

Rule Review Meeting – June 12, 2018

ITEM #1 – Sexual Harassment Policy

Staff note: Substitute Senate Bill 5996 was passed during the 2018 Legislation session with an effective date of June 7, 2018. This bill states that an employer may not require an employee, as defined in chapter 49.44 RCW, as a condition of employment, to sign a nondisclosure agreement, waiver, or other document that prevents the employee from disclosing sexual harassment or sexual assault. We are proposing the following amendment to place new provisions in Title 357 WAC so there are clear expectations of what is and what is not acceptable.

The following rule amendment was filed on an emergency basis effective June 7, 2018.

AMENDATORY SECTION

WAC 357-25-027 What must be included in the agency's sexual harassment policy?

Agencies as defined in RCW 41.06.020 must at a minimum include the following in their policy on sexual harassment:

- (1) Indicate who is covered by the policy;
- (2) Provide that the employer is committed to providing a working environment free from sexual harassment of any kind;
- (3) State that sexual harassment is an unlawful employment practice prohibited by Title VII of the Civil Rights Act of 1964 and RCW 49.60;
- (4) The definition of sexual harassment as defined by the Equal Employment Opportunity Commission;
- (5) Notify the employee or individual of their right to file a complaint with the Washington State Human Rights Commission under RCW 49.60.230 or the Federal Equal Employment Opportunity Commission under Title VII of the Civil Rights Act of 1964;
- (6) Identify how and to whom employees or individuals may raise concerns or file complaints. The policy should allow multiple avenues for an employee or individual to raise complaints or concerns and should clearly identify the positions or entities charged with receiving these complaints;
- (7) Advise all individuals covered by the policy that the employer is under a legal obligation to respond to allegations concerning a violation of the policy;
- (8) Identify the manner by which the employer will respond to alleged violations of the policy, including a formal investigation if necessary;
- (9) State that the complainant shall be informed of the status and the outcome of an investigation;
- (10) Identify the agency's investigation or response procedure;
- (11) Define the roles and responsibilities of employees, managers, supervisors, and others covered by the policy with respect to the following:
 - (a) Preventing or not engaging in sexual harassment;
 - (b) Responding to concerns or allegations of violations of the policy;
 - (c) Participation in an investigation under the policy; and
 - (d) The prohibition against retaliation.
- (12) State that confidentiality cannot be guaranteed;
- (13) Advise that retaliation against individuals covered by the policy who report allegations of sexual harassment or who participate in an investigation is prohibited;
- (14) Advise that any employee found to have violated the policy will be subject to corrective and/or disciplinary action, up to and including dismissal; (~~and~~)

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(15) Advise that any employee found to have retaliated against individuals covered by the policy who report allegations of sexual harassment or who participate in an investigation will be subject to corrective and/or disciplinary action, up to and including dismissal; and

(16) State an employer may not require an employee, as a condition of employment, to sign a nondisclosure agreement, waiver, or other document that prevents the employee from disclosing sexual harassment or sexual assault occurring in the workplace, at work-related events coordinated by or through the employer, or between employees, or between an employer and an employee, off the employment premises in accordance with section 1, chapter 117, Laws of 2018.

For the purposes of this subsection, "employee" has the same meaning as defined in section 1, chapter 117, Laws of 2018.

ITEM #2 – Expanding reasons in which shared leave can be used for

Staff note: Engrossed Substitute House Bill 1434 was passed during the 2018 Legislative session with an effective date of July 1, 2018. This bill expands the use of shared leave to employees that are sick or temporarily disabled because of a pregnancy disability and for the purposes of parental leave. This bill also allows an employee to maintain up to forty hours of vacation leave and forty hours of sick leave while using shared leave. We are proposing the following rule amendments below in red text to reflect these changes.

Additionally, we are proposing amendments below in teal text to clean-up WACs (by condensing and/or housekeeping changes).

The following rule amendments will be filed on an emergency basis effective July 1, 2018.

AMENDATORY SECTION

WAC 357-31-380 What is the purpose of the state leave sharing program? The purpose of the state leave sharing program is to permit state employees, at no significantly increased cost to the state for providing leave, to come to the aid of another state employee who is likely to take leave without pay or terminate ~~((his or her))~~ employment ~~((because:~~

- ~~(1) The employee has been called to service in the uniformed services;~~
- ~~(2) The employee is volunteering with a governmental agency or a nonprofit organization when a state of emergency has been declared within the United States;~~
- ~~(3) The employee or a relative or household member is suffering from an extraordinary or severe illness, injury, impairment, or physical or mental condition; or~~
- ~~(4) The employee is a victim of domestic violence, sexual assault, or stalking as defined in RCW 41.04.655).~~

