# Rule Review Items – April 9, 2024

## **Item #1 - Choice Performance Confirmation Clean-up** \*NEW

**Staff note:** In September 2016 SHR launched the Choice Performance Confirmation pilot program, a modified version of the Performance Management Confirmation program. The pilot was designed to assist state employers in the development of a performance management program that 1) creates and manages a performance-based culture; 2) links individual, team and organizational performance goals; 3) meaningfully distinguishes among different levels of performance; and 4) develops a fair and transparent performance program. The pilot program included changes to the performance-based incentives for confirmed agencies. While the CPC was operating as a pilot program, it remained operating under the PMC program title. During the preparation for the pilot, SHR met with all CPC confirmed agencies to solicit feedback and recommendations. During that process, SHR learned that participating employers never intended or planned on using layoff as part of the program. Therefore, a policy decision was made to remove the ability for participating employers to factor employee performance when making layoff decisions. Rulemaking was completed in 2022 to reflect the Choice Performance Confirmation program title change and remove language referencing the ability to factor employee performance when making layoff decisions. We are proposing to amend WAC 357-58-470 to remove the ability for employers with performance management confirmation the ability to consider properly documented performance in addition to seniority for the employee’s employment retention rating. The amendment to this WAC was inadvertently missed during the 2022 rulemaking.

Lead: Brittany Trujillo

**AMENDATORY SECTION**

### WAC 357-58-470 How does an employer determine an employee's employment retention rating?

The employer determines an employee's employment retention rating using seniority as calculated in WAC [**357-46-055**](http://app.leg.wa.gov/WAC/default.aspx?cite=357-46-055). ~~Employers with performance management confirmation may consider properly documented performance in addition to seniority. If performance is not considered, an employee's employment retention rating is equal to the employee's seniority~~.

**REFERENCE ONLY**

### WAC 357-46-050 How does an employer determine an employee's employment retention rating?

The employer determines an employee's employment retention rating using seniority as calculated in WAC [357-46-055](http://app.leg.wa.gov/WAC/default.aspx?cite=357-46-055) for general government employees and [357-46-053](http://app.leg.wa.gov/WAC/default.aspx?cite=357-46-053) for higher education employees.

## Item #2 - Nondisclosure and Nondisparagement Provisions \*NEW

**Staff note:** [ESHB 1795](https://lawfilesext.leg.wa.gov/biennium/2021-22/Pdf/Bills/Session%20Laws/House/1795-S.SL.pdf?q=20220509162654) passed during the 2022 legislative session with an effective date of June 9, 2022. This bill prohibits nondisclosure and nondisparagement provisions from employers regarding illegal acts of discrimination, harassment, retaliation, wage and hour violations, and sexual assault. Section 4 of this bill repeals RCW 49.44.210 which is the statute that previously prohibited an employer from requiring an employee, as a condition of employment, to sign a nondisclosure agreement regarding sexual harassment and sexual assault occurring in the workplace. RCW 49.44.210 was replaced with section 2 of this bill, codified as [RCW 49.44.211](https://app.leg.wa.gov/RCW/default.aspx?cite=49.44.211), Prohibited Nondisclosure and Nondisparagement Provisions – Retaliation by Employer Prohibited – Penalties – Construction.

We are proposing to repeal existing language in WAC 357-25-027(17) and replace it with new language stemming from RCW 49.44.211. We are also proposing to amend the “employee” definition reference from RCW 49.44.210 to RCW 49.44.211.

Lead: Brittany Trujillo

**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**](http://app.leg.wa.gov/RCW/default.aspx?cite=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) A statement 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**](http://app.leg.wa.gov/RCW/default.aspx?cite=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) A statement 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) A statement that confidentiality cannot be guaranteed;

(13) A statement that responses to public records requests will be provided in accordance with RCW [**42.56.660**](http://app.leg.wa.gov/RCW/default.aspx?cite=42.56.660) and [**42.56.675**](http://app.leg.wa.gov/RCW/default.aspx?cite=42.56.675);

(14) Advise that retaliation against individuals covered by the policy who report allegations of sexual harassment or who participate in an investigation is prohibited;

(15) Advise that any employee found to have violated the policy will be subject to corrective and/or disciplinary action, up to and including dismissal;

(16) 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

(17) ~~A statement that 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 RCW~~[**~~49.44.210~~**](http://app.leg.wa.gov/RCW/default.aspx?cite=49.44.210)~~.~~ A statement that an employer may not require an employee to sign an agreement that prevents the employee from disclosing or discussing conduct or the existence of a settlement involving conduct described in RCW 45.44.211 and that it is a violation for an employer to discharge or otherwise discriminate or retaliate against an employee for disclosing or discussing such conduct.

For the purposes of this subsection, "employee" has the same meaning as defined in RCW [**~~49.44.210~~**](http://app.leg.wa.gov/RCW/default.aspx?cite=49.44.210)**49.44.211**.

**REFERENCE ONLY**

**RCW**[**49.44.211**](http://app.leg.wa.gov/RCW/default.aspx?cite=49.44.211) **Prohibited nondisclosure and nondisparagement provisions—Retaliation by employer prohibited—Penalties—Construction.**

(1) A provision in an agreement by an employer and an employee not to disclose or discuss conduct, or the existence of a settlement involving conduct, that the employee reasonably believed under Washington state, federal, or common law to be illegal discrimination, illegal harassment, illegal retaliation, a wage and hour violation, or sexual assault, or that is recognized as against a clear mandate of public policy, is void and unenforceable. Prohibited nondisclosure and nondisparagement provisions in agreements concern conduct that occurs at the workplace, at work-related events coordinated by or through the employer, between employees, or between an employer and an employee, whether on or off the employment premises. Prohibited nondisclosure and nondisparagement provisions include those contained in employment agreements, independent contractor agreements, agreements to pay compensation in exchange for the release of a legal claim, or any other agreement between an employer and an employee.

(2) This section does not prohibit the enforcement of a provision in any agreement that prohibits the disclosure of the amount paid in settlement of a claim.

(3) It is a violation of this section for an employer to discharge or otherwise discriminate or retaliate against an employee for disclosing or discussing conduct that the employee reasonably believed to be illegal harassment, illegal discrimination, illegal retaliation, wage and hour violations, or sexual assault, that is recognized as illegal under state, federal, or common law, or that is recognized as against a clear mandate of public policy, occurring in the workplace, at work-related events coordinated by or through the employer, between employees, or between an employer and an employee, whether on or off the employment premises.

(4) It is a violation of this section for an employer to request or require that an employee enter into any agreement provision that is prohibited by this section.

(5) It is a violation of this section for an employer to attempt to enforce a provision of an agreement prohibited by this section, whether through a lawsuit, a threat to enforce, or any other attempt to influence a party to comply with a provision in any agreement that is prohibited by this section.

(6) This section does not prohibit an employer and an employee from protecting trade secrets, proprietary information, or confidential information that does not involve illegal acts.

(7) An employer who violates this section after June 9, 2022, is liable in a civil cause of action for actual or statutory damages of $10,000, whichever is more, as well as reasonable attorneys' fees and costs.

(8) For the purposes of this section, "employee" means a current, former, or prospective employee or independent contractor.

(9) A nondisclosure or nondisparagement provision in any agreement signed by an employee who is a Washington resident is governed by Washington law.

(10) The provisions of this section are to be liberally construed to fulfill its remedial purpose.

(11) As an exercise of the state's police powers and for remedial purposes, this section is retroactive from June 9, 2022, only to invalidate nondisclosure or nondisparagement provisions in agreements created before June 9, 2022, and which were agreed to at the outset of employment or during the course of employment. This subsection allows the recovery of damages only to prevent the enforcement of those provisions. This subsection does not apply to a nondisclosure or nondisparagement provision contained in an agreement to settle a legal claim.

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## Item #3 – Vacation Leave Accrual \*NEW

**Staff note:** House bill [2246](https://lawfilesext.leg.wa.gov/biennium/2023-24/Pdf/Bills/Session%20Laws/House/2246.SL.pdf?q=20240402114528) (Chapter 151, 2024 Laws) passed during the 2024 legislative session, with an effective date of June 6, 2024. Section 1 of this bill amends [RCW 43.01.040](https://apps.leg.wa.gov/rcw/default.aspx?cite=43.01.040) to increase the annual cap on the accrual of unused vacation leave for state employees from 240 hours to 280 hours. Section 2 of this bill amends [RCW 43.01.044](https://apps.leg.wa.gov/rcw/default.aspx?cite=43.01.044) to increase the amount of unused vacation leave that can be deferred above the maximum from 240 hours to 280 hours.

We are proposing to amend:

* WAC 357-01-022 and 357-01-023 to increase the amount of unused vacation hours higher education and general government employees may accumulate before its lost on their anniversary date.
* WAC 357-31-210 to address that vacation leave may be accumulated to maximum of 280 hours.
* WAC 357-31-215 to address when an employee may accumulate vacation leave above the maximum amount of 280 hours, housekeeping amendments to comply with the WAC style guide, amendments to subsection 2(a) to reflect gender neutral pronouns, and amendments to subsection 2(c) to update the example to reflect the increased vacation leave amount.

Lead: Katie Linehan

**AMENDATORY SECTION**

**WAC 357-01-022 Anniversary date (higher education).**

For employees of higher education institutions or related higher education boards, anniversary date is the most recent date of hire into state service. The anniversary date is used to determine when vacation leave over ~~two hundred forty (240) hours~~ 280 hours is lost. Higher education employers may make the anniversary date the first calendar day of the month in which the date of hire occurred. A higher education employee receives a new anniversary date when that employee is rehired following a break in state service, but not when the employee promotes, demotes, or transfers to another higher education employer.

