**Item #1–Family Members Definition – Cleanup \*NEW**

**Staff Note:** Engrossed Substitute Senate Bill 1320 ([ESSB 1320](https://lawfilesext.leg.wa.gov/biennium/2021-22/Pdf/Bills/Session%20Laws/House/1320-S2.SL.pdf?cite=2021%20c%20215%20§%20121)) passed during the 2021 legislative session, chapter 215, Laws of 2021. The act modernized, harmonized, and improved the efficacy and accessibility of laws concerning civil protection order. In part the act repealed chapter 26.50 RCW, domestic violence prevention, and amended RCW 46.76.020, Domestic Violence Leave, to define dating relationship in accordance with [RCW 7.105.010](https://app.leg.wa.gov/RCW/default.aspx?cite=7.105.010).

Note: The “dating relationship” definition as previously defined in RCW 26.50.010 is the same as the “dating relationship” definition in RCW 49.76.020.

We are proposing to amend WAC 357-01-172, Definition Family Member, to replace the reference to RCW 26.50.010 with [RCW 49.76.020](https://app.leg.wa.gov/RCW/default.aspx?cite=49.76.020).

Lead: Patricia Foshaug

AMENDATORY SECTION

**WAC 357-01-172 Family members.**

Individuals considered to be members of the family are parent, sibling, parent-in-law, spouse, registered domestic partner, grandparent, grandchild, minor/dependent child, and child. For the purpose of domestic violence, sexual assault, or stalking provisions within Title 357 WAC family member also includes a domestic partner as defined in RCW [**26.60.020**](http://app.leg.wa.gov/RCW/default.aspx?cite=26.60.020) or a person with whom the employee has a dating relationship as defined in RCW [**~~26.50.010~~**](http://app.leg.wa.gov/RCW/default.aspx?cite=26.50.010) [**49.76.020**](https://app.leg.wa.gov/RCW/default.aspx?cite=49.76.020).

REFERENCE ONLY

### RCW [49.76.020](http://app.leg.wa.gov/RCW/default.aspx?cite=49.76.020) Definitions.

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Child," "spouse," "parent," "parent-in-law," "grandparent," and "sick leave and other paid time off" have the same meanings as in RCW [**49.12.265**](http://app.leg.wa.gov/RCW/default.aspx?cite=49.12.265).

(2) "Dating relationship" has the same meaning as in RCW [**7.105.010**](http://app.leg.wa.gov/RCW/default.aspx?cite=7.105.010).

(3) "Department," "director," "employer," and "employee" have the same meanings as in RCW [**49.12.005**](http://app.leg.wa.gov/RCW/default.aspx?cite=49.12.005).

(4) "Domestic violence" has the same meaning as in RCW [**7.105.010**](http://app.leg.wa.gov/RCW/default.aspx?cite=7.105.010).

(5) "Family member" means any individual whose relationship to the employee can be classified as a child, spouse, parent, parent-in-law, grandparent, or person with whom the employee has a dating relationship.

(6) "Intermittent leave" is leave taken in separate blocks of time due to a single qualifying reason.

(7) "Reduced leave schedule" means a leave schedule that reduces the usual number of hours per workweek, or hours per workday, of an employee.

(8) "Sexual assault" has the same meaning as in RCW [**70.125.030**](http://app.leg.wa.gov/RCW/default.aspx?cite=70.125.030).

(9) "Stalking" has the same meaning as in RCW [**9A.46.110**](http://app.leg.wa.gov/RCW/default.aspx?cite=9A.46.110).

### RCW [7.105.010](http://app.leg.wa.gov/RCW/default.aspx?cite=7.105.010) Definitions.

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Abandonment" means action or inaction by a person or entity with a duty of care for a vulnerable adult that leaves the vulnerable adult without the means or ability to obtain necessary food, clothing, shelter, or health care.

(2) "Abuse," for the purposes of a vulnerable adult protection order, means intentional, willful, or reckless action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment on a vulnerable adult. In instances of abuse of a vulnerable adult who is unable to express or demonstrate physical harm, pain, or mental anguish, the abuse is presumed to cause physical harm, pain, or mental anguish. "Abuse" includes sexual abuse, mental abuse, physical abuse, personal exploitation, and improper use of restraint against a vulnerable adult, which have the following meanings:

(a) "Improper use of restraint" means the inappropriate use of chemical, physical, or mechanical restraints for convenience or discipline, or in a manner that: (i) Is inconsistent with federal or state licensing or certification requirements for facilities, hospitals, or programs authorized under chapter [**71A.12**](http://app.leg.wa.gov/RCW/default.aspx?cite=71A.12) RCW; (ii) is not medically authorized; or (iii) otherwise constitutes abuse under this section.