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AMENDATORY SECTION

WAC 357-31-390 What criteria does an employee have to meet to be eligible to receive

shared leave? An employee may be eligible to receive shared leave if the agency head or higher education institution president has determined the employee meets the following criteria:

(1) The employee:

(a) 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;

(b) ~~((The employee))~~ Has been called to service in the uniformed services;

(c) A state of emergency has been declared anywhere within the United States by the federal or any state government and the employee has the needed skills to assist in responding to the emergency or its aftermath and volunteers their services to either a governmental agency or to a nonprofit organization engaged in humanitarian relief in the devastated area, and the governmental agency or nonprofit organization accepts the employee's offer of volunteer services;

(d) ~~((The employee))~~ Is a victim of domestic violence, sexual assault~~((;))~~ or stalking as defined in RCW 41.04.655;

(e) ~~((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))~~

(f) ~~((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;

(g) Needs the time for parental leave as defined in WAC 357-31-395(3); or

(h) Is sick or temporarily disabled because of a pregnancy disability leave as defined in WAC 357-31-395(4).

(2) The ~~illness, injury, impairment,~~ condition~~(s)~~ listed in subsection (1) is likely to cause, ~~call to service, emergency volunteer service, consequence of domestic violence, sexual assault, or stalking, or is likely to cause,~~ the employee to:

~~(a) Go~~ on leave without pay status; or

~~(b) Terminate~~ state employment.

(3) The employee's absence and the use of shared leave are justified.

(4) The employee has depleted or will shortly deplete leave in accordance with ~~((deplete their:~~

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~~(a) Compensatory time, recognition leave as described in WAC 357-31-565, personal holiday, accrued vacation leave, and accrued sick leave if the employee qualifies under subsection (1)(a) of this section; or~~

~~(b) Compensatory time, recognition leave as described in WAC 357-31-565, personal holiday, accrued vacation leave, and paid military leave allowed under RCW 38.40.060 if the employee qualifies under subsection (1)(b) of this section; or~~

~~(c) Compensatory time, recognition leave as described in WAC 357-31-565, personal holiday, and accrued vacation leave if the employee qualifies under (1)(c) of this section)) WAC 357-31-435. If the employee qualifies under subsection (1)(g) or (h) the employee is not required to deplete all of their vacation leave or sick leave in accordance with WAC 357-31-435.~~

(5) The employee has abided by employer rules regarding:

(a) Sick leave use if the employee qualifies under subsections (1)(a), (d), (g), or (h) of this section; or

(b) Military leave if the employee qualifies under subsection (1)(b) of this section.

(6) If the illness or injury is work-related and the employee has diligently pursued and been found to be ineligible for benefits under chapter 51.32 RCW if the employee qualifies under subsection (1)(a) of this section.

AMENDATORY SECTION

WAC 357-31-395 What definitions apply to shared leave? (1) "Employee" means any employee of the state, including employees of school districts and educational service districts, who ~~(is)~~ are entitled to accrue sick leave or vacation leave and for whom accurate leave records are maintained ~~as defined in RCW 41.04.665.~~

(2) "Employee's relative" normally must be limited to the employee's spouse, registered domestic partner, child, grandchild, grandparent~~((,))~~ or parent.

(3) "Parental leave" means leave to bond and care for a newborn child after birth or to bond and care for a child after placement for adoption or foster care, for a period of up to sixteen weeks after the birth or placement.

(4) "Pregnancy disability leave" means a pregnancy-related medical condition or miscarriage.

(5) "Severe" or "extraordinary" condition is defined as serious ~~or,~~ extreme ~~and~~ or life threatening.

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~~((4))~~ (6) "Service in the uniformed services" means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes active duty, active duty for training, initial active duty for training, inactive duty training, full-time national guard duty including state-ordered active duty~~((7))~~ and a period for which a person is absent from a position of employment for the purpose of an examination to determine the fitness of the person to perform any such duty.

~~((5))~~ (7) "Uniformed services" means the armed forces, the army national guard, and the air national guard of any state, territory, commonwealth, possession, or district when engaged in active duty for training, inactive duty training, full-time national guard duty, or state active duty, the commissioned corps of the public health service, the coast guard~~((7))~~ and any other category of persons designated by the President of the United States in time of war or national emergency.

AMENDATORY SECTION

WAC 357-31-405 What documentation may an employee seeking shared leave be required to submit? (1) For employees seeking shared leave under WAC 357-31-390 (1)(a), the employer may require the employee to submit a medical certificate from a licensed physician or health care practitioner verifying the severe or extraordinary nature and expected duration of the condition before the employer approves or disapproves the request.

(2) For employees seeking shared leave under WAC 357-31-390 (1)(b), the employer may require the employee to submit a copy of the military orders verifying the employee's required absence before the employer approves or disapproves the request.

