

WSR 22-19-099
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed September 21, 2022, 10:43 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-11-080.

Title of Rule and Other Identifying Information: Transportation network companies. New sections in chapter 296-128 WAC.

Hearing Location(s): On November 1, 2022, at 1:00 p.m., at the Department of Labor and Industries (L&I) Service Location, 12806 Gateway Drive South, Tukwila, WA 98168; on November 2, 2022, at 1:00 p.m., at L&I Service Location, 312 S.E. Stonemill Drive, Suite 120, Vancouver, WA 98684; and on November 4, 2022, at 9:00 a.m., virtual/telephonic meeting. Join Zoom meeting at <https://lni-wa-gov.zoom.us/j/89814993126?pwd=ODQraDZiKzk5TVJYRjErdjR6QnJYUT09>; join by phone 253-215-8782, Meeting ID 898 1499 3126, Passcode EmpStds22#. The meetings will begin at the time indicated, and will continue until all oral comments are received.

Date of Intended Adoption: November 22, 2022.

Submit Written Comments to: Bridget Osborne, L&I, Employment Standards, P.O. Box 44540, Olympia, WA 98504-4510, email ESRules@Lni.wa.gov, fax 360-902-5300, by November 7, 2022, by 5 p.m.

Assistance for Persons with Disabilities: Contact Bridget Osborne, phone 360-902-5552, fax 360-902-5300, email ESRules@Lni.wa.gov, by October 24, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The Washington state legislature passed ESHB 2076 during the 2022 legislative session. ESHB 2076 sets new requirements for transportation network companies and gives drivers new rights and protections. Section 1 (13) (f) of ESHB 2076, now codified in RCW 49.46.300 (1) (13) (f), requires L&I to conduct rule making regarding the reimbursements from the newly created driver resource center to a transportation network company for costs associated with deduction and remittance. Additional rules are needed to clarify the new requirements for transportation network companies and new driver protections relating to minimum compensation, paid sick time, retaliation and deactivations, and administrative violations. Rules are also needed to carry out and enforce the new requirements and help L&I coordinate with the driver resource center.

This rule making proposes to create new rule sections and will not change any existing rules.

Reasons Supporting Proposal: Section 1 (13) (f) of ESHB 2076, now codified in RCW 49.46.300 (1) (13) (f), requires L&I to conduct rule making. Additional rule making has been determined to be the best approach to outline the transportation network company's compliance requirements relating to driver payments, electronic receipts, deductions, deactivations, notices, paid sick time, and the department's enforcement capabilities. The proposed rules also provide clarity for drivers on their new protections.

Statutory Authority for Adoption: Chapter 49.46 RCW; RCW 43.22.270.

Statute Being Implemented: RCW 49.46.210, 49.46.300 through 49.46.350.

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: Bridget Osborne, Tumwater, Washington, 360-902-5552; Implementation: Cristina Evans, Tumwater, Washington, 360-485-2965; and Enforcement: Bryan Templeton, Tumwater, Washington, 360-902-5310.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Bridget Osborne, L&I, Employment Standards, P.O. Box 44540, Olympia, WA 98504-4510, phone 360-902-5552, fax 360-902-5300, email ESRules@Lni.wa.gov.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule.

Is exempt under RCW 34.05.328 (5)(c)(ii).

Explanation of exemptions: See table in Section 2 below.

Scope of exemption for rule proposal:

Is partially exempt:

Explanation of partial exemptions:

	Proposed WAC Sections and Title	This proposed rule section is <i>not exempt</i> - Analysis is required	This proposed rule section is <i>exempt</i>. Provide RCW to support this exemption.
1.	WAC 296-128-99010 Definitions.	X	This section is partially exempt under RCW 34.05.328 (5)(c)(ii) and 34.05.310 (4)(c) because the definitions are interpretive rules that do not result in a violation and adopt definitions from RCW 48.177.005, 49.46.210, 49.46.300, WAC 296-128-035 without material change.
2.	WAC 296-128-99020 Fees collected and remitted for the driver resource center fund.	<input type="checkbox"/>	This section is exempt under RCW 34.05.310 (4)(c) because it adopts without material change the fee structure established in RCW 49.46.300 (12) and (14).
3.	WAC 296-128-99030 Driver electronic receipts and weekly trip notices.	X	This section is partially exempt under RCW 34.05.310 (4)(c) by adopting RCW 49.46.300 (8) and (10) without material change.
4.	WAC 296-128-99040 Payment requirements.	X	
5.	WAC 296-128-99050 Geographic application of RCW 49.46.300 minimum compensation requirements.	<input type="checkbox"/>	This section is exempt under RCW 34.05.328 (5)(c)(ii) because it is interpretive and adopts language from RCW 49.46.300(4) without material change.
6.	WAC 296-128-99060 Tips and gratuities.	<input type="checkbox"/>	This section is exempt under RCW 34.05.310 (4)(c) because it adopts RCW 49.46.300(4) without material change.

	Proposed WAC Sections and Title	This proposed rule section is <i>not exempt</i> - Analysis is required	This proposed rule section is <i>exempt</i>. Provide RCW to support this exemption.
7.	WAC 296-128-99070 Driver reimbursements.	<input type="checkbox"/>	This section is exempt under RCW 34.05.328 (5)(c)(ii) and 34.05. 310 (4)(c) because this section is interpreting and adopting RCW 49.46.300(6) without material change.
8.	WAC 296-128-99080 Deductions from driver compensation.	X	This section is partially exempt under RCW 34.05.328 (5)(c)(ii) and 34.05.310 (4)(c) because it interprets and adopts RCW 49.46.300 without material change.
9.	WAC 296-128-99090 Voluntary per trip earnings deduction contributions and reimbursements—Driver resource center.	X	This section is partially exempt under RCW 34.05.310 (4)(c) because it adopts RCW 49.46.300(13).
10.	WAC 296-128-99100 Deactivations.	X	
11.	WAC 296-128-99110 Notice of rights.	X	This section is partially exempt under RCW 34.05.310 (4)(c) by adopting RCW 49.46.300(7) without material change.
12.	WAC 296-128-99120 Retaliation.	<input type="checkbox"/>	This section is exempt under RCW 34.05.310 (4)(c) by adopting RCW 49.46.340 without material change.
13.	WAC 296-128-99130 Paid sick time accrual.	<input type="checkbox"/>	This section is exempt under RCW 34.05.328 (5)(c)(ii) and 34.05.310 (4)(c) by interpreting and adopting RCW 49.46.210(1) without material change.
14.	WAC 296-128-99140 Paid sick time usage.	<input type="checkbox"/>	This section is exempt under RCW 34.05.328 (5)(c)(ii) and 34.05.310 (4)(c) by interpreting and adopting RCW 49.46.210(5) without material change.
15.	WAC 296-128-99150 Paid sick time rate of pay.	<input type="checkbox"/>	This section is exempt under RCW 34.05.328 (5)(c)(ii) and 34.05.310 (4)(c) by interpreting and adopting RCW 49.46.210(5) without material change.
16.	WAC 296-128-99160 Reasonable notice.	X	
17.	WAC 296-128-99170 Paid time off (PTO) programs.	<input type="checkbox"/>	This rule is exempt under RCW 34.05.328 (5)(c)(ii) because it provides guidance and does not subject anyone to a violation.
18.	WAC 296-128-99180 Verification for paid sick time usage.	X	This section is partially exempt under RCW 34.05.328 (5)(c)(ii) and 34.05.310 (4)(c) by interpreting and adopting RCW 49.46.210 (5)(l) without material change.
19.	WAC 296-128-99190 Frontloading.	<input type="checkbox"/>	This rule is exempt under RCW 34.05.328 (5)(c)(ii) because it provides guidance and does not subject anyone to a violation.
20.	WAC 296-128-99200 Third-party administrators.	<input type="checkbox"/>	This rule is exempt under RCW 34.05.328 (5)(c)(ii) because it provides guidance and does not subject anyone to a violation.
21.	WAC 296-128-99210 Paid sick time notifications.	X	This section is partially exempt under RCW 34.05.328 (5)(c)(ii) and 34.05.310 (4)(c) by interpreting and adopting RCW 49.46.210 (5)(n) without material change.
22.	WAC 296-128-99220 Shared paid sick time.	<input type="checkbox"/>	This rule is exempt under RCW 34.05.328 (5)(c)(ii) because it provides guidance and does not subject anyone to a violation.
23.	WAC 296-128-99230 Driver use of paid sick time for unauthorized purposes.	X	

	Proposed WAC Sections and Title	This proposed rule section is not exempt - Analysis is required	This proposed rule section is exempt. Provide RCW to support this exemption.
24.	WAC 296-128-99240 Enforcement —Complaints by driver—Additional investigations by department for amounts owed to drivers.	X	
25.	WAC 296-128-99250 Enforcement —Remittances.	X	
26.	WAC 296-128-99260 Enforcement —Complaint by driver—Paid sick time.	X	
27.	WAC 296-128-99270 Enforcement —Retaliation investigations.	X	
28.	WAC 296-128-99280 Enforcement —Administrative violations.	X	
29.	WAC 296-128-99290 Enforcement —Administrative enforcement supplemental.	X	

The proposed rule does impose more-than-minor costs on businesses.

Small Business Economic Impact Statement (SBEIS)

Rules proposed: ESHB 2076, An act relating to rights and obligations of transportation network company drivers and transportation network companies, chapter 296-128 WAC, Minimum wages.

Date: September 20, 2022.

1. Describe the proposed rule, including: A brief history of the issue; an explanation of why the proposed rule is needed; and a brief description of the amendments in this proposal that would impose new or additional costs on affected businesses, including small businesses. The Washington state legislature passed ESHB 2076, now codified under chapter 49.46 RCW during the 2022 legislative session, which sets new requirements for transportation network companies (TNCs) and gives drivers new rights and protections.

Section 1 (13) (f) of ESHB 2076, now codified in RCW 49.46.300 (1) (13) (f), requires L&I to conduct rule making regarding the reimbursements from the driver resource center to TNCs for costs associated with deduction and remittance. Additional rules are needed to clarify the new requirements for TNCs and new driver protections relating to minimum compensation, paid sick time, retaliation and deactivations, and administrative violations. Rules are also needed to carry out and enforce the new requirements and help L&I coordinate with the driver resource center. This rule making does not make any changes to the existing rules in chapter 296-128 WAC that apply to "employees" covered under the Minimum Wage Act.

The proposed rules that may impose new or additional costs on businesses are related to: The requirements of providing "preferred language"; driver receipts and weekly trip notices; deactivations; notice of rights; and paid sick time notifications.

2. Identify which businesses are required to comply with the proposed rule using the North American Industry Classification System (NAICS). The requirements of ESHB 2076 are limited to those companies that meet the definition of TNCs in RCW 49.46.300 (1) (v):

"Transportation network company" has the same meaning as defined in RCW 46.04.652. A TNC does not provide for hire transportation service. RCW 46.04.652 defines a "transportation network company" as "a corporation, partnership, sole proprietorship, or other entity that operates in this state, and uses a digital network to connect passengers with TNC drivers to provide prearranged rides."