**AMENDATORY SECTION**

**WAC 357-01-023 Anniversary date (general government).**

For employees of general government agencies, anniversary date is the unbroken service date plus prior state service. The anniversary date is used to determine when vacation leave over ~~two hundred forty hours~~ 280 hours is lost and for computing the rate of vacation leave accrual beginning with the fifth year of total state employment.

**AMENDATORY SECTION**

**WAC 357-31-210 What is the maximum number of hours of vacation leave that an employee ~~can~~ may accumulate?**

Vacation leave may be accumulated to a maximum of ~~two hundred forty~~ 280 hours. Exceptions to this maximum are described in WAC [**357-31-215**](http://app.leg.wa.gov/WAC/default.aspx?cite=357-31-215).

**AMENDATORY SECTION**

**WAC 357-31-215 When may vacation leave be accumulated above the maximum ~~two hundred forty hours~~ 280 hours?**

There are two circumstances in which vacation leave may be accumulated above the maximum of ~~two hundred forty hours~~ 280 hours.

(1) If an employee's request for vacation leave is denied by the employer, and the employee is close to the maximum vacation leave ~~(two hundred forty hours~~ 280 hours~~)~~, the employer must grant an extension for each month that the employer defers the employee's request for vacation leave. The employer must maintain a statement of necessity justifying the extension.

(2) As an alternative to subsection (1) of this section, employees may also accumulate vacation leave in excess of ~~two hundred forty~~ 280 hours as follows:

(a) An employee may accumulate the vacation leave hours between the time the ~~two hundred forty~~ 280 hours is accrued and ~~his/her~~ their next anniversary date of state employment.

(b) Leave accumulated above ~~two hundred forty~~ 280 hours must be used by the next anniversary date and in accordance with the employer's leave policy. If such leave is not used before the employee's anniversary date, the excess leave is automatically lost and considered to have never existed.

(c) A statement of necessity, as described in subsection (1) of this section, can only defer leave that the employee has not accrued as of the date of the statement of necessity. Any accrued leave in excess of ~~two hundred forty~~ 280 hours as of the date of the statement of necessity cannot be deferred regardless of circumstances. For example:

On June 15th, an employee is assigned to work on a special project. It is expected that the assignment will last six months. Due to an ambitious timeline and strict deadlines, the employee will not be able to take any vacation leave during that time.

• On June 15th, the employee's vacation leave balance is ~~two hundred sixty~~ 300 hours.

• The employee accrues ten hours monthly.

• The employee's anniversary date is October 16th.

Because the employee will not be able to use leave from June 15th through December 15th the employee files a statement of necessity asking to defer the leave accrued during this time. This deferred leave will not be lost as long as the employee uses the deferred hours by their next anniversary date (October 16th of the following year).

The twenty hours of excess vacation leave the employee had on June 15th are not covered by the statement of necessity.

**Reference Only**

**WAC 357-31-225 When employees separate from state service, are they entitled to a lump sum payment of unused vacation leave?**

(1) When an employee who has completed six continuous months of employment separates from service by reason of resignation with adequate notice, layoff, trial service reversion, separation, dismissal, retirement, or death, the employee is entitled to a lump sum payment of unused vacation leave. The payment is computed by using the formula published by the office of financial management. No contributions are to be made to the department of retirement systems (DRS) for lump sum payment of excess vacation leave accumulated under the provisions of WAC [**357-31-215**](http://app.leg.wa.gov/WAC/default.aspx?cite=357-31-215)(2), nor shall such payment be reported to the DRS as compensation.

(2) General government permanent employees may defer the payment of accumulated vacation leave to which they are entitled for a period of thirty calendar days in any of these circumstances:

(a) If the separation resulted from a layoff, trial service reversion, or conclusion of a project or nonpermanent appointment and there is a reasonable probability of reemployment; or

(b) If the separation resulted from an employee returning to a classified position from an exempt position under the provision of RCW [**41.06.070**](http://app.leg.wa.gov/RCW/default.aspx?cite=41.06.070).

**Reference Only**

**RCW**[**43.01.041**](http://app.leg.wa.gov/RCW/default.aspx?cite=43.01.041) **Accrued vacation leave—Payment upon termination of employment.**

Officers and employees referred to in RCW [**43.01.040**](http://app.leg.wa.gov/RCW/default.aspx?cite=43.01.040) whose employment is terminated by their death, reduction in force, resignation, dismissal, or retirement, who have been employed for at least six continuous months, and who have accrued vacation leave as specified in RCW [**43.01.040**](http://app.leg.wa.gov/RCW/default.aspx?cite=43.01.040) or [**43.01.044**](http://app.leg.wa.gov/RCW/default.aspx?cite=43.01.044), shall be paid therefor under their contract of employment, or their estate if they are deceased, or if the employee in case of voluntary resignation has provided adequate notice of termination. Vacation leave accumulated under RCW [**43.01.044**](http://app.leg.wa.gov/RCW/default.aspx?cite=43.01.044) is not to be included in the computation of retirement benefits. From July 1, 2011, through June 29, 2013, the amount of pay received by an employee under the provisions of this section shall not be reduced by any temporary salary reduction.

Should the legislature revoke any benefits or rights provided under chapter 292, Laws of 1985, no affected officer or employee shall be entitled thereafter to receive such benefits or exercise such rights as a matter of contractual right.

# Item #4 – Definition of Veteran \*NEW

**Staff note:** Second Substitute House Bill 2014 ([2SHB 2014)](https://app.leg.wa.gov/billsummary?BillNumber=2014&Initiative=false&Year=2023), Chapter 146, Laws of 2024 passed during the 2024 legislative session with an effective date of June 6, 2024 for sections 1 through 24. This bill intends to align the federal and state definitions of “veteran” expanding state veterans benefits to any veteran who is already eligible for federal Department of Veterans Affairs monetary benefits. Section 4 adds a new section to chapter 73.04 RCW to define “qualifying discharge” and “honorable discharge” is replaced with “qualifying discharge” throughout this bill.

We are proposing to:

* Amend WAC 357-01-170 to repeal language stating veterans scoring criteria is only added to passing scores since there is more than one way for an eligible candidate to receive preference credits. For example, Substitute Senate Bill 6157 effective June 6, 2024, allows for employers to consider granting civil service advantage for bilingual and multilingual applicants, applicants with higher education, and applicants with prior work experience in social services.
* Create WAC 357-01-267 to provide a definition of “qualifying discharge” and clarify it has the same meaning as RCW 73.04.XXX.
* Amend WAC 357-16-110(1) to clarify that veterans scoring criteria is only added to passing scores. This language was removed from WAC 357-01-170 since there is more than one way for an eligible candidate to receive preference credits.
* Amend WAC 357-16-110(2) to replace “honorably discharge” with “qualifying discharge” and to add clarification that veterans must have a qualifying discharge.
* Amend WAC 357-46-060(2)(b) and 357-58-475(2)(b) to replace “honorable discharge” with “qualifying discharge” replace existing criteria and instead reference that upon termination of such service has received a qualifying discharge under the provisions of RCW 73.04.XXX.

Lead: Brittany Trujillo

**AMENDATORY SECTION**

**WAC 357-01-170 Examination results.**

An eligible candidate's final score on an examination, plus any veterans scoring criteria or other applicable credits. ~~Veterans scoring criteria is only added to passing scores.~~

**NEW SECTION**

**WAC 357-01-267 Qualifying discharge.**

“Qualifying discharge” has the same meaning as RCW 73.04.XXX.

**AMENDATORY SECTION**

**WAC 357-16-110 Do veterans receive any preference in the hiring process?**

(1) If an employer is administering an examination prior to certification, the employer must grant preference to veterans in accordance with the veterans scoring criteria provisions of RCW [**41.04.010**](http://app.leg.wa.gov/RCW/default.aspx?cite=41.04.010). Veterans scoring criteria is only added to passing scores.

(2) If no examination is administered prior to certification, the employer must refer the following individuals to the employing official under the provisions of RCW [**73.16.010**](http://app.leg.wa.gov/RCW/default.aspx?cite=73.16.010) as long as the individual meets the competencies and other position requirements:

(a) Eligible veterans with a qualifying discharge*;*

(b) Surviving spouses or registered domestic partners of eligible veterans with a qualifying discharge ; or

(c) Spouses or registered domestic partners of ~~honorably discharged~~ veterans with a qualifying discharge who have a service connected permanent and total disability.

**AMENDATORY SECTION**

**WAC 357-46-060 Does a veteran receive any preference in layoff?**

(1) An eligible veteran receives a preference in layoff by having their seniority increased for total active military service, not to exceed five years.

(2) An eligible veteran is defined as any permanent employee who:

(a) Has one or more years in active military service in any branch of the armed forces of the United States or who has less than one year's service and is discharged with a disability incurred in the line of duty or is discharged at the convenience of the government; and

(b~~) Has received,~~ ~~u~~Upon termination of such service has received a qualifying discharge.

~~(i) An honorable discharge;~~

~~(ii) A discharge for physical reasons with an honorable record; or~~

~~(iii) A release from active military service with evidence of service other than that for which an undesirable, bad conduct, or dishonorable discharge is given.~~

(3) "An eligible veteran" does not include any person who as a veteran voluntarily retired, as evidenced by the "DD Form 214" or other official military records, with twenty or more years' active military service and has military retirement pay in excess of five hundred dollars per month.

(4) The surviving spouse or surviving registered domestic partner of an eligible veteran is entitled to veteran's seniority preference for up to five years as outlined in subsection (1) and (2) of this section regardless of whether the veteran had at least one year of active military service.

**AMENDATORY SECTION**

**WAC 357-58-475 Does a veteran receive any preference in layoff?**

(1) An eligible veteran receives a preference in layoff by having their seniority increased for total active military service, not to exceed five years.

