employees.

(8) The employer must identify and record all wage adjustments openly and clearly in employee payroll records.

(9) Regardless of the provisions of this section, if appropriate, employers retain the right of private legal action to recover an overpayment from an employee.

(10) This regulation does not apply to public employers. See chapter 49.48 RCW, Wages—Payment—Collection.

[Statutory Authority: Chapter 49.12 RCW. WSR 10-04-092, § 296-126-030, filed 2/2/10, effective 3/15/10. Statutory Authority: Chapters 49.12, 49.46, 49.48, 49.52 RCW, and RCW 43.22.270. WSR 05-24-019, § 296-126-030, filed 11/29/05, effective 1/1/06.]

WAC 296-126-040 Statements furnished. (1) Every employer shall furnish to each employee at the time of payment of wages an itemized statement showing the pay basis (i.e., hours or days worked), rate or rates of pay, gross wages and all deductions for that pay period.

(2) An itemized pay statement means a separate written statement from the paycheck issued to employees on each payday. Pay periods shall be identified on the pay statement by month, day, year, and payment date.

(3) The pay statement may be furnished or made available electronically provided each employee has access to receive and copy it on the payday. If an employee cannot receive an electronic pay statement at work or at home on the established payday, the employer must provide a written pay statement to the employee on the payday.

[Statutory Authority: Chapter 49.12 RCW. WSR 10-04-092, § 296-126-040, filed 2/2/10, effective 3/15/10; Order 74-9, § 296-126-040, filed 3/13/74, effective 4/15/74.]

WAC 296-126-050 Personnel files. (1)(a) Every employer shall keep for at least three years a record of the name, address, and occupation of each employee, dates of employment, rate or rates of pay, amount paid each pay period to each such employee and the hours worked.

(b) For employers subject to the Minimum Wage Act, personnel files also includes records required by WAC 296-128-010 through 296-128-030.

(c) Personnel files also includes the following records, if the employer creates such records: Job application records, performance evaluations, nonactive or closed disciplinary records, leave and reasonable accommodation records, payroll records, and employment agreements.

(2) Every employer shall make the record described in subsection (1) available to the employee, upon request, at any reasonable time.

(3) Every employer is required to allow employees to inspect all the employees' own personnel files within 21 calendar days upon receiving a request from the employee.

(4) Every employer shall, within 21 calendar days of receiving a written request by a former employee or their designee, furnish a signed written statement to the employee or their designee stating the effective date of discharge, whether the employer had a reason for the discharge, and if so, the reasons.

(5) "Former employee" means a person who separated from the employer within three years of the date of the person's request.

(6) An employee or former employee may seek private cause of action for each violation for failure to provide the complete personnel file(s), provided that a violation has occurred and the employee or former employee has given notice of intent to sue.

[Statutory Authority: RCW 49.12.250. WSR 26-08-079 (Order 26-01), s 296-126-050, filed 3/31/26, effective 5/1/26. Statutory Authority: Chapter 49.12 RCW. WSR 10-04-092, § 296-126-050, filed 2/2/10, effective 3/15/10. Statutory Authority: RCW 43.22.270, 49.12.020, 49.12.091, 49.12.050, 49.46.020 and 49.46.070. WSR 89-22-016 (Order 89-16), § 296-126-050, filed 10/24/89, effective 11/24/89; Order 74-9, § 296-126-050, filed 3/13/74, effective 4/15/74.]

WAC 296-126-070 Prohibited action. No employer shall discharge or in any other way discriminate against or penalize any employee who seeks information or a hearing concerning variance requests by an employer or information concerning employment standards, or who has filed a complaint alleging a violation of any employment standard.

[Order 74-9, § 296-126-070, filed 3/13/74, effective 4/15/74.]

WAC 296-126-080 Posting of order. The employer shall keep posted a current copy of these regulations in a form provided by the department, titled "Your Rights as a Worker in Washington State." The poster shall be positioned in a readily accessible location and within plain view in each work site where an employee or employees are employed.

[Statutory Authority: Chapter 49.12 RCW. WSR 10-04-092, § 296-126-080, filed 2/2/10, effective 3/15/10; Order 74-9, § 296-126-080, filed 3/13/74, effective 4/15/74.]

WAC 296-126-090 Hours. Any employee who feels the number of hours or other matters relating to overtime employment are detrimental to the health, safety or welfare of the employee may request the department of labor and industries to make an investigation following which the department will issue findings and conclusions. Whenever the circumstances are found to be detrimental to the health, safety or welfare of the employee, the department may adopt additional or revised employment standards.

