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No. 79209-7

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SUPREME COURT
OF THE STATE OF WASHINGTON

CLERK

GENE CHAMPAGNE, CARY BROWN, ROLAND
KNORR, and CHRISTOPHER SCANLON,

Plaintiffs/Petitioners

v.

THURSTON COUNTY, a political
subdivision of the State of Washington,

Defendant/Respondent

FILED
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STATE OF WASHINGTON
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ON PETITION FOR REVIEW FROM
COURT OF APPEALS, DIVISION II

ANSWER TO PETITION FOR REVIEW

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A. Identity of Answering Party.

Defendant and Respondent Thurston County ("Respondent") submits this Answer to the Petition for Review of plaintiffs Gene Champagne ("Champagne"), Cary Brown ("Brown"), Roland Knorr ("Knorr") and Christopher Scanlon ("Scanlon") (collectively "Plaintiffs" or "Petitioners").

B. Summary of Answer to Petition.

Petitioners have asked this Court to review the Court of Appeals' decision affirming the summary judgment dismissal of Petitioners' claims "based on their failure to show that the County violated any law in paying their additional wages the following month and on their corresponding failure to state a claim for which relief could be granted." *Champagne v. Thurston County*, 134 Wn. App. 515, 520, 141 P.3d 72 (2006). The sole basis for Petitioners' request for review by this Court is RAP 13.4(b)(4) -- Petitioners contend that this case presents "an issue of substantial public interest." Petition for Review ("Petition") at 17. Petitioners do *not* seek review on the basis of any other grounds under RAP 13.4(b)(1)-(3). Thus, Petitioners do not contend that the Court of Appeals' decision is in conflict with any other decision of the Court of Appeals or the Supreme Court, or that it raises any constitutional issues.

As discussed below, Petitioners' request for review by this Court should be rejected for two reasons. First, the decision of the Court of Appeals is correct as a matter of undisputed fact and established law, and is consistent with the holdings of this Court in prior cases addressing the remedies available under Washington's wage and hour laws. As a consequence, there are no issues of "substantial public interest" raised by the Court of Appeals' decision.

Second, on January 23, 2007, the Washington State Department of Labor and Industries ("Department") adopted revisions to clarify the meaning and effect of the very regulation that forms the basis for Petitioners' claims in this action, WAC 296-128-035, and those revisions extinguish any continuing basis for Petitioners' claim that the County's pay practices are unlawful. Through these revisions, the Department (the agency tasked with enforcing Washington's wage and hour laws) has now answered and resolved all questions raised by Petitioners concerning the meaning and application of WAC 296-128-035, and no "substantial public interest" or other purpose would be served by this Court engaging in review of a regulation (and related claims and legal arguments) that is now obsolete.

C. Counterstatement of Issues Raised by the Petition.

Petitioners' best efforts cannot disguise the fact that their Petition really presents nothing more than a plea for this Court to correct supposed errors by the Court of Appeals. In deciding that Petitioners' claims were properly dismissed on summary judgment, the Court of Appeals merely applied the basic and well-settled rule under Washington's wage and hour laws that employees are not entitled to an award of statutory damages for unpaid wages when, in fact, it is undisputed that the employer has already "paid them all wages, both regular and additional, due under [their] collective bargaining agreement." *Champagne*, 134 Wn. App. at 517. In the absence of a claim that the County has actually "withheld" wages as required under RCW 49.52.070, or has failed to pay minimum or final wages as required by chapters 49.46 and 49.48 RCW, Petitioners have no basis for asserting such claims and the Court of Appeals properly affirmed summary judgment in favor of Respondent.

Boiled down to essentials, the only real issue raised by Petitioners' request for review is whether the Court of Appeals correctly applied this well-established and common sense principle of Washington wage and hour law. Such an issue fails to present an issue of "substantial public interest." RAP 13.4(b)(4). Accordingly, Petitioners' Petition should be denied.

The lack of any genuine issue of public importance is confirmed by the Department's recent adoption of a comprehensive clarification of the "payment interval" regulation (WAC 296-128-035) that forms the basis for all of Petitioners' claims in this action. As revised and adopted by the Department on January 23, 2007 (with an effective date of March 1, 2007), WAC 296-128-035 confirms that the County may pay overtime wages to Petitioners and other County employees on "the regular pay day following the next pay period" after the overtime wages were earned. WAC 296-128-035(6). The regulation also recognizes that the payment interval rules provided in the regulation "may be superseded" by the collective bargaining agreement that covers Petitioners and other County employees, and that the County is in full compliance with Washington law as long as Petitioners receive their "regular wages . . . at no longer than monthly intervals," and all "other wages (including overtime, bonus pay, and other categories of specialty pay in addition to regular wages) in accordance with the payment interval requirements applicable to covered employees under the terms of, or recognized custom and practice under, the collective bargaining agreement" negotiated between the County and Petitioners' union. WAC 296-128-035(8).

It is undisputed that the County's pay practices comply with these requirements. As a consequence, Petitioners' Petition should be denied

because no issues of "substantial public interest" remain for this Court to decide.

D. Counterstatement of Facts.

The facts of this case, as summarized by the Court of Appeals and acknowledged by Petitioners, are not in dispute. Petitioners are four Corrections Officers with the Thurston County Sheriff's Office. (CP 27) (Complaint at 2, ¶ 1.1). During all times relevant to this appeal, Thurston County has paid Petitioners on the last work day of each month for regular wages earned that month. (CP 28, 243.) Petitioners acknowledge that Thurston County has properly paid all regular wages, and Petitioners are not asserting any claims in this action relating to the payment of their base wage. (CP 228-29, 245-46, 262-63.)

In addition to their base salary, Petitioners are also eligible to receive certain categories of additional pay under their collective bargaining agreement, including overtime, compensatory time, specialty pay, supervisory pay and holiday pay. (CP 118-222, 225-36, 243-55, 262-64, 269-74.) If Petitioners work overtime or earn additional pay beyond their regular wages in any given month, they must submit the appropriate form (time sheet) to the County at the end of that month. (CP 78-79.) After obtaining the required verification and approval of any additional pay items recorded on the time sheet, and making the necessary

payroll calculations, the County then includes the additional pay in the Petitioner's next paycheck, which the County issues at the end of the following month. *Id.*; Petition at 3-4. This practice is specifically recognized and approved under Petitioners' collective bargaining agreement, which provides that it "shall normally be the practice to pay overtime in money during the pay period following the pay period in which overtime is worked." (CP 135, 188) (Paragraph 5.5 of Petitioners' collective bargaining agreement).

