## Item #1 – Director’s Review Requests and Personnel Resources Board Appeals \*NEW

**Staff note:** We are proposing to amend WAC 357-49-023 and WAC 357-52-225 to allow Director’s Review requests and Personnel Resources Board appeals to be filed in person by appointment only. The proposed amendments to subsection (1) of each WAC to remove redundant language. We are proposing to remove subsection (3) of each WAC and incorporate the “legible copy” into subsection (1) of each WAC.

We are proposing to add WAC 357-52-225(3) to state the filing of appeal requests by electronic mail (email) is not authorized without express prior approval of the board, and only under such circumstances as the board allows. This language was removed inadvertently from this WAC in 2019 when online filing became available.

Lead: Katie Linehan

**AMENDATORY SECTION**

### WAC 357-49-023 How must director's review requests be filed with the director?

Director's review requests must be filed with the director either ~~by filing~~ online through the director's review website, by fax, ~~by~~ mail, or in person by appointment only. Individuals filing a director’s review request in person, should schedule an appointment with the director or designee at least 24 hours before the desired appointment time.

(1) Director's review requests are considered filed when a legible copy is received in the director's review office in Olympia, Washington, during the office hours of 8:00 a.m. to 5:00 p.m., Monday through Friday. Documents received ~~in the director's review office in Olympia, Washington,~~ outside of office hours or on a legal holiday will be deemed filed on the next business day.

(2) Director's review requests filed by fax must have a cover page identifying the addressee; the person making the transmission, including the address, telephone number; and the review to which the documents are related.

~~(3) Director's review requests are considered filed when a legible copy of the documents is received in accordance with subsection (1) of this section.~~

**AMENDATORY SECTION**

**WAC 357-52-225 How must appeal requests be filed with the board?**

Appeal requests must be filed with the board ~~by filing~~ either online through the board's website, by fax, ~~by~~ mail, or in person by appointment only. Individuals filing an appeal in person should schedule an appointment with the board at least 24 hours before the desired appointment time.

(1) Appeal requests are considered filed when a legible copy is received in the board's office in Olympia, Washington, during the office hours of 8:00 a.m. to 5:00 p.m., Monday through Friday. Documents received ~~in the board's office in Olympia, Washington,~~ outside of office hours or on a legal holiday will be deemed filed on the next business day.

(2) Appeals filed by fax must have a cover page identifying the addressee; the person making the transmission, including the address, telephone number; and the appeal to which the documents are related.

~~(3) Appeal requests are considered filed when a legible copy of the documents is received in accordance with subsection (1) of this section.~~

(3) The filing of appeal requests by electronic mail (email) is not authorized without the express prior approval of the board, and only under such circumstances as the board allows.

## Item #2 – Return to Work \*NEW

**Staff note:** [House Bill 1197](https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Flawfilesext.leg.wa.gov%2Fbiennium%2F2023-24%2FPdf%2FBills%2FSession%2520Laws%2FHouse%2F1197.SL.pdf%3Fq%3D20230531121642&data=05%7C01%7Ckatie.linehan%40ofm.wa.gov%7C9cb6c9648edc4d2e3e0108db94750073%7C11d0e217264e400a8ba057dcc127d72d%7C0%7C0%7C638267002459665032%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C3000%7C%7C%7C&sdata=91ZiismbPPZYhJIiwqJcKtr8%2BbGnJWRCLxJiiLARNM8%3D&reserved=0) passed during the 2023 legislative session (HB 1197), Chapter 171, Laws of 2023, effective July 1, 2025, and applies retroactively. Section 7 of this bill amends [RCW 51.32.090](https://app.leg.wa.gov/rcw/default.aspx?cite=51.32.090) to replace all references of a physician or licensed advanced registered nurse practitioner to an attending provider. Section 2 of the bill created [RCW 51.08.200](https://app.leg.wa.gov/RCW/default.aspx?cite=51.08.200) to define an attending provider. [RCW 41.06.490](https://apps.leg.wa.gov/rcw/default.aspx?cite=41.06.490)(2) requires the OFM Director to adopt rules that “provide for eligibility in the return-to-work program, for a minimum of two years from the date the temporary disability commenced, for any permanent employee who is receiving compensation under RCW 51.32.090 and who is, by reason of his or her temporary disability, unable to return to his or her previous work, but is physically capable of carrying out work of a lighter or modified nature”.

We are proposing to amend [WAC 357-19-530](https://app.leg.wa.gov/WAC/default.aspx?cite=357-19-530)(3), to reflect gender-neutral pronouns and to replace the reference to “a physician or licensed mental health professional” with “an attending provider as defined in RCW 51.08.200”.

Lead: Katie Linehan

**AMENDATORY SECTION**

### **WAC 357-19-530** Who is eligible to participate in the employer's return-to-work program?

Employees are eligible to participate in the return-to-work employer's program under the following conditions:

(1) The employee is a permanent employee.

