



25.40 Leave

25.40.10

March 17, 2020

Shared leave

25.40.10.a

General guidelines

Per RCW 41.04.650 through 670, the state's shared leave program allows a state employee to come to the aid of another state employee who is likely to take leave without pay or terminate his or her employment because:

- The employee suffers from, or has a relative or household member suffering from, an illness, injury, impairment, or physical or mental condition which is of an extraordinary or severe nature;
- The employee has been called to service in the uniformed services;
- The employee is a current member of the uniformed services or is a veteran as defined under RCW 41.04.005, and is attending medical appointments or treatments for a service connected injury or disability;
- The employee is a spouse of a current member of the uniformed services or a veteran as defined under RCW 41.04.005, who is attending medical appointments or treatments for a service connected injury or disability and requires assistance while attending appointments or treatments;
- A state of emergency has been declared anywhere within the United States by the Federal or any state government and the employee has needed skills to assist in responding to the emergency or its aftermath and is volunteering with a governmental agency or a nonprofit organization to provide humanitarian relief in the devastated area, and the governmental agency or nonprofit organization accepts the employee's offer of volunteer services;
- The employee is a victim of domestic violence, sexual assault or stalking;
- The employee needs the time for parental leave; or
- The employee is sick or temporarily disabled because of pregnancy disability.

When taken, this leave is classified as Shared Leave and tracked separately over the state career of the recipient employee (donee).

WAC 357-31-380 through 455, or collective bargaining agreements (CBAs), establishes the definition and eligibility requirements for the state leave sharing program.

Until the expiration of [Proclamation 20-05](#), issued February 29, 2020, by the Governor and declaring a state of emergency in the state of Washington, or any amendment thereto, whichever is later, an agency head may permit an employee to receive shared leave under [RCW 41.04.665](#) if the employee, or a relative or household member, is isolated or quarantined as recommended, requested, or ordered by a public health official or health care provider as a result of suspected or confirmed infection with or exposure to the 2019 Novel Coronavirus (COVID-19). An agency head may permit use of shared leave under this subsection (1)(f) without considering the requirements of subsection (1)(a) through (1)(e) of [RCW 41.04.665](#).

Within these rules, the head of each agency determines the agency's level of participation in the program.

The agency head may not prevent an employee from using shared leave intermittently or on nonconsecutive days so long as the leave has not been returned.

Agencies are strongly encouraged to establish policies that encompass these rules and that set internal procedures for managing the program.

25.40.10.b Definitions

Employee – Any employee entitled to accrue sick, vacation, or personal holiday leave and for whom an agency has maintained leave records.

Donor – The employee making the donation of leave.

Donee – The employee receiving the donation of leave (recipient).

Donated leave – The dollar value of the leave hours a donor donates through the Shared Leave Program.

Shared leave – The donated leave converted to hours by the receiving agency at the donee's rate of pay. This may be more or less than the literal hours donated, depending on the relative salary rates of the respective employees.

Shortly deplete – The employee will have 40 hours or less of the applicable leave types under Subsection (1)(d) of [RCW 41.04.665](#). Refer to subsection 25.40.10.c.4.b.

25.40.10.c Shared leave program requirements and restrictions

1. Salaries and wages

Employees on shared leave continue to receive the same salary, wage, and employee benefits that they normally receive when using accrued leave. Refer to RCW 41.04.665(7).

2. Shared leave requester

a) An agency shall require the employee requesting shared leave to submit a medical statement supporting the request. A licensed physician (or health care practitioner) should:

- Verify the severity or extraordinary nature of the condition.
- Determine the expected duration of the condition.

The requirement for a medical statement may be waived in unusual circumstances where such a statement may not be available, such as a pandemic emergency.