(b) "Mental abuse" means an intentional, willful, or reckless verbal or nonverbal action that threatens, humiliates, harasses, coerces, intimidates, isolates, unreasonably confines, or punishes a vulnerable adult. "Mental abuse" may include ridiculing, yelling, swearing, or withholding or tampering with prescribed medications or their dosage.

(c) "Personal exploitation" means an act of forcing, compelling, or exerting undue influence over a vulnerable adult causing the vulnerable adult to act in a way that is inconsistent with relevant past behavior, or causing the vulnerable adult to perform services for the benefit of another.

(d) "Physical abuse" means the intentional, willful, or reckless action of inflicting bodily injury or physical mistreatment. "Physical abuse" includes, but is not limited to, striking with or without an object, slapping, pinching, strangulation, suffocation, kicking, shoving, or prodding.

(e) "Sexual abuse" means any form of nonconsensual sexual conduct including, but not limited to, unwanted or inappropriate touching, rape, molestation, indecent liberties, sexual coercion, sexually explicit photographing or recording, voyeurism, indecent exposure, and sexual harassment. "Sexual abuse" also includes any sexual conduct between a staff person, who is not also a resident or client, of a facility or a staff person of a program authorized under chapter [**71A.12**](http://app.leg.wa.gov/RCW/default.aspx?cite=71A.12) RCW, and a vulnerable adult living in that facility or receiving service from a program authorized under chapter [**71A.12**](http://app.leg.wa.gov/RCW/default.aspx?cite=71A.12) RCW, whether or not the sexual conduct is consensual.

(3) "Chemical restraint" means the administration of any drug to manage a vulnerable adult's behavior in a way that reduces the safety risk to the vulnerable adult or others, has the temporary effect of restricting the vulnerable adult's freedom of movement, and is not standard treatment for the vulnerable adult's medical or psychiatric condition.

(4)(a) "Coercive control" means a pattern of behavior that is used to cause another to suffer physical, emotional, or psychological harm, and in purpose or effect unreasonably interferes with a person's free will and personal liberty. In determining whether the interference is unreasonable, the court shall consider the context and impact of the pattern of behavior from the perspective of a similarly situated person. Examples of coercive control include, but are not limited to, engaging in any of the following:

(i) Intimidation or controlling or compelling conduct by:

(A) Damaging, destroying, or threatening to damage or destroy, or forcing the other party to relinquish, goods, property, or items of special value;

(B) Using technology to threaten, humiliate, harass, stalk, intimidate, exert undue influence over, or abuse the other party, including by engaging in cyberstalking, monitoring, surveillance, impersonation, manipulation of electronic media, or distribution of or threats to distribute actual or fabricated intimate images;

(C) Carrying, exhibiting, displaying, drawing, or threatening to use, any firearm or any other weapon apparently capable of producing bodily harm, in a manner, under circumstances, and at a time and place that either manifests an intent to intimidate the other party or that warrants alarm by the other party for their safety or the safety of other persons;

(D) Driving recklessly with the other party or minor children in the vehicle;

(E) Communicating, directly or indirectly, the intent to:

(I) Harm the other party's children, family members, friends, or pets, including by use of physical forms of violence;

(II) Harm the other party's career;

(III) Attempt suicide or other acts of self-harm; or

(IV) Contact local or federal agencies based on actual or suspected immigration status;

(F) Exerting control over the other party's identity documents;

(G) Making, or threatening to make, private information public, including the other party's sexual orientation or gender identity, medical or behavioral health information, or other confidential information that jeopardizes safety; or

(H) Engaging in sexual or reproductive coercion;

(ii) Causing dependence, confinement, or isolation of the other party from friends, relatives, or other sources of support, including schooling and employment, or subjecting the other party to physical confinement or restraint;

(iii) Depriving the other party of basic necessities or committing other forms of financial exploitation;

(iv) Controlling, exerting undue influence over, interfering with, regulating, or monitoring the other party's movements, communications, daily behavior, finances, economic resources, or employment, including but not limited to interference with or attempting to limit access to services for children of the other party, such as health care, medication, child care, or school-based extracurricular activities;

(v) Engaging in vexatious litigation or abusive litigation as defined in RCW [**26.51.020**](http://app.leg.wa.gov/RCW/default.aspx?cite=26.51.020) against the other party to harass, coerce, or control the other party, to diminish or exhaust the other party's financial resources, or to compromise the other party's employment or housing; or

(vi) Engaging in psychological aggression, including inflicting fear, humiliating, degrading, or punishing the other party.

(b) "Coercive control" does not include protective actions taken by a party in good faith for the legitimate and lawful purpose of protecting themselves or children from the risk of harm posed by the other party.

(5) "Consent" in the context of sexual acts means that at the time of sexual contact, there are actual words or conduct indicating freely given agreement to that sexual contact. Consent must be ongoing and may be revoked at any time. Conduct short of voluntary agreement does not constitute consent as a matter of law. Consent cannot be freely given when a person does not have capacity due to disability, intoxication, or age. Consent cannot be freely given when the other party has authority or control over the care or custody of a person incarcerated or detained.