(2) An eligible veteran is defined as any permanent employee who:

(a) Has one or more years in active military service in any branch of the armed forces of the United States or who has less than one year's service and is discharged with a disability incurred in the line of duty or is discharged at the convenience of the government; and

(b) ~~Has received,~~ Upon termination of such service has received a qualifying discharge.:

~~(i) An honorable discharge;~~

~~(ii) A discharge for physical reasons with an honorable record; or~~

~~(iii) A release from active military service with evidence of service other than that for which an undesirable, bad conduct, or dishonorable discharge is given.~~

(3) "An eligible veteran" does not include any person who as a veteran voluntarily retired with twenty or more years' active military service and has military retirement pay in excess of five hundred dollars per month.

(4) The surviving spouse or surviving registered domestic partner of an eligible veteran is entitled to veteran's seniority preference for up to five years as outlined in subsection (1) and (2) of this section regardless of whether the veteran had at least one year of active military service.

## **Item #5 – Temporary Layoff – Clean up**

**Staff note:** [ESSB 6503](https://lawfilesext.leg.wa.gov/biennium/2009-10/Pdf/Bills/Session%20Laws/Senate/6503-S.SL.pdf?q=20231009091033) passed during the 2010 legislative session, Chapter 32, 2010 Laws, requiring a reduction in expenditures during the 2009-2011 fiscal biennium. As a result, amendments to Title 357 WAC were adopted to reflect the requirements stemming from this legislation as it related to the implementation of temporary layoffs specific to the exception regarding the use of vacation leave during the period of layoff.

We are proposing to amend WAC 357-46-067 and WAC 357-58-554 to remove obsolete language.

Lead: Brittany Trujillo

**AMENDATORY SECTION**

### WAC 357-46-067 What is an employee's status during temporary layoff?

(1) The following applies during a temporary layoff:
(a) An employee's anniversary, seniority, and unbroken service dates are not adjusted for periods of time spent on temporary layoff;
(b) An employee's vacation and sick leave accruals will not be impacted by periods of time spent on temporary layoff;
(c) An employee's holiday compensation will not be impacted by periods of time spent on temporary layoff; and
(d) The duration of an employee's probationary period or trial service period shall not be extended for periods of time spent on temporary layoff.
(2) An employee who is temporarily laid off is not entitled to:
(a) Layoff rights, including the ability to bump any other position or be placed on the employer's internal or statewide layoff list;
(b) Payment for their vacation leave balance; and
(c) Use of their accrued vacation leave for hours the employee is not scheduled to work if the temporary layoff was due to lack of funds. ~~The only exception is that during the 2009-2011 fiscal biennium if an employee's monthly full-time equivalent base salary is two thousand five hundred dollars or less and the employee's office or institution enacts a temporary layoff as described in chapter 32, Laws of 2010, the employee can use accrued vacation leave during the period of temporary layoff.~~(3) If the temporary layoff was not due to lack of funds, an employer may allow an employee to use accrued vacation leave in lieu of temporary layoff.

**AMENDATORY SECTION**

### WAC 357-58-554 What is a WMS employee's status during temporary layoff?

(1) The following applies during a temporary layoff:
(a) An employee's anniversary date, seniority, or unbroken service date is not adjusted for periods of time spent on temporary layoff;
(b) An employee's vacation and sick leave accruals will not be impacted by periods of time spent on temporary layoff;
(c) An employee's holiday compensation will not be impacted by periods of time spent on temporary layoff; and
(d) The duration of an employee's review period shall not be extended for periods of time spent on temporary layoff.
(2) A WMS employee who is temporarily laid off is not entitled to:
(a) Layoff rights, including the ability to bump any other position or be placed on the employer's internal or statewide layoff list;
(b) Payment for their vacation leave balance; and
(c) Use of their accrued vacation leave for hours the employee is not scheduled to work if the temporary layoff was due to lack of funds. ~~The only exception is that during the 2009-2011 fiscal biennium if an employee's monthly full-time equivalent base salary is two thousand five hundred dollars or less and the employee's agency enacts a temporary layoff as described in chapter 32, Laws of 2010, the employee can use accrued vacation leave during the period of temporary layoff.~~
(3) If the temporary layoff was not due to lack of funds, an employer may allow a WMS employee to use accrued vacation leave in lieu of temporary layoff.

## Item #6 – WMS - Clean up

**Staff note:**

We are proposing to amend:

* WAC 357-31-165(2) to replace “or” with “and/or” to align with WAC 357-58-175. This was an oversight when WAC 357-31-165 was originally created. Based on research performed in the rule history file there is documentation supporting that the intent was to give flexibility to an employer. An employer may authorize a lump sum accrual of vacation leave and/or accelerate the vacation leave accrual rate to support the recruitment and/or retention of a candidate or employee for a WMS position.
* WAC 357-58-175 to replace "can" with "may" and "or" with "and/or" in the WAC title for consistency with the body of the WAC and to meet the original intent of the rule (see explanation above).
* WAC 357-58-180 to replace “agency” with “employer” and "the recruitment of a candidate or the retention of an employee" with " the recruitment and/or retention of a candidate or employee" in the WAC title for consistency with the body of the WAC and to meet the original intent of the rule (see explanation above).
* WAC 357-58-210 to correct the reference from “management band” to “same salary standard and/or same evaluation points” to align with the WMS definition of transfer found in WAC 357-58-065(16).

The highlighted green text reflects proposed amendments to WAC 357-31-165 as proposed in rule item #7.

Lead: Katie Linehan

**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~~)) 20 minutes per month;

(b) During the third year of current continuous state employment - ((~~Ten~~)) 10 hours per month;

(c) During the fourth year of current continuous state employment - ((~~Ten~~)) 10 hours, ((~~forty~~)) 40 minutes per month;

(d) During the fifth and sixth years of total state employment - ((~~Eleven~~)) 11 hours, ((~~twenty~~)) 20 minutes per month;

(e) During the seventh, eighth and ninth years of total state employment - ((~~Twelve~~)) 12 hours per month;

(f) During the ((~~tenth, eleventh, twelfth, thirteenth and fourteenth~~)) 10th, 11th, 12th, 13th, and 14th years of total state employment - ((~~Thirteen~~)) 13 hours, ((~~twenty~~)) 20 minutes per month;

(g) During the ((~~fifteenth, sixteenth, seventeenth, eighteenth and nineteenth~~)) 15th, 16th, 17th, 18th, and 19th years of total state employment - ((~~Fourteen~~)) 14 hours, ((~~forty~~)) 40 minutes per month;

(h) During the ((~~twentieth, twenty-first, twenty-second, twenty-third and twenty-fourth~~)) 20th, 21st, 22nd, 23rd, and 24th years of total state employment - ((~~Sixteen~~)) 16 hours per month; and

(i) During the ((~~twenty-fifth~~)) 25th and succeeding years of total state employment - ((~~Sixteen~~)) 16 hours, ((~~forty~~)) 40 minutes per month.

(2) As provided in WAC 357-58-175, an employer may authorize a lump-sum accrual of vacation leave and/or accelerate the vacation leave accrual rate to support the recruitment and/or retention of a candidate or employee 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)(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 for the purposes of computing the rate of vacation leave accrual.

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

**AMENDATORY SECTION**

### **WAC 357-58-175 ~~Can~~ May an employer authorize lump sum vacation leave ~~or~~ and/or accelerate vacation leave accrual rates to support the recruitment and/or retention of an employee or candidate for a WMS position**?

### In addition to the vacation leave accruals as provided in WAC [357-31-165](http://app.leg.wa.gov/WAC/default.aspx?cite=357-31-165), an employer may authorize additional vacation leave as follows to support the recruitment and/or retention of an employee or candidate for a specific WMS position:

(1) Employers may authorize an accelerated accrual rate for an employee or candidate. The WMS employee would remain at the accelerated accrual rate until the WMS employee’s anniversary date caught up to the accrual rate amount in accordance with WAC [357-31-165](http://app.leg.wa.gov/WAC/default.aspx?cite=357-31-165); and/or

(2) Employers may authorize a lump sum accrual of up to 80 hours of vacation leave for the employee or candidate.

Vacation leave accrued under this section must be used in accordance with the leave provisions of chapter [357-31](http://app.leg.wa.gov/WAC/default.aspx?cite=357-31) WAC.

**AMENDATORY SECTION**

### WAC 357-58-180 Must an employer ~~agency~~ have a policy regarding authorization of additional leave for the recruitment and/or retention of a candidate or employee ~~to support the recruitment of a candidate or the retention of an~~ ~~employee~~ for a WMS position?

In order to authorize additional leave for the recruitment and/or retention of a candidate or employee for a WMS position, an ~~agency~~ employer must have a written policy that:

(1) Identifies the reasons for which the employer may authorize additional leave; and

(2) Requires that lump sum accruals only be granted after services have been rendered in accordance with express conditions established by the employer.

**AMENDATORY SECTION**

### WAC 357-58-210 When may a WMS employee transfer to a WGS position and vice versa?

A permanent employee may transfer from a WMS position to a WGS position if the employee's salary is within the salary range of the WGS position.

A permanent employee may transfer from a WGS position to a WMS position if the employee's salary is within the same salary standard and/or same evaluation points ~~management band~~ assigned to the WMS position.

**REFERENCE ONLY**

### WAC 357-58-065 Definitions for WMS.

The following definitions apply to chapter [**357-58**](http://app.leg.wa.gov/WAC/default.aspx?cite=357-58) WAC:

(1) **Break in service.** An employee has a break in continuous state service if the employee is separated, dismissed or resigns from state service. A furlough for the purposes of temporary layoff as provided in WAC [**357-58-550**](http://app.leg.wa.gov/WAC/default.aspx?cite=357-58-550) is not considered a break in continuous state service.

(2) **Choice performance confirmation.** Approval granted by the director to an employer allowing the employer to factor in individual employee performance when granting recognition leave.