(2) The employee is receiving compensation under RCW [**51.32.090**](http://app.leg.wa.gov/RCW/default.aspx?cite=51.32.090).

(3) The employee has a temporary disability which makes ~~him/her~~ them temporarily unable to return to ~~his or her~~ their previous work, but who is capable of carrying out work of a lighter or modified nature as evidenced by a written statement from an ~~physician or licensed mental health professional.~~ attending provider as defined in RCW 51.08.200.

**REFERENCE ONLY**

**RCW**[**41.06.490**](http://app.leg.wa.gov/RCW/default.aspx?cite=41.06.490) **State employee return-to-work program.**

In addition to the rules adopted under RCW [**41.06.150**](http://app.leg.wa.gov/RCW/default.aspx?cite=41.06.150), the director shall adopt rules establishing a state employee return-to-work program. The program shall, at a minimum:

(1) Direct each agency to adopt a return-to-work policy. The program shall allow each agency program to take into consideration the special nature of employment in the agency;

(2) Provide for eligibility in the return-to-work program, for a minimum of two years from the date the temporary disability commenced, for any permanent employee who is receiving compensation under RCW [**51.32.090**](http://app.leg.wa.gov/RCW/default.aspx?cite=51.32.090) and who is, by reason of his or her temporary disability, unable to return to his or her previous work, but who is physically capable of carrying out work of a lighter or modified nature;

(3) Require each agency to name an agency representative responsible for coordinating the return-to-work program of the agency;

(4) Provide that applicants receiving appointments for classified service receive an explanation of the return-to-work policy;

(5) Require training of supervisors on implementation of the return-to-work policy, including but not limited to assessment of the appropriateness of the return-to-work job for the employee; and

(6) Coordinate participation of applicable employee assistance programs, as appropriate.

**REFERENCE ONLY**

**RCW**[**51.08.200**](http://app.leg.wa.gov/RCW/default.aspx?cite=51.08.200) **Attending provider. *(Effective July 1, 2025.)***

"Attending provider" means a person who is a member of the health care provider network established under RCW [51.36.010](http://app.leg.wa.gov/RCW/default.aspx?cite=51.36.010), is treating injured workers within the person's scope of practice, and is licensed under Title [18](http://app.leg.wa.gov/RCW/default.aspx?cite=18) RCW in one of the following professions: Physicians, chapter [18.71](http://app.leg.wa.gov/RCW/default.aspx?cite=18.71) RCW; osteopathy, chapter [18.57](http://app.leg.wa.gov/RCW/default.aspx?cite=18.57) RCW; chiropractic, chapter [18.25](http://app.leg.wa.gov/RCW/default.aspx?cite=18.25) RCW; naturopathy, chapter [18.36A](http://app.leg.wa.gov/RCW/default.aspx?cite=18.36A) RCW; podiatric medicine and surgery, chapter [18.22](http://app.leg.wa.gov/RCW/default.aspx?cite=18.22) RCW; dentistry, chapter [18.32](http://app.leg.wa.gov/RCW/default.aspx?cite=18.32) RCW; optometry, chapter [18.53](http://app.leg.wa.gov/RCW/default.aspx?cite=18.53) RCW; in the case of claims solely for mental health conditions, psychology, chapter [18.83](http://app.leg.wa.gov/RCW/default.aspx?cite=18.83) RCW; physician assistants, chapter [18.71A](http://app.leg.wa.gov/RCW/default.aspx?cite=18.71A) RCW; and licensed advanced registered nurse practitioners, chapter [18.79](http://app.leg.wa.gov/RCW/default.aspx?cite=18.79) RCW.

**REFERENCE ONLY**

**RCW**[**51.32.090**](http://app.leg.wa.gov/RCW/default.aspx?cite=51.32.090) **Temporary total disability—Partial restoration of earning power—Return to available work—When employer continues wages—Limitations—Finding—Rules. *(Effective July 1, 2025.)***

(1) When the total disability is only temporary, the schedule of payments contained in RCW [**51.32.060**](http://app.leg.wa.gov/RCW/default.aspx?cite=51.32.060) (1) and (2) shall apply, so long as the total disability continues.

(2) Any compensation payable under this section for children not in the custody of the injured worker as of the date of injury shall be payable only to such person as actually is providing the support for such child or children pursuant to the order of a court of record providing for support of such child or children.