(6)(a) "Course of conduct" means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose. "Course of conduct" includes any form of communication, contact, or conduct, including the sending of an electronic communication, but does not include constitutionally protected free speech. Constitutionally protected activity is not included within the meaning of "course of conduct."

(b) In determining whether the course of conduct serves any legitimate or lawful purpose, a court should consider whether:

(i) Any current contact between the parties was initiated by the respondent only or was initiated by both parties;

(ii) The respondent has been given clear notice that all further contact with the petitioner is unwanted;

(iii) The respondent's course of conduct appears designed to alarm, annoy, or harass the petitioner;

(iv) The respondent is acting pursuant to any statutory authority including, but not limited to, acts which are reasonably necessary to:

(A) Protect property or liberty interests;

(B) Enforce the law; or

(C) Meet specific statutory duties or requirements;

(v) The respondent's course of conduct has the purpose or effect of unreasonably interfering with the petitioner's privacy or the purpose or effect of creating an intimidating, hostile, or offensive living environment for the petitioner; or

(vi) Contact by the respondent with the petitioner or the petitioner's family has been limited in any manner by any previous court order.

(7) "Court clerk" means court administrators in courts of limited jurisdiction and elected court clerks.

(8) "Dating relationship" means a social relationship of a romantic nature. Factors that the court may consider in making this determination include: (a) The length of time the relationship has existed; (b) the nature of the relationship; and (c) the frequency of interaction between the parties.

(9) "Domestic violence" means:

(a) Physical harm, bodily injury, assault, or the infliction of fear of physical harm, bodily injury, or assault; nonconsensual sexual conduct or nonconsensual sexual penetration; coercive control; unlawful harassment; or stalking of one intimate partner by another intimate partner; or

(b) Physical harm, bodily injury, assault, or the infliction of fear of physical harm, bodily injury, or assault; nonconsensual sexual conduct or nonconsensual sexual penetration; coercive control; unlawful harassment; or stalking of one family or household member by another family or household member.

(10) "Electronic monitoring" has the same meaning as in RCW [**9.94A.030**](http://app.leg.wa.gov/RCW/default.aspx?cite=9.94A.030).

(11) "Essential personal effects" means those items necessary for a person's immediate health, welfare, and livelihood. "Essential personal effects" includes, but is not limited to, clothing, cribs, bedding, medications, personal hygiene items, cellular phones and other electronic devices, and documents, including immigration, health care, financial, travel, and identity documents.

(12) "Facility" means a residence licensed or required to be licensed under chapter [**18.20**](http://app.leg.wa.gov/RCW/default.aspx?cite=18.20) RCW, assisted living facilities; chapter [**18.51**](http://app.leg.wa.gov/RCW/default.aspx?cite=18.51) RCW, nursing homes; chapter [**70.128**](http://app.leg.wa.gov/RCW/default.aspx?cite=70.128) RCW, adult family homes; chapter [**72.36**](http://app.leg.wa.gov/RCW/default.aspx?cite=72.36) RCW, soldiers' homes; chapter [**71A.20**](http://app.leg.wa.gov/RCW/default.aspx?cite=71A.20) RCW, residential habilitation centers; or any other facility licensed or certified by the department of social and health services.

(13) "Family or household members" means: (a) Persons related by blood, marriage, domestic partnership, or adoption; (b) persons who currently or formerly resided together; (c) persons who have a biological or legal parent-child relationship, including stepparents and stepchildren and grandparents and grandchildren, or a parent's intimate partner and children; and (d) a person who is acting or has acted as a legal guardian.

(14) "Financial exploitation" means the illegal or improper use of, control over, or withholding of, the property, income, resources, or trust funds of the vulnerable adult by any person or entity for any person's or entity's profit or advantage other than for the vulnerable adult's profit or advantage. "Financial exploitation" includes, but is not limited to:

(a) The use of deception, intimidation, or undue influence by a person or entity in a position of trust and confidence with a vulnerable adult to obtain or use the property, income, resources, government benefits, health insurance benefits, or trust funds of the vulnerable adult for the benefit of a person or entity other than the vulnerable adult;

(b) The breach of a fiduciary duty, including, but not limited to, the misuse of a power of attorney, trust, or a guardianship or conservatorship appointment, that results in the unauthorized appropriation, sale, or transfer of the property, income, resources, or trust funds of the vulnerable adult for the benefit of a person or entity other than the vulnerable adult; or

(c) Obtaining or using a vulnerable adult's property, income, resources, or trust funds without lawful authority, by a person or entity who knows or clearly should know that the vulnerable adult lacks the capacity to consent to the release or use of the vulnerable adult's property, income, resources, or trust funds.