(3) **Competencies.** Those measurable or observable knowledge, skills, abilities and behaviors critical to success in a key job role or function.

(4) **Director.** State human resources director within the office of financial management.

(5) **Dismissal.** The termination of an individual's employment for disciplinary reasons.

(6) **Employee.** An individual working in the classified service. Employee business unit members are defined in WAC [**357-43-001**](http://app.leg.wa.gov/WAC/default.aspx?cite=357-43-001).

(7) **Evaluation points.** The points resulting from an evaluation of a position using the managerial job value assessment chart.

(8) **Layoff unit.** A clearly identified structure within an employer's organization within which layoff options are determined in accordance with the employer's layoff procedure. Layoff units may be a series of progressively larger units within an employer's organization.

(9) **Management bands.** A series of management levels included in the WMS. Placement in a band reflects the nature of management, decision-making environment and policy impact and scope of management accountability and control assigned to the position.

(10) **Premium.** Pay added to an employee's base salary on a contingent basis in recognition of special requirements, conditions or circumstances associated with the job.

(11) **Reassignment.** An employer initiated movement of:

(a) A WMS employee from one position to a different position within WMS with the same salary standard and/or evaluation points; or

(b) A WMS position and the employee in that position from one section, department or geographical location to another section, department or geographical location.

(12) **Review period.** A period of time that allows the employer an opportunity to ensure the WMS employee meets the requirements and performance standards of the position.

## Item #7 – Vacation Leave Accrual/Service Dates - Clean up

 **Staff Note:** We are proposing to amend WAC 357-31-165 and WAC 357-31-166 to address service credits towards the vacation leave accrual rate when an employee transfers between general government and higher education employers and when a higher education employee was previously employed in the legislative and/or judicial branch; and several housekeeping changes. Specifically, we are proposing to amend:

* WAC 357-31-165(3)(b) to clarify this subsection is specific to the purposes of computing the rate of vacation leave accrual.
* WAC 357-31-165(3)(c) to state exempt employment with an employer (not just limited to a general government employer as previously stated) is credited when computing a general government employee’s rate of vacation leave accrual. An employer is defined in WAC 357-01-145 as “a state agency, an institution of higher education, or a related higher education board.” Employees must receive credit for their rate of vacation leave accrual when they work for higher education and/or general government employers in qualifying positions.
* WAC 357-31-166(3)(a) to replace language from “full-time faculty and/or administrative exempt” to “exempt academic and professional personnel”. After discussion with higher education institution HR leaders, it was determined this language allows for consistency among higher education institution practice.
* WAC 357-31-166(3)(c) to state employment in the legislative and/or judicial branch is credited when computing a higher education employee’s rate of vacation leave accrual.
* WAC 357-31-166(3)(d) to state exempt employment with a general government employer is credited when computing a higher education employee’s rate of vacation leave accrual, other than specified in WAC 357-04-055 which is excluded.

The highlighted green text reflects proposed amendments to WAC 357-31-165 as proposed in rule item #6.

The highlighted yellow text reflects changes since the November 14, 2023 Rules Meeting.

Lead: Katie Linehan

**REFERENCE ONLY**

### WAC 357-01-145 Employer.

A state agency, an institution of higher education, or a related higher education board.

**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~~)) 20 minutes per month;

(b) During the third year of current continuous state employment - ((~~Ten~~)) 10 hours per month;

(c) During the fourth year of current continuous state employment - ((~~Ten~~)) 10 hours, ((~~forty~~)) 40 minutes per month;

(d) During the fifth and sixth years of total state employment - ((~~Eleven~~)) 11 hours, ((~~twenty~~)) 20 minutes per month;

(e) During the seventh, eighth and ninth years of total state employment - ((~~Twelve~~)) 12 hours per month;

(f) During the ((~~tenth, eleventh, twelfth, thirteenth and fourteenth~~)) 10th, 11th, 12th, 13th, and 14th years of total state employment - ((~~Thirteen~~)) 13 hours, ((~~twenty~~)) 20 minutes per month;

(g) During the ((~~fifteenth, sixteenth, seventeenth, eighteenth and nineteenth~~)) 15th, 16th, 17th, 18th, and 19th years of total state employment - ((~~Fourteen~~)) 14 hours, ((~~forty~~)) 40 minutes per month;

(h) During the ((~~twentieth, twenty-first, twenty-second, twenty-third and twenty-fourth~~)) 20th, 21st, 22nd, 23rd, and 24th years of total state employment - ((~~Sixteen~~)) 16 hours per month; and

(i) During the ((~~twenty-fifth~~)) 25th and succeeding years of total state employment - ((~~Sixteen~~)) 16 hours, ((~~forty~~)) 40 minutes per month.

(2) As provided in WAC 357-58-175, an employer may authorize a lump-sum accrual of vacation leave and/or accelerate the vacation leave accrual rate to support the recruitment and/or retention of a candidate or employee 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)(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 for the purposes of computing the rate of vacation leave accrual.

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

 **AMENDATORY SECTION**

### WAC 357-31-166 At what rate do higher education employees accrue vacation leave?

(1) Full-time higher education employees accrue vacation leave at the following rates:

(a) During the first year of continuous state employment - 12 days (eight hours per month);

(b) During the second year of continuous state employment - 13 days (eight hours, 40 minutes per month);

(c) During the third and fourth years of continuous state employment - 14 days (nine hours, 20 minutes per month);

(d) During the fifth, sixth, and seventh years of total state employment - 15 days (10 hours per month);

(e) During the eighth, ninth, and ((~~tenth~~)) 10th years of total state employment - 16 days (10 hours, 40 minutes per month);

(f) During the ((~~eleventh~~)) 11th year of total state employment - 17 days (11 hours, 20 minutes per month);

(g) During the ((~~twelfth~~)) 12th year of total state employment - 18 days (12 hours per month);

(h) During the ((~~thirteenth~~)) 13th year of total state employment - 19 days (12 hours, 40 minutes per month);

(i) During the ((~~fourteenth~~)) 14th year of total state employment - 20 days (13 hours, 20 minutes per month);

(j) During the ((~~fifteenth~~)) 15th year of total state employment - 21 days (14 hours per month);

(k) During the ((~~sixteenth~~)) 16th and succeeding years of total state employment - 22 days (14 hours, 40 minutes per month).

(2) Higher education employers may establish accrual rates that exceed the rates listed in subsection (1) of this section. This does not apply to individual positions.

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

(a) Each contract year, or equivalent, of exempt academic and professional personnel

~~of full-time faculty and/or administrative exempt~~ employment with a higher education employer is credited as one year of qualifying service.

((~~(4)~~)) (b) Employment exempt by the provisions of WAC 357-04-040, 357-04-045, 357-04-050, and 357-04-055 is not credited for the purposes of computing the rate of vacation leave accrual.

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

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

## Item #8 – Redeployment

Staff note:During the COVID-19 response, some general government employers encountered shortages of employees in segments of their operations, while other agencies have employees with the capacity and skill sets that can be redeployed to address the staffing shortages. The civil service rules did not address a method to redeploy employees between agencies. As a result, a policy decision was made to amend Title 357 WAC, Civil Service Rules, to address employee impacts when the Director grants approval during an emergency or a disaster to allow a general government employer-initiated movement of an employee with the necessary skills, abilities and/or licensure within or between general government employers in the same or different job class with the same or different salary range maximum for a limited duration to support staffing shortages during an emergency or disaster. Given that redeployment is an employer-initiated movement during an emergency or disaster, the following policy decisions were made to minimize general government employee impacts:

* If a general government employer has received director approval to redeploy an employee, the movement will be treated as a type of nonpermanent appointment and a general government employer must grant return rights to the same position they held prior to the redeployment at the conclusion of the redeployment. Return rights are not required when an employee is in a nonpermanent appointment at the time of redeployment. If there is a need for a general government employer to continue the original nonpermanent appointment, it is allowable in accordance with existing WAC provisions.
* If a general government employee is redeployed while serving a probationary period, upon return from redeployment they will resume their probationary period. If the general government employer determines the position the employee was serving a probationary period in and the position the employee was redeployed to are allocated to the same class or classes which are closely related, the general government employer may count the time worked in the nonpermanent appointment toward the probationary period.
* If a general government employee is serving a trial service or WMS review period and is redeployed in a nonpermanent appointment for reason specified in WAC 357-19-360(2), the employer must count time worked in the nonpermanent appointment towards the trial service or WMS review period for the permanent position.
* An employee may be redeployed to a position within a reasonable commute of the employee’s domicile without the employee’s agreement. If the redeployment is outside of a reasonable commute of the employee’s domicile, the employee must agree to being redeployed. The general government employer initiating the redeployment defines what is within a reasonable commute.