The proposed rules are intended to implement requirements of ESHB 2076. Therefore, all businesses who meet the definition in RCW 49.46.300 (1)(v) are required to comply with the proposed rule. Table 1 below shows the NAICS code that TNCs most likely fall under and the best estimate of the total numbers of TNCs and workers that may be affected by these rules.

Table 1: The Affected Industry, Establishments, and Workers

NAICS	Industry	# of Companies	Affected Drivers/Workers ¹
485310	Taxi and Ridesharing Services	7	84,000

¹ Data source: Fiscal note for HB 2076. The number of 84,000 is updated from the 80,000 drivers estimated in the fiscal note using the share of drivers in total workforce and the latest statewide employment statistics from the employment security department.

This NAICS code data does not distinguish between companies who meet the definition of TNC in the statute and those that do not.

3. Identify and analyze the probable costs to comply with the proposed rule. The probable costs analyzed included both the following required and optional elements of the proposed rule.

3.1 The following proposed rules were determined to be exempt from the cost benefit analysis requirement and were not considered²:

² See chapter 2 of the cost-benefit analysis, available upon request.

- WAC 296-128-99010 (1), (5) through (30), and (32) through (35), Definitions.
- WAC 296-128-99020 Fees collected and remitted for the driver resource center fund.
- WAC 296-128-99050 Geographic application of RCW 49.46.300 minimum compensation requirements.
- WAC 296-128-99060 Tips and gratuities.
- WAC 296-128-99070 Driver reimbursements.
- WAC 296-128-99120 Retaliation.
- WAC 296-128-99130 Paid sick time accrual.
- WAC 296-128-99140 Paid sick time usage.
- WAC 296-128-99150 Paid sick time rate of pay.
- WAC 296-128-99170 Paid time off (PTO) programs.
- WAC 296-128-99190 Frontloading.
- WAC 296-128-99200 Third-party administrators.
- WAC 296-128-99220 Shared paid sick time.
- WAC 296-128-99290 Enforcement—Administrative enforcement supplemental.

3.2 The following proposed rules were determined to be significant legislative rules and the costs were analyzed as follows:

3.2.1 Quantifiable costs of the rule amendments: There are two categories of rule amendments whose cost impacts are quantified in this analysis: (1) The preferred language requirement under WAC 296-128-99010(3); and (2) the provisions of various notices to drivers under multiple sections.

WAC 296-128-99010(31) "Preferred language" definition: Rule Overview: This proposed rule defines the term "preferred language" used in the rules and provides that a TNC must make good faith effort to learn

the language and must translate documents via an accessible system when the preferred language is identified as the preferred language of at least two percent of drivers who use the TNC's platform in Washington. The definition applies to the requirements for an "accessible system" as defined in WAC 296-128-99010(1).

Costs: L&I's proposed "preferred language" definition, which applies to substantially similar notices for drivers as in Seattle's Transportation Network Company Driver Minimum Compensation Ordinance, includes a two percent threshold of languages spoken by drivers. This is more lenient than language access requirements TNCs are currently required to follow under Seattle's ordinance.

There may be a few TNCs not currently covered by Seattle's ordinances who will now be subject to the proposed rule. Costs for routine business translation range from \$20 to \$60 for translation of one million characters per month, and can go as high as \$75 for custom translation. For more sensitive documents such as deactivation notices and other legal documents, certified human translation is available for the price ranging from \$20 to \$29 per page.³

³ Sources of translation cost estimates: Amazon Translate, Google Translate, Microsoft Azure, US Language Services, and Universal Translation Services.

Assuming the number of the unidentified TNCs that are not covered by Seattle and King County's ordinances is no more than the number of TNCs that are currently identified by L&I, and they chose services at the upper end of the price spectrum, the total costs would be as follows:

- The maximum cost of machine translation of business documents and communications both as batches and in real time for as many as one million characters per month is \$75. For seven TNCs, the total annual cost equals \$6,300.
- The maximum cost of certified translation of one-page sensitive documents, such as deactivation notices, is \$29.
- Based on a 2014 business report,⁴ two to three percent of drivers are in danger of deactivation for their low ratings. Assuming the same percent of drivers are at risk of deactivation for all other possible reasons, an average of five percent of all drivers are vulnerable for deactivation each year.⁵
- L&I estimates that out of 84,000 drivers statewide, about 56,000 drivers are not covered by the existing local ordinances. Therefore, approximately 2,800 drivers are vulnerable to deactivation each year, and the total annual costs of translating all required deactivation notices for these drivers will amount to \$81,200.
- The total annual costs for the preferred language requirement would be \$87,500.

⁴ Business Insider quoting an internal UBER driver's manual.

⁵ This does not include those drivers who would be deactivated because they voluntarily resign or fail to appear on the platform for a period of time (365 days, for example).

WAC 296-128-99030 Electronic driver receipts and weekly trip notices, 296-128-99110 Notice of rights, and 296-128-99210 Paid sick time notifications: Rule Overview: RCW 49.46.300 (8) and (10) require TNCs to provide itemized reporting in both driver receipts and weekly trip notices. This proposed rule requires TNCs to include itemized information on driver receipts as well as itemized information, including total passenger platform time performed within the past 365 calendar days, on weekly trip notices. This information is needed to confirm a TNC's compliance with compensation and paid sick time requirements under the statute. All but two of the itemized reporting re-

quirements are included in the statute itself. The only additional data added to these requirements through rule are the requirement to report pickup and drop off location data, which is data already collected and included on passenger receipts, and the total amount of passenger platform time in the past 365 calendar days.

This proposed rule clarifies the requirement for TNCs to provide drivers with a notice of rights. The proposed rules include a requirement to maintain a driver's access to the notice of rights for at least three years. The rule also clarifies the TNC requirement to provide drivers with paid sick time notifications.

Costs: Given that L&I is committed to developing and providing sample notices for TNCs, L&I anticipates the compliance costs would not be substantial if TNCs chose to utilize L&I's notices. After discussing with its internal IT experts, L&I estimates that creating all these notices will cost an IT specialist no more than eight hours. Using the average hourly cost of \$72.52 for a typical computer professional in Washington state⁶ and a maximum of seven companies that are subject to these requirements, the total one-time cost will be no more than \$4,061.

⁶ Data source: 2022 Occupational Employment and Wage Estimates, ESD. This is the loaded wage, which includes the \$47.14 base wage, plus all fringe benefits.

3.2.2 Unquantifiable costs of the rule amendments: The following amendments either impose no new costs on the TNCs, or the costs of the amendments are negligible and, therefore, need not be quantified in this report.

WAC 296-128-99010(2) "Accessible system" definition: Rule Overview: The proposed rule defines the term "accessible system." An accessible system requires, in part, the use of a driver's preferred language, as defined in WAC 296-128-99010(31). Drivers must receive information in an accessible way in order to ensure their rights have not been violated.

Costs: The only prescriptive portion of the rule is the requirement for use of a driver's preferred language. This requirement is covered in the cost evaluation of WAC 296-128-99010(31).

WAC 296-128-99010(4) "Communication system" definition: Rule Overview: The proposed rule defines the term "communication system." A "communication system" ensures drivers receive important information to ensure their rights have not been violated, but does not include all of the requirements of an "accessible system."

Costs: Converting files to a comma-separated values file format is a routine computer activity. It presents no cost with saving a document in any other format. Therefore, it creates no new costs.

WAC 296-128-99040 Payment requirements: Rule Overview: This proposed rule clarifies pay requirements including pay intervals with which TNCs must comply. L&I's proposed rule specifies that payment intervals must occur at least biweekly which is less frequent than current practice by TNCs, who already pay more frequently. L&I's proposed rule on payment intervals does not require TNCs to pay additional compensation to drivers, so there is no cost to the rule.

Costs: L&I's proposed rule does not contain the same monthly payment interval contained in the rule that applies to employees as a payment interval option. See WAC 296-128-035. This recognizes that the drivers are not salaried employees. Hourly workers or workers paid on a work-performed basis are not typically paid on a monthly basis. TNC's current pay practices do not include a monthly payment option.

Because the requirement is no more restrictive than the current practice of TNCs, there are no new costs associated with this rule.

WAC 296-128-99080 Deductions from driver compensation: Rule Overview: This proposed rule clarifies which voluntary deductions from driver compensation are allowable, including what written authorization information is needed from a driver prior to a deduction being made. The written authorizations of deduction do not create new requirements for TNCs beyond what is provided in the statute. The information provided in written authorizations for deductions is provided by the driver if they elect to request a deduction. This is a discretionary rule that is only applicable if TNCs choose to allow for voluntary deductions. This rule also clarifies that deductions for loss or breakage are not allowable. This proposed rule language is based on existing deduction WAC 296-126-028, which applies to most employees. L&I's proposed rule language is consistent with existing rules and only clarifies what deductions can and cannot be taken from a driver's wages without creating new requirements for TNCs. Further, this is a discretionary rule that is only applicable if TNCs allow for voluntary deductions, and thus there is no required cost associated with the rule.

Costs: This is a rule that is only applicable if/when TNCs choose to allow for voluntary deductions, so there is no required cost associated with the rule.

WAC 296-128-99090 Voluntary per trip earnings deduction contributions and reimbursements—Driver resource center: Rule Overview: This proposed rule enacts the requirement from the statute for TNCs to provide an opportunity for drivers to make voluntary per trip earnings deduction contributions to the driver resource center, if the TNC has 100 or more drivers authorize such a deduction. It provides the process for administering such contributions through deductions and it provides for the reimbursement process to TNCs that seek reimbursement. The information provided in written authorizations for deductions is provided to the driver if they elect to request a deduction and if the driver resource center chooses to accept the voluntary contributions.

Costs: The portions of the rule beyond statutory requirements are discretionary, so there is no required cost associated with the rule.

WAC 296-128-99100 Deactivations: Rule Overview: This proposed rule clarifies what information must be included in deactivation notifications provided by a TNC to a driver when deactivated. L&I's proposed rule related to deactivation notifications is substantially similar to the deactivation notification required under Seattle Office of Labor Standards' rules passed under the Transportation Network Company Driver Minimum Compensation Ordinance, with which most TNCs are already required to comply. L&I's proposed rule includes the additional requirement to notify drivers of their ability to use paid sick time and the estimated end date of the deactivation.

Costs: There may be negligible and unquantifiable costs associated with providing this additional information on account deactivation notifications. There may be a small number of TNCs not currently covered by Seattle's ordinance. We currently lack sufficient data to determine if these TNCs will have more significant fiscal impacts from this requirement than TNCs covered by the ordinance. Deactivation notices include preferred language requirements; those costs have been estimated above.

WAC 296-128-99160 Reasonable notice: Rule Overview: This proposed rule clarifies that a TNC may not require advanced notice of paid sick time use from a driver for an authorized purpose under RCW 49.46.210. A TNC's request or requirement for advanced notice of paid sick time from a driver is considered an interference with a driver's lawful use of paid sick time.

Costs: The proposed rule does not create a new requirement for TNCs, so there is no cost associated with the rule.

WAC 296-128-99180 Verification for paid sick time usage: Rule Overview: This proposed rule clarifies requirements when a TNC chooses to verify that a driver's use of paid sick time is for an authorized purpose under the statute.

Costs: TNCs are not required to verify the use of paid sick time. Verification is optional, thus there is no required cost to the proposed rule.

