Chapter 296-135 WAC

LEAVE FOR VICTIMS OF DOMESTIC VIOLENCE, SEXUAL ASSAULT, OR STALKING

WAC

296-135-001	Purpose.
296-135-010	Definitions.
296-135-020	Reasons for taking leave.
296-135-030	Types of activities for which leave is allowed.
296-135-040	Choice and manner of leave allowed.
296-135-050	Duration of leave allowed.
296-135-060	Advance notice and timing.
296-135-070	Verification.
296-135-080	Employee's duty to provide information to the employer.
296-135-090	Employer's duty to keep information confidential.
296-135-100	Maintaining pay and benefits accrued before taking leave.
296-135-110	Employer's duty after employee returns from leave.
296-135-120	Health insurance during leave.
296-135-130	Rights are in addition to other rights.
296-135-140	Complaints—Investigation—Notice of infraction—Determination of compliance.
296-135-150	Appeals from notices of infraction and determinations of compliance.
296-135-160	Civil actions—Right to file; exhaustion of administrative remedies not required.
296-135-170	Effect of administrative actions and resulting legal proceedings on any civil action by employee.
296-135-180	Confidentiality of information.
296-135-190	Prohibited acts.
296-135-200	Posting requirement.
296-135-210	Notice to employees—Prosecutors—Victims' advocates.

WAC 296-135-001 Purpose. The purpose of these rules is to administer and enforce the provisions of chapter 49.76 RCW, leave for victims of domestic violence, sexual assault, or stalking.

[Statutory Authority: Chapter 49.76 RCW and 2008 c 286. WSR 10-14-099, § 296-135-001, filed 7/6/10, effective 9/1/10.]

WAC 296-135-010 Definitions. (1) "Department" means the department of labor and industries.

(2) "Director" means the director of the department of labor and industries, or the director's designated representative.

(3) "Employer" means any person, firm, corporation, partnership, business trust, legal representative, or other business entity which engages in any business, industry, profession, or activity in this state and employs one or more employees, and includes the state, any state institution, state agency, political subdivisions of the state, and any municipal corporation or quasi-municipal corporation. See RCW 49.12.005.

(4) "Employee" means an employee who is employed in the business of the employee's employer, whether by way of manual labor or otherwise. See RCW 49.12.005.

(5) "Child" means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis who is:

(a) Under eighteen years of age; or

(b) Eighteen years of age or older and incapable of self-care because of a mental or physical disability. See RCW 49.12.265(1).

(6) "Spouse" means a husband or wife, and individuals in state registered domestic partnerships. See RCW 49.12.265 (6) and 1.12.080.

(7) "Parent" means a biological or adoptive parent of an employee or an individual who stood in loco parentis to an employee when the employee was a child. See RCW 49.12.-265(3).

(8) "Parent-in-law" means a parent of the spouse or of a partner in a state registered domestic partnership of an employee. See RCW 49.12.265(4) and 1.12.080.

(9) "Grandparent" means a parent of a parent of an employee. See RCW 49.12.265(2).

(10) "Sick leave and other paid time off" means "sick leave or other paid time off." "Sick leave or other paid time off" means time allowed under the terms of an appropriate state law, collective bargaining agreement, or employer policy, as applicable, to an employee for illness, vacation, and personal holiday. If paid time is not allowed to an employee for illness, "sick leave or other paid time off" also means time allowed under the terms of an appropriate state law, collective bargaining agreement, or employer policy, as applicable, to an employee for disability under a plan, fund, program, or practice that is:

(a) Not covered by the Employee Retirement Income Security Act of 1974, 29 U.S.C. Sec. 1001 et seq.; and

(b) Not established or maintained through the purchase of insurance. See RCW 49.12.265(5).

(11) "Dating relationship" means a social relationship of a romantic nature. Factors for consideration in making this determination include:

(a) The length of time the relationship has existed;

(b) The nature of the relationship; and

(c) The frequency of interaction between the parties. See RCW 26.50.010.

(12) "Family member" means any individual whose relationship to the employee can be classified as a child, spouse, partner in a state registered domestic partnership, parent, parent-in-law, grandparent, or person with whom the employee has a dating relationship. See RCW 49.76.020(5) and 1.12.-080.