The following rule amendments are necessary to implement the above policy decisions when an employee is redeployed:

* Create WAC 357-01-277 to define “redeployment.”
* Create WAC 357-04-124 to address that during an emergency or disaster, a general government employer may request Director approval to redeploy an employee within or between general government employers for the preservation of public health, safety and general welfare. The employee must have the necessary skills, abilities, and/or licensure in order to be redeployed. For purposes of this section, emergency or disaster has the same meaning in RCW 38.52.
* Amend [WAC 357-19-073](https://app.leg.wa.gov/WAC/default.aspx?cite=357-19-073) to create subsection (1) and (3) to reflect existing language and clarify that subsection (1) applies when an employee who is serving a probationary period accepts a nonpermanent appointment for reasons specified in WAC 357-19-360(1). Add subsection (2) to address that if a general government employee who is serving a probationary period is redeployed into a nonpermanent appointment for reasons specified in WAC 357-19-360(2) the employer must agree to return the employee to the same position held prior to the redeployment at the conclusion of the redeployment.
* Amend [WAC 357-19-080](https://app.leg.wa.gov/WAC/default.aspx?cite=357-19-080) to create subsection (1) to reflect the existing language. Add subsection (2) to address that if a permanent general government employee is redeployed into a nonpermanent appointment for reasons specified in WAC 357-19-360(2) during a trial service period the employer must return the employee to the same position held prior to the redeployment and the employer must count time worked in the nonpermanent appointment towards the trial service period for the permanent position. Upon return to their previous position, the employee’s base salary must be set at the step the employee would be at if they had not left the position.
* Amend [WAC 357-19-085](https://app.leg.wa.gov/WAC/default.aspx?cite=357-19-085) to create subsection (1) to reflect existing language and add subsection (2) to address that if a general government employee in a nonpermanent appointment for reasons specified in WAC 357-19-360(2) is subsequently appointed permanently to a same or similar position, the employer may count time worked in the nonpermanent appointment towards the probationary period and must count time worked in the nonpermanent appointment towards the trial service period for the permanent position.
* Repeal [WAC 357-19-165](https://app.leg.wa.gov/WAC/default.aspx?cite=357-19-165) to remove redundant repetitive language. The existing language was originally intended to clarify the difference between a reassignment and a transfer however, it repeats the definitions defined in WAC 357-01-275 and 357-01-335.
* Create WAC 357-19-179 to address what provisions apply when a general government employee is redeployed to a different geographic area. If the redeployment is within a reasonable commute of the employee’s domicile, the employee may be redeployed without their agreement. If the redeployment is outside of a reasonable commute of the employee’s domicile, they may only be redeployed with the employee’s consent. The general government employer initiating the redeployment defines what is within a reasonable commute.
* Amend [WAC 357-19-353](https://app.leg.wa.gov/wac/default.aspx?cite=357-19-353) to remove the word “permanent” from the section title, create subsection (1) to reflect the existing language and reflect gender-neutral references. Add subsection (2) to clarify that at the conclusion of the redeployment a general government employer must return an employee who was redeployed in accordance with WAC 357-58-265(1)(b) to the same WGS position held prior to the redeployment at the conclusion of the redeployment.
* Amend [WAC 357-19-360](https://app.leg.wa.gov/wac/default.aspx?cite=357-19-360) to re-organize existing language to create subsection (1). Add subsection (2) to address that a general government employer may fill a position with a nonpermanent appointment when they have received director approval to redeploy an employee in accordance with WAC 357-04-125.
* Amend [WAC 357-19-365](https://app.leg.wa.gov/WAC/default.aspx?cite=357-19-365) to reference the updated WAC citation.
* Amend [WAC 357-19-370](https://app.leg.wa.gov/WAC/default.aspx?cite=357-19-370) to clarify subsection (1) applies to existing language. Amend subsection (2) to reference the updated WAC citation. Create subsection (3) to state that a nonpermanent appointment specified in WAC 357-19-360(2) must not exceed three months unless a longer duration is mutually agreed upon between the employee and general government employer(s) and conditions continue to exist in accordance with WAC 357-04-125. Appointment extensions must not exceed twenty-four months unless the director has approved an extension of the appointment.
* Amend [WAC 357-19-388](https://app.leg.wa.gov/wac/default.aspx?cite=357-19-388) to clarify that the notice requirement between employees and employers when an employee accepts a nonpermanent appointment is limited to reasons specified in WAC 357-19-360(1).
* Amend [WAC 357-19-395](https://app.leg.wa.gov/wac/default.aspx?cite=357-19-395) to remove the word “permanent” from the section title, create subsection (1) for existing language and clarify subsection (1) applies for nonpermanent appointments made for reasons specified in WAC 357-19-360(1). Create subsection (2) to address that for nonpermanent appointments made for reasons specified in WAC 357-19-360(2) the general government employee must be returned to the same position held prior to the redeployment. Upon return to a position, the employee’s base salary must be set at the step the employee would be at if they had not left the position.
* Amend [WAC 357-19-430](https://app.leg.wa.gov/WAC/default.aspx?cite=357-19-430) to reference the updated WAC citation.
* Create WAC 357-28-148 to address how a general government employee’s salary is determined when the employee is redeployed for reasons specified in WAC 357-19-360(2). An employee who is redeployed to a position with the same salary range keeps the same base salary. An employee who is redeployed 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 employee’s previous base salary exceeds the new salary range, the employee’s base salary may be set higher than step M but not exceeding their prior base salary. An employee who is redeployed to a position with a higher salary range must have their salary set in accordance with WAC 357-28-110.
* Amend [WAC 357-58-065](https://app.leg.wa.gov/wac/default.aspx?cite=357-58-065) to add subsection (12) to define “Redeployment” and renumber associated WACs.
* Create WAC 357-58-128 to address how a WMS employee’s salary is determined when the employee is redeployed for reasons specified in WAC 357-58-265(1)(b). A WMS employee who is redeployed to a position with the same salary standard keeps the same base salary. A WMS employee who is redeployed to a position with a lower salary standard maximum must be placed within the new salary standard as a salary equal to the employee’s previous base salary. If the previous base salary exceeds the new salary standard, the employee’s salary may be set higher than the associated salary standard but not exceeding their prior base salary. A WMS employee who is redeployed to a position with a higher salary standard must receive a salary increase nearest to five percent (5%) or up to the minimum of the new salary standard, whichever is greatest, not to exceed the new management band maximum.
* Amend [WAC 357-58-225](https://app.leg.wa.gov/wac/default.aspx?cite=357-58-225) to remove the word “permanent” and from the section title, create subsection (1) for existing language and clarify that subsection (1) applies for nonpermanent appointments for reasons specified in WAC 357-19-360(1). Add subsection (2) to address that nonpermanent appointments made for reasons listed in WAC 357-19-360(2) the general government employee must be returned to the same position held prior to redeployment. Upon return to their previous position, the employee’s base salary is set as if the employee had not left the position.
* Amend [WAC 357-58-226](https://app.leg.wa.gov/wac/default.aspx?cite=357-58-226) to remove “the same or different” from the section title, create subsection (1) for existing language and clarify subsection (1) applies for nonpermanent appointments made for reasons specified in WAC 357-19-360(1). Add subsection (2) to address that if a WMS employee who is serving a review period is redeployed into a WGS nonpermanent appointment in accordance with WAC 357-19-360(2) the employer must return the employee to the same position held prior to the redeployment at the conclusion of the redeployment and require the employer to count time worked in the nonpermanent appointment towards the completion of the review period for the permanent position.
* Amend [WAC 357-58-265](https://app.leg.wa.gov/wac/default.aspx?cite=357-58-265) to create subsection (1) for existing language and clarify that subsection (1)(a) allows an agency to make an acting WMS appointment when necessary to meet organizational needs. Add subsection (1)(b) to address that an agency may make an acting appointment when approval has been granted by the Director to redeploy an employee in accordance with WAC 357-04-125. Additionally, staff is proposing to re-organize the layout of the section for clarity.
* Amend [WAC 357-58-270](https://app.leg.wa.gov/wac/default.aspx?cite=357-58-270) to create subsection (1) for existing language and clarify that subsection (1) applies for nonpermanent appointments for reasons specified in WAC 357-58-265(1)(a). Add subsection (2) to address that when an individual is in an acting WMS appointment for reasons specified in WAC 357-58-265(1)(b) is subsequently appointed to a same or similar permanent WMS position, time spent in the acting appointment must count towards the review period for the permanent WMS position.
* Amend [WAC 357-58-275](https://apps.leg.wa.gov/WAC/default.aspx?cite=357-58-275) to remove the word “permanent” from the section title, create subsection (1) for existing language and create subsection (2) to clarify when a WMS employee has been redeployed into an acting WMS appointment the employee must be returned to the same position held prior to the redeployment at the conclusion of the acting appointment.

The highlighted yellow text reflects changes since the November 14, 2023 Rules Meeting.

Lead: Brittany Trujillo

**WAC 357-01 Definitions:**

**NEW SECTION**

### WAC 357-01-277 Redeployment.

A general government employer-initiated movement of an employee within or between general government employers in the same or different job class with the same or different salary range maximum for a limited duration to support staffing shortages during an emergency or disaster in accordance with WAC 357-04-124.

**WAC 357-04, General Provisions:**

**NEW SECTION**

### WAC 357-04-124 When may a general government employer request director approval to redeploy an employee during an emergency or disaster?

During an emergency or a disaster, a general government employer may request director approval to redeploy an employee within or between general government employers for the preservation of public health, safety, or general welfare. The employee must have the necessary skills, abilities, and/or licensure in order to be redeployed. For purposes of this section, emergency or disaster has the same meaning in RCW 38.52.010.

**WAC 357-19, Appointment and Reemployment:**

**AMENDATORY SECTION**

### WAC 357-19-073 What happens if an employee who is serving a probationary period accepts a nonpermanent appointment?

(1) If an employee who is serving a probationary period accepts a nonpermanent appointment for reasons specified in WAC 357-19-360(1), the probationary period will end and the employee will not be granted permanent status unless the employer agrees to return the employee to a position at the conclusion of the nonpermanent appointment. Any return rights granted by the employer must be to a vacant position in the class in which the employee was serving a probationary period. If the employer chooses to grant the employee a return right the employer must notify the employee in writing.

(2) If a general government employee who is serving a probationary period is redeployed into a nonpermanent appointment for reasons specified in WAC 357-19-360(2), the employer must return the employee to the same position held prior to the redeployment at the conclusion of the redeployment. Upon return to their previous position, the employee's base salary must be set at the step the employee would be at if they had not left the position.

(3) Upon return from a nonpermanent appointment the employee will resume their probationary period. If the employer determines the position the employee was serving a probationary period in and the position the employee was appointed to on a nonpermanent basis are allocated to classes which are closely related, the employer may count the time worked in the nonpermanent appointment towards the probationary period.

