

WSR 22-24-034
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed November 30, 2022, 2:04 p.m., effective January 1, 2023]

Effective Date of Rule: January 1, 2023.

Purpose: 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 (13)(f), requires the department of labor and industries (L&I) to conduct rule making regarding the reimbursements from the newly created driver resource center (DRC) to a transportation network company (TNC) for costs associated with deduction and remittance. ESHB 2076 also gave L&I broad authority to promulgate rules to implement the new statutory requirements and enforce its provisions. See RCW 49.46.300(16), 49.46.320 (16)(c), 49.46.210 (5)(q), and 49.46.350(6). 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. The new rules carry out and enforce the new requirements and help L&I coordinate with the DRC. The rules also provide additional detail regarding L&I's role in enforcement and enforcement processes.

This rule making creates new rule sections and does not change any existing rules.

Citation of Rules Affected by this Order: New WAC 296-128-99010, 296-128-99020, 296-128-99030, 296-128-99040, 296-128-99050, 296-128-99060, 296-128-99070, 296-128-99080, 296-128-99090, 296-128-99100, 296-128-99110, 296-128-99120, 296-128-99130, 296-128-99140, 296-128-99150, 296-128-99160, 296-128-99170, 296-128-99180, 296-128-99190, 296-128-99200, 296-128-99210, 296-128-99220, 296-128-99230, 296-128-99240, 296-128-99250, 296-128-99260, 296-128-99270, 296-128-99280, and 296-128-99290.

Statutory Authority for Adoption: RCW 49.46.300(16); chapter 49.46 RCW.

Adopted under notice filed as WSR 22-19-099 on September 21, 2022.

Changes Other than Editing from Proposed to Adopted Version:

WAC 296-128-99010 Definitions:

- **Proposed language:** Subsection (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.
- **Adopted language:** Subsection (19) "Minimum compensation" means the minimum payment for passenger platform time and mileage set forth in RCW 49.46.300(4). "Minimum compensation" may include incentives or premium pay specific to a particular trip in which the incentive or premium pay is earned if the transportation network company discloses to the driver upon each offer of such pay the amount and terms of such pay and that such pay will be used to satisfy part or all of the minimum compensation requirement in RCW 49.46.300 for that particular trip. "Minimum compensation" does not include any incentive or premium pay not specific to a

particular trip, any incentive or premium pay offered without the above disclosure, any bonuses, or any tips.

This proposed rule was changed due to comments received from both the TNCs and driver representatives who provided alternatives for language that would change the department's proposed rule that did not allow incentive or premium pay to count towards minimum compensation. The proposed rule was changed to reflect that TNCs may include incentive and premium pay in "minimum compensation" on a per-trip basis, given the TNC has provided a notice and disclaimer to the driver. This is an approach currently used under Seattle's ordinance with little to no complaints. Workweek averaging is prohibited.

WAC 296-128-99050 Geographic application of RCW 49.46.300 minimum compensation requirements:

- **Proposed language:** Subsection (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.
- **Adopted language:** Subsection (4) Shared rides. The greater of the per-trip minimums in subsections (1), (2), and (3) of this section apply to the entirety of the shared ride if any portion of the shared ride meets the requirements of subsection (1)(a) or (b) of this section.

This proposed rule was changed due to comments received showing general misunderstandings of the department's intended interpretation of the proposed language. The proposed rule was changed in order to ensure the department is aligning with RCW 49.46.300 (4)(c) and clearly communicating expectation regarding minimum compensation rates for shared rides. The intent of this rule is to make it clear that the higher of the minimum compensation rates apply to the entirety of a shared ride, not just a portion of the ride.

WAC 296-128-99050 Geographic application of RCW 49.46.300 minimum compensation requirements:

- **Proposed language:** Subsection (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.
- **Adopted language:** Subsection (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 in a locality outside of Washington, or any rule or regulation issued under such law or ordinance, 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.

This proposed rule was changed due to comments received showing general misunderstanding of the department's intended interpretation of the proposed language. The proposed rule was changed in order to

further clarify that the local laws or ordinances referenced are in relation to those outside of the state of Washington, and is not intended to conflict with the preemption language in RCW 46.72B.190.

WAC 296-128-99100 Deactivations:

- **Proposed language:** Subsection (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.
- **Adopted language:** Subsection (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, including an expeditious process for determining whether an account deactivation is an eligible account deactivation.

This proposed rule was changed due to public comments received expressing concern with ambiguity in the proposed language relating to how and when eligible account deactivations are determined to be "eligible" by a TNC. The proposed rule was changed in order to further clarify the department's expectations for our approval of a deactivation appeals process agreement between the TNC and DRC. The updated rule maintains TNC and DRC authority to set the exact terms of the agreement between the two parties, but provides clarity around elements of the process that should be established by the parties and included in the agreement. Further clarity is provided in the concise explanatory statement.