Petitioners do not dispute that the County has paid them in full for all wages owed, both regular and additional, in compliance with the terms of their collective bargaining agreement. In fact, in their Petition, Petitioners "concede that the wages at issue were [sic] eventually paid." Petition at 10. Thus, this is not a case that involves a claim that the employer has withheld or failed to pay wages owed to its employees. To the contrary, Petitioners have been paid, and continued to be paid, all regular and additional wages owed under their collective bargaining agreement on known and established pay days. (CP 244.) As acknowledged by Petitioners, their claims in this action are concerned with "the timing of the payment, not the fact of the payment." *Id.*

Petitioners filed their Complaint against the County in September 2004, in which they included causes of action under (1) the Washington

Minimum Wage Act ("WMWA"), Chapter 49.46 RCW; (2) the Washington Wage Payment and Collection Act, Chapter 49.48 RCW; and (3) the Washington Wages, Deductions, Contributions and Rebates Act, Chapter 49.52 RCW. (CP 6-7) (Complaint at 4-5, ¶¶ 4.1-6.4). Although Petitioners' Complaint included two causes of action against the County under chapters 49.46 and 49.48 RCW, Petitioners asserted *no claims for unpaid wages* against the County under these two causes of action. Instead, Petitioners claimed only that they were entitled to "their costs and reasonable attorneys' fees" under RCW 49.46.090 and RCW 49.48.010. (CP 6) (Complaint at 4, ¶¶ 4.3 and 5.3). Apart from seeking attorneys' fees and costs, Petitioners did not allege in their first two causes of action that the County owed them any unpaid wages or other damages.

The sole basis for Petitioners' damages claims in this action is their third cause of action under RCW 49.52.070. Under that cause of action, Petitioners claim that they are entitled to judgment for "twice the amount" of the additional wages that have already been paid to them, plus their "costs of suit and reasonable attorneys' fees under RCW 49.52.070 and applicable law." (CP 7) (Complaint at 5, ¶ 6.4).

On September 30, 2005, Thurston County moved for summary judgment on the grounds that Petitioners had failed to comply with the statutory prerequisites of RCW 36.45.010, RCW 4.96.010(1) and RCW

4.96.020(1)-(2). (CP 42-74.) Under those statutes, any individual claimant who wishes to assert a claim for damages against a county must first file his or her claim directly with the county as "a condition precedent to the commencement of any action claiming damages." RCW 4.96.010(1); *Harberd v. City of Kettle Falls*, 120 Wn. App. 498, 84 P.3d 1241, *rev. denied*, 152 Wn.2d 1025 (2004). Petitioners admitted then -- and continue to acknowledge today -- that they did not file their claims with the County prior to filing their lawsuit. (CP 4, 237, 261, 275-76); Petition at 5.

The trial court granted Thurston County's motion for summary judgment and dismissed Petitioners' Complaint without prejudice. (CP 282-83.) Petitioners then appealed the dismissal of their case to the Court of Appeals. (CP 295.) On appeal, the Court of Appeals affirmed summary judgment in favor of the County. *Champagne v. Thurston County*, 134 Wn. App. 515, 141 P.3d 72 (2006). However, the Court of Appeals did so on alternative grounds. Specifically, the Court of Appeals held that Petitioners had failed "to show that the County violated any law in paying their additional wages the following month," and that Petitioners' Complaint failed "to state a claim for which relief could be granted." *Champagne*, 134 Wn. App. at 520.

Petitioners now seek review of the Court of Appeals' decision. For the reasons discussed below, the Court should decline Petitioners' request.

E. Why Review Should Be Denied.

1. The Court of Appeals Correctly Determined That, Consistent With Established Law Under This Court's Precedents, Petitioners Failed to State an Actionable Claim Under RCW 49.52.070.

The Court of Appeals' decision in this case is a common sense result based on this Court's prior precedents and the plain meaning of the principal statute at issue -- RCW 49.52.070. Notwithstanding the wide-ranging arguments in their Petition, Petitioners' Complaint does not assert any claims for unpaid wages under chapters 49.46 or 49.48. Nor does the Complaint assert an "independent cause of action" for damages based directly on WAC 296-128-035. Instead, the sole claim for damages asserted in Petitioners' Complaint is Paragraph 6.4, in which Petitioners allege that "Thurston County's action in willfully failing to pay the due and payable wage payments entitles each of the Plaintiffs to judgment for twice the amount of the wages wrongfully withheld from them, together with their joint costs of suit and reasonable attorneys' fees under RCW 49.52.070 and applicable law." (CP 7.) *See Champagne*, 134 Wn. App. at 519 ("Correction Officers alleged in their complaint only that they were entitled to double damages under RCW 49.52.070."). Having made the

conscious choice to base their damages claims in this action exclusively on RCW 49.52.070 (presumably in an effort to maximize their potential recovery through the statute's double damages provision), Petitioners must now live with the consequences of that decision.

As recognized in this Court's prior decisions, RCW 49.52.070 does not permit an employee to recover double damages if the employee has already been paid the wages in question. Simply put, RCW 49.52.070 only applies in cases in which the employee's wages have actually been "withheld." Absent such a failure to pay wages, RCW 49.52.070 does not apply. As explained by this Court in *Schilling v. Radio Holdings, Inc.*, 136 Wn.2d 152, 158, 961 P.2d 371 (1998), the Legislature only authorized the recovery of exemplary damages under RCW 49.52.070 (based upon a violation of RCW 49.52.050(2)) in cases in which the "employer willfully *refuses to pay wages*" (emphasis added). As a consequence, the extraordinary remedy of double damages is only available "in circumstances where an employer paid no compensation whatsoever to an employee" *Seattle Prof'l Eng'g Employees Ass'n v. Boeing Co.*, 139 Wn.2d 824, 831, 991 P.2d 1126 (2000) ("*S.P.P.E.A.*").

Here, it is undisputed that there is no "failure to pay" or "refusal to pay" wages by the County. *S.P.E.E.A.*, 139 Wn.2d at 831. To the contrary, Petitioners admit that the County has paid them the full amount

of all wages, both regular and additional, consistent with the terms of their collective bargaining agreement. Having already received all wages to which they are entitled, Petitioners have no basis for contending that they are entitled to be paid *twice* the amount of those wages under RCW 49.52.070. Such an assertion defies both common sense and the plain meaning of the statute, and is directly contrary to this Court's holdings in *Schilling* and *S.P.E.E.A.* As the Court of Appeals correctly concluded, the Legislature did not intend RCW 49.52.070 to create such a windfall. Instead, double damages are only available under RCW 49.52.070 where "an employer has paid *no* compensation to an employee." *Champagne*, 134 Wn. App. at 519 (emphasis in original). Given the absence of such circumstances here, and the clear directives provided by this Court's prior holdings in the *Schilling* and *S.P.E.E.A.* cases, there is no "issue of substantial public interest" that warrants review of this matter under RAP 13.4(b)(4).