**AMENDATORY SECTION**

### WAC 357-19-080 What happens if a permanent employee accepts a nonpermanent appointment during a trial service period?

(1) If a permanent employee accepts a nonpermanent appointment for reasons specified in WAC 357-19-360(1) during a trial service period and the employer has agreed to return the employee to a position at the conclusion of the nonpermanent appointment, the employer may:

~~(((1)))~~ (a) Suspend the trial service period and allow the employee to resume the trial service period when the employee returns from the nonpermanent appointment;

~~(((2)))~~ (b) Require the trial service period to start over when the employee returns from the nonpermanent appointment; or

~~(((3)))~~ (c) Count the time worked in the nonpermanent appointment towards the trial service period.

(2) If a permanent general government employee is redeployed into a nonpermanent appointment for reasons specified in WAC 357-19-360(2) during a trial service period, the employer must return the employee to the same position held prior to the redeployment at the conclusion of the redeployment and the employer must count time worked in the nonpermanent appointment towards the trial service period for the permanent position. Upon return to their previous position, the employee's base salary must be set at the step the employee would be at if they had not left the position.

**AMENDATORY SECTION**

### WAC 357-19-085 Does time worked in a nonpermanent appointment count towards the probationary or trial service period for a permanent position?

(1) If an employee in a nonpermanent appointment for reasons specified in WAC 357-19-360(1) is subsequently appointed permanently to the same or a similar position, the employer may count time worked in the nonpermanent appointment towards the probationary or trial service period for the permanent position.

(2) If a general government employee in a nonpermanent appointment for reasons specified in WAC 357-19-360(2) is subsequently appointed permanently to a same or similar position, the employer may count time worked in the nonpermanent appointment towards the probationary period and must count time worked in the nonpermanent appointment towards the trial service period for the permanent position.

**REPEAL**

### WAC 357-19-165 What is the difference between reassignment and transfer?

~~A reassignment is an employer-initiated move of an employee from one position to a comparable position in the same class. A transfer is an employee-initiated move from one position within or between employers in the same class or a different class with the same salary range maximum.~~

**NEW SECTION**

### WAC 357-19-179 What provisions apply when a general government employee in classified service is redeployed to a different geographic area?

When a general government employee in classified service is redeployed to a position in a different geographic area, the following applies:

(1) If the redeployment is within a reasonable commute of the employee's domicile, they may be redeployed without the employee's agreement.

(2) If the redeployment is outside of a reasonable commute of the employee's domicile, they may only be redeployed with the employee's consent.

For purposes of this section, the general government employer initiating the redeployment defines what is within a reasonable commute.

**AMENDATORY SECTION**

### WAC 357-19-353 What return rights must an employer provide to a ((permanent)) WGS employee who accepts an acting WMS appointment?

(1) At a minimum, the employer must provide the permanent employee who is leaving a WGS position with the employer to accept a WMS acting appointment for reasons specified in WAC 357-58-265 (1)(a) access to the employer's internal layoff list at the conclusion of the acting appointment. If the employer agrees to return the employee to a position, the employee must notify the employer of ~~((his/her))~~ their intent to return to a permanent position at least ~~((fourteen (14)))~~ 14 calendar days in advance of return unless the employee and employer agree otherwise. Failure of the employee to provide proper written notice to the employer may result in forfeiture of any return rights. Upon return to a permanent position, the employee's salary must be determined by the employer's salary determination policy.

(2) At the conclusion of the redeployment a general government employer must return an employee who was redeployed for reasons specified in WAC 357-58-265 (1)(b) to the same WGS position held prior to the redeployment at the conclusion of the redeployment. Upon return to their previous position, the employee's base salary is set at the step the employee would be at if they had not left the position.

**AMENDATORY SECTION**

### WAC 357-19-360 For what reasons may an employer make nonpermanent appointments?

(1) An employer may fill a position with a nonpermanent appointment when any of the following conditions exist:

~~(((1)))~~ (a) A permanent employee is absent from the position;

~~(((2)))~~ (b) The employer is recruiting to fill a vacant position with a permanent appointment;

~~(((3)))~~ (c) The employer needs to address a short-term immediate workload peak or other short-term needs;

~~(((4)))~~ (d) The employer is not filling a position with a permanent appointment due to the impending or actual layoff of a permanent employee(s); or

~~(((5)))~~ (e) The nature of the work is sporadic and does not fit a particular pattern.

(2) A general government employer has received director approval to redeploy an employee in accordance with WAC 357-04-124.

**AMENDATORY SECTION**

### WAC 357-19-365 When is it inappropriate for an employer to fill a position with a nonpermanent appointment to address a short-term immediate workload peak or other short-term needs?

Employers must not fill a position with a nonpermanent appointment under the provisions of WAC 357-19-360~~(((3)))~~ (1)(c) when the work of the position is scheduled, ongoing and permanent in nature. If at any time during a nonpermanent appointment, a short-term workload peak or other short term need becomes ongoing and permanent in nature, the employer must take action to fill the position on a permanent basis.

**AMENDATORY SECTION**

### WAC 357-19-370 How long may a nonpermanent appointment last?

(1) Employers are encouraged to limit the duration of ~~((a))~~ nonpermanent appointments for reasons specified in WAC 357-19-360(1) to ~~((twelve))~~ 12 months from the appointment date.

(2) A nonpermanent appointment for a reason specified in WAC 357-19-360 (1) ~~((through (4)))~~ (a) through (d) **must not** exceed ~~((twenty-four))~~ 24 months unless the director has approved an extension of the appointment due to the continued absence of a permanent employee. An employer may choose to not count time spent in formal training programs towards the ~~((twenty-four))~~ 24 month limit. On-the-job training is not considered a formal training program for purposes of this rule.

(3) A nonpermanent appointment specified in WAC 357-19-360(2) must not exceed three months unless a longer duration is mutually agreed upon between the employee and general government employer(s) and conditions continue to exist in accordance with WAC 357-04-124. Appointment extensions must not exceed 24 months unless the director has approved an extension of the appointment.

**AMENDATORY SECTION**

### WAC 357-19-388 What notices must employees and their employers provide each other when an employee accepts a nonpermanent appointment?

Employees who accept a nonpermanent appointment for reasons specified in WAC 357-19-360(1) must give their current employers at least ~~((fourteen))~~ 14 calendar days' notice before moving to a nonpermanent appointment. The current employer and employee may agree to waive or shorten the notice period.

When the current employer receives the employee's notice, the employee's permanent employer must notify the employee in writing of the employee's return right at the conclusion of the nonpermanent appointment.

For purposes of this rule, written notice may be provided using alternative methods such as email, campus mail, the state mail service, or commercial parcel delivery in accordance with WAC 357-04-105.

**AMENDATORY SECTION**

### WAC 357-19-395 What return rights must an employer provide to ~~((a permanent))~~ an employee who accepts a nonpermanent appointment?

(1) For nonpermanent appointments made for reasons specified in WAC 357-19-360(1) at a minimum, the employer must provide the permanent employee who is leaving ~~((his/her))~~ their position with the employer to accept a nonpermanent appointment access to the employer's internal layoff list at the conclusion of the nonpermanent appointment. If the employer agrees to return the employee to a position, the employee must notify the employer of ~~((his/her))~~ their intent to return to a permanent position at least ~~((fourteen))~~ 14 calendar days in advance of return unless the employee and employer agree otherwise. Failure of the employee to provide proper written notice to the employer may result in forfeiture of any return rights. Upon return to a permanent position, the employee's salary must be determined by the employer's salary determination policy.

(2) For nonpermanent appointments made for reasons specified in WAC 357-19-360(2) the general government employee must be returned to the same position held prior to the redeployment at the conclusion of the redeployment. Upon return to their previous position, the employee's base salary must be set at the step the employee would be at if they had not left the position.

**AMENDATORY SECTION**

### WAC 357-19-430 When may the director take remedial action for nonpermanent employees and what does remedial action include?

The director may take remedial action to confer permanent status, set base salary, and establish seniority when it is determined that the following conditions exist:

(1) The employer has made an appointment that does not comply with rules on nonpermanent appointment; or

(2) The duration of a nonpermanent appointment as defined in WAC 357-19-360 (1)(a) through ~~(((4)))~~ (d) and 357-19-360(2) has exceeded ~~((twenty-four))~~ 24 months without director approval.

**WAC 357-28, Compensation:**

**NEW SECTION**

### WAC 357-28-148 How is a general government employee's salary determined when the employee is redeployed for reasons specified in WAC 357-19-360(2)?

The base salary of a general government employee appointed to a position for reasons specified in WAC 357-19-360(2) must be determined as follows:

(1) An employee who is redeployed to a position with the same salary range keeps the same base salary.

(2) An employee who is redeployed 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 employee's previous base salary exceeds the new salary range, the employee's base salary may be set higher than step M but not exceeding their prior base salary.

(3) An employee who is redeployed to a position with a higher salary range must have their salary set in accordance with WAC 357-28-110.

**WAC 357-58, Washington Management Service:**

**AMENDATORY SECTION**

### WAC 357-58-065 Definitions for WMS.

The following definitions apply to chapter 357-58 WAC:

(1) **Break in service.** An employee has a break in continuous state service if the employee is separated, dismissed or resigns from state service. A furlough for the purposes of temporary layoff as provided in WAC 357-58-550 is not considered a break in continuous state service.

(2) **Choice performance confirmation.** Approval granted by the director to an employer allowing the employer to factor in individual employee performance when granting recognition leave.

(3) **Competencies.** Those measurable or observable knowledge, skills, abilities and behaviors critical to success in a key job role or function.

(4) **Director.** State human resources director within the office of financial management.

(5) **Dismissal.** The termination of an individual's employment for disciplinary reasons.