[Statutory Authority: Chapter 49.12 RCW. WSR 10-04-092, § 296-126-090, filed 2/2/10, effective 3/15/10; Order 76-15, § 296-126-090, filed 5/17/76.]

WAC 296-126-092 Meal periods—Rest periods. (1) Employees shall be allowed a meal period of at least thirty minutes which commences no less than two hours nor more than five hours from the beginning of the shift. Meal periods shall be on the employer's time when the employee is required by the employer to remain on duty on the premises or at a prescribed work site in the interest of the employer.

(2) No employee shall be required to work more than five consecutive hours without a meal period.

(3) Employees working three or more hours longer than a normal work day shall be allowed at least one thirty-minute meal period prior to or during the overtime period.

(4) Employees shall be allowed a rest period of not less than ten minutes, on the employer's time, for each four hours of working time. Rest periods shall be scheduled as near as possible to the midpoint of the work period. No employee shall be required to work more than three hours without a rest period.

(5) Where the nature of the work allows employees to take intermittent rest periods equivalent to ten minutes for each 4 hours worked, scheduled rest periods are not required.

[Order 76-15, § 296-126-092, filed 5/17/76.]

WAC 296-126-094 General duty—Working conditions. It shall be the responsibility of every employer to maintain conditions within the work place environment that will not endanger the health, safety or welfare of employees. All facilities, equipment, practices, methods, operations and procedures shall be reasonably adequate to protect employees' health, safety and welfare.

[Order 76-15, § 296-126-094, filed 5/17/76.]

WAC 296-126-130 Variance. (1) An employer may seek a variance from the rules under this chapter by submitting a written application to the director. The application must contain the following:

(a) Reason(s) for the variance request; and

(b) Evidence that the employer provided to the employees or to their representatives the following:

(i) The intent to submit a variance.

(ii) A copy of the requested variance.

(iii) The director's address or phone number or other contact information.

(2) The director may allow the employer and any involved employee, or their representatives, the opportunity for oral presentation whenever circumstances of the particular application warrant such additional procedure.

(3) After reviewing the application, the director shall grant the variance if the director determines that there is good cause for the variance from the rules under this chapter.

(4) "Good cause" means, but is not limited to, those situations where the employer can justify the variance and can prove that the variance does not have a harmful effect on the health, safety, and welfare of the employees involved.

(5) The variance order shall state the following:

(a) The conditions the employer must maintain; and

(b) The practices, means, methods, operations, standards and processes which the employer must adopt under the variance.

(6) The director may revoke or terminate the variance order at any time after giving the employer at least thirty days' notice before revoking or terminating the order.

(7) The director may issue a temporary variance valid for no more than thirty calendar days when the employer demonstrates good cause and where immediate action is necessary pending further review by the director. An employer need not meet the requirement in subsection (1)(b) of this section in order to be granted a temporary variance.

(8) Employers do not require a variance in the following cases:

(a) Employers in construction trades with collective bargaining agreements negotiated under the National Labor Relations Act, 29 U.S.C. Sec. 151 et seq. These employers may vary from the meal and rest period rules, WAC 296-126-092, provided the agreement specifically requires meal and rest periods and prescribes requirements concerning those meal and rest periods; and

(b) Public employers that have entered into collective bargaining agreements, 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.

[Statutory Authority: Chapter 49.12 RCW. WSR 10-04-092, § 296-126-130, filed 2/2/10, effective 3/15/10; Order 74-9, § 296-126-130, filed 3/13/74, effective 4/15/74.]

WAC 296-126-200 Applicability. WAC 296-126-200 through 296-126-226 shall apply to persons employed in counselor staff occupations in organized seasonal recreational camps as herein defined.

[Statutory Authority: RCW 49.12.091. WSR 78-03-004 (Order 78-1), § 296-126-200, filed 2/3/78.]

WAC 296-126-202 Definitions. (1) "Department" shall mean the department of labor and industries.

(2) "Committee" shall mean the industrial welfare committee of the department of labor and industries.

(3) "Organized camps," as used herein, shall refer to established resident group camps, which are established and maintained for recreation, education, vacation, or religious purposes, for use by organized groups wherein the activities are conducted on a closely supervised basis, and where day-to-day living facilities, including food and lodging, are provided either free-of-charge or by payment of fee.

(4) "Employ" means to engage, suffer, or permit to work.

(5) "Employee" shall mean any person who is employed in a counselor staff occupation in an organized seasonal recreational camp as herein defined.