(3)(a) As soon as recovery is so complete that the present earning power of the worker, at any kind of work, is restored to that existing at the time of the occurrence of the injury, the payments shall cease. If and so long as the present earning power is only partially restored, the payments shall:

(i) For claims for injuries that occurred before May 7, 1993, continue in the proportion which the new earning power shall bear to the old; or

(ii) For claims for injuries occurring on or after May 7, 1993, equal eighty percent of the actual difference between the worker's present wages and earning power at the time of injury, but: (A) The total of these payments and the worker's present wages may not exceed one hundred fifty percent of the average monthly wage in the state as computed under RCW [**51.08.018**](http://app.leg.wa.gov/RCW/default.aspx?cite=51.08.018); (B) the payments may not exceed one hundred percent of the entitlement as computed under subsection (1) of this section; and (C) the payments may not be less than the worker would have received if (a)(i) of this subsection had been applicable to the worker's claim.

(b) No compensation shall be payable under this subsection (3) unless the loss of earning power shall exceed five percent.

(c) The prior closure of the claim or the receipt of permanent partial disability benefits shall not affect the rate at which loss of earning power benefits are calculated upon reopening the claim.

(4)(a) The legislature finds that long-term disability and the cost of injuries is significantly reduced when injured workers remain at work following their injury. To encourage employers at the time of injury to provide light duty or transitional work for their workers, wage subsidies and other incentives are made available to employers insured with the department.

(b) Whenever the employer of injury requests that a worker who is entitled to temporary total disability under this chapter be certified by the attending provider as able to perform available work other than his or her usual work, the employer shall furnish to the attending provider, with a copy to the worker, a statement describing the work available with the employer of injury in terms that will enable the attending provider to relate the activities of the job to the worker's disability. The attending provider shall then determine whether the worker is able to perform the work described. The worker's temporary total disability payments shall continue until the worker is released by his or her attending provider for the work, and begins the work with the employer of injury. If the work thereafter comes to an end before the worker's recovery is sufficient in the judgment of his or her attending provider to permit him or her to return to his or her usual job, or to perform other available work offered by the employer of injury, the worker's temporary total disability payments shall be resumed. Should the available work described, once undertaken by the worker, impede his or her recovery to the extent that in the judgment of his or her attending provider he or she should not continue to work, the worker's temporary total disability payments shall be resumed when the worker ceases such work.

(c) To further encourage employers to maintain the employment of their injured workers, an employer insured with the department and that offers work to a worker pursuant to this subsection (4) shall be eligible for reimbursement of the injured worker's wages for light duty or transitional work equal to fifty percent of the basic, gross wages paid for that work, for a maximum of sixty-six workdays within a consecutive twenty-four month period. In no event may the wage subsidies paid to an employer on a claim exceed ten thousand dollars. Wage subsidies shall be calculated using the worker's basic hourly wages or basic salary, and no subsidy shall be paid for any other form of compensation or payment to the worker such as tips, commissions, bonuses, board, housing, fuel, health care, dental care, vision care, per diem, reimbursements for work-related expenses, or any other payments. An employer may not, under any circumstances, receive a wage subsidy for a day in which the worker did not actually perform any work, regardless of whether or not the employer paid the worker wages for that day.

(d) If an employer insured with the department offers a worker work pursuant to this subsection (4) and the worker must be provided with training or instruction to be qualified to perform the offered work, the employer shall be eligible for a reimbursement from the department for any tuition, books, fees, and materials required for that training or instruction, up to a maximum of one thousand dollars. Reimbursing an employer for the costs of such training or instruction does not constitute a determination by the department that the worker is eligible for vocational services authorized by RCW [**51.32.095**](http://app.leg.wa.gov/RCW/default.aspx?cite=51.32.095) and \* [**51.32.099**](http://app.leg.wa.gov/RCW/default.aspx?cite=51.32.099).

(e) If an employer insured with the department offers a worker work pursuant to this subsection (4), and the employer provides the worker with clothing that is necessary to allow the worker to perform the offered work, the employer shall be eligible for reimbursement for such clothing from the department, up to a maximum of four hundred dollars. However, an employer shall not receive reimbursement for any clothing it provided to the worker that it normally provides to its workers. The clothing purchased for the worker shall become the worker's property once the work comes to an end.

(f) If an employer insured with the department offers a worker work pursuant to this subsection (4) and the worker must be provided with tools or equipment to perform the offered work, the employer shall be eligible for a reimbursement from the department for such tools and equipment and related costs as determined by department rule, up to a maximum of two thousand five hundred dollars. An employer shall not be reimbursed for any tools or equipment purchased prior to offering the work to the worker pursuant to this subsection (4). An employer shall not be reimbursed for any tools or equipment that it normally provides to its workers. The tools and equipment shall be the property of the employer.

(g) An employer may offer work to a worker pursuant to this subsection (4) more than once, but in no event may the employer receive wage subsidies for more than sixty-six days of work in a consecutive twenty-four month period under one claim. An employer may continue to offer work pursuant to this subsection (4) after the worker has performed sixty-six days of work, but the employer shall not be eligible to receive wage subsidies for such work.