(6) **Employee.** An individual working in the classified service. Employee business unit members are defined in WAC 357-43-001.

(7) **Evaluation points.** The points resulting from an evaluation of a position using the managerial job value assessment chart.

(8) **Layoff unit.** A clearly identified structure within an employer's organization within which layoff options are determined in accordance with the employer's layoff procedure. Layoff units may be a series of progressively larger units within an employer's organization.

(9) **Management bands.** A series of management levels included in the WMS. Placement in a band reflects the nature of management, decision-making environment and policy impact and scope of management accountability and control assigned to the position.

(10) **Premium.** Pay added to an employee's base salary on a contingent basis in recognition of special requirements, conditions or circumstances associated with the job.

(11) **Reassignment.** An employer initiated movement of:

(a) A WMS employee from one position to a different position within WMS with the same salary standard and/or evaluation points; or

(b) A WMS position and the employee in that position from one section, department or geographical location to another section, department or geographical location.

(12) **Redeployment.** An employer-initiated movement of a WMS employee within or between general government employers to a position in the same or different salary standard and/or evaluation points for a limited duration to support staffing shortages during an emergency or disaster in accordance with WAC 357-04-124.

(13) **Review period.** A period of time that allows the employer an opportunity to ensure the WMS employee meets the requirements and performance standards of the position.

~~(((13)))~~ (14) **Salary standard.** Within a management band a salary standard is the maximum dollar amount assigned to a position in those agencies that use a salary standard in addition to, or in place of, evaluation points.

~~(((14)))~~ (15) **Separation.** Separation from state employment for nondisciplinary reasons.

~~(((15)))~~ (16) **Suspension.** An absence without pay for disciplinary reasons.

~~(((16)))~~ (17) **Transfer.** An employee initiated movement from one position to a different position with the same salary standard and/or same evaluation points.

~~(((17)))~~ (18) **Veterans placement program.** A program that is designated to grant transitioning service members and veterans additional support to attain state employment.

~~(((18)))~~ (19) **Washington general service (WGS).** The system of personnel administration that applies to classified employees or positions under the jurisdiction of chapter 41.06 RCW which do not meet the definition of manager found in RCW 41.06.022.

~~(((19)))~~ (20) **Washington management service (WMS).** The system of personnel administration that applies to classified managerial employees or positions under the jurisdiction of RCW 41.06.022 and 41.06.500.

**NEW SECTION**

### WAC 357-58-128 How is a WMS employee's salary determined when the employee is redeployed for reasons specified in WAC 357-58-265(2)?

The base salary of a WMS employee appointed to a position for reasons specified in WAC 357-58-265(2) must be determined as follows:

(1) A WMS employee who is redeployed to a position with the same salary standard keeps the same base salary.

(2) A WMS employee who is redeployed to a position with a lower salary standard maximum must be placed within the new salary standard at a salary equal to the employee's previous base salary. If the previous base salary exceeds the new salary standard, the employee's base salary may be set higher than associated salary standard but not exceeding their prior base salary.

(3) A WMS employee who is redeployed to a position with a higher salary standard must receive a salary increase nearest to five percent or up to the minimum of the new salary standard, whichever is greatest, not to exceed the new management band maximum.

**AMENDATORY SECTION**

WAC 357-58-225 What return rights must an employer provide to a ~~((permanent))~~ WMS employee who accepts a nonpermanent appointment to a WGS position?

(1) Nonpermanent appointments for reasons specified in WAC 357-19-360(1) the following applies:

(a) When a permanent WMS employee has accepted a nonpermanent appointment to a WGS position within the **same** agency and the nonpermanent appointment ends, the agency must at a minimum provide the employee the layoff rights of the employee's permanent WMS position. If returning to a permanent WMS position the employee's salary must not be less than the salary of the previously held permanent WMS position.

~~(((2)))~~ (b) When a permanent WMS employee has accepted a nonpermanent appointment to a WGS position within a **different** agency, the original agency must provide layoff rights as specified in ~~((subsection (1)))~~ (a) of this ~~((section))~~ subsection for six months from the time the employee is appointed. Any return right after six months is negotiable between the employee and agency and must be agreed to prior to the employee accepting the nonpermanent appointment. If the employee does not return on the agreed upon date, the employee can request placement in the general government transition pool per WAC 357-46-095.

~~(((3)))~~ (c) In lieu of the rights provided in ~~((subsection (1) or (2)))~~ (a) or (b) of this ~~((section))~~ subsection, the agency and the employee may agree to other terms.

(2) For nonpermanent appointments made for reasons listed in WAC 357-19-360(2), the employee must be returned to the same position held prior to the redeployment at the conclusion of the nonpermanent appointment. Upon return to their previous position, the employee's base salary is set as if the employee had not left the position.

**AMENDATORY SECTION**

### WAC 357-58-265 When may an agency make an acting WMS appointment and what actions are required?

~~((When necessary to meet organizational needs,))~~ (1) An agency may make nonpermanent appointments in WMS~~((. These appointments))~~ which are called acting appointments. Acting WMS appointments can be made when any of the following conditions exist:

(a) When necessary to meet organization needs; or

(b) When approval has been granted by the director to redeploy an employee in accordance with WAC 357-04-124.

(2) Prior to the acting appointment, the appointing authority must communicate in writing to the employee the anticipated length, intent, salary, and other conditions of the appointment.

**AMENDATORY SECTION**

WAC 357-58-270 Does time in an acting appointment count as time in the review period?

(1) When an individual who is in an acting WMS appointment for reasons specified in WAC 357-58-265 (1)(a) is subsequently appointed to a permanent WMS position, time spent in the acting appointment may count towards the review period for the permanent WMS position at the discretion of the appointing authority.

(2) When an individual who is in an acting WMS appointment for reasons specified in WAC 357-58-265 (1)(b) is subsequently appointed to a same or similar permanent WMS position, time spent in the acting appointment must count towards the review period for the permanent WMS position.

**AMENDATORY SECTION**

### WAC 357-58-275 May a ~~((permanent))~~ WMS employee accept an acting WMS appointment and what are the employee's return rights at the conclusion of the acting appointment?

(1) Permanent WMS employees may accept acting appointments to WMS positions for reasons specified in WAC 357-58-265 (1)(a).

~~(((1)))~~ (a) When a permanent WMS employee has accepted an acting appointment within the **same** agency and the acting appointment ends the following applies:

~~(((a)))~~ (i) The agency may agree to return the employee to a permanent WMS position. If returning to a permanent WMS position, the employee's salary must not be less than the salary of the previously held permanent WMS position.

~~(((b)))~~ (ii) The agency at a minimum provide the employee the layoff rights of the employee's permanent WMS position in accordance with WAC 357-58-465.

~~(((2)))~~ (b) When a permanent WMS employee has accepted an acting appointment within a **different** agency, the original agency must provide layoff rights as specified in ~~((subsection (1)))~~ (a) of this ~~((section))~~ subsection for six months from the time the employee is appointed. Any return right after six months is negotiable between the employee and agency and must be agreed to prior to the employee accepting the nonpermanent appointment. If the employee does not return on the agreed upon date, the employee can request placement in the general government transition pool per WAC 357-46-095.

~~(((3)))~~ (c) In lieu of the rights provided in ~~((subsections (1) and (2)))~~ (a) and (b) of this ~~((section))~~ subsection, the agency and the employee may agree to other terms.

(2) When a WMS employee has been redeployed into an acting WMS position for reasons specified in WAC 357-58-265 (1)(b) the employee must be returned to the same position held prior to the redeployment at the conclusion of the acting appointment. Upon return to their previous position, the employee's base salary is set as if the employee had not left the position.

**REFERENCE ONLY**

**RCW**[**38.52.010**](http://app.leg.wa.gov/RCW/default.aspx?cite=38.52.010) **Definitions.**

As used in this chapter:

(1) "911 emergency communications system" means a public 911 communications system consisting of a network, database, and on-premises equipment that is accessed by dialing or accessing 911 and that enables reporting police, fire, medical, or other emergency situations to a public safety answering point. The system includes the capability to selectively route incoming 911 voice and data to the appropriate public safety answering point that operates in a defined 911 service area and the capability to automatically display the name, location, and telephone number of incoming 911 voice and data at the appropriate public safety answering point.

(2) "Automatic location identification" means information about a caller's location that is part of or associated with an enhanced or next generation 911 emergency communications system as defined in this section and RCW [**82.14B.020**](http://app.leg.wa.gov/RCW/default.aspx?cite=82.14B.020) and intended for the purpose of display at a public safety answering point with incoming 911 voice or data, or both.

(3) "Automatic number identification" means a method for uniquely associating a communication device that has accessed 911 with the incoming 911 voice or data, or both, and intended for the purpose of display at a public safety answering point.

(4) "Baseline level of 911 service" means access to 911 dialing from all communication devices with service from a telecommunications provider within a county's jurisdiction so that incoming 911 voice and data communication is answered, received, and displayed on 911 equipment at a public safety answering point designated by the county.

(5) "Broadcaster" means a person or entity that holds a license issued by the federal communications commission under 47 C.F.R. Part 73, 74, 76, or 78.

(6)(a) "Catastrophic incident" means any natural or human-caused incident, including terrorism and enemy attack, that results in extraordinary levels of mass casualties, damage, or disruption severely affecting the population, infrastructure, environment, economy, or government functions.

(b) "Catastrophic incident" does not include an event resulting from individuals exercising their rights, under the first amendment, of freedom of speech, and of the people to peaceably assemble.

(7) "Communication plan," as used in RCW [**38.52.070**](http://app.leg.wa.gov/RCW/default.aspx?cite=38.52.070), means a section in a local comprehensive emergency management plan that addresses emergency notification of life safety information.