In order for the requirement to be waived, an agency must establish a policy that, at a minimum, addresses the nature of the unusual circumstances under which a medical statement is not required; the limits, if any, imposed by the agency on the amount of shared leave that may be granted without a medical statement; and the agency official with authority to approve shared leave granted without a medical statement.

b) An agency shall require an employee called to service in the uniformed services who is requesting shared leave to submit a copy of the military orders verifying the employee's required absence.

c) An agency shall require an employee who is a victim of domestic violence, sexual assault or stalking to submit supporting documentation. WAC 357-31- 405 provides a listing of acceptable types of documentation.

d) An agency shall require an employee volunteering his or her services to either a governmental agency or a nonprofit organization to assist in disaster relief efforts in response to a declared federal or state emergency or its aftermath to submit proof of acceptance of the

employee's services by the government agency or nonprofit organization.

Refer to WAC 357-31-390 and 405, or CBAs for other acceptable uses and associated documentation requirements.

3. Types and limitations on leave donations

a) **Vacation leave**

Employees may donate vacation leave if this does not cause their vacation leave balance to fall below eighty hours after the transfer. For part-time employees, requirements for vacation leave balances are prorated. Additionally, certain CBAs specify that an employee may not donate excess vacation leave (hours in excess of 240) that the donor would not be able to take due to an approaching anniversary date. Prior to the donation, the donor's supervisor (or equivalent) determines how much of the excess leave the employee could use prior to the employee's anniversary date.

Because only approved usable excess leave can be donated, affected employees do not need a second approval to receive any remaining excess donated leave back should a reversion occur.

b) **Sick leave**

Employees may donate any amount of sick leave provided the donation does not cause their sick leave balance to fall below 176 hours after the transfer.

Note: RCW 41.04.665 allows employees of higher education institutions who do not accrue vacation leave but do accrue sick leave to donate sick leave. The donation cannot cause the employee's sick leave balance to fall below 22 days.

c) **Personal holiday**

An employee may donate all or part of a personal holiday. Any portion of the personal holiday that is not used shall be returned to the donating employee, and may be used by the donor if the returned donation occurs and is then used in the same calendar year that it was donated. For represented employees, check CBA for returns that cross calendar years.

4. Limitations on receipt of shared leave

a) Maximum shared leave per person

An employee may not receive more than 522 days of shared leave for the entire duration of state employment. For this purpose, eight hours shall constitute a day (RCW 49.28.010) unless otherwise required by statute, regulations, or employment contract.

An employer may authorize leave in excess of 522 days in extraordinary circumstances for an employee qualifying for shared leave because the employee is suffering from an illness, injury, impairment, or physical or mental condition which is of an extraordinary or severe nature.

b) When shared leave can be used

WAC 357-31-435 or CBAs require employees to use all compensatory time, recognition leave, and personal holiday that they have accrued before using shared leave. Refer to these resources as well as [RCW 41.04.665](#) for further guidance.

Additionally, before using shared leave for:

- Medical purposes, parental leave, or pregnancy disability – the employee is not required to deplete all of their accrued vacation leave and sick leave and can maintain up to 40 hours of each in reserve.
- Service in the uniformed services – the employee is not required to deplete all of their accrued vacation leave and paid military leave and can maintain up to 40 hours of each in reserve.
- A state of emergency, victim of domestic violence, sexual assault, or stalking – the employee is not required to deplete all of their accrued vacation leave and can maintain up to 40 hours in reserve.

For work related illness or injury, an employee receiving industrial insurance wage replacement benefits may not receive greater than 25 percent of his or her base salary from the receipt of shared leave.

Note: Once an employee uses authorized shared leave, the employee shall not be required to repay to the agency the value of the leave used.

5. Transfer of shared leave

Shared leave can transfer:

- Within a state agency and account,
- Between accounts or agencies, or
- Between agencies, educational service districts, and school districts.

Transfer of leave requires approval from the head or designee of both the donor and donee agencies, educational service districts, or school districts. It is recommended that an agency's shared leave policies include approval procedures and identify authorized designees.

If a shared leave account is closed and an employee later has a need to use shared leave due to the same condition listed in the closed account, the agency head must approve a new shared leave request for the employee.

25.40.10.d Computation of leave transferred

In transferring leave from the donor to the donee, it is the donor's dollar value of the leave that transfers and purchases shared leave for the donee at the donee's salary rate.

Calculate the **dollar value** of donated leave using the donor's total current salary rate times the hours donated.