(3) For employees seeking shared leave under WAC 357-31-390 (1)(c), proof of acceptance of an employee's offer to volunteer for either a governmental agency or a nonprofit organization during a declared state of emergency.

(4) For employees seeking shared leave under WAC 357-31-390 (1)(d), the employer may require that the request be supported by documentation. An employee may satisfy the verification requirement by providing the employer with one or more of the following:

(a) A police report indicating that the employee was a victim of domestic violence, sexual assault~~((7))~~ or stalking;

(b) A court order protecting or separating the employee from the perpetrator of the act of domestic violence, sexual assault~~((7))~~ or stalking;

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(c) Evidence from the court or prosecuting attorney that the employee appeared or is scheduled to appear in court in connection with an incident of domestic violence, sexual assault((7)) or stalking;

(d) An employee's written statement that the employee is a victim of domestic violence, sexual assault((7)) or stalking; or

(e) Documentation that the employee is a victim of domestic violence, sexual assault((7)) or stalking, from any of the following persons from whom the employee or employee's family member sought assistance in addressing the domestic violence, sexual assault((7)) or stalking: An advocate for victims of domestic violence, sexual assault((7)) or stalking; an attorney; a member of the clergy; or a medical or other professional.

(5) Employees seeking shared leave under WAC 357-31-390 (1)(e) or (f), the employee must provide documentation in accordance with WAC 357-31-805.

(6) Employees seeking shared leave under WAC 357-31-390 (1)(g), the employer may require verification of the birth, adoption, foster care or placement of the child.

(7) Employees seeking shared leave under WAC 357-31-390 (1)(h), the employer may require a medical certification from a licensed physician or health care practitioner.

AMENDATORY SECTION

WAC 357-31-415 Can donated leave be used for any purpose? Vacation leave, sick leave, or all or part of a personal holiday transferred from a donating employee under these rules must be used solely for the purpose stated in WAC 357-31-3890.

AMENDATORY SECTION

WAC 357-31-435 Must employees use their own leave before using shared leave? (1)

Employees who qualify for shared leave under WAC 357-31-390 (1)(a) must first use all compensatory time, recognition leave as described in WAC 357-31-565, personal holiday, sick leave((7)) and vacation leave that they have accrued before using shared leave.

(2) Employees who qualify [for shared leave](#) under WAC 357-31-390 (1)(b) must first use all of their compensatory time, recognition leave as described in WAC 357-31-565, personal holiday, accrued vacation leave((7)) and paid military leave allowed under RCW 38.40.060 before using shared leave.

(3) Employees who qualify for shared leave under WAC 357-31-390 (1)(c) and (d) must first use all compensatory time, recognition leave as described in WAC 357-31-565, personal holiday((7)) and vacation leave that they have accrued before using shared leave.

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(4) Employees who qualify for shared leave under WAC 357-31-390 (1)(e) or (f) must first use all leave as described in WAC 357-31-895.

(5) Employees who qualify for shared leave under WAC 357-31-390 (1)(g) and/or (h) must first use all accrued compensatory time, recognition leave as described in WAC 357-31-565 and personal holiday before using shared leave. The employee is not required to deplete all of their accrued vacation leave and sick leave and can maintain up to forty hours of vacation leave and forty hours of sick leave.

AMENDATORY SECTION

WAC 357-31-490 Will time off for parental leave be paid or unpaid? (1) Parental leave may be a combination of vacation leave, personal holiday, compensatory time, ~~((and))~~ leave of absence without pay and shared leave. Sick leave may be used if the criteria in WAC 357-31-130 are met. The combination and use of paid and unpaid leave during a parental leave is at the employee's choice.

(2) If necessary while on approved parental leave, the employee must be allowed to use a minimum of eight hours per month of the accrued paid leave identified in subsection (1) of this section during a parental leave of absence without pay to provide for continuation of benefits as provided by the public employees' benefits board. The employer designates when during the month paid leave will be interspersed to maintain benefits.

AMENDATORY SECTION

WAC 357-31-515 Will time off during the period of disability leave due to pregnancy and/or childbirth be paid? Disability leave due to pregnancy and/or childbirth may be a combination of sick leave, vacation leave, personal holiday, compensatory time, ~~((and))~~ leave without pay and shared leave. The combination and use of paid and unpaid leave must be per the choice of the employee.

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ITEM #3 – Housekeeping

Staff note: The proposed rule changes to WAC 357-31-010 and WAC 357-31-165 are housekeeping in nature and are highlighted below.

AMENDATORY SECTION

WAC 357-31-010 Which employees qualify for holiday compensation?