(13) "Intermittent leave" means leave taken in separate blocks of time due to a single qualifying reason. See RCW 49.78.020(9).

(14) "Reduced leave schedule" or "reduced work schedule" means a leave schedule that reduces the usual number of hours per workweek, or hours per workday, of an employee. See RCW 49.78.020(15).

(15) "Domestic violence" means:

(a) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members;

(b) Sexual assault of one family or household member by another; or

(c) Stalking as defined in RCW 9A.46.110 of one family or household member by another family or household member. See RCW 26.50.010.

(16) "Sexual assault" means any sexual assault as defined in RCW 70.125.030.

(17) "Stalking" means stalking as defined in RCW 9A.46.110.

(18) "Victim" means a person against whom domestic violence, sexual assault, or stalking has been committed. See RCW 41.04.655(9).

(19) "Health care provider" means:

(a) A person licensed as a physician under chapter 18.71 RCW or an osteopathic physician and surgeon under chapter 18.57 RCW;

(b) A person licensed as an advanced registered nurse practitioner under chapter 18.79 RCW; or

(c) Any other person, including, but not limited to, a licensed mental health counselor under chapter 18.225 RCW and a licensed dentist under chapter 18.32 RCW, determined by the director to be capable of providing health care services. See RCW 49.78.020(8).

(20) "Advocate for victims of domestic violence, sexual assault, or stalking" includes, but is not limited to:

(a) A sexual assault advocate under RCW 5.60.060 (7)(a); and

(b) A domestic violence advocate under RCW 5.60.060 (8)(a).

(21) "Filed" or to "file" means actual receipt of the document during office hours at the office of the director, or at such other place designated by the department for filing of the document.

(22) "Service," "served," or to "serve" means service under RCW 34.05.010(19).

(23) "Issue" or "issuance" means service under RCW 34.05.010(19).

[Statutory Authority: Chapter 49.76 RCW and 2008 c 286. WSR 10-14-099, § 296-135-010, filed 7/6/10, effective 9/1/10.]

WAC 296-135-020 Reasons for taking leave. An employee may take leave under these rules to:

(1) Seek legal or law enforcement assistance or remedies to ensure the employee's or family member(s)' health and safety including, but not limited to, preparing for, or participating in, any civil or criminal legal proceeding related to or derived from domestic violence, sexual assault, or stalking. "Related to or derived from" means any civil or criminal legal proceeding that is triggered, in whole or in part, by an act of domestic violence, sexual assault, or stalking against any employee or family member covered by these rules.

Note: Whether a legal proceeding is "related to or derived from" domestic violence, sexual assault, or stalking depends on the facts and must be reviewed on an individual basis.

(2) Seek treatment by a health care provider for physical or mental injuries caused by domestic violence, sexual assault, or stalking.

(3) Attend to health care treatment for a victim who is the employee's family member.

(4) Obtain, or assist the employee's family member(s) in obtaining, services from:

(a) A domestic violence shelter; or

(b) A rape crisis center; or

(c) A social services program for relief from domestic violence, sexual assault, or stalking.

(5) Obtain, or assist a family member in obtaining, mental health counseling related to an incident of domestic violence, sexual assault, or stalking, in which the employee or the employee's family member was a victim of domestic violence, sexual assault, or stalking.

(6) Participate, for the employee's own self or for the employee's family member(s), in:

(a) Safety planning; or

(b) Temporary or permanent relocation; or

(c) Other actions to increase the safety from future incidents of domestic violence, sexual assault, or stalking.

[Statutory Authority: Chapter 49.76 RCW and 2008 c 286. WSR 10-14-099, § 296-135-020, filed 7/6/10, effective 9/1/10.]

WAC 296-135-030 Types of activities for which leave is allowed. To qualify for leave and protections under these rules, an employee must engage in one or more of the activities described in WAC 296-135-020, regardless of when the employee or family member became a victim.

Example 1: An employee's family member becomes a victim of domestic violence and suffers physical injuries. The employee takes time off from work to take the family member to the hospital for treatment for the injuries. The employee is covered by these rules.

Example 2: An employee's family member becomes a victim of domestic violence. The employee takes time off from work but does not engage in any of the activities described in WAC 296-135-020. The employee is not covered by these rules.