For the donee, divide the **dollar value** received by the donee's total current salary rate to determine the leave hours to record.

Definition of Formula Elements for Calculating Shared Leave:

Regular salary rate = Current hourly rate OR $\frac{\text{Monthly rate}}{174 \text{ (or monthly hours)}}$

*Fringe benefits rate = 46% x Regular salary rate

Total salary rate = Regular salary rate + Fringe benefits rate

*Formula for deriving the fringe benefit rate is in Subsection 25.40.10.j.

Donor Formula for Shared Leave Transfer Calculation:

Dollar value of donated leave = Donated leave hours x Donor's total salary rate

Reduce the donor's leave balance by the number of hours donated.

Donee Formula for Shared Leave Received:

$$\text{Shared leave hours credited to donee} = \frac{\text{Dollar value of donated leave received}}{\text{Donee's total salary rate}}$$

Record the donee's shared leave balance for the calculated shared leave hours received.

25.40.10.e **Recording donated leave transfer(s) in accounting and payroll systems**

- Transfer the dollar value of donated leave using a Journal Voucher (A7) for transfers between treasury and/or treasury trust accounts.
- Use a warrant or a check for transfers between treasury/treasury trust accounts and local accounts, educational service districts, and school districts.
- Attach documentation to the JV or warrant or check, showing the name(s) of the employee(s) receiving the shared leave.
- Record the transfer in the appropriate accounting and payroll systems. **It is recommended agencies record the shared leave transactions, at a minimum, on a quarterly basis.** Refer to Subsection 85.34.20 for related accounting entries.

25.40.10.f **Shared leave records**

The agency head or designee must maintain the following shared leave information at a minimum:

- Number of leave requests received.
- Number of leave requests granted.
- Nature of requests.
- Name and agency of donors.
- Amount of leave transferred in or out.
- Value of leave transferred in or out.
- Date leave was taken for each occurrence.

Record donated leave as shared leave in agency leave records and maintain it separately from all other leave balances.

25.40.10.g **Unused shared leave**

1. The value of any leave transferred under this section which remains unused shall be returned at its original value to the employee or employees who transferred the leave when the agency head finds that the leave is no longer needed or will not be needed at a future time in connection with the illness or injury for which the leave was transferred or for any other qualifying condition. Unused shared leave may not be returned until one of the following occurs:
 - The agency head receives from the affected employee a statement from the employee's doctor verifying that the illness or injury is resolved.
 - The employee is released to full-time employment, has not received additional medical treatment for his or her current condition or any other qualifying condition for at least six months, and the employee's doctor has declined, in writing, the employee's request for a statement indicating the employee's condition has been resolved.
2. Upon reversion, the *donee agency* completes the following steps:
 - Determine the donee's shared leave hours remaining.
 - Calculate the dollar value using the *donee's original total salary rate* and return the dollars to the appropriate donor agency or account (if applicable). Refer to RCW 41.04.665(9). Any reversion *must* use the same total salary rate basis that was used to provide the shared leave hours to the donee. Otherwise, the dollar value per reverted hour returned to the donor agency or account will be more or less than received, depending on how a donee's current total salary rate may have changed. Refer to Subsection 85.34.20 for accounting entries, including the entries to return shared leave value within an account.
 - Reduce the donee's shared leave balance to zero. Also, restore the donor's applicable reverted leave hours if in the same agency.

Formula for calculating the return of shared leave to the donor:

Dollar value of reverting shared leave to <i>donor agency</i> and/or <i>account</i>	=	Shared leave hours remaining	x	Donee's <i>original</i> total salary rate
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Reduce the donee's available shared leave balance to zero and prepare transfer of the remaining dollar value of the leave back to the donor agency and/or account.

3. Upon reversion, the **donor agency** completes the following steps:

- Receive the returned cash from another agency and/or account. If the donor was within the same agency and same account, then receive the dollar value only. Refer to Subsection 85.34.20.
- Calculate the number of hours to restore to the donor using the *donor's current total salary rate*. In order to reflect the current cost of re-establishing leave hours, the donor's current salary rate is used.
- Restore the calculated leave hours to the donor.