(h) An employer shall not receive any wage subsidies or reimbursement of any expenses pursuant to this subsection (4) unless the employer has completed and submitted the reimbursement request on forms developed by the department, along with all related information required by department rules. No wage subsidy or reimbursement shall be paid to an employer who fails to submit a form for such payment within one year of the date the work was performed. In no event shall an employer receive wage subsidy payments or reimbursements of any expenses pursuant to this subsection (4) unless the worker's attending provider has restricted him or her from performing his or her usual work and the worker's attending provider has released him or her to perform the work offered.

(i) Payments made under (b) through (g) of this subsection are subject to penalties under RCW [**51.32.240**](http://app.leg.wa.gov/RCW/default.aspx?cite=51.32.240)(5) in cases where the funds were obtained through willful misrepresentation.

(j) Once the worker returns to work under the terms of this subsection (4), he or she shall not be assigned by the employer to work other than the available work described without the worker's written consent, or without prior review and approval by the worker's attending provider. An employer who directs a claimant to perform work other than that approved by the attending provider and without the approval of the worker's attending provider shall not receive any wage subsidy or other reimbursements for such work.

(k) If the worker returns to work under this subsection (4), any employee health and welfare benefits that the worker was receiving at the time of injury shall continue or be resumed at the level provided at the time of injury. Such benefits shall not be continued or resumed if to do so is inconsistent with the terms of the benefit program, or with the terms of the collective bargaining agreement currently in force.

(l) In the event of any dispute as to the validity of the work offered or as to the worker's ability to perform the available work offered by the employer, the department shall make the final determination pursuant to an order that contains the notice required by RCW [**51.52.060**](http://app.leg.wa.gov/RCW/default.aspx?cite=51.52.060) and that is subject to appeal subject to RCW [**51.52.050**](http://app.leg.wa.gov/RCW/default.aspx?cite=51.52.050).

(5) An employer's experience rating shall not be affected by the employer's request for or receipt of wage subsidies.

(6) The department shall create a Washington stay-at-work account which shall be funded by assessments of employers insured through the state fund for the costs of the payments authorized by subsection (4) of this section and for the cost of creating a reserve for anticipated liabilities. Employers may collect up to one-half the fund assessment from workers.

(7) No worker shall receive compensation for or during the day on which injury was received or the three days following the same, unless his or her disability shall continue for a period of fourteen consecutive calendar days from date of injury: PROVIDED, That attempts to return to work in the first fourteen days following the injury shall not serve to break the continuity of the period of disability if the disability continues fourteen days after the injury occurs.

(8) Should a worker suffer a temporary total disability and should his or her employer at the time of the injury continue to pay him or her the wages which he or she was earning at the time of such injury, such injured worker shall not receive any payment provided in subsection (1) of this section during the period his or her employer shall so pay such wages: PROVIDED, That holiday pay, vacation pay, sick leave, or other similar benefits shall not be deemed to be payments by the employer for the purposes of this subsection.

(9) In no event shall the monthly payments provided in this section:

(a) Exceed the applicable percentage of the average monthly wage in the state as computed under the provisions of RCW [**51.08.018**](http://app.leg.wa.gov/RCW/default.aspx?cite=51.08.018) as follows:

|  |  |  |  |
| --- | --- | --- | --- |
|  | AFTER | PERCENTAGE |  |
|  | June 30, 1993 | 105% |  |
|  | June 30, 1994 | 110% |  |
|  | June 30, 1995 | 115% |  |
|  | June 30, 1996 | 120% |  |

(b) For dates of injury or disease manifestation after July 1, 2008, be less than fifteen percent of the average monthly wage in the state as computed under RCW [**51.08.018**](http://app.leg.wa.gov/RCW/default.aspx?cite=51.08.018) plus an additional ten dollars per month if the worker is married and an additional ten dollars per month for each child of the worker up to a maximum of five children. However, if the monthly payment computed under this subsection (9)(b) is greater than one hundred percent of the wages of the worker as determined under RCW [**51.08.178**](http://app.leg.wa.gov/RCW/default.aspx?cite=51.08.178), the monthly payment due to the worker shall be equal to the greater of the monthly wages of the worker or the minimum benefit set forth in this section on June 30, 2008.

(10) If the supervisor of industrial insurance determines that the worker is voluntarily retired and is no longer attached to the workforce, benefits shall not be paid under this section.

(11) The department shall adopt rules as necessary to implement this section.

