

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

- (a) Reason(s) for the variance request; and
- (b) Evidence that the employer provided to the employees or to their representatives the following:
 - (i) The intent to submit a variance.
 - (ii) A copy of the requested variance.
 - (iii) The director's address or phone number or other contact information.

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

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

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

(5) The variance order shall state the following:

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

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

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

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

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

(b) Public employers that have entered into collective bargaining agreements, labor/management agreements, or other mutually agreed to employment agreements that specifically vary from or supersede, in part or in total, the rules regarding meal and rest periods.

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