Formula for converting the dollar value of returned leave to one donor:

Converting the dollar value of returned shared leave into *donor* hours = $\frac{\text{Dollar value of returned shared leave}}{\text{Donor's current total salary rate}}$

Record the calculated hours returned to the donor's leave balance.

4. Calculating reverting shared leave hours from **multiple donors**

Where more than one employee donated leave to an individual, calculate reverting leave on a prorated basis using either the shared leave hours provided or dollars received by the donee. The following example uses dollars received.

This is a three-step process:

Step 1: Calculate this percentage for each donor:

Percentage of residual shared leave returned to donor = $\frac{\text{Shared leave dollars received from Employee 1}}{\text{Total dollar value of shared leave received}}$

Step 2: Calculate the dollar value of shared leave reverting back to the donor:

Dollar value of shared leave reverting back to donors = $\% \text{ calculated in Step 1} \times \text{Remaining shared leave hours} \times \text{Donee's original total salary rate}$

Step 3: Calculate leave hours returned to the donor:

Converting the dollar value of returned shared leave into <i>donor</i> hours	=	$\frac{\text{Dollar value of reverting shared leave from Step 2}}{\text{Donor's current total salary rate}}$
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Note: A special reversion situation occurs when a donee depletes the initial shared leave hours received, and then receives additional donations. In this case, should there be a reversion of the additional leave received; do not include in the reversion proration *the donors(s) and the hours of the initial donation*. In effect, batches of donated shared leave are used on a first-in, first-out basis and reversion is limited to the remaining batch. Each batch (pool) is considered closed at the time its available shared leave balance reaches zero.

To comply with the cost containment provisions of RCW 41.04.670(3), accounting batches may be restricted to record only the amount of shared leave actually needed by donees on a payroll period by payroll period basis from a list of potential donors maintained on a first-in, first-out basis.

Agencies should communicate to potential donors the agency's shared leave policy in regard to how shared leave donations will be applied.

25.40.10.h **Donation and reversion calculation examples**

For a sample donation and reversion case, refer to OFM's Payroll Resources website at: <http://www.ofm.wa.gov/resources/payroll.asp>.

25.40.10.i **Direct questions on shared leave calculations to OFM**

Direct any questions arising due to the transfer of funds or the adjustment of appropriation authority with regard to the Shared Leave Program to the agency's assigned OFM financial consultant.

25.40.10.j **Formula for fringe benefit rate**

Formula for Deriving the Fringe Benefit Rate:

Benefits (Object B) as a percentage of salaries and wages		33.01%
Accrued holidays, sick leave, vacation leave	+	<u>13.41% **</u>
	Total	46.42% (Rounded to 46%)

**The additional 13.5% provides for holidays, sick leave, and vacation leave that an employee could potentially earn while on shared leave. The following formula is the method OFM has historically used to derive the percentage.

Holidays		11 days a year
Sick leave		12 days a year
Vacation leave		<u>12 days a year</u>
Total		35 days a year
	x	<u>8 hours per day</u>
Total		280 hours
		$280 \div 2,088 = 13.41\%$

25.40.12
January 1, 2012

Uniformed service shared leave pool

Per RCW 41.04.685, the uniformed service shared leave pool (USSLP) allows general government and higher education employees to voluntarily donate leave to be used by any eligible employee who has been called to service in the uniform services. WAC 357-31-640 through 725 establishes the rules for the USSLP.

The Military Department, in consultation with the Office of Financial Management (OFM), administers the USSLP. Procedures can be found on OFM’s Payroll Resources website at:
<https://www.ofm.wa.gov/accounting/administrative-accounting-resources/payroll>.

In order to participate in the USSLP, employers must develop a written policy which, at a minimum, addresses:

1. Eligibility requirements for use of the USSLP.
2. Donation of leave to the pool.
3. Use of uniformed service shared leave.
4. Abuse of pool.

Higher education institutions shall adopt policies consistent with the needs of the employees under their respective jurisdictions.

An employer may limit the amount of leave an employee may donate to or receive from the pool only if it would result in the violation of rule or statute.