(15) "Firearm" means a weapon or device from which a projectile or projectiles may be fired by an explosive such as gunpowder. "Firearm" does not include a flare gun or other pyrotechnic visual distress signaling device, or a powder-actuated tool or other device designed solely to be used for construction purposes. "Firearm" also includes parts that can be assembled to make a firearm.

(16) "Full hearing" means a hearing where the court determines whether to issue a full protection order.

(17) "Full protection order" means a protection order that is issued by the court after notice to the respondent and where the parties had the opportunity for a full hearing by the court. "Full protection order" includes a protection order entered by the court by agreement of the parties to resolve the petition for a protection order without a full hearing.

(18) "Hospital" means a facility licensed under chapter [**70.41**](http://app.leg.wa.gov/RCW/default.aspx?cite=70.41) or [**71.12**](http://app.leg.wa.gov/RCW/default.aspx?cite=71.12) RCW or a state hospital defined in chapter [**72.23**](http://app.leg.wa.gov/RCW/default.aspx?cite=72.23) RCW and any employee, agent, officer, director, or independent contractor thereof.

(19) "Interested person" means a person who demonstrates to the court's satisfaction that the person is interested in the welfare of a vulnerable adult, that the person has a good faith belief that the court's intervention is necessary, and that the vulnerable adult is unable, due to incapacity, undue influence, or duress at the time the petition is filed, to protect his or her own interests.

(20) "Intimate partner" means: (a) Spouses or domestic partners; (b) former spouses or former domestic partners; (c) persons who have a child in common regardless of whether they have been married or have lived together at any time, unless the child is conceived through sexual assault; or (d) persons who have or have had a dating relationship where both persons are at least 13 years of age or older.

(21)(a) "Isolate" or "isolation" means to restrict a person's ability to communicate, visit, interact, or otherwise associate with persons of his or her choosing. Isolation may be evidenced by acts including, but not limited to:

(i) Acts that prevent a person from sending, making, or receiving his or her personal mail, electronic communications, or telephone calls; or

(ii) Acts that prevent or obstruct a person from meeting with others, such as telling a prospective visitor or caller that the person is not present or does not wish contact, where the statement is contrary to the express wishes of the person.

(b) The term "isolate" or "isolation" may not be construed in a manner that prevents a guardian or limited guardian from performing his or her fiduciary obligations under \*chapter [**11.92**](http://app.leg.wa.gov/RCW/default.aspx?cite=11.92) RCW or prevents a hospital or facility from providing treatment consistent with the standard of care for delivery of health services.

(22) "Judicial day" means days of the week other than Saturdays, Sundays, or legal holidays.

(23) "Mechanical restraint" means any device attached or adjacent to a vulnerable adult's body that the vulnerable adult cannot easily remove that restricts freedom of movement or normal access to the vulnerable adult's body. "Mechanical restraint" does not include the use of devices, materials, or equipment that are (a) medically authorized, as required, and (b) used in a manner that is consistent with federal or state licensing or certification requirements for facilities, hospitals, or programs authorized under chapter [**71A.12**](http://app.leg.wa.gov/RCW/default.aspx?cite=71A.12) RCW.

(24) "Minor" means a person who is under 18 years of age.

(25) "Neglect" means: (a) A pattern of conduct or inaction by a person or entity with a duty of care that fails to provide the goods and services that maintain the physical or mental health of a vulnerable adult, or that fails to avoid or prevent physical or mental harm or pain to a vulnerable adult; or (b) an act or omission by a person or entity with a duty of care that demonstrates a serious disregard of consequences of such a magnitude as to constitute a clear and present danger to the vulnerable adult's health, welfare, or safety including, but not limited to, conduct prohibited under RCW [**9A.42.100**](http://app.leg.wa.gov/RCW/default.aspx?cite=9A.42.100).

(26) "Nonconsensual" means a lack of freely given consent.

(27) "Nonphysical contact" includes, but is not limited to, written notes, mail, telephone calls, email, text messages, contact through social media applications, contact through other technologies, or contact through third parties.

(28) "Petitioner" means any named petitioner or any other person identified in the petition on whose behalf the petition is brought.

(29) "Physical restraint" means the application of physical force without the use of any device, for the purpose of restraining the free movement of a vulnerable adult's body. "Physical restraint" does not include (a) briefly holding, without undue force, a vulnerable adult in order to calm or comfort him or her, or (b) holding a vulnerable adult's hand to safely escort him or her from one area to another.

(30) "Possession" means having an item in one's custody or control. Possession may be either actual or constructive. Actual possession occurs when the item is in the actual physical custody of the person charged with possession. Constructive possession occurs when there is no actual physical possession, but there is dominion and control over the item.

(31) "Respondent" means the person who is identified as the respondent in a petition filed under this chapter.

