

Item #1 – Pregnancy Disability and Parental Leave - Cleanup Items

Staff note: We are proposing to amend WAC 357-31-500 to remove the term “permanent”. Under Washington State Law Against Discrimination (Chapter 49.60 RCW) and Title VII of the Civil Rights Act of 1964 or the Pregnancy Discrimination Act an employee does not have to hold permanent status to qualify for a leave of absence for reasons of pregnancy disability and childbirth. Prior to Civil Service Reform, Disability Leave was addressed under Higher Education, Title 251 WAC and not under General Government Title 356 WAC. The current language in WAC 357-31-500 stemmed from the former language in the higher education rules (Title 251 WAC).

We are proposing to amend WAC 357-31-480 to update the correct reference from RCW 49.78.390 to RCW 50A.15.110. RCW 49.78.390 was repealed in 2018 therefore is no longer applicable. Parental leave is in addition to any leave for sickness or temporary disability as provided under the Federal Family and Medical Leave Act of 1993 and the Washington Paid Family and Medical Leave Act.

Lead: Patricia Foshaug

AMENDATORY SECTION

WAC 357-31-500 When must disability leave due to pregnancy and/or childbirth be granted?

Leave of absence must be granted for the period of time that an (permanent) employee is sick or temporarily disabled because of pregnancy and/or childbirth.

AMENDATORY SECTION

WAC 357-31-480 Is parental leave in addition to any leave for sickness or temporary disability because of pregnancy and/or childbirth?

Consistent with [RCW 50A.15.110](#), parental leave under Title 50A RCW (~~49.78.390~~), and the family leave required by the Federal Family and Medical Leave Act of 1993 (Act Feb. 5, 1993, P.L. 103-3, 107 Stat. 6) must be in addition to any leave for sickness or temporary disability because of pregnancy and/or childbirth as provided in WAC [357-31-500](#).

REFERENCE ONLY

RCW [50A.15.110](#) Leave available under other laws—Coordination.

(1) Leave under this title and leave under the federal family and medical leave act of 1993 (Act Feb. 5, 1993, P.L. 103-3, 107 Stat. 6, as it existed on October 19, 2017) is in addition to any leave for sickness or temporary disability because of pregnancy or childbirth.

(2) Unless otherwise expressly permitted by the employer, leave taken under this title must be taken concurrently with any leave taken under the federal family and medical leave act of 1993 (Act Feb. 5, 1993, P.L. 103-3, 107 Stat. 6, as it existed on October 19, 2017).

Item #2 - Compensation

Staff note: We are proposing to amend [WAC 357-58-141](#) to clarify when an employee must receive location-based premium pay. [ESHB 1109](#) passed during the 2019 legislative session with an effective date of May 21, 2019. This bill provided for two premium pays for non-represented employees. Section 207 provides for premium pay to an employee who is assigned to work on McNeil Island at the Special Commitment Center. Section 950 of this bill provides funding for a five percent premium pay for non-represented employees working in King County excluding non-represented employees at the University of Washington. As a result, WAC 357-58-141 was adopted on a permanent basis effective September 23, 2019, to state location based premium must be paid when an WMS employee is assigned to work on McNeil Island **and** assigned to a permanent duty station in King County. It has been brought to our attention that it should state location-based premium must be paid when an employee is assigned to work on McNeil Island **or** assigned to a permanent duty station in King County. We are proposing to amend WAC 357-58-141 to replace “and” with “or”.

Lead: Brittany Trujillo

AMENDATORY SECTION

WAC 357-58-141 When must a Washington management service (WMS) employee receive location based premium pay?

Location based premium pay at the rate specified in the compensation plan must be paid when a WMS employee is:

(1) Assigned to work on McNeil Island at the special commitment center and for each day the employee is physically working on the island. Days in paid status not working on the island will not qualify for premium pay; ~~and~~ or

(2) Assigned to a permanent duty station in King County. When an employee is no longer permanently assigned to a King County duty station they will not be eligible for location based premium pay.