Leave that is donated or received is calculated consistent with the Washington State Leave Sharing Program. Refer to Subsection 25.40.10. However, shared leave received under the USSLP is not included in the 522 day total specified in RCW 41.04.665.

Refer to Subsections [85.42.50.f and g](#) for illustrative entries.

25.40.13

July 23, 2017

Veterans' in-state service shared leave pool

Per RCW 41.04.672, the veterans' in-state service shared leave pool (VISSLP) allows general government and higher education employees to voluntarily donate leave to be used by any eligible employee who meets the following criteria:

- The employee is a current member of the uniformed services or is a veteran as defined under RCW 41.04.005, and is attending medical appointments or treatments for a service connected injury or disability; or
- The employee is a spouse of a current member of the uniformed services or a veteran as defined under RCW 41.04.005, who is attending medical appointments or treatments for a service connected injury or disability and requires assistance while attending appointments or treatments.

WAC 357-31-750 through 830 establishes the rules for the VISSLP.

The Department of Veterans' Affairs, in consultation with the Office of Financial Management (OFM), administers the VISSLP. Procedures can be found on OFM's Payroll Resources website at:

<https://www.ofm.wa.gov/accounting/administrative-accounting-resources/payroll>.

In order to participate in the VISSLP, employers must develop a written policy which, at a minimum, addresses:

1. Eligibility requirements for use of the VISSLP.
2. Donation of leave to the pool.
3. Use of veterans' in-state service shared leave.
4. Abuse of pool.

Higher education institutions shall adopt policies consistent with the needs of the employees under their respective jurisdictions.

An employer may limit the amount of leave an employee may donate to or receive from the pool only if it would result in the violation of rule or statute.

Leave that is donated or received is calculated consistent with the Washington State Leave Sharing Program. Refer to Subsection 25.40.10. However, shared leave received under the VISSLP is not included in the 522 day total specified in RCW 41.04.665.

Refer to Subsections [85.42.50.f and g](#) for illustrative entries.

Payroll

25.40.14

July 28, 2019

Foster parent shared leave pool

Per RCW 41.04.674, the foster parent shared leave pool (FPSLP) allows employees as defined in RCW 41.04.655 to voluntarily donate leave to be used by any eligible employee who is a licensed foster parent pursuant to RCW 74.15.040 needing to care for or preparing to accept a foster child in their home.

WAC 357-31-835 through 920 establishes the rules for the FPSLP.

The Department of Children, Youth, and Families, in consultation with the Office of Financial Management (OFM), administers the FPSLP. Procedures can be found on OFM's Payroll Resources website at:

<https://www.ofm.wa.gov/accounting/administrative-accounting-resources/payroll>.

In order to participate in the FPSLP, employers must develop a written policy which, at a minimum, addresses:

1. Amount of leave that may be withdrawn from the FPSLP.
2. Eligibility requirements for use of the FPSLP.
3. Donation of leave to the pool.
4. Use of foster parent shared leave.
5. Misuse of pool.

Higher education institutions shall adopt policies consistent with the needs of the employees under their respective jurisdictions.

An agency head or higher education president may limit the amount of leave an employee may donate to or receive from the pool.

Leave that is donated or received is calculated consistent with the Washington State Leave Sharing Program. Refer to Subsection 25.40.10. Shared leave received under the FPSLP is separate from and not included in the 522 day total specified in RCW 41.04.665. Refer to WAC 357-31-880.

- Refer to WAC 357-31-875 for the maximum number of hours the employee can receive from the FPSLP.
- Refer to WAC 357-31-895 for what types of leave must be used prior to using shared leave from the FPSLP.

Refer to Subsections [85.42.50.f and g](#) for illustrative entries.

25.40.15
May 20, 2010

Sick leave pools

Per RCW 41.04.680, general government state employees may pool sick leave within an agency to be used by participating employees who have a personal illness, accident, or injury. WAC 357-31-570 through 635 establishes the rules for creating and administering a sick leave pool.

Prior to creating a sick leave pool, an agency must appoint an administrator and develop a written policy. For purposes of calculating maximum sick leave that may be donated or received by any one employee, pooled sick leave is counted and converted in the same manner as sick leave under the Washington state Leave Sharing Program.