WAC 296-128-99230 Driver use of paid sick time for unauthorized purposes: Rule Overview: This rule allows withholding payment for unauthorized purposes and requires a TNC to provide notification when choosing to withhold the payment.

Costs: Because verifying sick leave and withholding the payment is discretionary, there is no cost created by the notification unless the TNC chooses to exercise this option.

WAC 296-128-99240 Enforcement—Complaints by driver—Additional investigations by department for amounts owed to drivers: Rule Overview: This proposed rule clarifies L&I's enforcement authority to investigate compensation-related complaints. The proposed rule grants L&I the ability to request that a TNC perform a self-audit to mitigate potential burden and costs associated with investigations. Self-audits are intended to be a less burdensome and less costly alternative to extensive document and information production during investigations. If self-audits are performed during an investigation, it may also reduce investigative timelines. The proposed rules also grant L&I the ability to require TNCs to notify drivers that L&I is conducting an investigation. This would only occur if allegations of a violation are brought forward. If the department does not receive complaints of potential violations, this rule requirement will not be applicable. Requiring TNCs to provide this notification to drivers is a less burdensome alternative to TNCs needing to respond to multiple individual complaints and the rule is an attempt to reduce the number of separate complaints to which TNCs and the department must respond.

Costs: Self-audits and notifications to drivers using previously mandated systems are intended to mitigate potential costs associated with the normal process of investigations, thus there is no cost associated with the rule.

WAC 296-128-99250 Enforcement—Remittances: Rule Overview: This proposed rule clarifies L&I's enforcement authority to investigate if the department receives information suggesting that a TNC may have violated the remittance provisions of RCW 49.46.330. The proposed rule grants L&I the ability to request that a TNC perform a self-audit to mitigate potential burden and costs associated with investigations. Self-audits are intended to be a less burdensome and less costly alternative to extensive document production during investigations. If self-audits are performed during an investigation, it may also reduce investigative timelines.

Costs: Self-audits are intended to mitigate potential costs associated with the normal process of investigations, thus there is no cost associated with the rule.

WAC 296-128-99260 Enforcement—Complaint by driver—Paid sick time: Rule Overview: This proposed rule clarifies L&I's enforcement authority to investigate paid sick time-related complaints. The proposed rule grants L&I the ability to request that a TNC perform a self-audit to mitigate potential burden and costs associated with investigations. Self-audits are intended to be a less burdensome and less costly alternative to extensive document production during investigations. If self-audits are performed during an investigation, it may also reduce investigative timelines. The proposed rules also grant L&I the ability to require TNCs to notify drivers that L&I is conducting an investigation. This would only occur if allegations of a violation are brought forward. If the department does not receive complaints of potential violations, this rule requirement will not be applicable. Requiring TNCs to provide this notification to drivers is a less burdensome alternative to TNCs needing to respond to multiple individual complaints and the rule is an attempt to reduce the number of separate complaints to which TNCs and the department must respond.

Costs: Self-audits and notifications to drivers using previously mandated systems are intended to mitigate potential costs associated with the normal process of investigations, thus there is no cost associated with the rule.

WAC 296-128-99270 Enforcement—Retaliation investigations: Rule Overview: This proposed rule clarifies L&I's enforcement authority to investigate retaliation-related complaints. The proposed rules also grant L&I the ability to require TNCs to notify drivers that L&I is conducting an investigation. This would only occur if allegations of a violation are brought forward. If the department does not receive complaints of potential violations, this rule requirement will not be applicable. Requiring TNCs to provide this notification to drivers is a less burdensome alternative to TNCs needing to respond to multiple individual complaints and the rule is an attempt to reduce the number of separate complaints to which TNCs and the department must respond.

Costs: Notifications to drivers using previously mandated systems are intended to mitigate potential costs associated with the normal process of investigations, thus there is no cost associated with the rule.

WAC 296-128-99280 Enforcement—Administrative violations: Rule Overview: This proposed rule clarifies L&I's enforcement authority to investigate administrative violation-related complaints. The proposed rules also grant L&I the ability to require TNCs to notify drivers that L&I is conducting an investigation. This would only occur if allegations of a violation are brought forward. If the department does not receive complaints of potential violations, this rule requirement will not be applicable. Requiring TNCs to provide this notification to drivers is a less burdensome alternative to TNCs needing to respond to multiple individual complaints and the rule is an attempt to reduce the number of separate complaints to which TNCs and the department must respond.

Costs: Notifications to drivers using previously mandated systems are intended to mitigate potential costs associated with the normal process of investigations, thus there is no cost associated with the rule.

The cost-benefit analysis (CBA) is available on the L&I website or it may be obtained by contacting Bridget Osborne at phone 360-902-5552, email ESRules@Lni.wa.gov.

4. Determine whether or not the proposed rule may impose a disproportionate impact on small businesses compared to the 10 percent of businesses that are the largest businesses required to comply with the proposed rule. Under the Regulatory Fairness Act (RFA), "'Small business' means any business entity, including a sole proprietorship, corporation, partnership, or other legal entity, that is owned and operated independently from all other businesses, and that has fifty or fewer employees," RCW 19.85.020(3).

Based on the best information available, most or all of the existing TNCs do not qualify as small businesses based on their nondriver employees. However, it is unclear if drivers count towards the employee totals in the definition of small business, because ESHB 2076 defines "drivers" separately from employees for the purposes of chapter 49.46 RCW and RCW 19.85.025 does not specifically define "employees." For these reasons, and for the purposes of determining applicability under RFA, L&I makes the conservative assumption that TNCs operating in Washington state might include small businesses as defined under RCW 19.85.020 even though the majority of them are large employers. Based on the costs estimated in the preliminary CBA, we have calculated costs and less-than-minor costs, assuming costs are equally shared in Table 1 below.

Table 1. Summary of Per-business Average Cost vs Minor Cost Threshold

Total Cost:	
One-time cost	\$4,061
Annual recurring cost	\$87,500
Number of affected businesses:	7
Per business cost:	
One-time cost	\$580
Annual recurring cost	\$12,500
Minor cost threshold for the industry with NAICS 485310 ⁷ :	\$15,908

⁷ [https://esd.wa.gov/labormarketinfo/covered-employment, 2021 annual averages \(revised\)](https://esd.wa.gov/labormarketinfo/covered-employment, 2021 annual averages (revised)).

As analyzed above, we estimate the proposed rule will impose a one-time cost of \$4,061 and an annual cost of \$87,500 across all the affected businesses. If we assume these costs are evenly borne by the seven companies that are possibly uncovered by the local ordinances, the average one-time cost is \$580 and the ongoing cost is \$12,500 per business per year. When compared to the minor cost threshold (max of one percent of annual payroll or 0.3 percent of annual revenue), this analysis indicates the average per-business cost of the proposed rule is likely below the threshold for affected businesses discussed above. Accordingly, an SBEIS would not be required for this rule making pursuant to RCW 19.85.030(1). However, as discussed below, L&I has taken additional steps to meet the requirements of RCW 19.85.040 if L&I's cost analysis does not capture all the costs associated with the proposed rules.

In the alternative, the department assumed there would be disproportionate impacts on small businesses (if any of the smaller TNCs qualify as a small business) due to the absence of data confirming that no small businesses will be impacted by the rules and insufficient information to otherwise determine the cost impact if the costs

are not equally shared. As such, this document meets the requirements of an SBEIS. As required by RCW 19.85.030 and 19.85.040, in the absence of this data, the department identified cost-mitigation measures, where legal and feasible, as described below.

5. If the proposed rule is likely to impose a disproportionate impact on small businesses, identify the steps taken to reduce the costs of the rule on small businesses. As discussed above, L&I does not have sufficient data to conclude that the rules will have disproportionate impacts, so instead will consider mitigation steps in RCW 19.85.030(2). Because at least two of the TNCs are not small businesses, RCW 19.85.030(3) does not apply. See RCW 19.85.030(3) (If a proposed rule affects only small businesses, the proposing agency must consider all mitigation options defined in this chapter). However, L&I considered the list of methods for reducing the impact on small businesses under RCW 19.85.030(2), and is taking the following steps to reduce the costs of the rules on small businesses:

5.1 As described below, L&I added language to the rules specifically to mitigate cost for small businesses.

WAC 296-128-99010(2) "Accessible system" definition: The only prescriptive portion of the rule is the requirement for use of a driver's preferred language. This requirement is covered in the cost evaluation of WAC 296-128-99010(31) (below). The rule does also not prescribe a particular IT system or program that must be used to meet the accessible system requirements, allowing for TNCs to use their existing systems, or whatever system works best for their business model. This flexibility is particularly important and helpful to small businesses, as they normally lack the IT resources that their larger counterparts possess. See RCW 19.85.030 (2)(a), (b).

WAC 296-128-99010(4) "Communication system" definition: Converting files to a comma-separated values file format is a routine computer activity. It presents no cost with saving a document in any other format. Therefore, it creates no new costs. The rule does not prescribe a particular IT system or program that must be used to meet the communication system requirements, allowing for TNCs to use their existing systems, or whatever system works best for their business model. This flexibility is particularly important and helpful to small businesses, as they normally lack the IT resources that their larger counterparts possess. See RCW 19.85.030 (2)(a), (b).

WAC 296-128-99010(31) "Preferred language" definition: In order to mitigate costs associated with translations and other potential language access-related costs, the proposed rule includes a two percent threshold of languages spoken by drivers. This is intended to mitigate the potentially high cost of translating notices into all languages, particularly for small businesses. So if small businesses do not have at least two percent of drivers who speak more than the top five languages spoken in the state, they would not be required to provide notifications in any additional languages than statutorily required. See RCW 19.85.030 (2)(a), (b).

WAC 296-128-99030 Electronic driver receipts and weekly trip notices: All but two of the itemized reporting requirements in the proposed rule are included in the statute itself. The only addition added to these requirements through rule is the requirement to report pickup and drop off location data and the total passenger platform time performed within the past 365 calendar days. The rule does not prescribe a particular IT system or program that must be used to generate driver receipts and weekly trip notices, allowing for TNCs to use their existing systems, or whatever system works best for their business mod-

el. This flexibility is particularly important and helpful to small businesses, as they normally lack the IT resources that their larger counterparts possess. See RCW 19.85.030 (2)(a), (b).

WAC 296-128-99100 Deactivations: Most of the information required in deactivation notifications is adopted from the statute without material change. The proposed rule includes the additional requirement to notify drivers of their ability to use paid sick time and the estimated end date of the deactivation. The proposed rule is intended to mitigate potential deactivation notification requirements on TNCs, particularly smaller TNCs. This is accomplished by modeling the proposed deactivation notification requirements after substantially similar requirements in Seattle's Transportation Network Company Driver Minimum Compensation Ordinance, which most TNCs are already required to comply with. Additionally, the proposed rule is intended to reduce the burden of potential disputes over deactivations, by ensuring drivers understand why they were deactivated. It is also intended to reduce the number of unnecessary complaints, investigations, and inspections of records by ensuring that drivers have a clear understanding of the end date for their deactivation so they do not file unnecessary appeals or complaints. See RCW 19.85.030 (2)(a), (b), (c).

