

WSR 24-15-125
EXPEDITED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
[Filed July 23, 2024, 12:23 p.m.]

Title of Rule and Other Identifying Information: Subminimum wage certificates; chapters 296-126 and 296-128 WAC.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to repeal rules relating to subminimum wage certificates issued for the employment of individuals with disabilities at less than the minimum wage under chapter 296-128 WAC, Minimum wages, and 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. This rule making repeals WAC 296-128-050 through 296-128-090 and amends WAC 296-126-001, 296-126-010, 296-126-015, and 296-126-020 to remove applicable subsections.

Reasons Supporting Proposal: RCW 49.46.170(2), enacted under 2021's ESSB 5284 (chapter 97, Laws of 2021), eliminated the department of labor and industries' (L&I) authority to issue any subminimum wage certificates for the employment of individuals with disabilities under RCW 49.12.110 and 49.46.060 as of July 31, 2023.

Statutory Authority for Adoption: RCW 49.46.170(2).

Statute Being Implemented: RCW 49.46.170(2).

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Michael Davis, Tumwater, Washington, 253-596-3813; Implementation and Enforcement: Bryan Templeton, Tumwater, Washington, 360-902-6639.

This notice meets the following criteria to use the expedited adoption process for these rules:

Content is explicitly and specifically dictated by statute.

This notice meets the following criteria to use the expedited repeal process for these rules:

The rule is no longer necessary because of changed circumstances.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: Expedited rule making is necessary to align rules with RCW 49.46.170 which eliminated L&I's authority to issue subminimum certifications for employment of individuals with disabilities.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Michael Davis, L&I, Fraud Prevention and Labor Standards, Employment Standards, P.O. Box 44510, Olympia, WA 98504-4510, phone 253-596-3813, email ESRules@Lni.wa.gov, AND RECEIVED BY September 23, 2024.

July 23, 2024
Joel Sacks
Director

OTS-5572.1

AMENDATORY SECTION (Amending WSR 10-04-092, filed 2/2/10, effective 3/15/10)

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 (~~or~~

~~(d) Sheltered workshops~~).

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.

OTS-5439.1

AMENDATORY SECTION (Amending WSR 10-04-092, filed 2/2/10, effective 3/15/10)

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) (~~An employee who is physically or mentally handicapped to such a degree that he or she is unable to obtain employment in the competitive labor market;~~

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

~~((c))~~) (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.

AMENDATORY SECTION (Amending WSR 10-04-092, filed 2/2/10, effective 3/15/10)

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

(1) (~~Physically and mentally handicapped employees: At a rate designed to adequately reflect the employees' earning capacity.~~

~~(2))~~) Learners: At ~~((eighty-five))~~ 85 percent of the applicable minimum wage rate.

~~((3))~~ (2) Student-learner: At ~~((seventy-five))~~ 75 percent of the applicable minimum wage rate.

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

AMENDATORY SECTION (Amending WSR 89-10-014, filed 4/24/89, effective 6/1/89)

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 ~~((sixteenth or seventeenth))~~ 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 ~~((eighteen))~~ 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 ~~((sixteenth))~~ 16th year of age a rate of pay per hour that is not less than ~~((eighty-five))~~ 85 percent of the hourly rate required by RCW 49.46.020 for employees ~~((eighteen))~~ 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.

~~((3) These provisions shall not apply to handicapped minors for whom special handicapped minor work permits have been issued as provided in RCW 49.12.110. The handicapped rate therein shall be set at a rate designed to adequately reflect the individual's earning capacity.))~~

OTS-5440.1

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 296-128-050	Applicability of this regulation.
WAC 296-128-055	Definition.
WAC 296-128-060	Application for certificate.
WAC 296-128-065	Conditions for granting a certificate.
WAC 296-128-070	Issuance of certificate.
WAC 296-128-075	Terms of certificate.
WAC 296-128-080	Renewal of certificate.
WAC 296-128-085	Review.
WAC 296-128-090	Amendment of this regulation.