

WSR 24-20-113
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed October 1, 2024, 9:24 a.m., effective November 1, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This rule making repeals rules relating to subminimum wage certificates issued for the employment of individuals with disabilities at less than the minimum wage under chapter 296-128, Minimum wages, and chapter 296-126, Standards of labor for the protection of the safety, health and welfare of employees for all occupations subject to chapter 49.12 RCW. This rule making repeals WAC 296-128-050 through 296-128-090 and amends WAC 296-126-001, 296-126-010, 296-126-015, and 296-126-020 to remove applicable subsections.

This rule making is needed to implement RCW 49.46.170(2), enacted under 2021's ESSB 5284 (chapter 97, Laws of 2021), which eliminated the department of labor and industries' authority to issue any subminimum wage certificates for the employment of individuals with disabilities under RCW 49.12.110 and 49.46.060 as of July 31, 2023.

Citation of Rules Affected by this Order: Repealing WAC 296-128-050 through 296-128-090; and amending WAC 296-126-001, 296-126-010, 296-126-015, and 296-126-020.

Statutory Authority for Adoption: RCW 49.46.170(2).

Adopted under notice filed as WSR 24-15-125 on July 23, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 4, Repealed 9.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 1, 2024.

Joel Sacks
Director

OTS-5572.1

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

WAC 296-126-001 Applicability. (1) These rules apply to employers and employees in the state as defined in RCW 49.12.005 (3) and (4).

(2) These rules do not apply to:

(a) Newspaper vendors or carriers;

(b) Domestic or casual labor in or about private residences; or

(c) Agricultural labor as defined in RCW 50.04.150 (~~(; or~~
~~(d) Sheltered workshops~~)).

Note 1: Public employers and employees should review RCW 49.12.005 (3)(a) and (b) and WAC 296-126-002(2) to determine applicability.

Note 2: For a variance from the rules under this chapter, see WAC 296-126-130.

OTS-5439.1

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

WAC 296-126-010 Exceptions to minimum wage rate—Special certificates. (1) The director may issue a special certificate to an employer authorizing the employer to pay the following employees at a wage rate that is less than the applicable minimum wage rate:

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

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

~~((c))~~) (b) A student learner.

(2) The director shall fix the reduced minimum wage and issue a special certificate only where the director determines that an employer has applied for it in good faith.

(3) The director shall fix the duration of the validity of the certificate.

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

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

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

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

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

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

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

WAC 296-126-020 Minimum wages—Minors. Except where a higher minimum wage is required by Washington state or federal law:

(1) Every employer shall pay to each of his or her employees who have reached their (~~(sixteenth or seventeenth)~~) 16th or 17th year of

age a rate of pay per hour which is equal to the hourly rate required by RCW 49.46.020 for employees ((eighteen)) 18 years of age or older, whether computed on an hourly, commission, piecework, or other basis, except as may be otherwise provided under this chapter.

(2) Every employer shall pay to each of his or her employees who have not reached their ((sixteenth)) 16th year of age a rate of pay per hour that is not less than ((eighty-five)) 85 percent of the hourly rate required by RCW 49.46.020 for employees ((eighteen)) 18 years of age or older whether computed on an hourly, commission, piecework, or other basis, except as may be otherwise provided under this chapter.

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

OTS-5440.1

REPEALER

The following sections of the Washington Administrative Code are repealed:

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