WAC 296-128-99110 Notice of rights: The proposed rule clarifies the TNC requirements to provide drivers with a notice of rights and includes a requirement to maintain a driver's access to the notice of rights for at least three years. The statute does not specify an end date of when notices must be available to drivers, so the proposed rule is intended to mitigate storage costs by limiting the storage to three years. The rule also intends to mitigate costs through the allowance of an established "accessible system" to meet the manner of distribution requirements. Additionally, in order to help mitigate potential burden of creating a driver's notice of rights, the proposed rule specifies that L&I may provide a sample notice of rights and that a TNC may satisfy its obligation to distribute the written notice of rights by providing the department's sample notice. It is also intended to reduce the number of unnecessary complaints, investigations, and inspections of records by ensuring that drivers have access to their notice of rights. See RCW 19.85.030 (2)(a), (b), (c).

WAC 296-128-99210 Paid sick time notifications: The proposed rule clarifies the TNC requirement to provide drivers with paid sick time notifications. In order to mitigate potential costs associated with translations and other potential language access-related costs, the proposed rules distinguish that the notice of paid sick time rights must be available via an "accessible system," but the monthly notifications may be made available via a "communication system" which does not include the same language access requirements. For the paid sick time notification via an accessible system, which includes language preference requirements, L&I has taken the steps above to mitigate the impacts of language preference requirements. See RCW 19.85.030 (2)(a), (b), (c).

5.2 L&I will be pursuing other steps to mitigate costs to small businesses, including:

- Developing and implementing a robust outreach and education program, so all transportation network companies are informed about what they need to know to comply with the law.
- Developing template notices of rights. RCW 19.85.030 (2)(a), (b).

- Considering other mitigation techniques including those suggested by small businesses or small business advocates. RCW 19.85.030 (2) (f).

6. Describe how small businesses were involved in the development of the proposed rule. Many of the provisions of ESHB 2076 go into effect January 1, 2023. In order to have rules in place before that date, L&I began a comprehensive rule-making development process in May 2022. As part of the process, L&I reached out to the seven companies currently licensed with the Washington state department of licensing as a TNC, and some may be small businesses. Three of those companies expressed interest in being involved in L&I's implementation efforts. Those three companies, and other stakeholders representing drivers, provided input on predraft versions of the proposed rules. Additionally, L&I will hold three public hearings in November 2022 to seek comments about the proposed rule and all supported analyses from the affected businesses and workers, which provides another opportunity for small businesses to be engaged in the development of the final rule.

7. Identify the estimated number of jobs that will be created or lost as the result of compliance with the proposed rule. L&I lacks credible information or data to estimate how many jobs will be created or lost due to the proposed rule. However, L&I believes that any potential job impact is likely a direct result of ESHB 2076, which granted drivers new substantive benefits, rather than L&I's modest rule making to implement ESHB 2076's substantive protections. L&I does not believe the implementation of these requirements will impose a significant impact on the state job market.

A copy of the statement may be obtained by contacting Bridget Osborne, L&I, Employment Standards, P.O. Box 44540, Olympia, WA 98504-4540, phone 360-902-5552, fax 360-902-5300, email ESRules@Lni.wa.gov.

September 21, 2022
Joel Sacks
Director

OTS-4075.3

TRANSPORTATION NETWORK COMPANIES

NEW SECTION

WAC 296-128-99010 Definitions. (1) "Absence" means any period of time in which the driver is unable to perform passenger platform time on the transportation network company's driver platform due to an authorized purpose defined in RCW 49.46.210.

(2) An "accessible system" is:

- (a) A platform through which the driver accesses, receives, and sends notices and communications with the transportation network company in compliance with chapter 49.46 RCW;
- (b) A platform through which the transportation network company accesses, receives, sends, and stores notices and communications with a driver in compliance with chapter 49.46 RCW;
- (c) Available in a driver's preferred language and English;
- (d) Provided in plain language;
- (e) Available to the driver via smartphone application and online web portal; and
- (f) Available from any location and must not be inaccessible due to geo-fencing.
- (3) "Account deactivation" means one or more of the following actions with respect to an individual driver or group of drivers that is implemented by a transportation network company and lasts for more than three consecutive days:
- (a) Blocking access to the transportation network company driver platform;
- (b) Changing a driver's status from eligible to provide transportation network company services to ineligible; or
- (c) Any other material restriction in access to the transportation network company's driver platform.
- (4) A "communication system" is:
- (a) A platform through which the driver accesses, receives, and sends notices and communications with the transportation network company in compliance with chapter 49.46 RCW;
- (b) A platform through which the transportation network company accesses, receives, sends, and stores notices and communications with a driver in compliance with chapter 49.46 RCW;
- (c) Available in a downloadable comma-separated values file format, except as provided in WAC 296-128-99030(1);
- (d) Available to the driver via smartphone application and online web portal; and
- (e) Available from any location and must not be inaccessible due to geo-fencing.
- (5) "Compensation" means payment owed to a driver by reason of providing network services including, but not limited to, the minimum payment for passenger platform time and mileage, incentives, and tips. Compensation does not include driver reimbursements.
- (6) "Department" means the department of labor and industries.
- (7) "Digital network" means any online-enabled application, website, or system offered or used by a transportation network company that enables the prearrangement of rides between drivers and passengers.
- (8) "Director" means the director of the department of labor and industries, or the director's authorized representative.
- (9) "Dispatch location" means the location of the driver at the time the driver accepts a trip request through the driver platform.
- (10) "Dispatch platform time" means the time a driver spends traveling from a dispatch location to a passenger pick-up location. Dispatch platform time ends when a passenger cancels a trip or the driver begins the trip through the driver platform. A driver cannot simultaneously be engaged in dispatch platform time and passenger platform time for the same transportation network company. For shared rides, dispatch platform time means the time a driver spends traveling from the first dispatch location to the first passenger pick-up location.

(11) "Dispatched trip" means the provision of transportation by a driver for a passenger through the use of a transportation network company's application dispatch system.

(12) "Driver" has the same meaning as "commercial transportation services provider driver" in RCW 48.177.005. Except as otherwise specified in WAC 296-128-99010 through 296-128-99290, for purposes of Titles 48, 50A, 50B, and 51 RCW, and chapter 49.46 RCW, and any orders, regulations, administrative policies, or opinions of any state or local agency, board, division, or commission, pursuant to those titles, a driver is not an employee or agent of a transportation network company if the following factors are met:

(a) The transportation network company does not unilaterally prescribe specific dates, times of day, or a minimum number of hours during which the driver must be logged into the transportation network company's online-enabled application or platform;

(b) The transportation network company may not terminate the contract of the driver for not accepting a specific transportation service request;

(c) The transportation network company does not contractually prohibit the driver from performing services through other transportation network companies except while performing services through the transportation network company's online-enabled application or platform during dispatch platform time and passenger platform time; and

(d) The transportation network company does not contractually prohibit the driver from working in any other lawful occupation or business. Notwithstanding any state or local law to the contrary, any party seeking to establish that the factors in this subsection are not met bears the burden of proof. A driver for purposes of this section shall not include any person ultimately and finally determined to be an "employee" within the meaning of section 2(3) of the National Labor Relations Act, 29 U.S.C. Sec. 152(3).

(13) "Driver platform" means the driver-facing application dispatch system software or any online-enabled application service, website, or system, used by a driver, or which enables services to be delivered to a driver, that enables the prearrangement of passenger trips for compensation.

(14) "Driver resource center" or "center" or "DRC" means a nonprofit organization that provides services to drivers. The nonprofit organization must be registered with the Washington secretary of state, have organizational bylaws giving drivers right to membership in the organization, and have demonstrated experience:

(a) Providing services to drivers in Washington state, including representing drivers in deactivation appeals proceedings; and

(b) Providing culturally competent driver representation services, outreach, and education. The administration and formation of the driver resource center may not be funded, excessively influenced, or controlled by a transportation network company.

(15) "Driver resource center fund" or "fund" means the dedicated fund created in RCW 49.46.310, the sole purpose of which is to administer funds collected from transportation network companies to provide services, support, and benefits to drivers.

(16) "Earned paid sick time" is the time provided by a transportation network company to a driver as calculated under RCW 49.46.210 and associated rules. 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.

(17) "Eligible account deactivation" means one or more of the following actions with respect to an individual driver that is implemented by a transportation network company:

(a) Blocking or restricting access to the transportation network company driver platform for more than three consecutive days; or

(b) Changing a driver's account status from eligible to provide transportation network company services to ineligible for more than three consecutive days; but

(c) An eligible account deactivation does not include any change in a driver's access or account status that is:

(i) Related to an allegation of discrimination, harassment, including sexual harassment or harassment due to someone's membership in a protected class, or physical or sexual assault, or willful or knowing commitment of fraud;

(ii) Related to an allegation that the driver was under the influence of drugs or alcohol while a related active investigation that takes no longer than 10 business days is under way; or

(iii) Any other categories the transportation network company and the driver resource center may agree to.

(18) "Geo-fencing" means the use of technology to create a virtual geographic boundary, enabling software to trigger a response when a mobile device enters or leaves a particular area.

(19) "Minimum compensation" means the minimum payment for passenger platform time and mileage set forth in RCW 49.46.300(4). Incentives, bonuses, premium pay, and tips are in addition to, and may not count towards, minimum compensation.

(20) "Network services" means services related to the transportation of passengers through the driver platform that are provided by a driver while logged in to the driver platform, including services provided during available platform time, dispatch platform time, and passenger platform time.

(21) "Passenger" has the same meaning as "commercial transportation services provider passenger" in RCW 48.177.005.

(22) "Passenger drop-off location" means the location of a driver's vehicle when the passenger leaves the vehicle.

(23) "Passenger pick-up location" means the location of the driver's vehicle at the time the driver starts the trip in the driver platform.

(24) "Passenger platform miles" means all miles driven during passenger platform time as recorded in a transportation network company's driver platform.

(25) "Passenger platform time" means the period of time when the driver is transporting one or more passengers on a trip, or portion of a trip, as follows:

(a) For a dispatched trip with a passenger pick-up location in Washington the entirety of the trip, regardless of the passenger drop-off location; and

(b) For a dispatched trip with a passenger pick-up location outside of Washington, the portion of passenger platform time and mileage that occurs within Washington.

(26) "Payday" means a specific day or date established by the transportation network company on which compensation, bonuses, incentives, tips, and other owed amounts are paid to a driver during a pay period.

(27) "Payment interval" means the amount of time between established paydays. A payment interval may be instant, daily, weekly, or bi-weekly.

(28) "Pay period" means a defined time frame for which a driver will receive a payment. A pay period may be instant, daily, weekly, or bi-weekly.

(29) "Personal vehicle" has the same meaning as "personal vehicle" in RCW 48.177.005.

(30) "Plain language" is language that is clear, concise, and visually easy to read. It must use common words, rather than jargon, acronyms, or unnecessary legal language.

(31) "Preferred language" is the driver's language choice provided in response to a transportation network company's request for their preferred language. Each transportation network company must make a good faith effort to learn a driver's preferred language. A transportation network company must translate documents available via an accessible system into the driver's preferred language, provided that the preferred language has been identified as the preferred language of at least two percent of drivers who utilize the transportation network company's driver platform in Washington. The transportation network companies and the driver resource center must work with the department to identify the preferred languages that meet the two percent threshold(s), at least every two years.