(1) Full-time general government employees who work full monthly schedules qualify for holiday compensation if they are employed before the holiday and are in pay status:

- (a) For at least eighty nonovertime hours during the month of the holiday; or
- (b) For the entire work shift preceding the holiday.

(c) Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this subsection.

(2) Full-time higher education employees and cyclic year position employees who work full monthly schedules qualify for holiday compensation if they are in pay status for the entire work shift preceding the holiday. Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this subsection.

(3) Cyclic year position employees scheduled to work less than full monthly schedules throughout their work year qualify for holiday compensation if they work or are in pay status on their last regularly scheduled working day before the holiday(s) in that month. Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this subsection.

(4) Part-time general government employees who are in pay status during the month of the holiday qualify for holiday pay on a pro rata basis in accordance with WAC 357-31-020, except that part-time employees hired during the month of the holiday will not receive compensation for holidays that occur prior to their hire date.

(5) Part-time higher education employees who satisfy the requirements of subsection **(42)** of this section are entitled to the number of paid hours on a holiday that their monthly schedule bears to a full-time schedule. Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this subsection.

AMENDATORY SECTION

WAC 357-31-165 At what rate do general government employees accrue vacation leave?

(1) Full-time general government employees accrue vacation leave at the following rates:

- (a) During the first and second years of current continuous state employment - Nine hours, twenty minutes per month;
- (b) During the third year of current continuous state employment - Ten hours per month;
- (c) During the fourth year of current continuous state employment - Ten hours, forty minutes per month;

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(d) During the fifth and sixth years of total state employment - Eleven hours, twenty minutes per month;

(e) During the seventh, eighth and ninth years of total state employment - Twelve hours per month;

(f) During the tenth, eleventh, twelfth, thirteenth and fourteenth years of total state employment - Thirteen hours, twenty minutes per month;

(g) During the fifteenth, sixteenth, seventeenth, eighteenth and nineteenth years of total state employment - Fourteen hours, forty minutes per month;

(h) During the twentieth, twenty-first, twenty-second, twenty-third and twenty-fourth years of total state employment - Sixteen hours per month; and

(i) During the twenty-fifth and succeeding years of total state employment - Sixteen hours, forty minutes per month.

(2) As provided in WAC 357-58-175, an employer may authorize a lump-sum accrual of vacation leave or accelerate the vacation leave accrual rate to support the recruitment and/or retention of a candidate or incumbent for a WMS position. Vacation leave accrual rates may only be accelerated using the rates established in subsection (1) of this section and must not exceed the maximum listed in subsection ~~((1)(k)-(1)(i)))~~ (1)(i) of this section.

(3) The following applies for purposes of computing the rate of vacation leave accrual:

(a) Employment in the legislative and/or the judicial branch except for time spent as an elected official or in a judicial appointment is credited.

(b) Employment exempt by the provisions of WAC 357-04-040, 357-04-045, 357-04-050, 357-04-055 is not credited.

(c) Exempt employment with a general government employer is credited, other than that specified in WAC 357-04-055 which is excluded.

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ITEM #4 – Reallocation

Staff note: The proposed rule amendment to WAC 357-28-130(2) changes the way salary is set when an employee is reallocated to a higher salary range due to the director creating, abolishing, or revising a class.

This change aligns with the how salary is set for a promotion and also when salary is set for a reallocation to a class with a higher salary range without the director creating, abolishing or revising a class. I am including both of these WACs for reference only.

AMENDATORY SECTION

WAC 357-28-130 How is an employee's base salary determined if the director creates, abolishes, or revises a class?

When reallocation is necessary because the director creates, abolishes, or revises a class, an employee's base salary is determined as follows:

(1) An employee occupying a position reallocated to a class with the same or lower salary range must be paid an amount equal to his/her previous base salary.

(2) An employee occupying a position reallocated to a class with a higher salary range must ~~have his/her base salary adjusted to the same step~~ receive a minimum increase of at least two steps not to exceed step M in the new salary range as held in the previous range unless otherwise determined by the director.

Reference Only:

WAC 357-28-110 Must an employee who is promoted receive a salary increase?

An employee who is promoted must receive a minimum increase of two steps not to exceed step M of the salary range. The employer may grant more than an increase of two steps not to exceed step L if:

(1) Significant increases in duties and responsibilities, as documented by the employer, warrant greater compensation;

(2) The increase is necessary for internal salary alignment, retention of the employee, or other documented business needs; or

(3) The increase is necessary to bring the employee to the minimum of the salary range for the position.

WAC 357-28-115 Must an employee occupying a position that is reallocated to a class with a higher salary range receive a salary increase?

An employee occupying a position that is reallocated to a class with a higher salary range must receive a minimum increase of at least two steps not to exceed step M of the salary range in accordance with WAC [357-28-110](#).