ITEM #3 – Step M Clean-Up

Staff note: On July 1, 2013, new rules were adopted to implement a new Step M that was provided in the 2013 – 2015 operating budget. Step M was originally implemented as a longevity step to allow employees who have been at the top step (step L) in the same salary range for six years to progress to step M. We are proposing the following rule amendments to clarify certain scenarios based on questions received since inception:

- [WAC 357-28-082](#) states an employee cannot be appointed to step M upon initial hire. [WAC 357-28-090](#) allows an employer to adjust an employee’s base salary up to step M to address issues related to recruitment, retention or other business related reasons. WAC 357-28-090 contradicts WAC 357-28-082. We are proposing to amend WAC 357-28-082 to align with WAC 357-28-090 allowing an employee to be appointed to step M upon initial hire for recruitment, retention or other business related reasons.
- [WAC 357-28-084](#) states an employee cannot be appointed to step M upon demotion unless the employee was previously at step M of the salary range they are demoting from or if the employee was previously at step M in the salary range of the class the employee is demoting to. We are proposing to add to

subsections (3) and (4) to clarify an employee may be appointed to step M if the demotion is a result of a reasonable accommodation or as a result of layoff in accordance with [WAC 357-28-135](#).

- [WAC 357-28-086](#) states if an employee is currently at step L of a salary range, the employee will progress to step M of that same salary range six years from the date they were advanced or appointed to step L regardless of what has transpired in between. We are proposing to amend subsection (1) to state an employee may be appointed to step M as a result of a layoff option to align in accordance with [WAC 357-28-088](#).
- [WAC 357-28-088](#) states if an employee transfers to a position, the time at step L in the previous position will count towards the six-year requirement for step M. If an employee is demoted the time at step L in the previous position will not count towards the six years to qualify for step M except in accordance with WAC 357-28-135(2). An employee may be appointed to step M if they are demoted as a result of a reasonable accommodation or as a result of a layoff. We are proposing to amend WAC 357-28-088 to clarify that if an employee may be placed at step M for these reasons.
- [WAC 357-28-120](#) states when an employee is occupying a position and it is reallocated to a class with the same or lower salary range, they must be placed within the new salary range at an amount equal to their previous base salary. If their previous base salary exceeds the new range, their base salary must be set equal to step M of the salary range. The employee's base salary may be set higher than step M but not exceeding their previous base salary, if allowed by the employer's salary determination policy. We are proposing to amend WAC 357-28-120 to clarify that an employee's base salary may be set higher than step M until the employee vacates the position or their salary falls within the new salary range and to reflect gender neutral pronouns.
- [WAC 357-28-135](#) We are proposing to amend WAC 357-28-135 to clarify an employee who is at step L when accepting a layoff option or is appointed from a layoff list to a position with a lower salary range, any previous time spent at step L will count towards the requirement to progress to step M of the new salary range. Additionally, we are proposing to re-organize the layout of the section for clarity. These changes are not intended to modify the intent of the section.
- [WAC 357-28-155](#) addresses how an employee's salary is determined upon demotion. We are proposing to amend WAC 357-28-155 to add subsection (2) to state if the demotion is a result of a reasonable accommodation, they may be appointed to step M in accordance with WAC 357-28-084.

Lead: Brittany Trujillo

AMENDATORY SECTION

WAC 357-28-082 Is step M on the salary schedule different than other salary steps? Step M is a longevity step. An employee cannot be appointed to step M upon initial hire unless for recruitment and retention or other business related reasons in accordance with WAC 357-28-090.

REFERENCE ONLY

WAC 357-28-090 Can an employer adjust an employee's base salary within the employee's current salary range for recruitment, retention, or other business related reasons?

The employer may adjust an employee's base salary up to step M within the salary range to address issues that are related to recruitment, retention or other business related reason, such as equity, alignment, or competitive market conditions.

AMENDATORY SECTION

WAC 357-28-084 ((Can)) May an employee be appointed to step M upon demotion (voluntary or involuntary)?