(6) "Employer" means any person, association, partnership, private or public corporation who employs or exercises control over wages, hours, or working conditions of one or more employees.

(7) "Minor" shall mean any person under eighteen years of age.

(8) "Counselor staff occupations" shall include all work involving duties primarily relating to guidance, instruction, supervision, and care of campers in organized camps, whether such work involves direct charge of, or responsibility for, such activities, or merely as-

sistance to persons in charge; but shall not include preseason training courses. Counselor staff occupations include, but are not limited to: Head counselor, assistant head counselor, specialist counselor or instructor (such as swimming counselor, arts and crafts counselor, etc.), group or division leader, camp parent, teacher, supervising counselor, senior counselor, counselor, general counselor, bunk counselor, assistant counselor, junior counselor, counselor aide, and kitchen helpers working no more than twenty-seven hours in a given work week.

(9) "Resident counselor staff" shall mean staff who receive lodging and meals from the employer.

(10) "Nonresident counselor staff" shall mean staff who do not receive lodging and meals from the employer.

(11) "Counselor I," "Counselor II," and "Counselor III," shall be defined for purposes of this standard as follows: "Counselor I" is one never before employed in any counselor staff occupations; "Counselor II" is one who has had at least one season's employment in a counselor staff occupation; "Counselor III" is one who has had at least three seasons of employment in a counselor staff occupation.

(12) "Season of employment" is defined as a period of not less than six weeks, nor more than twelve weeks in any one calendar year, except that counselors employed less than six weeks in any one season may accumulate their employment experience from year to year to meet the minimum requirements for counselor grade.

[Statutory Authority: RCW 49.12.091. WSR 78-03-004 (Order 78-1), § 296-126-202, filed 2/3/78.]

WAC 296-126-204 Minimum wage. Except as otherwise provided by chapter 49.46 RCW:

(1) The minimum wage for kitchen helpers working in excess of 27 hours per week, camp cooks, and all employees other than counselor staff, shall be no less than $2.00 per hour for employees 18 years of age or older, and no less than $1.75 for employees under age 18.

(2) Minimum wage rates for counselor staff occupations shall be as follows:

MINIMUM WEEKLY RATE

	Nonresident Employee (6-day week)	Resident Employee (6-day week)
COUNSELOR III	$66.00	$51.00
COUNSELOR II	45.00	30.00
COUNSELOR I	36.00	21.00

(3) The minimum daily wage rate for resident or nonresident counselor staff shall be prorated from the six-day basis.

(4) Minimum wage provisions shall not apply to resident campers under the age of 18 who are engaged in an in-training program, which provides prepared instructions and supervision by qualified counselor staff, and which requires no more than 24 on-duty hours weekly. Such resident campers shall (a) carry no responsibility for other campers and no bunk responsibility, except as a defined part of the training program and (b) shall not enter such a program unless their parents or guardians sign an authorization, which includes an outline of the program and a description of the duties and responsibilities involved.

[Statutory Authority: RCW 49.12.091. WSR 78-03-004 (Order 78-1), § 296-126-204, filed 2/3/78.]

WAC 296-126-206 Limitation on number of employees paid in Counselor I and Counselor II rates. In any week, an employer may pay the Counselor I rate to no more than 30 percent of the total number of employees in counselor staff occupations. Furthermore, the total number of employees paid at the Counselor I and Counselor II rates may not exceed 80 percent of the total staff. In small camps (40 campers or under) where the above percentage limitations may be unworkable, the supervisor of employment standards shall have authority to make reasonable adjustments of these limitations upon a showing that the above limitations will work a hardship.

[Statutory Authority: RCW 49.12.091. WSR 78-03-004 (Order 78-1), § 296-126-206, filed 2/3/78.]

WAC 296-126-208 Premium pay for resident counselor staff occupations. At termination of employment, a resident counselor staff member shall be entitled to premium payment of an additional 25 percent of the staff member's weekly rate of pay for each week of employment, unless he or she received 24 hours per week off-duty, 12 hours of which must have been in sequence. The 24 hours off-duty time need not have been accumulated in any one week.

[Statutory Authority: RCW 49.12.091. WSR 78-03-004 (Order 78-1), § 296-126-208, filed 2/3/78.]

WAC 296-126-210 Board, lodging, and other services. The minimum wage rates of resident counselor staff shall be subject to no charge by an employer for lodging or meals furnished by the employer or for any other services furnished in connection with camp business within reason.