(32) "Sexual conduct" means any of the following:

(a) Any intentional or knowing touching or fondling of the genitals, anus, or breasts, directly or indirectly, including through clothing;

(b) Any intentional or knowing display of the genitals, anus, or breasts for the purposes of arousal or sexual gratification of the respondent;

(c) Any intentional or knowing touching or fondling of the genitals, anus, or breasts, directly or indirectly, including through clothing, that the petitioner is forced to perform by another person or the respondent;

(d) Any forced display of the petitioner's genitals, anus, or breasts for the purposes of arousal or sexual gratification of the respondent or others;

(e) Any intentional or knowing touching of the clothed or unclothed body of a child under the age of 16, if done for the purpose of sexual gratification or arousal of the respondent or others; or

(f) Any coerced or forced touching or fondling by a child under the age of 16, directly or indirectly, including through clothing, of the genitals, anus, or breasts of the respondent or others.

(33) "Sexual penetration" means any contact, however slight, between the sex organ or anus of one person by an object, the sex organ, mouth, or anus of another person, or any intrusion, however slight, of any part of the body of one person or of any animal or object into the sex organ or anus of another person including, but not limited to, cunnilingus, fellatio, or anal penetration. Evidence of emission of semen is not required to prove sexual penetration.

(34) "Stalking" means any of the following:

(a) Any act of stalking as defined under RCW [**9A.46.110**](http://app.leg.wa.gov/RCW/default.aspx?cite=9A.46.110);

(b) Any act of cyber harassment as defined under RCW [**9A.90.120**](http://app.leg.wa.gov/RCW/default.aspx?cite=9A.90.120); or

(c) Any course of conduct involving repeated or continuing contacts, attempts to contact, monitoring, tracking, surveillance, keeping under observation, disrupting activities in a harassing manner, or following of another person that:

(i) Would cause a reasonable person to feel intimidated, frightened, under duress, significantly disrupted, or threatened and that actually causes such a feeling;

(ii) Serves no lawful purpose; and

(iii) The respondent knows, or reasonably should know, threatens, frightens, or intimidates the person, even if the respondent did not intend to intimidate, frighten, or threaten the person.

(35) "Temporary protection order" means a protection order that is issued before the court has decided whether to issue a full protection order. "Temporary protection order" includes ex parte temporary protection orders, as well as temporary protection orders that are reissued by the court pending the completion of a full hearing to decide whether to issue a full protection order. An "ex parte temporary protection order" means a temporary protection order that is issued without prior notice to the respondent.

(36) "Unlawful harassment" means:

(a) A knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, harasses, or is detrimental to such person, and that serves no legitimate or lawful purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the petitioner; or

(b) A single act of violence or threat of violence directed at a specific person that seriously alarms, annoys, harasses, or is detrimental to such person, and that serves no legitimate or lawful purpose, which would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the petitioner. A single threat of violence must include: (i) A malicious and intentional threat as described in RCW [**9A.36.080**](http://app.leg.wa.gov/RCW/default.aspx?cite=9A.36.080)(1)(c); or (ii) the presence of a firearm or other weapon.

(37) "Vulnerable adult" includes a person:

(a) Sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself; or

(b) Subject to a guardianship under RCW [**11.130.265**](http://app.leg.wa.gov/RCW/default.aspx?cite=11.130.265) or adult subject to conservatorship under RCW [**11.130.360**](http://app.leg.wa.gov/RCW/default.aspx?cite=11.130.360); or

(c) Who has a developmental disability as defined under RCW [**71A.10.020**](http://app.leg.wa.gov/RCW/default.aspx?cite=71A.10.020); or

(d) Admitted to any facility; or

(e) Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter [**70.127**](http://app.leg.wa.gov/RCW/default.aspx?cite=70.127) RCW; or

(f) Receiving services from a person under contract with the department of social and health services to provide services in the home under chapter [**74.09**](http://app.leg.wa.gov/RCW/default.aspx?cite=74.09) or [**74.39A**](http://app.leg.wa.gov/RCW/default.aspx?cite=74.39A) RCW; or

(g) Who self-directs his or her own care and receives services from a personal aide under chapter [**74.39**](http://app.leg.wa.gov/RCW/default.aspx?cite=74.39) RCW.

**Item #2 – Washington Management Services (WMS) \*New**

**Staff Note:** Second Substitute House Bill 1122 ([2SHB 1122](https://lawfilesext.leg.wa.gov/biennium/2023-24/Pdf/Bills/Session%20Laws/House/1122-S2.SL.pdf)) passed during the 2023 legislative session, chapter 136, laws of 2023, with an effective date of January 1, 2024. This bill amends Chapter 41.06 RCW (state civil service law) and Chapter [41.80](https://app.leg.wa.gov/rcw/default.aspx?cite=41.80) RCW (state collective bargaining) to grant Washington Management Service (WMS) employees in certain salary bands the right to collectively bargain. WMS collective bargaining agreements may not take effect before July 1, 2025.