A participating employee may not withdraw more than 522 days from a sick leave pool for the entire duration of state employment. The 522 days includes any days an employee has received under the Washington State Leave Sharing Program. Refer to Subsection 25.40.10.

This provision is for non-represented employees only.

25.40.20
July 1, 2013

Vacation leave buyout at termination

RCW 43.01.041 establishes the authority for vacation leave buyout upon termination of employment. WAC 357-31-225 or collective bargaining agreements (CBAs) provide additional rules and guidance.

Compute termination leave payments by multiplying an average hourly rate times the number of vacation leave hours accumulated. Determine the average hourly rate by multiplying .0063* times the monthly salary rate. The fraction of .0063 is based upon the number of work hours in an average month. Do not include premium pay such as standby, shift differential, and overtime in the monthly salary rate used as the basis for termination leave payment.

*The formula for deriving the .0063 factor follows.

<u>Formula for Deriving the Vacation Leave Buyout Termination Factor:</u>	
8 hrs	$\frac{1}{(365 \text{ days} - 104 \text{ Saturdays and Sundays} - 11 \text{ holidays} - 12 \text{ days of vacation leave})}$
1 day	12 months
=	$\frac{1}{158.66}$
=	.0063

25.40.30 **Accrued sick leave buyout**

July 1, 2013

25.40.30.a **Authority**

In order to provide eligible state employees an attendance incentive program, RCW 41.04.340 establishes rules when monetary compensation may be paid for accrued sick leave. Compensation is permitted for only that portion of sick leave accumulated at a rate of one day (8 hours) per month.

WAC 357-31-150 or collective bargaining agreements (CBAs) provide additional rules and guidance.

25.40.30.b **Eligibility rules**

1. **Continuing employees**

- In January of the year following any year in which a minimum of sixty days (480 hours) of sick leave is accrued, and at no other time, an eligible employee may elect to receive compensation for the unused sick leave *accumulated only in the previous year*.
- Compensation is payable at 25% for any of the prior year's unused sick leave hours the employee elects to receive. However, no sick leave hours may be converted which would reduce the calendar year-end balance below 480 hours. Payment is based on the employee's current salary.
- Sick leave for which compensation has been received is deducted from accrued sick leave at the rate of 4 days for every 1 day paid.

2. **Terminating employees**

Eligible employees (or their estates) who separate from state service due to retirement or death may elect to receive compensation for unused sick leave at the rate of 25% of accumulated accrued sick leave. The compensation is based on the employee's salary at the time of separation.

25.40.30.c **Medical expense plans**

RCW 41.04.340 (7-9) authorizes retiring state employees to participate in medical expense plans, subject to conditions provided in statute, WAC 357-31-375, or CBAs. In lieu of remuneration for unused sick leave at retirement, agencies may, with equivalent funds, provide eligible employees with a benefit plan that provides for reimbursement for medical expenses.

25.40.30.d **Determination of the current hourly rate**

The appropriate current hourly rate for sick leave buyout compensation depends on how an eligible employee is paid. Most situations are addressed in the following examples.

- For an employee paid a monthly salary based upon an official Washington State Human Resource System Salary Schedule, divide the monthly salary rate by 174 (average number of hours in a month). The salary schedules can be found online at:
<http://hr.wa.gov/CompClass/Compensation/Pages/SalarySchedules.aspx>.
- For an employee paid a salary based on a contract stating the number of contract days, divide the contracted salary by the number of contracted days to obtain a daily rate. Then divide the daily rate by the appropriate number of hours per day established for that contract to derive the hourly rate.
- For an employee paid a salary based on a *yearly* contract, divide the yearly salary by 12. The hourly rate is then calculated by dividing the computed monthly salary by 174 hours.
- If an employee is paid an hourly rate in accordance with an agreement negotiated between an employee organization and the state or based on an hourly rate from an official Washington State Human Resource System Salary Schedule, that hourly rate is the official rate for computing sick leave compensation. The salary schedules can be found online at:
<http://hr.wa.gov/CompClass/Compensation/Pages/SalarySchedules.aspx>.