2. The Court of Appeals Properly Dismissed Petitioners' Claims Under Chapters 49.46 and 49.48 RCW. Although Petitioners spend the first fifteen pages of their Petition attempting to explain why they should be permitted to pursue claims for unpaid wages under chapters 49.46 and 49.48 RCW, as noted above the undisputed record in this case shows that Petitioners never asserted such claims in their Complaint. *See*

Complaint at 4, ¶¶ 4.3 and 5.3 (CP 29) (limiting claims under RCW 49.46.090 and RCW 49.48.010 to request for "costs and reasonable attorneys' fees"; no claims for unpaid wages asserted under chapters 49.46 or 49.48 RCW); *Champagne*, 134 Wn. App. at 519, and 520, n.5. Having failed to assert such claims below, Petitioners may not raise them now for the first time on appeal and attempt to use them as a basis for seeking review before this Court.¹

Even if Petitioners had included such claims in their Complaint, the Court of Appeals properly determined that Petitioners cannot state a claim for relief under chapters 49.46 or 49.48 RCW. An employee may only assert a claim for relief under RCW 49.46.090 when his or her employer has paid the employee "less than [the] wages to which such employee is entitled under or by virtue of" chapter 49.46 RCW. In such a

¹In similar fashion, Petitioners failed to assert in their Complaint that they have a private right of action, either express or implied, to assert a claim for damages directly under WAC 296-128-035. As a consequence, Petitioners' argument that "employees maintain independent causes of action for an employer's violation of a substantive regulation," Petition at 11, n.3 (citing *Wingert v. Yellow Freight Sys., Inc.*, 146 Wn.2d 841, 50 P.3d 256 (2002)), is not properly before this Court and may not be used by Petitioners as a basis for seeking review. The sole basis upon which Petitioners asserted their claim for an award of unpaid wages and exemplary damages in this case is RCW 49.52.070. See Complaint at 5, ¶ 6.4 (CP 30). Because the Court of Appeals properly dismissed Petitioners' claims under RCW 49.52.070, consistent with the holdings in this Court's prior decisions, no issues of "substantial public interest" exist in this case that warrant further review.

case, the employee is entitled to recover the amount of unpaid wages owed by the employer, "less any amount actually paid to such employee by the employer" RCW 49.46.090(1).

As this Court recognized in *S.P.E.E.A.*, the express language of RCW 49.46.090 only allows an employee to "recover for an employer's *failure to pay compensation* equivalent to the statutory minimum wage, or time and one-half at the employee's regular wage rate for overtime." *S.P.E.E.A.*, 139 Wn.2d at 830-31 (emphasis added). Such is not the case here. To the contrary, it is undisputed that the County has paid Petitioners all wages owed, both regular and additional. As a consequence, even if Petitioners had included a claim for unpaid wages under chapter 49.46 RCW in their Complaint (which, as discussed above, they did not), there is no legal or factual basis to support such a claim.

In summary, consistent with this Court's prior precedents and the undisputed facts and circumstances of this case, the Court of Appeals correctly concluded that chapter 49.46 RCW does *not* provide a basis for asserting a claim for damages "when an employer has in fact paid the employees their due wages, as the County did here," *Champagne*, 134 Wn. App. at 520, n.5. Having failed to present (or even assert) a viable claim

under chapter 49.46 RCW, Petitioners have failed to demonstrate any "issue of substantial public interest" that warrants review by this Court.²

Petitioners' arguments concerning chapter 49.48 RCW fare no better. Like RCW 49.46.090, RCW 49.48.010 and 49.48.030 limit employee claims to those cases in which the employer has actually *failed to pay* wages to the employee (in this case, at the termination of employment).³ As explained by this Court in *Schilling*, in enacting RCW

²In an effort to persuade this Court otherwise, Petitioners cite to various federal court decisions under the Fair Labor Standards Act. *See* Petition at 12-13. These decisions, which were decided under a federal regulation (29 C.F.R. § 778.106) that is not at issue here, are inapposite to this case because they involved completely different claims and circumstances. Unlike this case, which involves claims concerning the County's use of a payroll system under which Petitioners are, in fact, paid all regular and additional wages on a fixed and known schedule, the federal cases cited by Petitioners involved claims against employers that completely failed to pay any wages to its employees (*Biggs v. Wilson*, 1 F.3d 1537 (9th Cir. 1993), *cert. denied*, 510 U.S. 1081 (1994)), or withheld the employees' wages for indefinite and unknown periods lasting several months (*Brooks v. Village of Ridgefield Park*, 185 F.3d 130 (3d Cir. 1999)). As the Court of Appeals recently explained, such federal decisions are inapplicable to cases like this one, where the County "only seeks a short period of time to process overtime and other irregular payments." *Clark v. City of Kent*, ___ Wn. App. ___, 150 P.3d 161, 165 (2007). Even the cases cited by Petitioners confirm that it is proper for an employer to pay wages to its employees on the "first pay day after the amount can practicably be determined." *O'Brien v. Town of Agawam*, 350 F.3d 279, 298 (1st Cir. 2003).

³As this Court recognized in *Pope v. Univ. of Washington*, 121 Wn.2d 479, 489, 852 P.2d 1055 (1993), *opinion amended*, 571 P.2d 590, *cert. denied*, 510 U.S. 1115 (1994), RCW 49.48.010 only applies to cases in which an employer has "made improper deductions to wages due at the
(continued . . .)

49.48.010, "the Legislature mandated that employers pay employees all wages due upon the conclusion of the employment relationship and banned all *withholding or diversion of wages* by employers unless specifically approved by statute." *Schilling*, 136 Wn.2d at 157 (emphasis added); *accord*, *S.P.E.E.A.*, 139 Wn.2d at 830-31.

As discussed above, it is undisputed that such facts are not present here. The County has never "withheld" or "diverted" any wages owed to Petitioners (whether at termination or otherwise). Accordingly, having failed to present (or even assert) a viable claim under chapter 49.48 RCW, Petitioners have failed to demonstrate any "issue of substantial public interest" that warrants review by this Court under RAP 13.4(b)(4).

3. The Revised Payment Interval Regulation Adopted by the Washington State Department of Labor and Industries on January 23, 2007, Confirms That the County's Pay Practices Are Lawful, and Moots Petitioners' Request for Review. Whatever limited appeal Petitioners' arguments may have had when they first filed their Petition, those arguments have now been extinguished as a result of recent regulatory activity by the Washington State Department of Labor and Industries. On

(. . . continued)

termination of employment" -- it does *not* apply to cases involving *current* employees such as Petitioners. (CP 234, 243, 245.) This fact provides further support for the Court of Appeals' conclusion that Petitioners' Complaint failed to state a viable claim for relief under RCW 49.48.010.