(8) "Continuity of government planning" means the internal effort of all levels and branches of government to provide that the capability exists to continue essential functions and services following a catastrophic incident. These efforts include, but are not limited to, providing for: (a) Orderly succession and appropriate changes of leadership whether appointed or elected; (b) filling vacancies; (c) interoperability communications; and (d) processes and procedures to reconvene government following periods of disruption that may be caused by a catastrophic incident. Continuity of government planning is intended to preserve the constitutional and statutory authority of elected officials at the state and local level and provide for the continued performance of essential functions and services by each level and branch of government.

(9) "Continuity of operations planning" means the internal effort of an organization to provide that the capability exists to continue essential functions and services in response to a comprehensive array of potential emergencies or disasters.

(10) "Department" means the state military department.

(11) "Director" means the adjutant general.

(12) "Emergency management" or "comprehensive emergency management" means the preparation for and the carrying out of all emergency functions, other than functions for which the military forces are primarily responsible, to mitigate, prepare for, respond to, and recover from emergencies and disasters, and to aid victims suffering from injury or damage, resulting from disasters caused by all hazards, whether natural, technological, or human caused, and to provide support for search and rescue operations for persons and property in distress. However, "emergency management" or "comprehensive emergency management" does not mean preparation for emergency evacuation or relocation of residents in anticipation of nuclear attack.

(13)(a) "Emergency or disaster" as used in all sections of this chapter except RCW [**38.52.430**](http://app.leg.wa.gov/RCW/default.aspx?cite=38.52.430) means an event or set of circumstances which: (i) Demands immediate action to preserve public health, protect life, protect public property, or to provide relief to any stricken community overtaken by such occurrences; or (ii) reaches such a dimension or degree of destructiveness as to warrant the governor proclaiming a state of emergency pursuant to RCW [**43.06.010**](http://app.leg.wa.gov/RCW/default.aspx?cite=43.06.010).

(b) "Emergency" as used in RCW [**38.52.430**](http://app.leg.wa.gov/RCW/default.aspx?cite=38.52.430) means an incident that requires a normal police, coroner, fire, rescue, emergency medical services, or utility response as a result of a violation of one of the statutes enumerated in RCW [**38.52.430**](http://app.leg.wa.gov/RCW/default.aspx?cite=38.52.430).

(14) "Emergency response" as used in RCW [**38.52.430**](http://app.leg.wa.gov/RCW/default.aspx?cite=38.52.430) means a public agency's use of emergency services during an emergency or disaster as defined in subsection (13)(b) of this section.

(15) "Emergency services communication system" means a multicounty or countywide communications network, including an enhanced or next generation 911 emergency communications system, which provides rapid public access for coordinated dispatching of services, personnel, equipment, and facilities for police, fire, medical, or other emergency services.

(16) "Emergency services communications system data" includes voice or audio; multimedia, including pictures and video; text messages; telematics or telemetrics; or other information that is received or displayed, or both, at a public safety answering point in association with a 911 access.

(17) "Emergency worker" means any person who is registered with a local emergency management organization or the department and holds an identification card issued by the local emergency management director or the department for the purpose of engaging in authorized emergency management activities or is an employee of the state of Washington or any political subdivision thereof who is called upon to perform emergency management activities.

(18) "Executive head" and "executive heads" means the county executive in those charter counties with an elective office of county executive, however designated, and, in the case of other counties, the county legislative authority. In the case of cities and towns, it means the mayor in those cities and towns with mayor-council or commission forms of government, where the mayor is directly elected, and it means the city manager in those cities and towns with council manager forms of government. Cities and towns may also designate an executive head for the purposes of this chapter by ordinance.

(19) "Expense of an emergency response" as used in RCW [**38.52.430**](http://app.leg.wa.gov/RCW/default.aspx?cite=38.52.430) means reasonable costs incurred by a public agency in reasonably making an appropriate emergency response to the incident, but shall only include those costs directly arising from the response to the particular incident. Reasonable costs shall include the costs of providing police, coroner, firefighting, rescue, emergency medical services, or utility response at the scene of the incident, as well as the salaries of the personnel responding to the incident.

(20) "First informer broadcaster" means an individual who:

(a) Is employed by, or acting pursuant to a contract under the direction of, a broadcaster; and

(b)(i) Maintains, including repairing or resupplying, transmitters, generators, or other essential equipment at a broadcast station or facility; or (ii) provides technical support services to broadcasters needed during a period of proclaimed emergency.

(21) "Incident command system" means: (a) An all-hazards, on-scene functional management system that establishes common standards in organization, terminology, and procedures; provides a means (unified command) for the establishment of a common set of incident objectives and strategies during multiagency/multijurisdiction operations while maintaining individual agency/jurisdiction authority, responsibility, and accountability; and is a component of the national interagency incident management system; or (b) an equivalent and compatible all-hazards, on-scene functional management system.

(22) "Injury" as used in this chapter shall mean and include accidental injuries and/or occupational diseases arising out of emergency management activities.

(23) "Interconnected voice over internet protocol service provider" means a provider of interconnected voice over internet protocol service as defined by the federal communications commission in 47 C.F.R. Sec. 9.3 on January 1, 2009, or a subsequent date determined by the department.

(24) "Life safety information" means information provided to people during a response to a life-threatening emergency or disaster informing them of actions they can take to preserve their safety. Such information may include, but is not limited to, information regarding evacuation, sheltering, sheltering-in-place, facility lockdown, and where to obtain food and water.

(25) "Local director" means the director of a local organization of emergency management or emergency services.

(26) "Local organization for emergency services or management" means an organization created in accordance with the provisions of this chapter by state or local authority to perform local emergency management functions.

(27) "Next generation 911" means an internet protocol-based system comprised of managed emergency services internet protocol networks, functional elements (applications), and databases that replicate enhanced 911 features and functions as defined in RCW [**82.14B.020**](http://app.leg.wa.gov/RCW/default.aspx?cite=82.14B.020)(4) that provide additional capabilities designed to provide access to emergency services from all connected communications sources and provide multimedia data capabilities for public safety answering points.

(28) "Next generation 911 demarcation point" means the location and equipment that separates the next generation 911 network from:

(a) A telecommunications provider's network, known as the ingress next generation 911 demarcation point; and

(b) A public safety answering point, known as the egress next generation 911 demarcation point.

(29) "Next generation 911 emergency communications system" means a public communications system consisting of networks, databases, and public safety answering point 911 hardware, software, and technology that is accessed by the public in the state through 911. The system includes the capability to: Route incoming 911 voice and data to the appropriate public safety answering point that operates in a defined 911 service area; answer incoming 911 voice and data; and receive and display incoming 911 voice and data, including automatic location identification and automatic number identification, at a public safety answering point. "Next generation 911 emergency communications system" includes future modernizations to the 911 system.

(30) "Next generation 911 emergency services internet protocol network" means a managed internet protocol network used for 911 emergency services communications that is managed and maintained, including security and credentialing functions, by the state 911 coordination office to provide next generation 911 emergency communications from the ingress next generation 911 demarcation point to the egress next generation 911 demarcation point. It provides the internet protocol transport infrastructure upon which application platforms and core services are necessary for providing next generation 911 services. Next generation 911 emergency services internet protocol networks may be constructed from a mix of dedicated and shared facilities and may be interconnected at local, regional, state, federal, national, and international levels to form an internet protocol-based inter-network (network of networks).

(31) "Next generation 911 service" means public access to the next generation 911 emergency communications system and its capabilities by accessing 911 from communication devices to report police, fire, medical, or other emergency situations to a public safety answering point.

(32) "Political subdivision" means any county, city or town.

(33) "Public agency" means the state, and a city, county, municipal corporation, district, town, or public authority located, in whole or in part, within this state which provides or may provide firefighting, police, ambulance, medical, or other emergency services.

(34) "Public safety answering point" means the public safety location that receives and answers 911 voice and data originating in a given area as designated by the county. Public safety answering points must be equipped with 911 hardware, software, and technology that is accessed through 911 and is capable of answering incoming 911 calls and receiving and displaying incoming 911 data.

(a) "Primary public safety answering point" means a public safety answering point, as designated by the county, to which 911 calls and data originating in a given area and entering the next generation 911 network are initially routed for answering.

(b) "Secondary public safety answering point" means a public safety answering point, as designated by the county, that only receives 911 voice and data that has been transferred by other public safety answering points.

(35) "Radio communications service company" means every corporation, company, association, joint stock, partnership, and person, their lessees, trustees, or receivers appointed by any court, and every city or town making available facilities to provide commercial mobile radio services, as defined by 47 U.S.C. Sec. 332(d)(1), or cellular communications services for hire, sale, and both facilities-based and nonfacilities-based resellers, and does not include radio paging providers.

(36) "Search and rescue" means the acts of searching for, rescuing, or recovering by means of ground, marine, or air activity any person who becomes lost, injured, or is killed while outdoors or as a result of a natural, technological, or human-caused disaster, including instances involving searches for downed aircraft when ground personnel are used. Nothing in this section shall affect appropriate activity by the department of transportation under chapter [**47.68**](http://app.leg.wa.gov/RCW/default.aspx?cite=47.68) RCW.

(37) "Telecommunications provider" means a telecommunications company as defined in RCW [**80.04.010**](http://app.leg.wa.gov/RCW/default.aspx?cite=80.04.010), a radio communications service company as defined in RCW [**38.52.010**](http://app.leg.wa.gov/RCW/default.aspx?cite=38.52.010), a commercial mobile radio service provider as defined in 47 C.F.R. Sec. 20.3, providers of interconnected voice over internet protocol service as defined in RCW [**38.52.010**](http://app.leg.wa.gov/RCW/default.aspx?cite=38.52.010), and providers of data services.

(38) "Washington state patrol public safety answering points" means those designated as primary or secondary public safety answering points by the counties in which they provide service.