(32) "Shared ride" means a dispatched trip in which, prior to its commencement, a passenger requests through the transportation network company's digital network to share the dispatched trip with one or more passengers and each passenger is charged a fare that is calculated, in whole or in part, based on the passenger's request to share all or a part of the dispatched trip with one or more passengers, regardless of whether the passenger actually shares all or a part of the dispatched trip.

(33) "Tips" means a verifiable sum to be presented by a passenger as a gift or gratuity in recognition of service performed for the passenger by the driver receiving the tip.

(34) "Transportation network company" has the same meaning as defined in RCW 46.04.652. A transportation network company does not provide for hire transportation service and includes a third-party administrator when a transportation network company contracts with a third-party administrator for the purposes of providing paid sick time.

(35) "Verification" means evidence that establishes or confirms that a driver's use of paid sick time is for an authorized purpose under RCW 49.46.210.

[]

GENERAL REQUIREMENTS

NEW SECTION

WAC 296-128-99020 Fees collected and remitted for the driver resource center fund. Transportation network companies must collect and

remit per trip fee amounts from passenger fares to the driver resource center fund as follows:

(1) Beginning July 1, 2024, the per trip fee amount is \$0.15.

(2) Beginning January 1, 2025, and every January 1st thereafter, the per trip fee amount is as adjusted and published by the department in accordance with RCW 49.46.300 (12) (b).

(3) Each transportation network company shall submit to the fund, with its remittance under RCW 49.46.300(12), a report detailing the number of trips in the previous quarter and the total amount of the surcharge charged to customers. The first payment and accounting is due on the 30th day of the quarter following the collection of the surcharge. The department may request records from a transportation network company in order to confirm accuracy of remittance payments and reports submitted to the department.

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NEW SECTION

WAC 296-128-99030 Driver electronic receipts and weekly trip notices. (1) **Electronic receipts.** Within 24 hours of each dispatched trip, a transportation network company must transmit to the driver an electronic receipt, available in a communication system, for each unique trip or portion of a unique trip. For the purposes of an electronic receipt, a transportation network company may either provide a downloadable comma-separated values file or searchable PDF format containing a table with rows for each unique trip or portion of the trip and columns for each itemized element contained in the trip receipt. Electronic receipts must be available to the driver for at least two years following the date the transportation network company provided the receipt to the driver. The electronic receipt must itemize the following information for each unique trip, or portion of a unique trip:

(a) The total amount of passenger platform time;

(b) The total mileage driven during passenger platform time;

(c) The applicable rate(s) of pay including, but not limited to, the rate(s) per minute, rate(s) per mile, percentage of passenger fare, and any applicable price multiplier(s) or variable pricing policy in effect including variable rates based on geographic location;

(d) Any tip compensation paid by the passenger within 24 hours of the dispatched trip;

(e) Gross payment;

(f) Net payment after deductions, fees, tolls, surcharges, lease fees, or other charges;

(g) Itemized deductions or fees, including any tolls, surcharges, commissions, lease fees, and other charges;

(h) The applicable date and time frame for each trip and each portion of a trip; and

(i) The passenger pick-up and passenger drop-off locations for each trip and each portion of a trip as described by the street, city, and state in which the passenger pick-up and passenger drop-off occurred; however, if the passenger is an unaccompanied minor, only the city and state need be disclosed.

(2) **Weekly trip notices.** At least once a week, a transportation network company must transmit to the driver a written notice, availa-

ble in a communication system, that contains the following information for trips, or portions of trips, which occurred in the prior week:

- (a) The driver's total passenger platform time;
- (b) Total mileage driven by the driver during passenger platform time;
- (c) The driver's total tip compensation received from passengers within the prior week, itemized by the date of each dispatched trip or portion of a dispatched trip;
- (d) The driver's gross payment, itemized by:
 - (i) Rate(s) per minute;
 - (ii) Rate(s) per mile; and
 - (iii) Any other method used to calculate pay including, but not limited to, base pay, percentage of passenger fare, or any applicable price multiplier(s) or variable pricing policy in effect for the trip, including variable rates based on geographic location;
- (e) The driver's net payment after deductions, fees, tolls, surcharges, lease fees, or other charges;
- (f) An itemization of deductions or fees, including all tolls, surcharges, commissions, lease fees, and other charges, from the driver's payment; and
- (g) The total passenger platform time performed within the past 365 calendar days.

[]

NEW SECTION

WAC 296-128-99040 Payment requirements. (1) A transportation network company must establish regularly scheduled payment intervals for compensation, tips and gratuities, reimbursements, or any other amounts due to a driver. The scheduled interval must occur at least bi-weekly. Nothing in this provision prevents a transportation company from establishing a more frequent interval or paying in advance of a scheduled payday, such as an instant payment.

(2) A transportation network company must pay the driver amounts owed no later than 10 calendar days after the end of the pay period.

(3) Transportation network companies may pay drivers by direct deposit or other electronic means on the established payday. If a transportation network makes a payment by mail, any mailed payment must be postmarked no later than the established payday. If the established payday falls on a weekend day or holiday when the business office is not open, mailed paychecks must be postmarked no later than the next business day.

(4) If any applicable federal, state, or local law or ordinance provides specific payment interval requirements that are more favorable to a driver than the payment interval requirements provided under this rule, that law shall apply.

[]

NEW SECTION

WAC 296-128-99050 Geographic application of RCW 49.46.300 minimum compensation requirements. (1) A transportation network company must pay drivers in accordance with RCW 49.46.300(4) as follows:

(a) For a dispatched trip with a passenger pick-up location in Washington all minimum compensation requirements under RCW 49.46.300(4) apply for the entirety of the trip, regardless of the passenger drop-off location; and

(b) For a dispatched trip with a passenger pick-up location outside of Washington all minimum compensation requirements under RCW 49.46.300(4) apply for the portion of a trip that occurs within Washington.

(2) For a dispatched trip with a passenger pick-up location in a city in the state of Washington with a population above 600,000, all minimum compensation requirements under RCW 49.46.300 (4) (a) (i) apply, regardless of the passenger drop-off location.

(3) For a trip with a passenger pick-up location in the state of Washington outside a city with a population above 600,000 and a passenger drop-off location inside a city with a population above 600,000 in the state of Washington, the greater of:

(a) The combined total of:

(i) The per minute and per mile minimum compensation requirements under RCW 49.46.300 (4) (a) (i) applied to the portion of passenger platform time or mileage that occurs within the city with a population above 600,000; and

(ii) The per minute and per mile compensation requirements under RCW 49.46.300 (4) (a) (ii) applied to the portion of passenger platform time or mileage that occurs outside the city with a population above 600,000; or

(b) The per trip minimum for a dispatched trip under RCW 49.46.300 (4) (a) (1) (B).

(4) **Shared rides.** The per trip minimums in subsections (1), (2), and (3) of this section apply to the entirety of the shared ride if any pick-up location, passenger platform time, or mileage within the shared ride meets the requirements of subsection (1) (a) or (b) of this section.

(5) **More favorable standards.** If any portion of a dispatched trip or shared ride is subject to a standard established by any applicable federal, state, or local law or ordinance, or any rule or regulation issued thereunder, which is more favorable to drivers than these minimum compensation requirements, such standard shall not be affected by this chapter and such other laws, or rules or regulations, shall be in full force and effect and may be enforced as provided by law.

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NEW SECTION

WAC 296-128-99060 Tips and gratuities. (1) A transportation network company shall remit to drivers all tips, except as provided in WAC 296-128-99080. Tips paid to a driver are in addition to, and may not count towards, the driver's minimum compensation under RCW 49.46.300(4) or associated rules.

(2) All tips must be paid in regular intervals in accordance with WAC 296-128-99040, upon payment from the passenger.

[]

NEW SECTION

WAC 296-128-99070 Driver reimbursements. (1) "Driver reimbursement" is an amount charged to a passenger and remitted to the driver for tolls, fees, or any other charges or surcharges.

(2) A transportation network company must pay driver reimbursements in an amount at least equal to the amount charged to the passenger for tolls, fees, or any other charges or surcharges.

(3) Amounts charged to a passenger and remitted to the driver for tolls, fees, or any other charges or surcharges must be paid in accordance with WAC 296-128-99040.

[]

NEW SECTION

WAC 296-128-99080 Deductions from driver compensation. (1) **Mandatory deductions.** A transportation network company may deduct any portion of a driver's compensation, without a driver's prior written authorization, for the following reasons:

(a) If the deduction is required by state or federal law; or

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

(2) A mandatory deduction may reduce a driver's compensation below the minimum compensation requirements in RCW 49.46.300(4) and associated rules.

(3) **Voluntary deductions.** Except as required by law, a transportation network company may only deduct compensation when the driver expressly authorizes the deduction in writing and does so in advance and for a lawful purpose. Voluntary deductions may reduce the driver's per trip earnings below the minimum compensation requirements set forth in chapter 49.46 RCW and associated rules. Any authorization by a driver must be voluntary and knowing.

(a) Voluntary deductions that may be authorized by a driver include, but are not limited to:

(i) Voluntary per trip earnings deduction contributions in accordance with WAC 296-128-99090; or

(ii) Voluntary deductions for a lease or rental car program.

(b) A driver's written authorization for deductions is valid if it:

(i) Is written in either English or the driver's preferred language;

(ii) States that the driver authorizes a deduction from the driver's compensation;

(iii) States the deduction amount(s), interval(s) of deductions, and nature of any deductions;

(iv) States the effective date(s) of a deduction;

(v) States the estimated end date of a deduction, if any;
(vi) Includes sufficient information to identify the driver;
(vii) Is submitted in advance of the deduction; and
(viii) Is submitted by the driver or the driver's authorized representative.

(c) A "voluntary and knowing" deduction means:

(i) The driver was informed via an accessible system that the deduction may reduce their compensation below the minimum compensation requirements in RCW 49.46.300 or associated rules; and

(ii) The driver was not pressured, manipulated, or coerced into authorizing the deduction.

(d) A driver may rescind a voluntary deduction with notice, written in either English or the driver's preferred language, at least 10 days before a scheduled deduction.

(4) **No financial benefit for any deduction.** A transportation network company, or any person acting in the interest of the transportation network company, may not derive any financial profit or benefit from any deduction.

(a) A deduction will be considered for financial profit or benefit only if it results in a gain over and above the fair market value of the goods or services for which the deduction was made.

(b) In determining whether a deduction resulted in a financial profit or benefit to the transportation network company, or any person acting in the interest of the transportation network company, the department may consider any of the following nonexhaustive factors:

(i) The cost of the goods or services incurred by the transportation network company, including reasonable administrative costs to provide the goods or services to the transportation network company driver;

(ii) The fair market value for the goods or services; and

(iii) Whether the deduction resulted in a gain over and above expenditures.

(5) **No deductions for loss or breakage.** In no case may a transportation network company deduct the cost of damage to or loss of transportation network company equipment, software, intellectual property, or other tangible or intangible property from a driver's compensation.

(6) A transportation network company must not deduct from a driver's tips, unless required by law or expressly authorized under the voluntary deduction provisions of this section.