## Item #3 – Family Member Definition

**Staff note**: Engrossed Substitute Senate Bill ([ESSB 5793](https://app.leg.wa.gov/billsummary?BillNumber=5793&Year=2023&Initiative=false)), Chapter 356, Laws of 2024, passed during the 2024 legislative session, effective January 1, 2025. Section 1 of this bill amends RCW 49.46.210(1)(b)(iii) to clarify an employee is authorized to use paid sick leave when the employee’s place of business or an employee’s child’s school or place of care has been closed by order of a public official for any health-related reason or after the declaration of an emergency by a local or state government or agency, or federal government. Section 1 also amends RCW 49.46.210(2) to expand the definition of a family member to include any individual who regularly resides in the employee’s home or where the relationship creates an expectation the employee cares for the person and that individual depends on the employee for care, except it does not include an individual who simply resides in the same home with no expectation the employee cares for the individual. The definition of a child was also expanded to include a child’s spouse or child’s registered domestic partner.

*Note: The family member definition in ESSB 5793 does not include a minor/dependent child or a parent-in-law as currently provided in WAC 357-01-172 (see highlighted blue text below).* *However, a minor/dependent child and parent-in-law will remain in the expanded definition of family member for WAC 357-31-130 since they are already included in who the employer must allow an employee to use their accrued sick leave for. In other words, removing them for this purpose would be taking away from the current state.*

A policy decision was made to expand the definition of a family member for all sick leave reasons provided in WAC 357-31-130, not just limiting to ones included in RCW 49.46.210, and also apply these changes to both overtime-eligible and overtime-exempt employees to allow for equal treatment of all employees.

We are proposing to:

* Amend WAC 357-01-072 to expand the definition of child for the purpose of using accrued sick leave under WAC 357-31-130 to include a child’s spouse or child’s registered domestic partner.
* Amend WAC 357-01-172 to expand the definition of family member for the purpose of using accrued sick leave under WAC 357-31-130 to include any individual who regularly resides in the employee's home or where the relationship creates an expectation that the employee care for the person, and that individual depends on the employee for care. Family member does not include an individual who simply resides in the same home with no expectation that the employee cares for the individual for the purposes of WAC 357-31-130.
* Amend WAC 357-31-130(5) to align with the changes made to RCW 49.46.210(1)(b)(iii).

The highlighted yellow text reflects changes since the September 10, 2024 Rules Review Meeting.

Lead: Inna Livingston

**AMENDATORY SECTION**

**WAC 357-01-072 Child.**

A biological, adopted, foster child, stepchild, legal ward, or a child of a person standing *in loco parentis*, a child of a legal guardian, or a child of a de facto parent, regardless of age or dependency status. For the purpose of using accrued sick leave under WAC 357-31-130, child also includes a child’s spouse or child’s registered domestic partner.

**AMENDATORY SECTION**

**WAC 357-01-172 Family members.**

Individuals considered to be members of the family are parent, sibling, parent-in-law, spouse, registered domestic partner, grandparent, grandchild, minor/dependent child, and child.

For the purpose of domestic violence, sexual assault, or stalking provisions within Title 357 WAC, in addition to subsection (1) of this section, family member also includes a domestic partner as defined in RCW 26.60.020 or a person with whom the employee has a dating relationship as defined in RCW 49.76.020.

For the purpose of using accrued sick leave under WAC 357-31-130, in addition to subsection (1) of this section ~~“~~family member~~”~~ also includes any individual who regularly resides in the employee's home or where the relationship creates an expectation that the employee care for the person, and that individual depends on the employee for care. Family member does not include an individual who simply resides in the same home with no expectation that the employee cares for the individual.

**AMENDATORY SECTION**

### WAC 357-31-130 When must an employer allow an employee to use their accrued sick leave?

The employer may require medical verification or certification of the reason for sick leave use in accordance with the employer's leave policy and in compliance with chapter 296-128 WAC.

Employers **must** allow the use of accrued sick leave under the following conditions:

(1) An employee's mental or physical illness, disability, injury or health condition that has incapacitated the employee from performing required duties; to accommodate the employee's need for medical diagnosis, care or treatment of a mental or physical illness, injury or health condition; or an employee's need for preventive medical care.

(2) By reason of exposure of the employee to a contagious disease when the employee's presence at work would jeopardize the health of others.

(3) When a high-risk employee seeks an accommodation to protect themselves from the risk of exposure to an infectious or contagious disease and the employer determines no other accommodation is reasonable besides the use of leave.

(4) To allow an employee to provide care for a child who has been exposed to a contagious disease and is required to quarantine; or when a household or family member needs additional care, not covered by subsection (6) of this section, who has been exposed to a contagious disease and is required to quarantine.

(5) When the employee's place of business has been closed by order of a public official for any health-related reason, or when an employee's child's school or place of care has been closed for such health-related reason~~.~~ or after the declaration of an emergency by a local or state government or agency, or by the federal government.

(6) To allow an employee to provide care for a family member with a mental or physical illness, injury or health condition; care of a family member who needs medical diagnosis, care or treatment of a mental or physical illness, injury or health condition; or care for a family member who needs preventive medical care.