January 23, 2007, the Department formally adopted a revised and clarified⁴ version of WAC 269-128-035, which is the very "payment interval" regulation that lies at the heart of Petitioners' case. This revised version of WAC 296-128-035 becomes effective on March 1, 2007. *See* Wash. St. Reg. 07-03-145 (Jan. 23, 2007). For the Court's convenience, a copy of the revised payment interval regulation is attached hereto as Exhibit A.

As revised and clarified by the Department, WAC 296-128-035 leaves no doubt that the County's payroll practices are proper and lawful. Specifically, WAC 296-128-035(6) now provides that if the "correct amount of overtime wages cannot be determined until after [the] regular pay day," an employer "may establish a separate pay day for overtime wages" as long as the overtime wages are paid no later than "the regular pay day following the next pay period." It is undisputed that the County's pay practices comply with this section of the revised payment interval regulation.

⁴The stated purpose of the Department's revised payment interval regulation is to incorporate current agency policy into rule and clarify the meaning and application of existing payment interval requirements. Wash. St. Reg. 07-03-145 (January 23, 2007).

Further, WAC 296-128-035(8) expressly excludes employees, such as Petitioners, who are covered by a collective bargaining agreement⁵ and paid (a) all "regular wages" at no longer than monthly intervals, and (b) all "other wages" (including overtime, bonus pay, and other categories of specialty pay in addition to regular wages) in accordance with "the terms of, or recognized custom and practice under, the collective bargaining agreement." WAC 296-128-035(8)(a)-(b). Once again, it is undisputed that the County's pay practices fall within this section of the revised payment interval regulation. Paragraph 5.5 of Petitioners' collective bargaining agreement expressly provides that it "shall normally be the practice to pay overtime in money during the pay period following the pay period in which overtime is worked." (CP 135, 188.) Consistent with this provision, the County includes overtime and other categories of specialty pay in the paycheck issued at the end of the following pay period. Such a recognized and long-established custom and practice is specifically permitted and approved under WAC 296-128-035(8).

In summary, regardless of whatever theoretical issues of "substantial public interest" may have existed with respect to the former version of WAC 296-128-035, those issues have now been resolved and

⁵In similar fashion, RCW 49.48.010 provides that "the duty to pay an employee forthwith shall not apply if the labor-management agreement under which the employee has been employed provides otherwise."

extinguished by the Department's recent clarification and revision of the payment interval regulation. It being undisputed that the County's pay practices comply with that revised regulation, this Court should deny Petitioners' request for review of this matter under RAP 13.4(b)(4). No purpose would be served by continuing to litigate the meaning and effect of a regulation that no longer exists.

F. Conclusion.

For the foregoing reasons, Respondent Thurston County respectfully requests that this Court deny Petitioners' Petition for Review.

RESPECTFULLY SUBMITTED this 9th day of February,

2007.

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WSR 07-03-145

PERMANENT RULES

DEPARTMENT OF

LABOR AND INDUSTRIES

[Filed January 23, 2007, 2:45 p.m. , effective March 1, 2007]

Effective Date of Rule: March 1, 2007.

Purpose: WAC 296-126-023, 296-128-035, and 296-131-010, payment interval rules. The purpose of this rule making is to incorporate the payment interval administrative policy into the rules. By integrating the policy into rule and expanding the rule to clarify different payment interval approaches, the payment interval rule will be easier to use, understand, and provide greater certainty and consistency without having to rely on additional documents. The adoption will:

1. Retain the requirement that employers must pay all wages at no longer than monthly intervals on regular pay days.
2. Continue to require an employer to implement a regular payroll system in which wages from up to seven days before pay day may be withheld if paying at a monthly interval.
3. Continue to require that paychecks must be mailed on the established payday and funds provided by direct deposit or electronic means must be available on the established payday.
4. Employers are required to pay wages no later than ten days after the end of the pay period, except for monthly payroll systems.
5. Allow employers to establish separate pay periods for regular and overtime wages plus commission and other specialty pay as long as workers are paid no later than the pay day for the following pay period.

Citation of Existing Rules Affected by this Order: Amending WAC 296-126-023, 296-128-035, and 296-131-010.

Statutory Authority for Adoption: Chapters 49.12, 49.30, and 49.46 RCW.

Adopted under notice filed as WSR 06-17-136 on August 22, 2006.

Changes Other than Editing from Proposed to Adopted Version: The following sections were amended between the proposed and adopted versions (bold and italics indicate change):

WAC 296-126-023:

(5) If an employer pays wages on the basis of a monthly pay period, the employer may establish a regular payroll system under which wages for work performed by an employee during the last seven days of the monthly pay period may be withheld and included with the wages paid on the pay day for the next pay period.

EXHIBIT A

Example: Employer establishes a monthly pay period starting on the 1st day of each month with an established pay day on the last day of the month. In a thirty-one-day month, unless a different payment interval applies by law, the employer must pay wages for work performed between the 1st and 24th days of the month on the established pay day (the last day of the month). The employer may pay wages for work performed between the 25th and 31st days of the current month on the following month's pay day (which means that the employer would pay wages for work performed between the 25th and 31st days of the current month, and the 1st and 24th days of the following month, on the following month's pay day).

<u>If pay period is:</u>	<u>Then payday must be no later than:</u>	<u>And employer must pay wages for at least:</u>
<u>Monthly, starting on 1st day of the month</u>	<u>Last day of the month</u>	<u>1st day of the month - 24th day of the month</u>

(6) An employer shall pay **nonbase overtime** wages owed to an employee ~~(including overtime, bonus pay, and other categories of specialty pay in addition to base pay)~~ on the regular pay day for the pay period in which ~~such nonbase~~ the overtime wages were earned. If the correct amount of **nonbase overtime** wages cannot be determined until after such regular pay day, the employer may establish a separate pay day for **nonbase overtime** wages; however, the payment of **nonbase overtime** wages may not be delayed for a period longer than that which is reasonably necessary for the employer to compute and arrange for payment of the amount due, and ~~in no even may payment be delayed beyond~~ overtime wages must be paid by the regular payday period following the next pay period ~~in which the nonbase wages were earned.~~

Example: Employer establishes two semi-monthly pay periods. ~~(the~~ The first pay period covers work performed from the 1st day of the month to the 15th day of the month with the payday of the 25th; the second pay period covers the 16th day of the month with the payday of the 10th of the following month to the last day of the month). ~~The employer pays a base hourly wage of fifteen dollars per hour, plus a ten percent commission. An employee works overtime in each of the pay periods.~~ Unless a different payment interval applies by law, the employer must pay overtime ~~the base hourly~~ wages no later than the ~~25th~~ 10th day of the following month for the overtime earned during the first pay period, and no later than the ~~10th~~ 25th day of the following month for the overtime earned during the second pay period. ~~The employer may pay the additional commission wages no later than the 10th day of the following month for commissions earned during the first pay period, and no later than the 25th day of the following month for commissions earned during the second pay period.~~