An employee cannot be appointed to step M upon demotion (voluntary or involuntary) unless:

- (1) The employee was at step M of the salary range from which the employee is demoting ((or));
- (2) The employee was previously at step M in the salary range of the class the employee is demoting to;
- (3) The demotion is a result of a reasonable accommodation; or
- (4) The employee was appointed to a position due to layoff action in accordance with WAC 357-28-135.

AMENDATORY SECTION

WAC 357-28-086 When may an employee progress to step M of the salary range?

(1) If an employee is currently at step L of a salary range, the employee will progress to step M of that same salary range six years from the date they were advanced or appointed to step L. The progression to step M is regardless of what has transpired in the six years since the employee was appointed to step L, provided that the employee is at step L in the same pay range as the pay range the employee was in at the beginning of the six-year period except in accordance with WAC 357-28-088.

(2) With director approval, higher education institutions may make all movements to step M effective:

- (a) The first of the current month for actions occurring between the first and the ~~((fifteenth))~~ 15th of the month; or
- (b) The first of the following month for actions occurring between the ~~((sixteenth))~~ 16th and the end of the month.

AMENDATORY SECTION

WAC 357-28-088 If an employee transfers or demotes will the time spent at step L count towards the six years to qualify for step M in the new position? If an employee transfers to a position the time at step L in the previous position will count towards the six years to qualify for step M in the new position.

If an employee is demoted (voluntary or involuntary), the time at step L in the previous position will not count towards the six years to qualify for step M except if the demotion is a reasonable accommodation or due to layoff action in accordance with WAC 357-28-135~~((2))~~ (4).

AMENDATORY SECTION

WAC 357-28-120 What is the base salary of an employee occupying a position that is reallocated to a class with the same or lower salary range?

An employee occupying a position that is reallocated to a class with the same or lower salary range must be placed within the new salary range at an amount equal to ~~((his/her))~~ their previous base salary. If the previous base salary exceeds the new salary range, the employee's base salary must be set equal to step M of the salary range for the reallocated position. The employee's base salary may be set higher than step M if allowed by the employer's salary determination policy, but not exceeding the previous base salary, ~~((if allowed by the employer's salary determination policy))~~ until such time as the employee vacates the position or their salary falls within the new salary range.

AMENDATORY SECTION

WAC 357-28-135 How is an employee's salary determined when the employee is appointed to a position due to a layoff action?

~~((1))~~ (1) The base salary of an employee ((appointed to a position due to a layoff action must be)) who accepts a layoff option must have their salary determined as follows:

~~((1))~~ (a) Accepts a layoff option to a different position with the same salary range keeps the same base salary.

~~((2))~~ (b) Accepts a layoff option to a position with a lower salary range maximum must be placed within the new range at a salary equal to the employee's previous base salary. If the previous base salary exceeds the new range, the employee's base salary must be set equal to step M of the new salary range~~((--If the employee's previous base salary was at step M of the salary range the employee must be placed at step M of the new salary range)).~~

~~((3))~~ (2) The base salary of an employee who is appointed from an internal or statewide layoff list must have their salary determined as follows:

(a) Appointed to a position with the same range as the position from which the employee was laid off must be placed within the range at a salary equal to the employee's previous base salary.

~~((4))~~ (b) Appointed ((from an internal or statewide layoff list)) to a position with a lower range maximum than the position from which the employee was laid off must have the salary determined by the employer's salary determination policy.

(3) An employee whose previous base salary was at step M of a salary range at the time of being appointed must be placed at step M of the new salary range.

(4) An employee who is at step L when accepting a layoff option to a position with a lower salary range, any previous time spent at step L will count towards the requirement to get to step M of the new salary range.

AMENDATORY SECTION

WAC 357-28-155 How is an employee's salary determined upon demotion?

(1) The base salary of an employee who accepts a demotion in lieu of layoff must be set in accordance with WAC 357-28-135.