[Statutory Authority: Chapter 49.76 RCW and 2008 c 286. WSR 10-14-099, § 296-135-030, filed 7/6/10, effective 9/1/10.]

WAC 296-135-040 Choice and manner of leave allowed. (1) An employee may choose to take any of the following types of leave under these rules:

(a) Unpaid leave; or

(b) Paid leave, including sick leave and other paid time off; or

(c) Compensatory time.

(2) An employee may choose to take leave, whether unpaid or paid, in any manner as follows:

(a) Intermittent leave; or

(b) Leave on a reduced work schedule; or

(c) In a single block of time.

[Statutory Authority: Chapter 49.76 RCW and 2008 c 286. WSR 10-14-099, § 296-135-040, filed 7/6/10, effective 9/1/10.]

WAC 296-135-050 Duration of leave allowed. An employee is allowed to take leave that is reasonable in duration. The reasonableness of duration of leave must be determined on a case-by-case basis considering the reasons for taking leave under RCW 49.76.030 and WAC 296-135-020.

[Statutory Authority: Chapter 49.76 RCW and 2008 c 286. WSR 10-14-099, § 296-135-050, filed 7/6/10, effective 9/1/10.]

WAC 296-135-060 Advance notice and timing. (1) **Advance notice for foreseeable leave.** As a condition of taking foreseeable leave, an employee shall give advance oral or written notice of the employee's intention to take leave under RCW 49.76.030 and these rules, subject to subsection (2) of this section.

(a) If the employer has a stated policy that requires advance notice for foreseeable leave then the employee shall follow that policy. A "stated policy" means a written policy communicated to the employee prior to the employee requesting leave under these rules.

(b) If the employer does not have a stated policy that requires advance notice for foreseeable leave under these rules by a certain time, then the employee must give advance notice as soon as practicable for the leave requested.

(2) **Exemption from advance notice for unforeseeable leave.** When an employee is unable to give advance notice to the employer because of an emergency or unforeseen circumstances due to domestic violence, sexual assault, or stalking, the employee or his or her designee must give oral or written notice to the employer no later than the end of the first day that the employee takes such leave.

[Statutory Authority: Chapter 49.76 RCW and 2008 c 286. WSR 10-14-099, § 296-135-060, filed 7/6/10, effective 9/1/10.]

WAC 296-135-070 Verification. (1) An employer may require an employee requesting leave to verify that:

(a) The employee or the employee's family member is a victim; and

(b) The leave taken was for one of the activities described in RCW 49.76.030 and WAC 296-135-020.

(2) Timing of verification:

(a) An employee must provide verification in a timely manner from when the employee receives the request for verification.

(b) When an employee is unable to give advance notice because of an emergency or unforeseen circumstances due to domestic violence, sexual assault, or stalking, and the employer requires verification, an employee must provide verification to the employer within a reasonable time period during or after the leave.

(3) An employer cannot request that an employee submit a specific type of document to verify the need for leave under these rules. An employee may submit his or her choice of any of the following documents, or any combination thereof, to satisfy an employer's request for verification:

(a) A police report indicating that the employee or employee's family member was a victim; or

(b) A court order protecting or separating the employee or employee's family member from the perpetrator of the act of domestic violence, sexual assault, or stalking; or

(c) Other evidence from the court or the prosecuting attorney showing that the employee or employee's family member appeared, or is scheduled to appear, in court in connection with an incident of domestic violence, sexual assault, or stalking; or

(d) Documentation that the employee or employee's family member is a victim from any of the following persons from whom the employee or employee's family member sought assistance in addressing the domestic violence, sexual assault, or stalking:

(i) An advocate for victims of domestic violence, sexual assault, or stalking; or

(ii) An attorney; or

(iii) A member of the clergy; or

(iv) A medical or other professional, such as a social services provider, paralegal, realtor, or other professional determined by the director to be capable of assisting with a protected activity as described in RCW 49.76.030 and WAC 296-135-020; or

(e) An employee's written statement that the employee or family member is a victim and that the leave was taken for one of the activities described in RCW 49.76.030 and WAC 296-135-020.