<u>If pay period is:</u>	<u>And if payday for regular wages is:</u>	<u>Then payday for overtime wages must be no later than:</u>
<u>1st of the month - 15th day of the month</u>	<u>25th of the month</u>	<u>10th of the following month</u>
<u>16th of the month - 30th or 31st of the month</u>	<u>10th of the following month</u>	<u>25th of the following month</u>

(8) These rules may be superseded by a collective bargaining agreement negotiated under the National Labor Relations Act, 29 U.S.C. Sec. 151 et seq., the Public Employees' Bargaining Act, RCW 41.56.010 et seq., or the Personnel System Reform Act, RCW 41.80.001 et seq., if the terms of, or recognized custom and practice under, the collective bargaining agreement prescribe specific payment interval requirements for employees covered by the collective bargaining agreement; provided, that:

(a) All **base regular** wages (whether paid on an hourly, salary, commission, piece rate, or other basis) shall be paid to employees covered by the collective bargaining agreement ("covered employees") at no longer than monthly intervals;

(b) All other wages (including overtime, bonus pay, and other categories of specialty pay in addition to **base pay regular wages**) are paid in accordance with the payment interval requirements applicable to covered employees under the terms of, or recognized custom and practice under, the collective bargaining agreement; and

(c) The employer pays **base regular** wages to covered employees at no less than the applicable minimum wage rate.

WAC 296-128-035

(5) If an employer pays wages on the basis of a monthly pay period, the employer may establish a regular payroll system under which wages for work performed by an employee during the last seven days of the monthly pay period may be withheld and included with the wages paid on the pay day for the next pay period.

Example: Employer establishes a monthly pay period starting on the 1st day of each month with an established pay day on the last day of the month. In a thirty-one-day month, unless a different payment interval applies by law, the employer must pay wages for work performed between the 1st and 24th days of the month on the established pay day (the last day of the month). The employer may pay wages for work performed between the 25th and 31st days of the current month on the following month's pay day (which means that the employer would pay wages for work performed between the 25th and 31st days of the current month, and the 1st and 24th days of the following month, on the following month's pay day).

<i>If pay period is:</i>	<i>And if payday for regular wages is:</i>	<i>Then payday for overtime wages must be no later than:</i>
<i>1st of the month - 15th day of the month</i>	<i>25th of the month</i>	<i>10th of the following month</i>
<i>16th of the month - 30th or 31st of the month</i>	<i>10th of the following month</i>	<i>25th of the following month</i>

(6) An employer shall pay **nonbase overtime** wages owed to an employee ~~(including overtime, bonus pay, and other categories of specialty pay in addition to base pay)~~ on the regular pay day for the pay period in which ~~such nonbase~~ the overtime wages were earned. If the correct amount of **nonbase overtime** wages cannot be determined until after such regular pay day, the employer may establish a separate pay day for **nonbase overtime** wages; however, the payment of **nonbase overtime** wages may not be delayed for a period longer than that which is reasonably necessary for the employer to compute and arrange for payment of the amount due, and ~~in no even may payment be delayed beyond~~ **overtime wages must be paid by the regular payday period** following the ~~next~~ pay period ~~in which the nonbase wages were earned~~.

Example: Employer establishes two semi-monthly pay periods. ~~(the~~ The first pay period covers work performed from the 1st day of the month to the 15th day of the month with the payday of the 25th; the second pay period covers the 16th day of the month with the payday of the 10th of the following month to the last day of the month). The employer pays a base hourly wage of fifteen dollars per hour, plus a ten percent commission. An employee works overtime in each of the pay periods. Unless a different payment interval applies by law, the employer must pay overtime ~~the base hourly~~ wages no later than the ~~25th~~ 10th day of the following month for the overtime earned during the first pay period, and no later than the ~~10th~~ 25th day of the following month for the overtime earned during the second pay period. ~~The employer may pay the additional commission wages no later than the 10th day of the following month for commissions earned during the first pay period, and no later than the 25th day of the following month for commissions earned during the second pay period.~~

<u>If pay period is:</u>	<u>And if payday for regular wages is:</u>	<u>Then payday for overtime wages must be no later than:</u>
<u>1st of the month - 15th day of the month</u>	<u>25th of the month</u>	<u>10th of the following month</u>
<u>16th of the month - 30th or 31st of the month</u>	<u>10th of the following month</u>	<u>25th of the following month</u>

(8) These rules may be superseded by a collective bargaining agreement negotiated under the National Labor Relations Act, 29 U.S.C. Sec. 151 et seq., the Public Employees' Bargaining Act, RCW 41.56.010 et seq., or the Personnel System Reform Act, RCW 41.80.001 et seq., if the terms of, or recognized custom and practice under, the collective bargaining agreement prescribe specific payment interval requirements for employees covered by the collective bargaining agreement; provided, that:

(a) All **base regular** wages (whether paid on an hourly, salary, commission, piece rate, or other basis) shall be paid to employees covered by the collective bargaining agreement ("covered employees") at no longer than monthly intervals;

(b) All other wages (including overtime, bonus pay, and other categories of specialty pay in addition to **base pay regular wages**) are paid in accordance with the payment interval requirements applicable to covered employees under the terms of, or recognized custom and practice under, the collective bargaining agreement; and

(c) The employer pays **base regular** wages to covered employees at no less than the applicable minimum wage rate.

WAC 296-131-010:

(5) If an employer pays wages on the basis of a monthly pay period, the employer may establish a regular payroll system under which wages for work performed by an employee during the last seven days of the monthly pay period may be withheld and included with the wages paid on the pay day for the next pay period.

Example: Employer establishes a monthly pay period starting on the 1st day of each month with an established pay day on the last day of the month. In a thirty-one-day month, unless a different payment interval applies by law, the employer must pay wages for work performed between the 1st and 24th days of the month on the established pay day (the last day of the month). The employer may pay wages for work performed between the 25th and 31st days of the current month on the following month's pay day (which means that the employer would pay wages for work performed between the 25th and 31st days of the current month, and the 1st and 24th days of the following month, on the following month's pay day).