We are proposing to amend WAC 357-58-040(1) to add the exemption reference to [RCW 41.06.022](http://app.leg.wa.gov/RCW/default.aspx?cite=41.06.022) for clarification.

Lead: Patricia Foshaug

REFERENCE ONLY

**WAC** **357-58-035 What is the definition of a manager or managerial employee?**

In accordance with RCW [**41.06.022**](http://app.leg.wa.gov/RCW/default.aspx?cite=41.06.022), a manager or managerial employee is defined as the employee of a position that:

(1) Formulates statewide policy or directs the work of an agency or agency subdivision;

(2) Administers one or more statewide policies or programs of an agency or agency subdivision;

(3) Manages, administers and controls a local branch office of an agency or an agency subdivision, including the physical, financial or personnel resources;

(4) Has substantial responsibility in personnel administration, legislative relations, public information or the preparation and administration of budgets; and/or

(5) Functions above the first level of supervision and exercises authority that is not merely routine or clerical in nature and requires the consistent use of independent judgment.

AMENDATORY SECTION

**WAC** **357-58-040 Which manager positions or managerial employees are excluded from WMS and not covered by chapter**[**357-58**](http://app.leg.wa.gov/WAC/default.aspx?cite=357-58)**WAC?**

The following manager positions or managerial employees are excluded from WMS and not covered by chapter [**357-58**](http://app.leg.wa.gov/WAC/default.aspx?cite=357-58) WAC:

(1) Manager positions or managerial employees that are exempt from civil service in accordance with [RCW 41.06.022](http://app.leg.wa.gov/RCW/default.aspx?cite=41.06.022);

(2) Manager positions or managerial employees that are included in professional structures; and

(3) Manager positions or managerial employees of institutions of higher education and related boards.

**Item #3 – Redeployment \*NEW**

**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 current 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 or designee grants approval during emergency conditions to allow an employer-initiated movement of an employee with the necessary skills, abilities or licensure within or between general government employers. Given that redeployment is an employer-initiated movement during emergent conditions, the following policy decisions are intended to minimize general government employee impacts:

* If a general government employer has received 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 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 an 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.
* 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 employer 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 357-04-125 to address that when emergency conditions exist, a general government employer may request approval to redeploy an employee within or between general government employers for the preservation of public health, safety and general welfare. For purposes of this section, emergency conditions are defined as an event or set of circumstances which demands immediate action to preserve public health, protect life, protect public property or to provide relief to any overtake by such occurrences; or reaches such a dimension or degree of destructiveness as to warrant the governor proclaiming a state of emergency pursuant to [RCW 43.06.010](https://app.leg.wa.gov/rcw/default.aspx?cite=43.06.010).
* Amend [WAC 357-19-073](https://app.leg.wa.gov/WAC/default.aspx?cite=357-19-073) to create subsection (1) 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)(a) through (d). Add subsection (2) to address that if an employee who is serving a probationary period is redeployed into a nonpermanent appointment for reasons specified in WAC 357-19-360(2) the general government employer must agree to return the employee to the same position held prior to the redeployment at the conclusion of the redeployment. Upon return from a redeployment the employee 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 time worked in the nonpermanent appointment towards the probationary period.
* Amend [WAC 357-19-165](https://app.leg.wa.gov/WAC/default.aspx?cite=357-19-165) to clarify the differences between a reassignment, transfer and redeployment. A redeployment is an employer-initiated move of an employee within or between general government employers in the same or different class with the same or difference salary range maximum for a limited duration.
* Create WAC 357-19-179 to address the provisions for redeploying an employee 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, the employee must agree to being redeployed. The general government employer 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 when an employee is leaving a general service position to be redeployed in accordance with WAC 357-04-125 the employee must be returned to the same 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 there is a need to redeploy an employee in accordance with WAC 357-04-125.
* 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)(a) through (d).
* 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)(a) through (d). Create subsection (2) to address that for nonpermanent appointments made for reasons specified in WAC 357-19-360(2) the 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.
* Create WAC 357-28-184 to address how an employee’s salary is determined when the employee is redeployed. The base salary of 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.
* Amend [WAC 357-58-225](https://app.leg.wa.gov/wac/default.aspx?cite=357-58-225) to remove the word “permanent” 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)(a) through (d). Add subsection (2) to address that nonpermanent appointments made for reasons listed in WAC 357-19-360(2) the employee must be returned to the same position held prior to redeployment. Upon return to a position, the employee’s base salary is set as if the employee had not left the 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 add subsection (2) to address that an general government employer may make an acting WMS appointment when approval has been granted to redeployee an employee in accordance with WAC 357-04-125.
* 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 position the employee must be returned to the same position held prior to the redeployment at the conclusion of the acting appointment.