(4) Verification of familial relationship. An employee may verify a victim is a family member by providing:

(a) A written statement from the employee;

(b) A birth certificate;

(c) A court document; or

(d) Other similar documents showing a familial relationship between the employee and the victim.

[Statutory Authority: Chapter 49.76 RCW and 2008 c 286. WSR 10-14-099, § 296-135-070, filed 7/6/10, effective 9/1/10.]

WAC 296-135-080 Employee's duty to provide information to the employer. (1) An employee is required to provide only the information required under RCW 49.76.040(2) and WAC 296-135-070 to establish that the leave is protected under RCW 49.76.030.

(2) An employer is prohibited from requiring any information that is beyond the scope of RCW 49.76.040(2) and WAC 296-135-070.

(3) An employee is not required to produce or discuss with the employer, and the employer is prohibited from requiring, any information that would compromise the employee's or employee's family member's safety in any way.

[Statutory Authority: Chapter 49.76 RCW and 2008 c 286. WSR 10-14-099, § 296-135-080, filed 7/6/10, effective 9/1/10.]

WAC 296-135-090 Employer's duty to keep information confidential. For purposes of this section, designated representatives include supervisors, human resource and payroll personnel, members of a safety team, and other personnel whose job duties require them to act on requests for leave by employees.

(1) An employer and designated representatives shall maintain the confidentiality of all information provided by the employee, including:

(a) The fact that the employee or a family member is a victim; and

(b) That the employee requested or obtained leave; and

(c) Any written or oral statement, documentation, record, or corroborating evidence provided by the employee.

(2) An employer may disclose information given by an employee to third parties, including other employees, only if:

(a) The employee requests or consents that the employer disclose the information; or

(b) A court or administrative agency orders disclosure of the information; or

(c) Federal or state law otherwise requires the employer to disclose the information.

Example 1: The owner of a company discloses to the company's bookkeeper that an employee is taking leave under these rules and should be given access to available sick leave and other paid time off. This disclosure is permissible.

Example 2: A manager holds a staff meeting and reports to all workers, without consent of the employee requesting leave under these rules, that the employee or his or her family member is a victim. This disclosure is not permissible.

Note: **Safety plans at work.** Employees should work cooperatively with their employers to permit communication of information, including safety plans, necessary to protect the safety of the employee and others.

[Statutory Authority: Chapter 49.76 RCW and 2008 c 286. WSR 10-14-099, § 296-135-090, filed 7/6/10, effective 9/1/10.]

WAC 296-135-100 Maintaining pay and benefits accrued before taking leave. When an employee takes leave under RCW 49.76.030 and these rules, the employee shall not lose any pay or benefits that accrued to the employee before the date on which the leave started.

[Statutory Authority: Chapter 49.76 RCW and 2008 c 286. WSR 10-14-099, § 296-135-100, filed 7/6/10, effective 9/1/10.]

WAC 296-135-110 Employer's duty after employee returns from leave. (1) Upon an employee's return from leave under RCW 49.76.030 and these rules, an employer shall either:

(a) Restore the employee to the position of employment held by the employee when the leave commenced; or

(b) Restore the employee to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment.

(2) The provisions of subsection (1) of this section do not apply if:

(a) The employee works for a staffing company and is assigned to work on a temporary basis for another organization that directs and supervises the employee to:

(i) Support or supplement the other organization's workforce; or

(ii) Provide assistance in special work situations such as, but not limited to:

(A) Employee absences; and

(B) Skill shortages; and

(C) Seasonal workloads; and

(D) Special assignments and projects; or

(b) The employee:

(i) Was hired for a specific term, or only to perform work on a discrete project; and

(ii) The employment term or project is over, and the employer would not otherwise have continued to employ the employee.

[Statutory Authority: Chapter 49.76 RCW and 2008 c 286. WSR 10-14-099, § 296-135-110, filed 7/6/10, effective 9/1/10.]

WAC 296-135-120 Health insurance during leave. To the extent allowed by law, an employer must maintain coverage under any health insurance plan for an employee who takes leave under RCW 49.76.030 and these rules. Coverage must be for the duration of the leave and at the level and under the conditions coverage would have been provided if the employee had not taken the leave.

[Statutory Authority: Chapter 49.76 RCW and 2008 c 286. WSR 10-14-099, § 296-135-120, filed 7/6/10, effective 9/1/10.]