<u>If pay period is:</u>	<u>Then payday must be no later than:</u>	<u>And employer must pay wages for at least:</u>
<u>Monthly, starting on 1st day of the month</u>	<u>Last day of the month</u>	<u>1st day of the month - 24th day of the month</u>

(6) An employer shall pay **nonbase overtime** wages owed to an employee ~~(including overtime, bonus pay, and other categories of specialty pay in addition to base pay)~~ on the regular pay day for the pay period in which ~~such nonbase~~ the overtime wages were earned. If the correct amount of **nonbase overtime** wages cannot be determined until after such regular pay day, the employer may establish a separate pay day for **nonbase overtime** wages; however, the payment of **nonbase overtime** wages may not be delayed for a period longer than that which is reasonably necessary for the employer to compute and arrange for payment of the amount due, and ~~in no even may payment be delayed beyond overtime wages must be paid by the regular payday period~~

following the next pay period ~~in which the nonbase wages were earned.~~

~~Example: Employer establishes two semi-monthly pay periods. ~~(the~~ The first pay period covers work performed from the 1st day of the month to the 15th day of the month with the payday of the 25th; the second pay period covers the 16th day of the month with the payday of the 10th of the following month to the last day of the month). The employer pays a base hourly wage of fifteen dollars per hour, plus a ten percent commission. An employee works overtime in each of the pay periods. Unless a different payment interval applies by law, the employer must pay overtime ~~the base hourly~~ wages no later than the ~~25th~~ 10th day of the following month for the overtime earned during the first pay period, and no later than the ~~10th~~ 25th day of the following month for the overtime earned during the second pay period. The employer may pay the additional commission wages no later than the 10th day of the following month for commissions earned during the first pay period, and no later than the 25th day of the following month for commissions earned during the second pay period.~~

<u>If pay period is:</u>	<u>And if payday for regular wages is:</u>	<u>Then payday for overtime wages must be no later than:</u>
<u>1st of the month - 15th day of the month</u>	<u>25th of the month</u>	<u>10th of the following month</u>
<u>16th of the month - 30th or 31st of the month</u>	<u>10th of the following month</u>	<u>25th of the following month</u>

(8) These rules may be superseded by a collective bargaining agreement negotiated under the National Labor Relations Act, 29 U.S.C. Sec. 151 et seq., the Public Employees' Bargaining Act, RCW 41.56.010 et seq., or the Personnel System Reform Act, RCW 41.80.001 et seq., if the terms of, or recognized custom and practice under, the collective bargaining agreement prescribe specific payment interval requirements for employees covered by the collective bargaining agreement; provided, that:

(a) All **base regular** wages (whether paid on an hourly, salary, commission, piece rate, or other basis) shall be paid to employees covered by the collective bargaining agreement ("covered employees") at no longer than monthly intervals;

(b) All other wages (including overtime, bonus pay, and other categories of specialty pay in addition to **base pay regular wages**) are paid in accordance with the payment interval requirements applicable to covered employees under the terms of, or recognized custom and practice under, the collective bargaining agreement; and

(c) The employer pays **base regular** wages to covered employees at no less than the applicable minimum wage rate.

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 0, Repealed 0.

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 3, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 3, 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 3, Repealed 0.

Date Adopted: January 23, 2007.

Judy Schurke

Acting Director

OTS-9090.3

AMENDATORY SECTION(Amending Order 89-16, filed 10/24/89, effective 11/24/89)

WAC 296-128-035 Payment interval. ~~((All wages due shall be paid at no longer than monthly intervals to each employee on established regular pay days. To facilitate bookkeeping, an employer may implement a regular payroll system in which wages from up to seven days before pay day may be withheld from the pay period covered and included in the next pay period.))~~ (1) This rule shall apply to employers and employees subject to chapter 49.46 RCW.

Note: Employers and employees not subject to this regulation may still be subject to the payment interval requirements of WAC 296-126-023 or 296-131-010.

(2) Definitions:

(a) "Monthly interval" means a one-month time period between established pay days.

(b) "Pay day" means a specific day or date established by the employer on which wages are paid for hours worked during a pay period.

(c) "Payment interval" means the amount of time between established pay days. A payment interval may be daily, weekly, bi-weekly, semi-monthly or monthly.

(d) "Pay period" means a defined time frame for which an employee will receive a paycheck. A pay period may be daily, weekly, bi-weekly, semi-monthly or monthly.

(3) An employer shall pay all wages owed to an employee on an established regular pay day at no longer than monthly payment intervals. If federal law provides specific payment interval requirements that are more favorable to an employee than the payment interval requirements provided under this rule, federal law shall apply.

(4) If an employer pays wages on the basis of a pay period that is less than a month, the employer shall establish a regular pay day no later than ten calendar days after the end of the pay period, unless expressly provided otherwise by law.

Example 1: Employer establishes a weekly pay period. The workweek is from Sunday January 1 through Saturday January 7. Unless a different payment interval applies by law, the employer must pay wages no later than January 17.

Example 2: Employer establishes two semi-monthly pay periods (the first pay period covers the 1st day of the month to the 15th day of the month; the second pay period covers the 16th day of the month to the last day

of the month). Unless a different payment interval applies by law, the employer must pay wages no later than the 25th day of the current month for the first pay period, and no later than the 10th day of the following month for the second pay period.

(5) If an employer pays wages on the basis of a monthly pay period, the employer may establish a regular payroll system under which wages for work performed by an employee during the last seven days of the monthly pay period may be withheld and included with the wages paid on the pay day for the next pay period.

Example: Employer establishes a monthly pay period starting on the 1st day of each month with an established pay day on the last day of the month. In a thirty-one-day month, unless a different payment interval applies by law, the employer must pay wages for work performed between the 1st and 24th days of the month on the established pay day (the last day of the month). The employer may pay wages for work performed between the 25th and 31st days of the current month on the following month's pay day (which means that the employer would pay wages for work performed between the 25th and 31st days of the current month, and the 1st and 24th days of the following month, on the following month's pay day).

<u>If pay period is:</u>	<u>And if pay day for regular wages is:</u>	<u>Then pay day for overtime wages must be no later than:</u>
<u>1st of the month - 15th day of the month</u>	<u>25th of the month</u>	<u>10th of the following month</u>
<u>16th of the month - 30th or 31st of the month</u>	<u>10th of the following month</u>	<u>25th of the following month</u>

(6) An employer shall pay overtime wages owed to an employee on the regular pay day for the pay period in which the overtime wages were earned. If the correct amount of overtime wages cannot be determined until after such regular pay day, the employer may establish a separate pay day for overtime wages; provided, that the payment of overtime wages may not be delayed for a period longer than that which is reasonably necessary for the employer to compute and arrange for payment of the amount due, and overtime wages must be paid by the regular pay day following the next pay period.

Example: Employer establishes two semi-monthly pay periods. The first pay period covers work performed from the 1st day of the month to the 15th day of the month with the pay day of the 25th; the second pay period covers the 16th day of the month to the last day of the month with the pay day of the 10th of the following month. An employee works overtime in each of the pay periods. Unless a different payment interval applies by law, the employer must pay the overtime wages no later than the 10th day of the following month for the overtime earned during the first pay period, and no later than the 25th day of the following month for the overtime earned during the second pay period.