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NEW SECTION

WAC 296-128-99090 Voluntary per trip earnings deduction contributions and reimbursements—Driver resource center. (1) Beginning no later than June 9, 2023, each transportation network company must provide an opportunity for drivers to make voluntary per trip earnings deduction contributions to the driver resource center, if the transportation network company has 100 or more drivers authorize such a deduction.

(2) The driver resource center will administer driver authorizations and revocations of the voluntary per trip earnings deduction contributions subject to the following:

(a) Each driver must expressly authorize the deduction in writing;

(b) Each deduction authorization must include sufficient information to identify the driver and driver's per trip deduction amount;

(c) Such a deduction may reduce the driver's per trip earnings below the minimum compensation requirements set forth in RCW 49.46.300 (13)(a) and all associated rules; and

(d) A driver's authorization will remain in effect until the driver or driver resource center provides the driver's express revocation to the transportation network company.

(3) The driver resource center must inform drivers that deductions will continue unless the driver requests express revocation or an adjustment of the deduction amount. The driver resource center may choose to meet this requirement by providing a standard form to drivers. If the driver resource center chooses to develop a standard form, it must:

(a) Be made available in English and the driver's preferred language; and

(b) Include the driver's requested per trip deduction amount.

(4) Transportation network companies must rely on the information provided by the driver resource center regarding any authorization or revocation of a deduction.

(5) A transportation network company may seek reimbursement from the driver resource center for costs associated with the deduction and remittance of voluntary per-trip earnings deduction contributions. Costs associated with deductions and remittances eligible for reimbursement include:

(a) Administrative costs; and

(b) Any transfer fees, charges, or other costs associated with any bank fees.

(6) The transportation network company must submit any reimbursement requests for costs associated with the deduction and remittance of voluntary per-trip earnings deduction contributions to the driver resource center by no later than 28 calendar days following the end of the month in which costs were accrued.

(7) With each reimbursement request, a transportation network company must provide the following supporting documents:

(a) A list of the drivers from whose compensation such deductions were made and the amounts deducted during that month; and

(b) Supporting documentation showing any claimed administrative costs, transfer fees, charges, or other associated costs.

(8) The driver resource center must issue a reimbursement to the transportation network company by no later than 28 calendar days following the reimbursement request.

(9) The driver resource center may deny a transportation network company's request for reimbursement of costs associated with deduction and remittance, if the request does not include supporting records sufficient to show the costs are reasonably related to the deduction or remittance of voluntary per-trip earnings deductions.

(10) The transportation network company may resubmit the request within 30 days of the rejection with additional supporting documents for further consideration.

(11) If the driver resource center denies a transportation network company's request for reimbursement of costs associated with de-

duction and remittance after providing further documentation, the transportation network company may request the department review the submissions and issue an order determining whether the reimbursement should be paid. Such an order will be subject to review under the provisions of chapter 34.05 RCW.

(12) The transportation network company must keep records of all costs associated with reimbursement requests for deduction and remittance costs for three years.

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NEW SECTION

WAC 296-128-99100 Deactivations. (1) A transportation network company must enter into an agreement with the driver resource center regarding the driver account deactivation appeals process for eligible account deactivations. Any agreement must be approved by the department. The department may approve an agreement only if the agreement is consistent with RCW 49.46.300 (15) (a) (iv) and associated rules, as set forth under RCW 49.46.300 (15) (c).

(2) Upon a driver's account deactivation, the transportation network company must provide notification via email and an accessible system to the driver that includes:

(a) Notification that the driver may have the right to appeal the account deactivation and receive representation by the driver resource center in an appeal;

(b) Contact information for the driver resource center, as specified by the driver resource center;

(c) A written statement describing the reason for deactivation and the internal policy violated;

(d) The effective start date of deactivation;

(e) The anticipated end date of deactivation or confirmation that the deactivation is permanent;

(f) Any action necessary for the driver to remedy the deactivation; and

(g) Notification of the driver's right to use earned accrued paid sick time during a deactivation period.

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NEW SECTION

WAC 296-128-99110 Notice of rights. (1) **Notice of rights requirements.** A transportation network company must provide each driver with a written notice of rights as established by RCW 49.46.300 (7) and associated rules. The notice must inform drivers of:

(a) The right to the applicable per minute rate, per mile rate, or per trip rate guaranteed by RCW 49.46.300 or associated rules;

(b) The right to be protected from retaliation for exercising in good faith the rights protected by RCW 49.46.300 or associated rules; and

(c) The right to seek legal action or file a complaint with the department for violation of the requirements of RCW 49.46.300 or asso-

ciated rules, including a transportation network company's failure to pay the minimum per minute rate, per mile rate, or per trip rate, or a transportation network company's retaliation against a driver or other person for engaging in an activity protected by RCW 49.46.300 or associated rules.

(2) **Sample notice.** The department may develop a sample notice of rights that meets the department's standard for compliance with RCW 49.46.300(7) and associated rules. If the department provides such a notice:

(a) The department may provide the sample notice of rights in English and the five most common languages spoken in the state, but may also consult with the driver resource center and transportation network company representatives to identify other common languages spoken by drivers in the state of Washington to provide additional translated sample notices of rights;

(b) Each transportation network company may satisfy its obligation to distribute the written notice of rights by providing the department's sample notice in an accessible system; and

(c) Each transportation network company should make additional efforts to provide access to the notice of rights in a driver's preferred language when a transportation network company knows or has reason to know the driver's preferred language.

(3) **Manner of distribution.** The transportation network company must distribute the notice of rights as follows:

(a) The written notice of rights must be made available and remain accessible to the driver in an electronic format that is readily accessible for at least three years. A transportation network company must make the notice of rights available to the driver via smartphone application or online web portal, in English and the five most common foreign languages spoken in this state. A transportation network company may meet this requirement by distributing the notice of rights via an accessible system;

(b) For a new driver or a driver who has not begun a period of passenger platform time for a 90 day period, the transportation network company shall affirmatively provide the driver with the notice of rights within 48 hours of the driver beginning a period of passenger platform time in Washington.

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NEW SECTION

WAC 296-128-99120 Retaliation. (1) It is unlawful for a transportation network company to interfere with, restrain, or deny the exercise of any driver right provided under or in connection with chapter 49.46 RCW or associated rules. This means a transportation network company may not use a driver's exercise of any of their rights provided under chapter 49.46 RCW or associated rules as a negative factor in any account deactivation, restriction in account access, or other adverse action, or otherwise subject a driver to an adverse action for the exercise of any rights provided under chapter 49.46 RCW or associated rules.

(2) It is unlawful for a transportation network company to adopt or enforce any policy that counts the use of paid sick time for a purpose authorized under RCW 49.46.210 (1)(b), (c), or (5)(h) as an ab-

sence that may lead to or result in any account deactivation or other adverse action.

(3) It is unlawful for a transportation network company to deactivate, restrict account access, or take any adverse action against a driver because the driver has exercised their rights provided under chapter 49.46 RCW or associated rules. Such rights include, but are not limited to: Filing an action, filing a complaint with the department or driver resource center, or otherwise instituting or causing to be instituted any proceeding under or related to chapter 49.46 RCW or associated rules; exercising their right to paid sick time, compensation, tips and gratuities, reimbursements or other amounts due to a driver; utilizing the driver resource center; or testifying or offering or intending to testify in any such proceeding related to any driver rights provided under chapter 49.46 RCW or associated rules.

(4) Adverse action means any action taken or threatened by a transportation network company against a driver for the driver's exercise of chapter 49.46 RCW or associated rule rights, which actions may include, but is not limited to:

(a) Denying use of or delaying payment for paid sick time, compensation, all tips and gratuities, reimbursements, or any other amounts due to a driver;

(b) Deactivating an account as defined by RCW 49.46.300 (1)(a) and associated rules;

(c) Restricting any account access;

(d) Altering any of the driver's rates of pay;

(e) Preventing a driver's alternate compensation rate tier opportunities;

(f) Threatening to take, or taking, action based upon the immigration status of a driver or a driver's family member;

(g) Preventing a driver from working in any other lawful occupation or business; or

(h) Altering a driver's rating.

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TNC—PAID SICK TIME STANDARDS

NEW SECTION

WAC 296-128-99130 Paid sick time accrual. (1) Drivers accrue earned paid sick time for all passenger platform time worked. A driver must accrue at least one hour of paid sick time for every 40 hours of passenger platform time worked. Transportation network companies may provide drivers with a more generous paid sick time accrual rate.

(2) Drivers who provide network services on a driver platform shall accrue paid sick time for all passenger platform hours performed on or after January 1, 2023.

(3) Transportation network companies are not required to allow drivers to accrue paid sick time for any time not considered passenger platform time. Transportation network companies are not required but may choose to allow drivers to accrue paid sick time for time not considered passenger platform time.

(4) Transportation network companies must allow drivers to carry over at least 40 hours of accrued, unused paid sick time to the following calendar year. However, a transportation network company may allow for more than 40 hours of accrued, unused paid sick time to carry over to the following calendar year. If a driver carries over unused paid sick time to the following calendar year, accrual of paid sick time in the subsequent year would be in addition to the hours accrued in the previous calendar year and carried over.

(5) Transportation network companies may cap carry over of accrued, unused paid sick time to the following calendar year at 40 hours. Transportation network companies may allow for a more generous carry over of accrued, unused paid sick time to the following calendar year.

(6) If a driver does not record any passenger platform time on a transportation network company's driver platform for 365 consecutive calendar days, the transportation company may choose to allow any earned paid sick time to expire. A transportation network company must make available for use any unused earned paid sick time to a driver with less than a consecutive 365-day gap between recording passenger platform time for the transportation network company.

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NEW SECTION

WAC 296-128-99140 Paid sick time usage. (1) A driver is entitled to use earned paid sick time for the following purposes authorized in RCW 49.46.210(5):

(a) 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 a driver's need for preventive medical care;

(b) To allow the driver to provide care for an authorized family member under RCW 49.46.210 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;

(c) 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;

(d) For absences for which an employee would be entitled to leave under RCW 49.76.030;

(e) During an account 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; and

(f) A transportation company may provide more generous paid sick time policies or permit use of paid sick time for additional purposes or family members.

(2) After three consecutive days of account deactivation, a driver may request paid sick time for any portion of the deactivation period, unless the deactivation or status is due to a verified allegation of sexual assault or physical assault perpetrated by the driver.

(3) 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. Transportation network companies may allow drivers to use accrued, unused paid sick time prior to recording 90 hours of passenger platform time.

(4) Upon recording 90 hours of passenger platform time on the transportation network company's driver platform, a transportation network company must make earned accrued paid sick time available for use to the driver.

(5) A driver is entitled to use earned paid sick time if the driver has recorded passenger platform time as a driver within 90 calendar days preceding the driver's request to use earned paid sick time.

(6) Earned paid sick time must be made available for use within a communication system for drivers.

(7) A transportation network company must allow drivers to use paid sick time in four-hour increments, not to exceed eight hours within one day. A transportation network company may allow paid sick time usage in shorter increments.

(8) A transportation network company must allow drivers to claim earned paid sick time through a communication system within a time frame during which a driver was eligible to use their earned paid sick time and projected absences, so long as the absence is for an authorized purpose under RCW 49.46.210.

(9) A driver may choose to use earned paid sick time simultaneously for multiple transportation network companies during the same time period for a purpose authorized under RCW 49.46.210.

