

WAC 296-128-640 Variance from required increments of paid sick leave usage. (1) The department shall grant a variance from the increments required by WAC 296-128-630(4) for "good cause." Good cause means situations where an employer can establish that compliance with the requirements for increments of use are infeasible, and that granting a variance does not have a significant harmful effect on the health, safety, and welfare of the involved employees. The existence of a collective bargaining agreement which sets forth increments of use may be used as a factor in determining good cause for granting a variance from the increments required by WAC 296-128-630(4).

(2) An employer may seek a variance from the requirement to provide employees with paid sick leave in increments greater than the increments required by WAC 296-128-630(4) by submitting a written application to the department. The application must contain the following:

(a) A justification for the variance, which establishes good cause for providing paid sick leave in increments greater than the increments required by WAC 296-128-630(4);

(b) The paid sick leave increments of use being sought;

(c) The group of employees for whom the variance is sought; and

(d) Evidence that the employer provided to the involved employees and, if applicable, to their union representatives, the following:

(i) A copy of the written request for a variance;

(ii) Information about the right of the involved employees and, if applicable, their union representatives, to be heard by the department during the variance application review process;

(iii) Information about the process by which involved employees and, if applicable, their union representatives, may make a written request to the director for reconsideration, subject to the provisions outlined in subsection (7) of this section; and

(iv) The department's address and phone number, or other contact information.

(3) The department must allow the employer, any involved employees and, if applicable, their union representatives, the opportunity for oral or written presentation during the variance application review process whenever circumstances of the particular application warrant it.

(4) No later than sixty days after the date on which the department received the application for a variance, the department must issue a written decision either granting or denying the variance. The department may extend the sixty-day time period by providing advance written notice to the employer and, if applicable, the union representatives of any involved employees, setting forth a reasonable justification for an extension of the sixty-day time period, and specifying the duration of the extension. The employer must provide involved employees with notice about any such extension.

(5) Variances shall be granted if the department determines that there is good cause for allowing an employer to provide paid sick leave in increments greater than the increments required by WAC 296-128-630(4). The variance order shall state the following:

(a) The paid sick leave increments of use approved in the variance;

(b) The basis for a finding of good cause;

(c) The group of employees impacted; and

(d) The period of time for which the variance will be valid, not to exceed three years from the date of issuance.

(6) Upon making a determination for issuance of a variance, the department must make notification in writing to the employer and, if

applicable, the union representatives of any involved employees. If the variance is denied, the written notification will include a stated basis for the denial.

(7) An employer, involved employee and, if applicable, their union representative, may file with the director a request for reconsideration within fifteen days after receiving notice of the variance determination. The request for reconsideration must set forth the grounds upon which the reconsideration is being made. If reasonable grounds exist, the director may grant such review and, to the extent deemed appropriate, afford all interested parties an opportunity to be heard. If the director grants such review, the written decision of the department will remain in place until the reconsideration process is complete.

(8) Unless subject to the reconsideration process, 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.

(9) Where immediate action is necessary pending further review by the department, the department may issue a temporary variance. The temporary variance will remain valid until the department determines whether good cause exists for issuing a variance. An employer need not meet the requirement in subsection (2)(d) of this section in order to be granted a temporary variance.

(10) If an employer obtains a variance under these rules, the employer must provide the involved employees with information about the increments of use requirements that apply within fifteen days of receiving notification of such approval from the department. An employer must make this information readily available to all employees.

[Statutory Authority: RCW 49.46.810. WSR 17-21-092, § 296-128-640, filed 10/17/17, effective 1/1/18.]