<u>If pay period is:</u>	<u>And if pay day for regular wages is:</u>	<u>Then pay day for overtime wages must be no later than:</u>
<u>1st of the month - 15th day of the month</u>	<u>25th of the month</u>	<u>10th of the following month</u>
<u>16th of the month - 30th or 31st of the month</u>	<u>10th of the following month</u>	<u>25th of the following month</u>

(7) Mailed paychecks shall be postmarked no later than the established pay day. If the established pay day falls on a weekend day or holiday when the business office is not open, mailed paychecks shall be postmarked no later than the next business day. Employers that pay employees by direct deposit or other electronic means shall ensure that such wage payments are made and available to employees on the established pay day.

(8) These rules may be superseded by a collective bargaining agreement negotiated under the National Labor Relations Act, 29 U.S.C. Sec. 151 et seq., the Public Employees' Bargaining Act, RCW 41.56.010 et seq., or the Personnel System Reform Act, RCW 41.80.001 et seq., if the terms of, or recognized custom and practice under, the collective bargaining agreement prescribe specific payment interval requirements for employees covered by the collective bargaining agreement; provided, that:

(a) All regular wages (whether paid on an hourly, salary, commission, piece rate, or other basis) shall be paid to employees covered by the collective bargaining agreement ("covered employees") at no longer than monthly intervals;

(b) All other wages (including overtime, bonus pay, and other categories of specialty pay in addition to regular wages) are paid in accordance with the payment interval requirements applicable to covered employees under the terms of, or recognized custom and practice under, the collective bargaining agreement; and

(c) The employer pays regular wages to covered employees at no less than the applicable minimum wage rate.

[Statutory Authority: RCW 43.22.270, 49.12.020, 49.12.091, 49.12.050, 49.46.020 and 49.46.070. 89-22-016 (Order 89-16), § 296-128-035, filed 10/24/89, effective 11/24/89.]

OTS-9089.3

AMENDATORY SECTION(Amending Order 89-16, filed 10/24/89, effective 11/24/89)

WAC 296-126-023 Payment interval. ~~((All wages due shall be paid at no longer than monthly intervals to each employee on established regular pay days. To facilitate bookkeeping, an employer may implement a regular payroll system in which wages from up to seven days before pay day may be withheld from the pay period covered and included in the next pay period.))~~ (1) This rule shall apply to employers and employees subject to chapter 49.12 RCW.

Note: Employers and employees not subject to this regulation may still be subject to the payment interval requirements of WAC 296-128-035 or 296-131-010.

(2) Definitions:

(a) "Monthly interval" means a one-month time period between established pay days.

(b) "Pay day" means a specific day or date established by the employer on which wages are paid for hours worked during a pay period.

(c) "Payment interval" means the amount of time between established pay days. A payment interval may be daily, weekly, bi-weekly, semi-monthly or monthly.

(d) "Pay period" means a defined time frame for which an employee will receive a paycheck. A pay period may be daily, weekly, bi-weekly, semi-monthly or monthly.

(3) An employer shall pay all wages owed to an employee on an established regular pay day at no longer than monthly payment intervals. If federal law provides specific payment interval requirements that are more favorable to an employee than the payment interval requirements provided under this rule, federal law shall apply.

(4) If an employer pays wages on the basis of a pay period that is less than a month, the employer shall establish a regular pay day no later than ten calendar days after the end of the pay period, unless expressly provided otherwise by law.

Example 1: Employer establishes a weekly pay period. The workweek is from Sunday January 1 through Saturday January 7. Unless a different payment interval applies by law, the employer must pay wages no later than January 17.

Example 2: Employer establishes two semi-monthly pay periods (the first pay period covers the 1st day of the month to the 15th day of the month; the second pay period covers the 16th day of the month to the last day of the month). Unless a different payment interval applies by law, the employer must pay wages no later than the 25th day of the current month for the first pay period, and no later than the 10th day of the following month for the second pay period.

(5) If an employer pays wages on the basis of a monthly pay period, the employer may establish a regular payroll system under which wages for work performed by an employee during the last seven days of the monthly pay period may be withheld and included with the wages paid on the pay day for the next pay period.

Example: Employer establishes a monthly pay period starting on the 1st day of each month with an established pay day on the last day of the month. In a thirty-one-day month, unless a different payment interval applies by law, the employer must pay wages for work performed between the 1st and 24th days of the month on the established pay day (the last day of the month). The employer may pay wages for work performed between the 25th and 31st days of the current month on the following month's pay day (which means that the employer would pay wages for work performed between the 25th and 31st days of the current month, and the 1st and 24th days of the following month, on the following month's pay day).

	<u>Then pay day must be no later than:</u>	<u>And employer must pay wages for at least:</u>
<u>If pay period is:</u>		
<u>Monthly, starting on 1st day of the month</u>	<u>Last day of the month</u>	<u>1st day of the month - 24th day of the month</u>

(6) An employer shall pay overtime wages owed to an employee on the regular pay day for the pay period in which the overtime wages were earned. If the correct amount of overtime wages cannot be determined until after such regular pay day, the employer may establish a separate pay day for overtime wages; however, the payment of overtime wages may not be delayed for a period longer than that which is reasonably necessary for the employer to compute and arrange for payment of the amount due, and overtime wages must be paid by the regular pay day following the next pay period.

Example: Employer establishes two semi-monthly pay periods. The first pay period covers work performed from the 1st day of the month to the 15th day of the month with the pay day of the 25th; the second pay period

covers the 16th day of the month with the pay day of the 10th of the following month. An employee works overtime in each of the pay periods. Unless a different payment interval applies by law, the employer must pay overtime wages no later than the 10th day of the following month for the overtime earned during the first pay period, and no later than the 25th day of the following month for the overtime earned during the second pay period.

<u>If pay period is:</u>	<u>And if pay day for regular wages is:</u>	<u>Then pay day for overtime wages must be no later than:</u>
<u>1st of the month - 15th day of the month</u>	<u>25th of the month</u>	<u>10th of the following month</u>
<u>16th of the month - 30th or 31st of the month</u>	<u>10th of the following month</u>	<u>25th of the following month</u>

(7) Mailed paychecks shall be postmarked no later than the established pay day. If the established pay day falls on a weekend day or holiday when the business office is not open, mailed paychecks shall be postmarked no later than the next business day. Employers that pay employees by direct deposit or other electronic means shall ensure that such wage payments are made and available to employees on the established pay day.