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NEW SECTION

WAC 296-128-99150 Paid sick time rate of pay. (1) A transportation network company must pay drivers their average hourly compensation for each hour of paid sick time used, as established by RCW 49.46.210.

(2) "Average hourly compensation" means a driver's compensation during passenger platform time for, 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. A transportation network company may also calculate the "average hourly compensation" by adopting a consistent practice of dividing the last 12 full calendar months immediately prior to the day that paid sick time is used by the total hours of passenger platform time worked by the driver on that transportation network company's driver platform during that period. "Aver-

age hourly compensation" includes bonus and incentive pay. "Average hourly compensation" does not include tips or reimbursements.

(3) Nothing in this section prevents a transportation network company from providing a more generous rate of average hourly compensation.

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NEW SECTION

WAC 296-128-99160 Reasonable notice. (1) A transportation network company may not require advanced notice of paid sick time use from a driver for an authorized purpose under RCW 49.46.210.

(2) A transportation network company's request or requirement for advanced notice of paid sick time from a driver is considered an interference with a driver's lawful use of paid sick time and is subject to enforcement procedures under chapter 49.46 RCW and associated rules.

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NEW SECTION

WAC 296-128-99170 Paid time off (PTO) programs. (1) Paid time off (PTO) provided to drivers by a transportation network company's PTO program (e.g., a program that combines leave for multiple purposes into one pool), created by a written policy or agreement with a third-party administrator, satisfies the requirement to provide paid sick time if the PTO program meets or exceeds the provisions of RCW 49.46.210 and all applicable rules, including:

(a) Accrual of PTO leave at a rate of not less than one hour for every 40 hours of passenger platform time worked as a driver;

(b) Payment for PTO leave at a rate of no less than the driver's average hourly compensation;

(c) Carryover of at least 40 hours of unused earned PTO leave to the next calendar year;

(d) Access to use PTO leave for all the purposes authorized under RCW 49.46.210 (5) (h); and

(e) Transportation network company notification and recordkeeping requirements set forth in RCW 49.46.210 and all applicable rules.

(2) If a driver chooses to use PTO leave for purposes other than those authorized under RCW 49.46.210 and the need for use of paid sick time later arises when no additional PTO leave is available, the transportation network company is not required to provide any additional PTO leave to the driver as long as the transportation network company's PTO program meets or exceeds the provisions of RCW 49.46.210 and all applicable rules.

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NEW SECTION

WAC 296-128-99180 Verification for paid sick time usage. (1) A transportation network company must not request or require verification of a driver's authorized use except as permitted under RCW 49.46.210.

(2) For a driver's use of paid sick time for an absence exceeding three calendar days, a transportation network company may require verification that a driver's use of paid sick time is for an authorized purpose under RCW 49.46.210(5), except during an account deactivation as provided in subsection (3) of this section. "Exceeding three calendar days" means a driver spends more than three consecutive calendar days using earned paid sick time without recording passenger platform time on the transportation network company's driver platform.

(3) A transportation network company must not request verification if the paid sick time usage occurs during a deactivation period that prevents the driver from providing network services to the transportation network company.

(4) Before a transportation network company requires verification for the use of paid sick time under RCW 49.46.210, the transportation network company must:

(a) Provide a written policy or agreement with a third-party administrator in advance to the driver via an accessible system, outlining any such requirements; and

(b) Notify the driver of such policy or agreement with a third-party administrator, including the driver's right to assert that the verification requirement results in an unreasonable burden or expense on the driver, prior to the driver requesting the paid sick time.

(5) If a transportation network company requires verification from a driver, the verification must be provided to the transportation network company within a reasonable time period during or after the use of the paid sick time. For driver use of paid sick time under RCW 49.46.210, "reasonable time period" is a period of time defined by a transportation network company's written policy or agreement with a third-party administrator, but may not be less than 10 calendar days following the first day upon which the driver uses paid sick time.

(6) A transportation network company's requirements for verification may not result in an unreasonable burden or expense on the driver and may not exceed privacy or verification requirements otherwise established by law.

(7) If a transportation network company requires verification and the driver anticipates that the requirement will result in an unreasonable burden or expense:

(a) The driver must be allowed to provide a written explanation via an accessible system which asserts:

(i) The driver's use of paid sick time was for an authorized purpose under RCW 49.46.210; and

(ii) How the transportation network company's verification requirement creates an unreasonable burden or expense on the driver;

(b) The transportation network company must consider the driver's explanation. Within 10 calendar days of the driver providing an explanation to the transportation network company about the existence of an unreasonable burden or expense, the transportation network company must make a reasonable effort to identify and provide alternatives for the driver to meet the transportation network company's verification requirement in a manner which does not result in an unreasonable burden or expense on the driver. A reasonable effort by the transporta-

tion network company to identify and provide alternatives could include, but is not limited to:

(i) Accepting the written explanation provided by the driver as a form of verification that meets the transportation network company's verification requirement; or

(ii) Mitigating the driver's out-of-pocket expenses associated with obtaining medical verification, by no later than the driver's next regularly scheduled date of compensation or no more than 14 calendar days, whichever occurs first; and

(c) If after the transportation network company considers the driver's explanation, the transportation network company and driver disagree on whether the transportation network company's verification requirement results in an unreasonable burden or expense on the driver:

(i) The transportation network company and driver may consult with the department regarding verification requirements; and

(ii) A driver may file a complaint with the department.

(8) If a transportation network company requires a driver to provide verification from a health care provider identifying the need for use of paid sick time for an authorized purpose under RCW 49.46.210, the transportation network company must not require that the information provided explain the nature of the condition. If the transportation network company obtains any health information about a driver or a driver's family member, the transportation network company must treat such information in a confidential manner consistent with applicable privacy laws.

(9) 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 or no more than 14 calendar days after verification is provided.

(10) If a transportation network company requires verification that the use of paid sick time is for an authorized purpose under the Domestic Violence Leave Act, chapter 49.76 RCW, any such verification requirements must comply with the provisions outlined in WAC 296-135-070.

(11) For use of paid sick time for purposes authorized under federal, state, or other local laws that permit transportation network companies to make medical inquiries, a transportation network company may require verification from a driver that complies with such certification requirements.

(12) Nothing in this section prevents a transportation network company from providing a more favorable verification process as long as such process meets or exceeds the requirements of this section and RCW 49.46.210.

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NEW SECTION

WAC 296-128-99190 Frontloading. (1) A transportation network company may, but is not required to, frontload paid sick time to a driver in advance of accrual.

(2) If a transportation network company frontloads paid sick time, the transportation network company must ensure that such frontloaded paid sick time complies with the provisions of RCW 49.46.210 and all applicable rules.

(3) If a transportation network company frontloads paid sick time, the transportation network company must do so by using a reasonable calculation, consistent with the accrual requirement set forth under RCW 49.46.210(5), to determine the amount of paid sick time the driver would be projected to accrue during the period of time for which paid sick time is being frontloaded.

(a) If the transportation network company calculates and frontloads, and a driver subsequently uses, an amount of paid sick time which exceeds the paid sick time the driver would have otherwise accrued absent frontloading, the transportation network company must not seek reimbursement from the driver for such paid sick time.

(b) If a transportation network company frontloads paid sick time to a driver, but such frontloaded paid sick time is less than the amount the driver was entitled to accrue under RCW 49.46.210(5), the transportation network company must make such additional amounts of earned paid sick time available for use by the driver as soon as practicable, but no later than 30 calendar days after identifying the discrepancy.

(4) If a transportation network company frontloads paid sick time, the company must have a written policy or an agreement with a third-party administrator which addresses the requirements for use of frontloaded paid sick time. A transportation network company must notify drivers of such policy or an agreement with a third-party administrator prior to frontloading a driver paid sick time, and must make this information readily available to all drivers via an accessible system.

(5) A transportation network company may not seek reimbursement from a driver for frontloaded paid sick time used prior to accrual under RCW 49.46.210(5), unless there is a specific agreement with a third-party administrator in place allowing for such a reimbursement.

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NEW SECTION

WAC 296-128-99200 Third-party administrators. (1) Transportation network companies may contract with a third-party administrator in order to administer the earned paid sick time requirements under RCW 49.46.210 and applicable rules. A transportation network company may contract with the driver resource center to act as a third-party administrator.

(2) With the consent of transportation network companies, third-party administrators may pool a driver's earned paid sick time from multiple transportation network companies as long as the accrual rate is at least equal to one hour of earned paid sick time for every 40 hours of passenger platform time worked. For example, if a group of transportation network companies has drivers who perform work for various transportation network companies at different times, the transportation network companies may choose to contract with a third-party administrator to track the hours worked and rate of accrual for earned paid sick time for each driver, and pool such earned paid sick time

for use by the driver when the driver is working for any transportation network companies in the same third-party administrator network.

(3) A transportation network company must have a written policy or third-party administrator agreement that outlines the provisions for a transportation network company to use a third-party administrator. Such written policies must meet all of the paid sick time requirements under RCW 49.46.210 and all applicable rules, inform drivers of any other transportation network companies within the same third-party administrator network, and be made available via an accessible system.

(4) Transportation network companies are not relieved of their obligations under RCW 49.46.210, and all applicable rules, if they elect to contract with a third-party administrator to administer earned paid sick time requirements.

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NEW SECTION

WAC 296-128-99210 Paid sick time notifications. (1) Transportation network companies must notify each driver of the driver's entitlement to paid sick time, the rate at which the driver will accrue paid sick time, the authorized purposes for which paid sick time may be used, and that retaliation by the transportation network company for the driver's lawful use of paid sick time and other rights provided under chapter 49.46 RCW, and all applicable rules, is prohibited.

(2) Transportation network companies must provide such a notification via an accessible system. For drivers hired on or after January 1, 2023, transportation network companies must notify each driver of such rights no later than the commencement of the driver performing passenger platform time. For existing drivers, the transportation network company must notify each driver no later than January 1, 2023.

(3) No less than monthly, transportation network companies must provide each driver with notification via a communication system detailing:

(a) The amount of paid sick time accrued since the last notification;

(b) The amount of paid sick time reductions since the last notification;

(c) The amount of unused earned paid sick time available for use;

(d) The average hourly compensation rate applied to any paid sick time used since the last notification and the calculation used to identify such rate; and

(e) The driver's expected average hourly rate of compensation for paid sick time use during the month following the statement, and the calculation used to identify such rate.

(4) Transportation network companies may satisfy the notification requirements by providing this information in regular pay statements.

(5) If a transportation network company chooses to frontload paid sick time to a driver in advance of accrual:

(a) The transportation network company must make notification to a driver via an accessible system no later than the end of the period for which the frontloaded paid sick time was intended to cover, establishing that the amount of paid sick time frontloaded to the driver was at least equal to the accrual rate under RCW 49.46.210; and

(b) The transportation network company is not relieved of its obligation to provide notification, not less than monthly, of the paid sick time available for use by the driver.

(6) A transportation network company must satisfy all notification requirements in RCW 49.46.210(5) and related rules for drivers with an account deactivation.

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NEW SECTION

WAC 296-128-99220 Shared paid sick time. (1) A transportation network company may, but is not required to, establish a shared paid sick time program in which a driver may choose to donate paid sick time to another driver.