[Statutory Authority: RCW 49.12.091. WSR 78-03-004 (Order 78-1), § 296-126-210, filed 2/3/78.]

WAC 296-126-212 Travel expenses. The employer shall pay the fare or make transportation available for any counselor staff member who is required or permitted to supervise, or assist in supervising, campers in transit.

[Statutory Authority: RCW 49.12.091. WSR 78-03-004 (Order 78-1), § 296-126-212, filed 2/3/78.]

WAC 296-126-214 Records. Records showing the names of employees, dates of employment, wages paid, and days worked by them shall be kept by every employer for a period of at least three years and available for inspection by the representatives of the industrial welfare committee of the department of labor and industries at all reasonable times.

[Statutory Authority: RCW 49.12.091. WSR 78-03-004 (Order 78-1), § 296-126-214, filed 2/3/78.]

WAC 296-126-216 Agreements. All employees must enter into a written agreement with the camp administration setting forth the remuneration, room and board, special services provided, and the nature of the work assignment as counselors and leaders. Resident camper parental authorizations and employee agreements are to be kept on file for a three-year period.

[Statutory Authority: RCW 49.12.091. WSR 78-03-004 (Order 78-1), § 296-126-216, filed 2/3/78.]

WAC 296-126-218 Work permits. No minor shall be employed until the employer has applied for and received a permit to employ minors from the department of labor and industries, and has obtained a parental authorization and proof of age document for each minor employee.

[Statutory Authority: RCW 49.12.091. WSR 78-03-004 (Order 78-1), § 296-126-218, filed 2/3/78.]

WAC 296-126-220 Minors' occupations. No minor worker shall be employed in any occupation which the department of labor and industries, through the industrial welfare committee, shall declare to be particularly hazardous for minors under the age specified in the minor work permit regulation, chapter 296-125 WAC.

[Statutory Authority: RCW 49.12.091. WSR 78-03-004 (Order 78-1), § 296-126-220, filed 2/3/78.]

WAC 296-126-222 Sanitation and safety. (1) All places of employment shall be maintained in a sanitary condition in conformity with the requirements for sanitation for camps set by the health services division, department of social and health services and/or the Washington Industrial Safety and Health Act (WISHA).

(2) All places of employment shall be maintained in a safe condition in conformity with the WISHA standards of the department of labor and industries, division of industrial safety and health.

(3) First-aid requirements of the WISHA standards of the department of labor and industries shall be met. In addition, the provision of an infirmary with the full-time services of a physician and/or registered nurse is recommended for camps operated by one organized group for more than two weeks.

(4) Transportation shall be available at all times for use in case of an emergency and shall be of a nature to render reasonable comfort to an injured person.

(5) If preemployment physical examinations, including preventive inoculations, recommended by public health authorities are required of employees, such examinations shall not be at the expense of the employee.

(6) No employee shall be required or permitted to lift or carry excessive weights. Where weights in excess of twenty pounds are to be

lifted, carried, pushed, or pulled as a normal part of an employee's responsibility:

(i) The lifting, carrying, pushing or pulling duties shall be made known to the prospective employee at the time of recruitment, initial employment or reassignment to a lifting job.

(ii) Instruction shall be given such employees on proper lifting techniques in accordance with instructions provided or approved by the department of labor and industries.

(iii) Assurance that adequate instruction in weight lifting techniques have been given as provided in (ii) shall be furnished the committee or its authorized agent upon request.

(7) Employee assignments to counseling duties shall be in keeping with the employee's maturity, knowledge, and skills. The health and welfare of the employee shall be considered in the determination of adequate counselor staff-camper ratios. Personnel should be selected on the basis of standards currently prescribed in the American Camping Association Resident Camp standards.

[Statutory Authority: RCW 49.12.091. WSR 78-03-004 (Order 78-1), § 296-126-222, filed 2/3/78.]

WAC 296-126-226 Penalties. The department shall investigate the complaint of any individual alleging that these standards have been violated. Any employer employing any person in violation of these standards shall upon conviction thereof be punished in accordance with RCW 49.12.170, which states as follows: "Any employer employing any person for whom a minimum wage or standards, conditions, and hours of labor have been specified, at less than said minimum wage, or under standards, or conditions of labor or at hours of labor prohibited by the rules and regulations of the committee; or violating any other of the provisions of this 1973 amendatory act, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be punished by a fine of not less than twenty-five dollars nor more than one thousand dollars."

[Statutory Authority: RCW 49.12.091. WSR 78-03-004 (Order 78-1), § 296-126-226, filed 2/3/78.]