WAC 296-135-130 Rights are in addition to other rights. (1) The rights under chapter 49.76 RCW and this chapter are in addition to any other rights provided by state and federal law.

(2) An employer may adopt policies that provide greater leave rights to employees who are or who have family members who are victims.

(3) These rules do not diminish an employer's obligation to comply with any collective bargaining agreement, or any employment benefit program or plan, that provides greater leave rights to employees than the rights provided under chapter 49.76 RCW and these rules.

[Statutory Authority: Chapter 49.76 RCW and 2008 c 286. WSR 10-14-099, § 296-135-130, filed 7/6/10, effective 9/1/10.]

WAC 296-135-140 Complaints—Investigation—Notice of infraction—Determination of compliance. (1) Upon complaint by an employee of an employer's violation of chapter 49.76 RCW and these rules, the director shall investigate the complaint.

(2) If the director determines that an employer has violated chapter 49.76 RCW and these rules, the director shall issue a notice of infraction and may:

(a) Impose a fine of up to five hundred dollars for the first infraction; and

(b) Impose a fine of up to one thousand dollars for each subsequent infraction committed within three years of a previous infraction; and

(c) Order an employer to restore the employee to a position of employment under RCW 49.76.050(2) and WAC 296-135-110(1), except as limited by RCW 49.76.050(3) and WAC 296-135-110(2).

(3) If the director determines that an employer has not violated chapter 49.76 RCW and these rules, the director shall issue a determination of compliance.

[Statutory Authority: Chapter 49.76 RCW and 2008 c 286. WSR 10-14-099, § 296-135-140, filed 7/6/10, effective 9/1/10.]

WAC 296-135-150 Appeals from notices of infraction and determinations of compliance. (1) Except as otherwise provided in chapter 49.76 RCW and these rules, appeal from the director's decision is governed by the Administrative Procedure Act, chapter 34.05 RCW and the model rules of procedure, chapter 10-08 WAC. An employer or employee may file an appeal from a notice of infraction or determination of compliance under chapter 49.76 RCW and these rules within twenty days of issuance of the decision. The appealing party shall file two copies of its notice of

appeal with the department at the office designated on the notice of infraction or determination of compliance. If no party files an appeal from the notice of infraction or determination of compliance within twenty days of its issuance, the notice of infraction or determination of compliance is final and binding and not subject to further appeal.

(2) Upon receipt of a timely appeal of a notice of infraction or determination of compliance, the department must:

(a) Notify the employer and employee of the receipt of the appeal; and

(b) Conduct a hearing in accordance with chapter 34.05 RCW and chapter 10-08 WAC.

(3) Appeals shall be assigned to the office of administrative hearings. The burden of proof at hearing shall be on the party alleging violation of chapter 49.76 RCW and these rules. The standard of proof is by a preponderance of the evidence. The administrative law judge will issue a proposed decision that includes findings of fact, conclusions of law, and if appropriate, any penalty for infraction.

(4) The employee, employer, and/or department may appeal to the director within thirty days after the date of issuance of the proposed decision. The appeals shall be in writing, stating the reasons why the proposed decision is incorrect, and must be filed with the director. The appealing party must serve on all other parties or their representatives a copy of the notice of appeal at the time it is filed. The director may also determine that the proposed decision be reviewed.

(5) If none of the parties files an appeal within thirty days of issuance of a proposed decision, and the director does not order review within such time, the proposed decision shall become final without further action and may not be appealed either to the director or the courts.

(6) The respondent parties must file with the director and serve upon all other parties or their representatives their responsive written arguments, if any, within thirty days after the date the notice of appeal from a proposed decision and the arguments of the appellant were served upon them.

(7) The director or the director's designee will review the administrative law judge's proposed decision in accordance with the Administrative Procedure Act, chapter 34.05 RCW. The director shall issue a final decision that can affirm, modify, or reverse the proposed decision. In addition, the director may:

(a) Allow the parties to present oral arguments as well as the written arguments;

(b) Require the parties to specify the portions of the record on which the parties rely;

(c) Require the parties to submit additional information by affidavit or certificate;

(d) Remand the matter to the administrative law judge for further proceedings; or

(e) Require a departmental employee to prepare a summary of the record for the director to review.