(8) These rules may be superseded by a collective bargaining agreement negotiated under the National Labor Relations Act, 29 U.S.C. Sec. 151 et seq., the Public Employees' Bargaining Act, RCW 41.56.010 et seq., or the Personnel System Reform Act, RCW 41.80.001 et seq., if the terms of, or recognized custom and practice under, the collective bargaining agreement prescribe specific payment interval requirements for employees covered by the collective bargaining agreement; provided, that:

(a) All regular wages (whether paid on an hourly, salary, commission, piece rate, or other basis) shall be paid to employees covered by the collective bargaining agreement ("covered employees") at no longer than monthly intervals;

(b) All other wages (including overtime, bonus pay, and other categories of specialty pay in addition to regular wages) are paid in accordance with the payment interval requirements applicable to covered employees under the terms of, or recognized custom and practice under, the collective bargaining agreement; and

(c) The employer pays regular wages to covered employees at no less than the applicable minimum wage rate.

[Statutory Authority: RCW 43.22.270, 49.12.020, 49.12.091, 49.12.050, 49.46.020 and 49.46.070. 89-22-016 (Order 89-16), § 296-126-023, filed 10/24/89, effective 11/24/89; Order 74-9, § 296-126-023, filed 3/13/74, effective 4/15/74.]

OTS-9091.3

AMENDATORY SECTION(Amending Order 89-15, filed 10/24/89, effective 11/24/89)

WAC 296-131-010 Payment interval. ((All wages due shall be paid at no longer than monthly intervals to each employee on established regular pay days, unless federal law requires more frequent pay intervals. To facilitate bookkeeping, an employer may implement a regular payroll system in which wages from up to seven days before pay day may be withheld from the pay period covered and included in the next pay period.)) (1) This rule shall apply to employers and employees engaged in agricultural labor as defined in RCW 50.04.150

and subject to WAC 296-131-001.

Note: Employers and employees not subject to this regulation may still be subject to the payment interval requirements of WAC 296-126-023 or 296-128-035.

(2) Definitions:

(a) "Monthly interval" means a one-month time period between established pay days.

(b) "Pay day" means a specific day or date established by the employer on which wages are paid for hours worked during a pay period.

(c) "Payment interval" means the amount of time between established pay days. A payment interval may be daily, weekly, bi-weekly, semi-monthly or monthly.

(d) "Pay period" means a defined time frame for which an employee will receive a paycheck. A pay period may be daily, weekly, bi-weekly, semi-monthly or monthly.

(3) An employer shall pay all wages owed to an employee on an established regular pay day at no longer than monthly payment intervals. If federal law provides specific payment interval requirements that are more favorable to an employee than the payment interval requirements provided under this rule, federal law shall apply.

(4) If an employer pays wages on the basis of a pay period that is less than a month, the employer shall establish a regular pay day no later than ten calendar days after the end of the pay period, unless expressly provided otherwise by law.

Example 1: Employer establishes a weekly pay period. The workweek is from Sunday January 1 through Saturday January 7. Unless a different payment interval applies by law, the employer must pay wages no later than January 17.

Example 2: Employer establishes two semi-monthly pay periods (the first pay period covers the 1st day of the month to the 15th day of the month; the second pay period covers the 16th day of the month to the last day of the month). Unless a different payment interval applies by law, the employer must pay wages no later than the 25th day of the current month for the first pay period, and no later than the 10th day of the following month for the second pay period.

(5) If an employer pays wages on the basis of a monthly pay period, the employer may establish a regular payroll system under which wages for work performed by an employee during the last seven days of the monthly pay period may be withheld and included with the wages paid on the pay day for the next pay period.

Example: Employer establishes a monthly pay period starting on the 1st day of each month with an established pay day on the last day of the month. In a thirty-one-day month, unless a different payment interval applies by law, the employer must pay wages for work performed between the 1st and 24th days of the month on the established pay day (the last day of the month). The employer may pay wages for work performed between the 25th and 31st days of the current month on the following month's pay day (which means that the employer would pay wages for work performed between the 25th and 31st days of the current month, and the 1st and 24th days of the following month, on the following month's pay day).

	<u>Then pay day must be no later than:</u>	<u>And employer must pay wages for at least:</u>
<u>If pay period is:</u>		
<u>Monthly, starting on 1st day of the month</u>	<u>Last day of the month</u>	<u>1st day of the month - 24th day of the month</u>

(6) An employer shall pay overtime wages owed to an employee on the regular pay day for the pay period in which the overtime wages were earned. If the correct amount of overtime wages cannot be determined until after such regular pay day, the employer may establish a separate pay day for overtime wages; however, the payment of overtime wages may not be delayed for a period longer than that which is reasonably necessary for the employer to compute and arrange for payment of the amount due, and overtime wages must be paid by the regular pay day following the next pay period.

Example: Employer establishes two semi-monthly pay periods. The first pay period covers work performed from the 1st day of the month to the 15th day of the month with the pay day of the 25th; the second pay period covers the 16th day of the month to the last day of the month with the pay day of the 10th of the following month. An employee works overtime in each of the pay periods. Unless a different payment interval applies by law, the employer must pay overtime wages no later than the 10th day of the following month for the overtime earned during the first pay period, and no later than the 25th day of the following month for the overtime earned during the second pay period.

	<u>And if pay day for regular wages is:</u>	<u>Then pay day for overtime wages must be no later than:</u>
<u>If pay period is:</u>		
<u>1st of the month - 15th day of the month</u>	<u>25th of the month</u>	<u>10th of the following month</u>
<u>16th of the month - 30th or 31st of the month</u>	<u>10th of the following month</u>	<u>25th of the following month</u>

(7) Mailed paychecks shall be postmarked no later than the established pay day. If the established pay day falls on a weekend day or holiday when the business office is not open, mailed paychecks shall be postmarked no later than the next business day. Employers that pay employees by direct deposit or other electronic means shall ensure that such wage payments are made and available to employees on the established pay day.

(8) These rules may be superseded by a collective bargaining agreement negotiated under the National Labor Relations Act, 29 U.S.C. Sec. 151 et seq., the Public Employees' Bargaining Act, RCW 41.56.010 et seq., or the Personnel System Reform Act, RCW 41.80.001 et seq., if the terms of, or recognized custom and practice under, the collective bargaining agreement prescribe specific payment interval requirements for employees covered by the collective bargaining agreement; provided, that:

(a) All regular wages (whether paid on an hourly, salary, commission, piece rate, or other basis) shall be paid to employees covered by the collective bargaining agreement ("covered employees") at no longer than monthly intervals;

(b) All other wages (including overtime, bonus pay, and other categories of specialty pay in addition to regular wages) are paid in accordance with the payment interval requirements applicable to covered employees under the terms of, or recognized custom and practice under, the collective bargaining agreement; and

(c) The employer pays regular wages to covered employees at no less than the applicable minimum wage rate.

[Statutory Authority: RCW 43.22.270, 1989 c 380 and chapter 49.46 RCW. 89-22-015 (Order 89-15), § 296-131-010, filed 10/24/89, effective 11/24/89.]

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