(2) If the demotion is a result of a reasonable accommodation, they may be appointed to step M in accordance with WAC 357-28-084.

(3) An employee demoted for any other reason must be paid within the salary range of the class to which the position is allocated. The employee's base salary must be determined in accordance with the employer's salary determination policy.

Item #4 – Cleanup USSLP and VISSLP Shared Leave Pools

Staff note: We proposed this rule item at the June 2021 rules review meeting and it was placed on hold due to other priority items. We are proposing to amend the following rules to clarify that an employee is able to maintain a balance of 40 hours of applicable leave types before receiving shared leave from the Uniformed Service and Veterans' in-state service shared leave pools. The proposed amendment to WAC 357-31-687 is to clarify that an employee is not required to deplete all of their accrued vacation leave and paid military leave before receiving shared leave from the Uniformed Service Shared Leave Pool. The proposed amendment to WAC 357-31-797 is to clarify an employee is not required to deplete all of their accrued vacation leave and sick leave before receiving shared leave from the Veterans' In-State Service Shared Leave Pool.

Lead: Patricia Foshaug

AMENDATORY SECTION

WAC 357-31-687 Must employees use their own leave before receiving shared leave from the uniformed service shared leave pool?

Employees who are eligible to receive shared leave from the uniformed service shared leave pool must first use all accrued compensatory time, accrued holiday credit, recognition leave as described in WAC 357-31-565((,)) and personal holiday(~~(, vacation leave, and paid military leave allowed under RCW 38.40.060))~~) before receiving shared leave from the uniformed service shared leave pool. The employee is not required to deplete all of their accrued vacation leave and paid military leave allowed under RCW 38.40.060 and can maintain up to 40 hours of vacation leave and 40 hours of paid military leave.

AMENDATORY SECTION

WAC 357-31-797 Must employees use their own leave before receiving shared leave from the veterans' in-state service shared leave pool?

Employees who are eligible to receive shared leave from the veterans' in-state service shared leave pool must first use all accrued compensatory time, accrued holiday credit, recognition leave as described in WAC 357-31-565((,)) and personal holiday(~~(, sick leave, and vacation leave))~~) before receiving shared leave from the veterans' in-state service shared leave pool. The employee is not required to deplete all of their accrued vacation leave and sick leave and can maintain up to 40 hours of vacation leave and 40 hours of sick leave.

Item #5 – Leave to Obtain Vaccination, Hours Worked

Staff note: [WAC 357-31-325\(5\)](#) requires an employer to grant leave with pay to a general government employee to travel and receive each dose or booster of COVID-19 vaccine if the vaccine is not offered at the workplace. [WAC 357-31-326\(4\)](#) states a general government employer may grant a reasonable amount of leave with pay for an employee to receive each dose or booster of COVID-19 vaccine if the vaccine is offered at the workplace. [WAC 357-31-326\(5\)](#) states a higher education employer may grant a reasonable amount of leave with pay for an employee to receive each dose of booster of COVID-19 vaccine if the vaccine is not offered at the workplace. [WAC 357-28-265](#) states for the purposes of computing eligibility for overtime compensation, leave with pay during an employee's regular work schedule is not considered time worked. Washington State Labor and Industries provided guidance that states if an employer requires employees to receive a COVID-19 vaccine, the time associated with

receiving the vaccine must be considered hours worked and overtime must be paid under the Washington State Minimum Wage Act.

We are proposing to amend WAC 357-28-265 to state leave with pay during the employee's regular work schedule **is not** considered time work **except** when leave is taken to travel and receive each dose or booster of COVID-19 vaccination in accordance with WAC 357-31-325 and 357-31-326.

Lead: Brittany Trujillo

AMENDATORY SECTION

WAC 357-28-265 For the purpose of computing eligibility for overtime compensation, are holidays and leave with pay considered time worked?