(7) For family care emergencies per WAC 357-31-290, 357-31-295, 357-31-300 and 357-31-305.

(8) When an employee is required to be absent from work to care for members of the employee's household or relatives of the employee or relatives of the employee's spouse/registered domestic partner who experience an illness or injury, not including situations covered by subsection (6) of this section.

(a) The employer must approve up to five days of accumulated sick leave each occurrence. Employers may approve more than five days.

(b) For purposes of this subsection, "relatives" is limited to spouse, registered domestic partner, child, grandchild, grandparent or parent.

(9) When requested as a supplemental benefit while receiving a partial wage replacement for paid family and/or medical leave under Title 50A RCW as provided in WAC 357-31-248. Leave taken under this subsection may be subject to verification that the employee has been approved to receive benefits for paid family and/or medical leave under Title 50A RCW.

(10) If the employee or the employee's family member, as defined in chapter 357-01 WAC, is a victim of domestic violence, sexual assault or stalking as defined in RCW 49.76.020. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730.

(11) In accordance with WAC 357-31-373, for an employee to be with a spouse or registered domestic partner who is a member of the armed forces of the United States, National Guard, or reserves after the military spouse or registered domestic partner has been notified of an impending call or order to active duty, before deployment, or when the military spouse or registered domestic partner is on leave from deployment.

(12) When an employee requests to use sick leave for the purpose of parental leave to bond with a newborn, adoptive or foster child for a period up to 18 weeks. Sick leave for this purpose must be taken during the first year following the child's birth or placement.

(13) If the employee requests to use sick leave when granted a temporary leave of absence for legislative service in accordance with WAC 357-31-374(2).

**REFERENCE ONLY**

**RCW**[**49.46.210**](http://app.leg.wa.gov/RCW/default.aspx?cite=49.46.210) **Paid sick leave—Authorized purposes—Limitations. *(Effective January 1, 2025.)***

(1) Beginning January 1, 2018, except as provided in RCW [**49.46.180**](http://app.leg.wa.gov/RCW/default.aspx?cite=49.46.180), every employer shall provide each of its employees paid sick leave as follows:

(a) An employee shall accrue at least one hour of paid sick leave for every forty hours worked as an employee. An employer may provide paid sick leave in advance of accrual provided that such front-loading meets or exceeds the requirements of this section for accrual, use, and carryover of paid sick leave.

(b) An employee is authorized to use paid sick leave for the following reasons:

(i) An absence resulting from an employee's mental or physical illness, injury, or health condition; to accommodate the employee's need for medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or an employee's need for preventive medical care;

(ii) To allow the employee to provide care for a family member with a mental or physical illness, injury, or health condition; care of a family member who needs medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or care for a family member who needs preventive medical care; and

(iii) When the employee's place of business has been closed by order of a public official for any health-related reason, or when an employee's child's school or place of care has been closed for such a health-related reason or after the declaration of an emergency by a local or state government or agency, or by the federal government.

(c) An employee is authorized to use paid sick leave for absences that qualify for leave under the domestic violence leave act, chapter [**49.76**](http://app.leg.wa.gov/RCW/default.aspx?cite=49.76) RCW.

(d) An employee is entitled to use accrued paid sick leave beginning on the ninetieth calendar day after the commencement of his or her employment.

(e) Employers are not prevented from providing more generous paid sick leave policies or permitting use of paid sick leave for additional purposes.

(f) An employer may require employees to give reasonable notice of an absence from work, so long as such notice does not interfere with an employee's lawful use of paid sick leave.

(g) For absences exceeding three days, an employer may require verification that an employee's use of paid sick leave is for an authorized purpose. If an employer requires verification, verification must be provided to the employer within a reasonable time period during or after the leave. An employer's requirements for verification may not result in an unreasonable burden or expense on the employee and may not exceed privacy or verification requirements otherwise established by law.

(h) An employer may not require, as a condition of an employee taking paid sick leave, that the employee search for or find a replacement worker to cover the hours during which the employee is on paid sick leave.

(i) For each hour of paid sick leave used, an employee shall be paid the greater of the minimum hourly wage rate established in this chapter or his or her normal hourly compensation. The employer is responsible for providing regular notification to employees about the amount of paid sick leave available to the employee.

(j) Except as provided in (l) of this subsection, accrued and unused paid sick leave carries over to the following year, but an employer is not required to allow an employee to carry over paid sick leave in excess of 40 hours.

(k) Except as provided in (l) of this subsection, an employer is not required to provide financial or other reimbursement for accrued and unused paid sick leave to any employee upon the employee's termination, resignation, retirement, or other separation from employment. When there is a separation from employment and the employee is rehired within 12 months of separation by the same employer, whether at the same or a different business location of the employer, previously accrued unused paid sick leave shall be reinstated and the previous period of employment shall be counted for purposes of determining the employee's eligibility to use paid sick leave under (d) of this subsection. For purposes of this subsection (1)(k), "previously accrued and unused paid sick leave" does not include sick leave paid out to a construction worker under (l) of this subsection.