Lead: Brittany Trujillo

## WAC 357-01 Definitions:

**NEW SECTION:**

**WAC 357-01-277 Redeployment.**

Approval granted by the director or designee during emergency conditions to allow the general government employer-initiated movement of an employee with the necessary skills, abilities or licensure within or between general government employers in the same or different job class with the same or different salary range maximum.

## WAC 357-04, General Provisions:

**NEW SECTION:**

**WAC 357-04-125 Under what conditions may an employer redeploy an employee?**

When emergency conditions exist, a general government employer may request approval to redeploy an employee within or between general government employers for the preservation of public health, safety or general welfare. For purposes of this section, emergency conditions are defined as an event or set of circumstances which demands immediate action to preserve public health, protect life, protect public property or to provide relief to any overtake by such occurrences; or reaches such a dimension or degree of destructiveness as to warrant the governor proclaiming a state of emergency pursuant to RCW 43.06.010.

## 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](http://app.leg.wa.gov/WAC/default.aspx?cite=357-19-360) (1)(a) through (d) 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 an employee who is serving a probationary period is redeployed into a nonpermanent appointment for reasons specified in WAC 357-19-360(2) the general government employer must agree to return the employee to the same position held prior to the redeployment at the conclusion of the redeployment.

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 357-19-165 What is the difference between reassignment, transfer and redeployment?**

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. A redeployment is a general government employer-initiated move of an employee within or between general government employers in the same or different class with the same or different salary range maximum for a limited duration.

**NEW SECTION:**

**WAC 357-19-179 What are the provisions for redeploying a general government employee to a different geographic area?**

When redeploying an employee 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 the employee must agree to being redeployed. The general government employer defines what is within a reasonable commute.

This subsection applies to employees in Washington Management Service.

**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 a permanent employee who is leaving a WGS position with the employer to accept a WMS acting appointment for reasons specified in with WAC 357-58-265(1) 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) 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. If an employee is leaving a WGS position to be redeployed for reasons specified in WAC 357-58-265(2) the employee must be returned to the same position held prior to the redeployment at the conclusion of the redeployment.

**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:

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

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

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

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

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

(2) A general government employer may fill a position with a nonpermanent appointment when there is a need to redeploy an employee in accordance with WAC 357-04-125.

**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](http://app.leg.wa.gov/WAC/default.aspx?cite=357-19-360) (1)(a) through (d) must give their current employers at least fourteen 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](http://app.leg.wa.gov/WAC/default.aspx?cite=357-04-105).

**AMENDATORY SECTION**

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

1. For nonpermanent appointments made for reasons specified in WAC [357-19-360](http://app.leg.wa.gov/WAC/default.aspx?cite=357-19-360) (1)(a) through (d), 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 layofflist 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 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 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.

## WAC 357-28, Compensation:

**NEW SECTION:**

**WAC 357-28-148 How is an employee’s salary determined when the employee is redeployed?**

The base salary of an 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**](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) **Redeployment.** During emergency conditions as outlined in WAC 357-01-277, employer-initiated movement of a Washington Management Services employee with the necessary skills, abilities or licensure within or between general government employers to a position in the same or different salary standard and/or evaluation points.

(13)(~~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.

(14)~~(13)~~**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.

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

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

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

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

(19)~~(18)~~**Washington general service (WGS).** The system of personnel administration that applies to classified employees or positions under the jurisdiction of chapter [**41.06**](http://app.leg.wa.gov/RCW/default.aspx?cite=41.06) RCW which do not meet the definition of manager found in RCW [**41.06.022**](http://app.leg.wa.gov/RCW/default.aspx?cite=41.06.022).

(20)~~(19)~~**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**](http://app.leg.wa.gov/RCW/default.aspx?cite=41.06.022) and [**41.06.500**](http://app.leg.wa.gov/RCW/default.aspx?cite=41.06.500).

**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](http://app.leg.wa.gov/WAC/default.aspx?cite=357-19-360) (1)(a) through (d) the following applies:

(a) ~~(1)~~ 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.

(b) ~~(2)~~ 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 (a) ~~(1)~~ of this section 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.

(c) ~~(3)~~ In lieu of the rights provided in subsection (a) ~~(1)~~ or (b)~~(2)~~ of this section, 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. Upon return to a 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?**

1. When necessary to meet organizational needs, an agency may make nonpermanent appointments in WMS. These appointments are called acting appointments. 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.
2. When approval has been granted to redeployee an employee in accordance with WAC 357-04-125.

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

(i)~~(a)~~ 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.

(ii)~~(b)~~ 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**](http://app.leg.wa.gov/WAC/default.aspx?cite=357-58-465).

(b)~~(2)~~ 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 (a)~~(1)~~ of this section 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**](http://app.leg.wa.gov/WAC/default.aspx?cite=357-46-095).