(2) If a transportation network company establishes a shared paid sick time program, the company must have a written policy or third-party administrator agreement which specifies that a driver may donate accrued earned paid sick time to another driver for purposes authorized under RCW 49.46.210(5).

(3) The transportation network company must notify drivers of such policy or third-party administrator agreement via an accessible system prior to allowing a driver to donate or use shared paid sick time.

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NEW SECTION

WAC 296-128-99230 Driver use of paid sick time for unauthorized purposes. (1) If a transportation network company can demonstrate that a driver's use of paid sick time was for a purpose not authorized under RCW 49.46.210(5), the transportation network company may withhold payment of paid sick time for such hours, but may not subsequently deduct those hours from a driver's legitimately unused accrued earned paid sick time hours.

(2) If a transportation network company withholds payment for the use of paid sick time for purposes not authorized under RCW 49.46.210(5), the transportation network company must provide notification that includes a description of the reason the purpose was considered unauthorized via an accessible system to the driver. If the driver maintains that the use of paid sick time was for an authorized purpose, the driver may file a complaint with the department.

(3) If a driver accepts an offer of prearranged services for compensation from a transportation network company during the period of time 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.

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TNC—ENFORCEMENT STANDARDSNEW SECTION

WAC 296-128-99240 Enforcement—Complaints by driver—Additional investigations by department for amounts owed to drivers. (1) If a driver files a complaint with the department alleging a transportation network company violated any compensation-related requirements of RCW 49.46.300, or any associated rules, the department will investigate the complaint under the provisions of RCW 49.46.320. "Compensation-related requirements" include compensation, improper deductions, or any other amounts owed to the driver.

(2) During an investigation, if the department discovers information suggesting additional violations of any compensation-related requirements of RCW 49.46.300, or any associated rules, the department may investigate and take appropriate enforcement action without any additional complaint. The department may also initiate an investigation on behalf of one or more drivers for a violation of any compensation-related requirements of RCW 49.46.300, or any associated rules, when the director otherwise has reason to believe that a violation has occurred or will occur.

(3) The department may conduct a consolidated investigation for any alleged compensation-related violations identified under RCW 49.46.300, or associated rules, when there are common questions of law or fact involving drivers who provide passenger platform services for the same transportation network company. If the department consolidates such matters into a single investigation, it will provide notice to the transportation network company.

(4) The department may, for the purposes of enforcing RCW 49.46.300 or any associated rules, issue subpoenas to compel the attendance of witnesses or parties and the production of documents, administer oaths and examine witnesses under oath, take depositions, and seek affidavits or other verifications. The department may request a transportation network company perform a self-audit of any records. The results or conclusions of the self-audit must be provided to the department within a reasonable time. Reasonable timelines will be specified in the self-audit request. The records examined by the transportation network company in order to perform the self-audit must be made available to the department upon request.

(5) Upon the department's request, a transportation network company must notify drivers via an accessible system that the department is conducting an investigation. The department may require the transportation network company to include a general description of each investigation as part of the notification, including the allegations and whether the notified driver may be affected. The department may consult with the transportation network company to provide the information for the description.

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NEW SECTION

WAC 296-128-99250 Enforcement—Remittances. (1) Upon receiving information suggesting that a transportation network company may have violated the remittance provisions of RCW 49.46.330, the department will investigate the applicable provisions of that section.

(2) If the department determines that a transportation network company has violated the remittance provisions of RCW 49.46.330 and issues a citation and notice of assessment, the department may order the transportation network company to pay all owed remittance payments as required under RCW 49.46.330. The department shall deposit all owed remittance payments into the driver resource center fund.

(3) Failure to accurately remit all applicable per trip fees is deemed a delinquency subject to the penalties and interest provided in RCW 49.46.330 and associated rules.

(4) Failure to remit payments by the deadlines is deemed a delinquency subject to the penalties and interest provided in RCW 49.46.330 and associated rules.

(5) The department may, for the purposes of enforcing RCW 49.46.330 or the associated rules, issue subpoenas to compel the attendance of witnesses or parties and the production of documents, administer oaths and examine witnesses under oath, take depositions, and seek affidavits or other verifications. The department may request a transportation network company perform a self-audit of any records. The results or conclusions of the self-audit must be provided to the department within a reasonable time. Reasonable timelines will be specified in the self-audit request. The records examined by the transportation network company in order to perform the self-audit must be made available to the department upon request.

(6) All remittance fees under RCW 49.46.330 for a calendar quarter are due the day immediately following the last day of the month following the calendar quarter. Any remittance fees not paid the day they are due are delinquent.

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NEW SECTION

WAC 296-128-99260 Enforcement—Complaint by driver—Paid sick time. (1) If a driver files a complaint with the department alleging that the transportation network company failed to provide the driver with earned paid sick time as provided in RCW 49.46.210, or any associated rules, the department will investigate the complaint as an alleged violation of a compensation-related requirement of RCW 49.46.300.

(2) If the department's investigation results in a finding that the transportation network company failed to provide the driver with earned paid sick time accrual, use, or carryover as required by RCW 49.46.210, the driver may elect to:

(a) Receive full access to the balance of accrued earned paid sick time hours withheld by the transportation network company, based on a calculation of at least one hour of earned paid sick time for every 40 hours of passenger platform time worked during the period of noncompliance; or

(b) Receive payment from the transportation network company at the driver's average hourly compensation for each hour of earned paid sick time that the driver would have used or have been reasonably expected to use, whichever is greater, during the period of noncompliance, not to exceed an amount the driver would have otherwise accrued. The driver will receive full access to the balance of accrued paid sick time hours unlawfully withheld by the transportation network company, less the number of paid sick time paid out to the driver pursuant to this subsection.

(3) When the department's investigation results in a finding that the transportation network company failed to provide the driver with earned paid sick time accrual, use, or carryover, and the driver has a deactivated account, the driver may elect to receive payment at the driver's average hourly compensation for each hour of earned paid sick time; receive reinstatement of the balance of paid sick time hours; or receive a combination of payment and reinstatement from the transportation network company for all hours of earned paid sick time that would have accrued during the period of noncompliance, unless such reinstatement is prohibited by law. Such hours must be based on a calculation at least one hour of earned paid sick time for every 40 hours of passenger platform time worked during the period of noncompliance.

(4) The department's notice of assessment may order the transportation network company to provide the driver any combination of reinstatement and payment of accrued, unused paid sick leave hours assessed pursuant to subsection (2) or (3) of this section.

(5) For the purposes of this section, a transportation network company found to be out of compliance must allow an affected driver to access any unused earned paid time ordered by the department for 365 days following the reinstatement of the earned paid sick time.

(6) For purposes of this section, a transportation network company found to be out of compliance must allow an affected driver to carryover over any additional earned paid sick time ordered by the department to the next calendar year in addition to the carryover of 40 hours of unused earned sick time required by RCW 49.46.210.

(7) The department may conduct a consolidated investigation for any alleged violations identified in RCW 49.46.210 or any associated rules, when there are common questions of law or fact involving drivers who provide passenger platform services for the same transportation network company. If the department consolidates such matters into a single investigation, it will provide notice to the transportation network company.

(8) The department may, for the purposes of enforcing RCW 49.46.210 or any associated rules, issue subpoenas to compel the attendance of witnesses or parties and the production of documents, administer oaths and examine witnesses under oath, take depositions, and seek affidavits or other verifications. The department may request a transportation network company perform a self-audit of any records. The results or conclusions of the self-audit must be provided to the department within a reasonable time. Reasonable timelines will be specified in the self-audit request. The records examined by the transportation network company in order to perform the self-audit must be made available to the department upon request.

(9) Upon the department's request, a transportation network company must notify drivers via an accessible system that the department is conducting an investigation. The department may require the transportation network company to include a general description of each investigation as part of the notification, including the allegations and

whether the notified driver may be affected. The department may consult with the transportation network company to provide the information for the description.

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NEW SECTION

WAC 296-128-99270 Enforcement—Retaliation investigations. (1)

The department will investigate any allegations that a transportation network company violated any of the protections of RCW 49.46.340, or any associated rules, pursuant to the enforcement procedures outlined in RCW 49.46.340.

(2) During an investigation, if the department discovers information suggesting additional violations of any of the protections of RCW 49.46.340 or any associated rules, the department may investigate and take appropriate enforcement action without any additional complaint. The department may also initiate an investigation on behalf of one or more drivers for a violation of RCW 49.46.340, or associated rules, when the director otherwise has reason to believe that a violation has occurred or will occur.

(3) The department may conduct a consolidated investigation for any alleged violations identified under RCW 49.46.210, 49.46.300, and 49.46.340, or associated rules, when there are common questions of law or fact involving drivers who provide passenger platform services for the same transportation network company. If the department consolidates such matters into a single investigation, it will provide notice to the transportation network company.

(4) The department may, for the purposes of enforcing RCW 49.46.340 or any associated rules, issue subpoenas to compel the attendance of witnesses or parties and the production of documents, administer oaths and examine witnesses under oath, take depositions, and seek affidavits or other verifications.

(5) Upon the department's request, a transportation network company must notify drivers via an accessible system that the department is conducting an investigation. The department may require the transportation network company to include a general description of each investigation as part of the notification, including the allegations and whether the notified driver may be affected. The department may consult with the transportation network company to provide the information for the description.

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NEW SECTION

WAC 296-128-99280 Enforcement—Administrative violations. (1)

If a driver files a complaint with the department alleging a violation of any noncompensation requirement of RCW 49.46.210, 49.46.300 or any associated rules, the department will investigate the complaint under RCW 49.46.330.

(2) During an investigation, if the department discovers information suggesting additional violations of any of the protections of RCW 49.46.210, 49.46.300, or any associated rules, the department may investigate and take appropriate enforcement action without any additional complaint. The department may also initiate an investigation on behalf of one or more drivers for a violation of RCW 49.46.210, 49.46.300, or any associated rules, when the director otherwise has reason to believe that a violation has occurred or will occur.

(3) The department may conduct a consolidated investigation for any alleged violations identified under RCW 49.46.210, 49.46.300, or associated rules when there are common questions of law or fact involving drivers who provide passenger platform services for the same transportation network company. If the department consolidates such matters into a single investigation, it will provide notice to the transportation network company.

(4) The department may, for the purposes of enforcing RCW 49.46.300 or any associated rules, issue subpoenas to compel the attendance of witnesses or parties and the production of documents, administer oaths and examine witnesses under oath, take depositions, and seek affidavits or other verifications. The department may request a transportation network company perform a self-audit of any records, which must be provided within a reasonable time. Reasonable timelines will be specified in the self-audit request. The records examined by the transportation network company in order to perform the self-audit must be made available to the department upon request.

(5) Upon the department's request, a transportation network company must notify drivers via an accessible system that the department is conducting an investigation. The department may require the transportation network company to include a general description of each investigation as part of the notification, including the allegations and whether the notified driver may be affected. The department may consult with the transportation network company to provide the information for the description.

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NEW SECTION

WAC 296-128-99290 Enforcement—Administrative enforcement supplemental. Nothing in these rules limits the department's authority to enforce RCW 49.46.200 through 49.46.350, or associated rules, as otherwise provided under Title 49 RCW.

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