(l)(i) A construction industry employer must pay a construction worker, who has not met the 90th day eligibility under (d) of this subsection at the time of separation, the balance of the worker's accrued and unused paid sick leave at the end of the established pay period following the worker's separation pursuant to RCW [**49.48.010**](http://app.leg.wa.gov/RCW/default.aspx?cite=49.48.010)(2).

(ii) The definitions in this subsection (1)(l)(ii) apply throughout this subsection (1)(l) unless the context clearly requires otherwise.

(A) "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.

(B) "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.

(2) The definitions in this subsection apply throughout this section, except for subsection (5) of this section:

(a) "Family member" means a child, grandchild, grandparent, parent, sibling, or spouse of an employee, and also includes any individual who regularly resides in the employee's home or where the relationship creates an expectation that the employee care for the person, and that individual depends on the employee for care. "Family member" includes any individual who regularly resides in the employee's home, except that it does not include an individual who simply resides in the same home with no expectation that the employee care for the individual.

(b) "Child" means a biological, adopted, or foster child, a stepchild, a child's spouse, or a child to whom the employee stands in loco parentis, is a legal guardian, or is a de facto parent, regardless of age or dependency status.

(c) "Grandchild" means a child of the employee's child.

(d) "Grandparent" means a parent of the employee's parent.

(e) "Parent" means the biological, adoptive, de facto, or foster parent, stepparent, or legal guardian of an employee or the employee's spouse, or an individual who stood in loco parentis to an employee when the employee was a child.

(f) "Spouse" means a husband or wife, as the case may be, or state registered domestic partner.

(3) An employer may not adopt or enforce any policy that counts the use of paid sick leave time as an absence that may lead to or result in discipline against the employee.

(4) An employer may not discriminate or retaliate against an employee for his or her exercise of any rights under this chapter including the use of paid sick leave.

(5)(a) The definitions in this subsection apply to this subsection:

(i) "Average hourly compensation" means a driver's compensation during passenger platform time from, or facilitated by, the transportation network company, during the 365 days immediately prior to the day that paid sick time is used, divided by the total hours of passenger platform time worked by the driver on that transportation network company's driver platform during that period. "Average hourly compensation" does not include tips.

(ii) "Driver," "driver platform," "passenger platform time," and "transportation network company" have the meanings provided in RCW [**49.46.300**](http://app.leg.wa.gov/RCW/default.aspx?cite=49.46.300).

(iii) "Earned paid sick time" is the time provided by a transportation network company to a driver as calculated under this subsection. For each hour of earned paid sick time used by a driver, the transportation network company shall compensate the driver at a rate equal to the driver's average hourly compensation.

(iv) For purposes of drivers, the following definitions apply:

(A) "Family member" means a child, grandchild, grandparent, parent, sibling, or spouse of a driver, and also includes any individual who regularly resides in the driver's home or where the relationship creates an expectation that the driver care for the person, and that individual depends on the driver for care. "Family member" includes any individual who regularly resides in the driver's home, except that it does not include an individual who simply resides in the same home with no expectation that the driver care for the individual.

(B) "Child" means a biological, adopted, or foster child, a stepchild, a child's spouse, or a child to whom the driver stands in loco parentis, is a legal guardian, or is a de facto parent, regardless of age or dependency status.

(C) "Grandchild" means a child of the driver's child.

(D) "Grandparent" means a parent of the driver's parent.

(E) "Parent" means the biological, adoptive, de facto, or foster parent, stepparent, or legal guardian of a driver or the driver's spouse, or an individual who stood in loco parentis to a driver when the driver was a child.

(F) "Spouse" means a husband or wife, as the case may be, or state registered domestic partner.

(b) Beginning January 1, 2023, a transportation network company must provide to each driver operating on its driver platform compensation for earned paid sick time as required by this subsection and subject to the provisions of this subsection. A driver shall accrue one hour of earned paid sick time for every 40 hours of passenger platform time worked.

(c) A driver is entitled to use accrued earned paid sick time upon recording 90 hours of passenger platform time on the transportation network company's driver platform.

(d) For each hour of earned paid sick time used, a driver shall be paid the driver's average hourly compensation.

(e) A transportation network company shall establish an accessible system for drivers to request and use earned paid sick time. The system must be available to drivers via smartphone application and online web portal.

(f) A driver may carry over up to 40 hours of unused earned paid sick time to the next calendar year. If a driver carries over unused earned paid sick time to the following year, accrual of earned paid sick time in the subsequent year must be in addition to the hours accrued in the previous year and carried over.