WAC 296-128-99290 Enforcement—Administrative enforcement supplemental and variance for delayed implementation of accessible system and communication system requirements:

- Subsection (2) was added due to public comments received from TNCs who previously met exemption requirements under Seattle ordinance due to not meeting the minimum annual trip threshold. This rule will allow TNCs who meet certain requirements to apply for a temporary variance to delay their requirements related to accessible and communication systems.

This order has been updated to renumber the variance section to WAC 296-128-99290(2).

The department updated its small business economic impact statement (SBEIS) to reflect the changes above and comments received; a copy of the updated SBEIS can be obtained by requesting a copy from the department.

A final cost-benefit analysis is available by contacting Bridget Osborne, L&I, Employment Standards, P.O. Box 44540 [44510], Olympia, WA 98504-4510, phone 360-902-5552, fax 360-902-5300, email esrules@lni.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 29, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 29, Amended 0, Repealed 0.

Date Adopted: November 30, 2022.

Joel Sacks
Director

OTS-4075.7

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). "Minimum compensation" may include incentives or premium pay specific to a particular trip in which the incentive or premium pay is earned if the transportation network company discloses to the driver upon each offer

of such pay the amount and terms of such pay and that such pay will be used to satisfy part or all of the minimum compensation requirement in RCW 49.46.300 for that particular trip. "Minimum compensation" does not include any incentive or premium pay not specific to a particular trip, any incentive or premium pay offered without the above disclosure, any bonuses, or any tips.

(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.

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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, available 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.

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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 in a locality outside of Washington 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.

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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 pas-

senger 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 greater of the per trip minimums in subsections (1), (2), and (3) of this section apply to the entirety of the shared ride if any portion of 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 in a locality outside of Washington, or any rule or regulation issued under such law or ordinance, 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.

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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.

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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 deduction 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, including an expeditious process for determining whether an account deactivation is an eligible account deactivation. 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 associated 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 absence 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 carryover of accrued, unused paid sick time to the following calendar year at 40 hours. Transportation network companies may allow for a more generous carryover 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. "Average 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 (i.e., 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 transportation 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 outside of Washington 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 admin-

istrator 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 rein-

statement 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 and variance for delayed implementation of accessible system and communication system requirements. (1) 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.

(2) (a) A transportation network company that qualifies under (b) of this subsection may seek a temporary variance on the requirements for an accessible system or a communication system under this chapter by submitting a written application to the director.

(b) A transportation network company who provides less than 1,000,000 dispatched trips within the state in the preceding calendar year qualifies for the variance in this section. Separate entities that form an integrated enterprise shall be considered a single transportation network company under this rule as provided by RCW 49.46.300 (3) (b).

(c) This variance is limited to the requirements to use an accessible system or a communication system to communicate with drivers. The variance does not change the transportation network company's obligations to provide all notices, receipts, paid sick time balances and any other communications required by chapter 49.46 RCW and associated rules to the driver in an electronic format that is readily accessible through either a smartphone application or an online web portal.

(d) A written application for a variance must contain the following:

(i) A description of the specific requirements the qualifying transportation network company seeks to delay;

(ii) Reasons for the variance request, including good cause for the delayed implementation of the requirements for an accessible system or a communication system being sought;

(iii) The length of delay being sought for the requirement(s) and a timeline showing how the transportation network company plans to come into compliance with the applicable requirements of this chapter;

(iv) An explanation of how the transportation network company will ensure drivers are provided the required notifications under this chapter during the variance period; and

(v) Evidence confirming that the transportation network company qualifies under this subsection are met.

(e) After reviewing the application, the director may grant a temporary variance to remain valid for up to one year if the director determines that the transportation network company meets the requirements of this section, will ensure that drivers are being provided all required notices under this chapter during the variance period, and has established good cause. The director will take into consideration the timeline provided in the variance application in determining the length of the variance.

(f) "Good cause" means the transportation network company can establish that it is infeasible for the company to come into full compliance with the requirements for the use of an accessible system or a communication system within the necessary time frame.

(g) The director may revoke or terminate the variance order at any time, upon at least 30 days' notice to the transportation network company.

(h) Upon further request by a transportation network company, the director may approve an extension of the variance for up to an additional year. An extension request must contain the information outlined in (d) of this subsection.

(i) If a transportation network company obtains a variance under these rules, within 15 days of being granted the variance the transportation network company must provide drivers notice indicating how they will be receiving the required notifications under this chapter. The transportation network company must make this information readily available to all drivers.

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