For purposes of computing eligibility for overtime compensation, paid holidays during the employee's regular work schedule **are** considered time worked. Leave with pay during the employee's regular work schedule is **not** considered time worked except for:

(1) When leave is taken to travel and receive each dose or booster of COVID-19 vaccine in accordance with WAC 357-31-325; or

(2) When leave is taken to receive each dose or booster of COVID-19 vaccine in accordance with WAC 357-31-326.

REFERENCE ONLY

WAC 357-31-325 When must an employer grant leave with pay for other miscellaneous reasons?

Leave with pay **must** be granted to an employee in accordance with WAC 357-31-320 and for the following reasons:

(1) To allow an employee to receive assessment from the employee assistance program.

(2) When an employee is scheduled to take an examination or participate in an interview for a position with a state employer during scheduled work hours.

(a) Employers may limit the number of occurrences or the total amount of paid leave that will be granted to an employee to participate in an interview or take an examination during scheduled work hours.

(b) Employers may deny an employee's request to participate in an interview or take an examination during scheduled work hours based upon operational necessity.

(3) When an employee is required to appear during working hours for a physical examination to determine physical fitness for military service.

(4) To allow a general government employee to take paid leave, not to exceed 30 days in a two-year period to participate in life-giving procedures, such as medical procedures, including testing, sampling, or donation of organs, tissues, and other body components for the purpose of donation, without compensation. For this subsection blood or plasma donations are not considered life-giving procedures.

(a) General government employers may take operational necessity into account and require the employee to provide reasonable advance notice.

(b) Employees must provide written proof from an accredited medical institution, physician, or other medical professional that the employee will or has participated in a life-giving procedure.

(5) To allow a general government employee to take a reasonable amount of leave with pay for the employee to travel and receive each dose or booster of COVID-19 vaccine if the vaccine is not offered at the workplace. An employer may authorize leave in excess of one day in extraordinary circumstances, such as to accommodate travel where the vaccine is unavailable locally. The employer may require that the request for leave be supported by documentation, which may include proof of the vaccination. This subsection no longer applies if state or federal law otherwise provides paid leave specifically for employees to receive the COVID-19 vaccine.

REFERENCE ONLY

WAC 357-31-326 When may an employer grant leave with pay?

(1) A general government employer **may** grant leave with pay for an employee to perform civil duties as a volunteer including, but not limited to, firefighting, search and rescue efforts, or donating blood. Leave granted to participate in blood and plasma donations must not exceed five days in a two-year period.

(2) A higher education employer may grant leave with pay for an employee to perform civil duties as a volunteer including, but not limited to, firefighting, search and rescue efforts, participating in life-giving procedures, or donating blood. Leave granted to participate in life-giving procedures must not exceed five days in a two-year period.

(3) In the department of natural resources, leave with pay equivalent to one regular workshift **may** be allowed for the purpose of rest and recuperation after 10 consecutive calendar days performing emergency work under an incident command system, defined in RCW [38.52.010](#). The employer may grant one additional day of leave with pay for rest and recuperation after 21 consecutive calendar days performing emergency work under an incident command system.

(4) A general government employer may grant a reasonable amount of leave with pay for an employee to receive each dose or booster of COVID-19 vaccine if the vaccine is offered at the workplace. An employer may authorize leave in excess of one day for receipt of the vaccine in extraordinary circumstances, such as to accommodate travel where the vaccine is unavailable locally. The employer may require that the request for leave be supported by documentation, which may include proof of the vaccination. This subsection no longer applies if state or federal law otherwise provides paid leave specifically for employees to receive the COVID-19 vaccine.

(5) A higher education employer may grant a reasonable amount of leave with pay for an employee to receive each dose or booster of COVID-19 vaccine if the vaccine is not offered at the workplace. An employer may authorize leave in excess of one day for receipt of the vaccine in extraordinary circumstances, such as to accommodate travel where the vaccine is unavailable locally. The employer may require that the request for leave be supported by documentation, which may include proof of the vaccination. This subsection no longer applies if state or federal law otherwise provides paid leave specifically for employees to receive the COVID-19 vaccine.