(g) A driver is entitled to use accrued earned paid sick time if the driver has used the transportation network company's platform as a driver within 90 calendar days preceding the driver's request to use earned paid sick time.

(h) A driver is entitled to use earned paid sick time for the following reasons:

(i) An absence resulting from the driver's mental or physical illness, injury, or health condition; to accommodate the driver's need for medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or an employee's need for preventive medical care;

(ii) To allow the driver to provide care for a family member with a mental or physical illness, injury, or health condition; care of a family member who needs medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or care for a family member who needs preventive medical care;

(iii) When the driver's child's school or place of care has been closed by order of a public official for any health-related reason or has been closed after the declaration of an emergency by a local or state government or agency, or by the federal government;

(iv) For absences for which an employee would be entitled for leave under RCW [**49.76.030**](http://app.leg.wa.gov/RCW/default.aspx?cite=49.76.030); and

(v) During a deactivation or other status that prevents the driver from performing network services on the transportation network company's platform, unless the deactivation or status is due to a verified allegation of sexual assault or physical assault perpetrated by the driver.

(i) If a driver does not record any passenger platform time in a transportation network company's driver platform for 365 or more consecutive days, any unused earned paid sick time accrued up to that point with that transportation network company is no longer valid or recognized.

(j) Drivers may use accrued days of earned paid sick time in increments of a minimum of four or more hours. Drivers are entitled to request four or more hours of earned paid sick time for immediate use, including consecutive days of use. Drivers are not entitled to use more than eight hours of earned paid sick time within a single calendar day.

(k) A transportation network company shall compensate a driver for requested hours or days of earned paid sick time no later than 14 calendar days or the next regularly scheduled date of compensation following the requested hours or days of earned paid sick time.

(l) A transportation network company shall not request or require reasonable verification of a driver's qualifying illness except as would be permitted to be requested of an employee under subsection (1)(g) of this section. If a transportation network company requires verification pursuant to this subsection, the transportation network company must compensate the driver for the requested hours or days of earned paid sick time no later than the driver's next regularly scheduled date of compensation after satisfactory verification is provided.

(m) If a driver accepts an offer of prearranged services for compensation from a transportation network company during the four-hour period or periods for which the driver requested earned paid sick time, a transportation network company may determine that the driver did not use earned paid sick time for an authorized purpose.

(n) A transportation network company shall provide each driver with:

(i) Written notification of the current rate of average hourly compensation while a passenger is in the vehicle during the most recent calendar month for use of earned paid sick time;

(ii) An updated amount of accrued earned paid sick time since the last notification;

(iii) Reduced earned paid sick time since the last notification;

(iv) Any unused earned paid sick time available for use; and

(v) Any amount that the transportation network company may subtract from the driver's compensation for earned paid sick time. The transportation network company shall provide this information to the driver no less than monthly. The transportation network company may choose a reasonable system for providing this notification, including but not limited to: A pay stub; a weekly summary of compensation information; or an online system where drivers can access their own earned paid sick time information. A transportation network company is not required to provide this information to a driver if the driver has not worked any days since the last notification.

(o) A transportation network company may not adopt or enforce any policy that counts the use of earned paid sick time as an absence that may lead to or result in any action that adversely affects the driver's use of the transportation network.

(p) A transportation network company may not take any action against a driver that adversely affects the driver's use of the transportation network due to his or her exercise of any rights under this subsection including the use of earned paid sick time.

(q) The department may adopt rules to implement this subsection.

[ [2024 c 356 s 1](https://lawfilesext.leg.wa.gov/biennium/2023-24/Pdf/Bills/Session%20Laws/Senate/5793-S.SL.pdf?cite=2024%20c%20356%20s%201); [2024 c 39 s 1](https://lawfilesext.leg.wa.gov/biennium/2023-24/Pdf/Bills/Session%20Laws/Senate/5979.SL.pdf?cite=2024%20c%2039%20s%201); [2023 c 267 s 1](https://lawfilesext.leg.wa.gov/biennium/2023-24/Pdf/Bills/Session%20Laws/Senate/5111-S.SL.pdf?cite=2023%20c%20267%20s%201); [2022 c 281 s 6](https://lawfilesext.leg.wa.gov/biennium/2021-22/Pdf/Bills/Session%20Laws/House/2076-S.SL.pdf?cite=2022%20c%20281%20s%206); [2019 c 236 s 3](https://lawfilesext.leg.wa.gov/biennium/2019-20/Pdf/Bills/Session%20Laws/Senate/5233.SL.pdf?cite=2019%20c%20236%20s%203); [2017 c 2 s 5](https://leg.wa.gov/CodeReviser/documents/sessionlaw/2017pam1.pdf?cite=2017%20c%202%20s%205) (Initiative Measure No. 1433, approved November 8, 2016).]