25.40.30.e **Exemption from retirement credit**

Do not take retirement contributions on payments for sick leave buyouts. Compensation for unused sick leave is not used in computing retirement allowances.

25.40.30.f **Buyout upon disability or death**

Per IRS Publication 15-A, sick leave buyouts made to employees who retire due to disability, or to deceased employees' survivors, are exempt from Old Age and Survivors Insurance (OASI) and Medicare taxes.

25.40.30.g **Buyout calculation**

Calculation for a Continuing Employee:

Sick Leave hours unused in previous year in excess of 480 hours elected for buyout x 25% x Employee's current hourly salary rate* = Buyout

Calculation for a Terminating Employee:

All unused Sick Leave hours remaining x 25% x Employee's current hourly salary rate* = Buyout

* Refer to Subsection 25.40.30.d for determination of the current hourly rate.

Example: An eligible employee has 650 hours of unused sick leave as of January 1, 20xx. The employee has 48 hours of unused prior year sick leave.

Calculation for a **Continuing** Employee: (25% x 48 hours) Pay 12 hours

Calculation for a **Terminating** Employee: (25% x 650 hours) Pay 162.5 hours

25.40.40

October 1, 2013

Workers' compensation time loss payments

25.40.40.a

Authority

Under RCW 51.32.090, employees cannot receive time loss payments for any period in which they receive their regular salary or wages. For purposes of determining eligibility for time loss payments, regular salary or wages do not include holiday pay, vacation pay, sick leave, or similar paid leave. However, a collective bargaining agreement (CBA), a rule or an agency policy can require recovery of time loss payments under certain circumstances. **Be sure to consult these resources to determine whether time loss payments to an employee are subject to recovery.**

25.40.40.b **Agency procedures for time loss determinations****1. Department of Labor and Industries notification**

The Department of Labor and Industries (L&I) notifies the agency of time loss payment amounts made to the agency's employees and the time periods covered.

2. Agency receipt of notice

When an agency receives notice of time loss payments, the agency determines the nature of paid leave used by the employee, if any, during the disability period covered by workers' compensation.

3. Employee options

Under WAC 357-31-235 or CBAs, employees can select from the following options:

- Time loss compensation exclusively,
- Accrued paid leave exclusively (excluding shared leave), or
- A combination of time loss compensation and accrued paid leave.

4. Eligibility for time loss payment is not affected by the use of these leave types:

- Vacation pay
- Sick leave
- Compensatory time
- Exchange time
- Holiday pay

5. Shared leave

An employee who qualifies for time loss cannot use shared leave for the same time period. RCW 41.04.665(1)(f) requires an employee to have diligently pursued and been found to be ineligible for benefits under Chapter 51.32 RCW for a work related illness or injury in order to be eligible for the shared leave program for medical purposes.

Note: If an employee inadvertently receives shared leave and is subsequently approved for benefits under Chapter 51.31 RCW, the employee shall not be required to repay to the agency the value of the shared leave used.

6. **Time loss recovery**

CBA's, a rule or an agency policy may require an agency to recover time loss payments if an employee receives both sick leave and time loss payments during a disability period.

25.40.40.c

Time loss recovery procedures

When time loss recovery is required by a CBA, a rule or an agency policy, upon notification by the Department of Labor and Industries (L&I) that an employee has received time loss payments, the agency is to determine if the employee received paid sick leave during the temporary disability period. If the employee received paid sick leave for a period covered by time loss payments, the agency is to recover the dollar value of the sick leave by having the employee select one of the following:

1. **The employee keeps the time loss payment but has a comparable salary reduction.**
 - Compute the employee's gross salary less the amount of the applicable time loss payment.
 - Compute federal income tax (FIT), OASI, and Medicare taxes on the employee's reduced gross salary. Time loss payments are not subject to these taxes.
 - For retirement contribution calculation and service credit, refer to Subsection 25.40.40.d.
 - Restore sick leave using the employee's hourly rate effective during the time loss period. Refer to Subsection 25.40.40.e.
2. **The employee reimburses the agency for the amount of the applicable time loss payment.**
 - Account for the reimbursement from the employee as a recovery of current period salary expenditures/expenses.
 - ***For payment purposes***, compute federal income tax withholding on the employee's gross salary without reduction for the time loss payment. However, OASI and Medicare taxes must be computed on the employee's gross salary after reduction for the time loss payment.
 - For retirement contribution calculation and service credit, refer to Subsection 25.40.40.d.