(8) The director or the director's designee will serve the final decision on all parties. Any aggrieved party may appeal the final decision to superior court pursuant to the Administrative Procedure Act, chapter 34.05 RCW. If no party files an appeal within thirty days of service of the final decision, the final decision is conclusive and binding on all parties.

[Statutory Authority: Chapter 49.76 RCW and 2008 c 286. WSR 10-14-099, § 296-135-150, filed 7/6/10, effective 9/1/10.]

WAC 296-135-160 Civil actions—Right to file; exhaustion of administrative remedies not required. (1) An employee aggrieved by any act in violation of chapter 49.76 RCW and these rules has the right to file a civil action in court for an injunction, actual damages, costs, and reasonable attorneys' fees.

(2) An employee need not exhaust administrative remedies before filing a civil action.

(3) The right to file a civil action under RCW 49.76.100 is in addition to any common law remedy or any other remedy that may be available to an employee.

[Statutory Authority: Chapter 49.76 RCW and 2008 c 286. WSR 10-14-099, § 296-135-160, filed 7/6/10, effective 9/1/10.]

WAC 296-135-170 Effect of administrative actions and resulting legal proceedings on any civil action by employee. Regardless of whether the prior administrative action was between the same or related parties or involved the same facts, any finding, determination, conclusion, declaration, notice of infraction, or determination of compliance (collectively called "administrative actions") resulting from a complaint by an employee against an employer to the department under chapter 49.76 RCW and these rules is neither conclusive nor binding in any civil suit by an employee against an employer. Such administrative actions are actions by the director, an appeal tribunal, an administrative law judge, or a reviewing officer, to include a member of the judiciary upon judicial review under chapter 34.05 RCW.

[Statutory Authority: Chapter 49.76 RCW and 2008 c 286. WSR 10-14-099, § 296-135-170, filed 7/6/10, effective 9/1/10.]

WAC 296-135-180 Confidentiality of information. (1) Information and records of employees contained in the department's complaint files under chapter 49.76 RCW and these rules are confidential and shall not be open to public inspection, except as provided in subsection (2) of this section.

(2) Except as limited by federal or state statutes or regulations:

(a) The department may provide information and records in subsection (1) of this section to public employees in the performance of their official duties; and

(b) A complainant, or a representative of a complainant, whether it is an individual or an organization, may review a complaint file or receive specific information after providing a signed authorization of the complainant to the department.

[Statutory Authority: Chapter 49.76 RCW and 2008 c 286. WSR 10-14-099, § 296-135-180, filed 7/6/10, effective 9/1/10.]

WAC 296-135-190 Prohibited acts. An employer cannot discharge, threaten to discharge, demote, deny a promotion to, sanction, discipline, retaliate against, harass, or otherwise discriminate against an employee with respect to compensation, terms, conditions, or privileges of employment because the employee:

(1) Exercised or attempted to exercise the right to take leave under RCW 49.76.030;

(2) Filed or communicated to the employer an intent to file a complaint with the department under RCW 49.76.070 or a civil action under RCW 49.76.100; or

(3) Participated or assisted, as a witness or otherwise, in another employee's attempt to exercise rights under RCW 49.76.030, 49.76.070, or 49.76.100.

[Statutory Authority: Chapter 49.76 RCW and 2008 c 286. WSR 10-14-099, § 296-135-190, filed 7/6/10, effective 9/1/10.]

WAC 296-135-200 Posting requirement. (1) The department shall include notice of the provisions under chapter 49.76 RCW in its posters under RCW 49.78.340.

(2) Employers shall post the notice as required by RCW 49.78.340.

[Statutory Authority: Chapter 49.76 RCW and 2008 c 286. WSR 10-14-099, § 296-135-200, filed 7/6/10, effective 9/1/10.]

WAC 296-135-210 Notice to employees—Prosecutors—Victims' advocates. Prosecuting attorney and victim/witness offices are encouraged to make information regarding chapter 49.76 RCW and these rules available for distribution at their offices.

[Statutory Authority: Chapter 49.76 RCW and 2008 c 286. WSR 10-14-099, § 296-135-210, filed 7/6/10, effective 9/1/10.]