- The following *year-to-date adjustments* are required:
 - Reduce year-to-date earnings subject to federal income tax, OASI and Medicare by the amount of the time loss payment.
 - Adjust year-to-date OASI and Medicare taxes to reflect the OASI and Medicare adjustment made for reduction of the time loss payment. **Note:** Year-to-date adjustments may be accomplished automatically or manually, depending on the payroll system used. Refer to the applicable system documentation.
 - Restore sick leave using the employee's hourly rate effective during the time loss period. Refer to Subsection 25.40.40.e.

25.40.40.d

Retirement service credit – employees on unpaid leave

Per the Department of Retirement Systems (DRS), employees who are in unpaid status while receiving time loss may elect to purchase service credit for up to a two year limit. Calculate retirement contributions based on one of the following two situations:

1. The employee elects to have full service credit for the duration of the claim up to the two year limit and the **agency chooses to assume liability for the employee and employer contributions:**
 - The agency must have an agreement with the employee. Calculate and report to DRS the *reportable compensation* the member would have received if the disability had not occurred.
 - Remit to DRS both the employer and employee retirement contributions that would have been made if the disability had not occurred. The employee contribution is deferred from Federal Income Tax (FIT).
2. The employee elects to have full service credit for the duration of the claim up to the two year limit and the **agency chooses not to assume liability for the employee contribution:**
 - At the end of the disability the employee has the option to purchase the lost service for each period of absence:
 - PERS, PSERS, TRS, and SERS: Up to 24 consecutive months for each duty disability.

- LEOFF Plan 2:
 - On or after July 1, 2002: Up to 24 consecutive months for each duty disability.
 - Prior to July 1, 2002: Up to six consecutive months for each duty disability.
- WSPRS: Up to six consecutive months for each duty disability.

Note: LEOFF Plan 1 administers temporary duty disabilities separately.

- Upon returning to work, the employee contacts DRS in order to purchase the desired amount of service credit.
- Upon receipt of payment for service credits by employee, DRS will invoice the employer for employer contributions, plus interest.

25.40.40.e

Formula to calculate sick leave to be restored

$\frac{\text{Semi-monthly salary}}{\text{Hours available for pay period when time loss payment made}} = \text{Actual hourly rate}$
$\frac{\text{Time loss dollar value}}{\text{Actual hourly rate during payment period}} = \text{Amount of sick leave hours to be restored}$

Example: Time loss payment of \$400 received or refunded to the agency. The employee’s semi-monthly salary was \$850 and the number of available hours in the 11 day pay period when the time loss payment was calculated was 88 (8 x 11).*

1. $\frac{\$850}{88} = \9.66 Actual hourly rate
2. $\frac{\$400}{\$9.66} = \$41.40$ Sick leave hours to restore

***Note:** Available hours are based on how many days are in a particular semi-monthly pay period and may vary depending on pay period.

25.40.40.f **FTE adjustment for restored sick leave hours**

When sick leave hours are restored in a sick leave recovery situation, a comparable FTE reduction is to be recorded when the sick leave is taken and recovered in the same fiscal period. The calculation for the monthly FTE adjustment, based on the example above is:

$$\frac{41.40 \text{ hrs}}{174} = .24 \text{ FTEs}$$

25.40.50

January 1, 2009

Recognition leave

WAC 357-31-565 and certain collective bargaining agreements authorize employers who have received performance management confirmation to grant employees up to five (5) days of paid leave within a twelve-month period to recognize outstanding accomplishments or the achievement of pre-defined work goals by individual employees or units.

Leave granted under this provision is not payable upon layoff, dismissal, separation, or resignation or transferable between employers. Accordingly, it need not be accrued at fiscal year end.