(c)(~~3)~~ In lieu of the rights provided in subsections ~~(1)~~(a) and (b)~~(2)~~ of this section, 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(2) the employee must be returned to the same position held prior to the redeployment at the conclusion of the acting appointment.

**Item #4–Vacation Leave Accrual/Service Dates - Clean up items**

**Staff Note:** We are proposing to amend 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.

We are also proposing to amend WAC 357-31-166(3) to add two new subsections for higher education employees. We are proposing to add subsection (c) which states employment in the legislative and/or judicial branch is credited when computing a higher education employee’s rate of vacation leave accrual and subsection (d) which states exempt employment with a general government employer is credited when computing a higher education employee’s rate of vacation leave accrual.

These changes are housekeeping in nature and are intended to provide clarity to employers 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.

Lead: Patricia Foshaug

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 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 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 #5 - Health Labor Emergency Standards Act (HELSA)**

**Staff note:** Health Emergency Labor Standards Act (HELSA) codified as [RCW 49.17.062](https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fapp.leg.wa.gov%2FRCW%2Fdefault.aspx%3Fcite%3D49.17.062&data=05%7C01%7Crules%40ofm.wa.gov%7Ce7d8d5fdd50746ca8eee08daa723a6e5%7C11d0e217264e400a8ba057dcc127d72d%7C0%7C0%7C638006069113162691%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C3000%7C%7C%7C&sdata=%2BOsN17I%2BvvqcVdpX4WYo1bx7ZZbVN3%2BbyqerzikOE0Q%3D&reserved=0) states “during a public health emergency, no employer may discharge, permanently replace, or in any manner discriminate against an employee who is high risk as a result of the employee seeking accommodation that protects them from the risk of exposure to the infectious or contagious disease, or, if no accommodation is reasonable, utilizing all available leave options, including but not limited to leave without pay and unemployment insurance until completion of the public health emergency or accommodation is made available.” As a result of the passage of HELSA, amendments were made to Chapter 357-31 WAC effective July 1, 2022, to allow high-risk employees, as defined in RCW [**49.17.062**](https://gcc02.safelinks.protection.outlook.com/?url=http%3A%2F%2Fapp.leg.wa.gov%2FRCW%2Fdefault.aspx%3Fcite%3D49.17.062&data=05%7C01%7Crules%40ofm.wa.gov%7Ce7d8d5fdd50746ca8eee08daa723a6e5%7C11d0e217264e400a8ba057dcc127d72d%7C0%7C0%7C638006069113162691%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C3000%7C%7C%7C&sdata=xpgdx%2BN8ncWlz%2F7e%2FwJbBfo2%2FrwnDxof6O%2Bj1gdFxFs%3D&reserved=0), to utilize leave if no accommodation is reasonable during a public health emergency as defined in RCW 49.17.062.

Existing WAC language does not require a declared public health emergency, therefore, may be interpreted to allow for a high-risk employee to utilize all leave types as an accommodation if no other accommodation is reasonable as long as the employee meets the definition of being high-risk. A decision has been made to allow a high-risk employee outside of a declared public health emergency to utilize all accrued leave types when seeking an accommodation to protect themselves from risk of exposure to an infectious or contagious disease if no accommodation is reasonable. However, the requirement for employers to approve leave without pay for a high-risk employee if no accommodation is reasonable will be limited to the duration of a declared public health emergency as defined in RCW 49.17.062. We are proposing to amend WAC 357-31-100(10) and 357-31-327(6) to clarify that an employer must grant the use of leave without pay during a declared public health emergency in accordance with RCW 49.17.062.

Additionally, a policy decision was made to amend WAC 357-31-330(14) to remove the reference to coronavirus 2019 (COVID-19) and instead state the risk of exposure to an infectious or contagious disease to allow for consistent language within WAC. In determining whether to grant leave, an employer will continue to be able to consider current workload demands and business needs that require employees to perform their duties.

We are proposing to amend:

* WAC 357-31-027 to add subsection (8) to state a higher education employer must allow part-time high-risk employee to utilize accrued holiday credit to protect themselves from risk of exposure to an infectious or contagious disease if no accommodation is reasonable. This WAC was inadvertently missed when the July 1, 2022, amendments were initially made.
* WAC 357-31-070(f) to clarify an employer must approve a high-risk employees request to use a personal holiday when an employee is seeking an accommodation to protect themselves from the risk of exposure to an infectious or contagious disease if the employer determines no other accommodation is reasonable besides the use of leave.
* WAC 357-31-100(9) to clarify an employer must have a policy that allows a high-risk employee seeking an accommodation to protect themselves from the risk of exposure to an infectious or contagious disease to use their accrued leave if the employer determines no other accommodation is reasonable besides the use of leave. The employer may require that the employees request be supported by verification or documentation.
* WAC 357-31-100(10) to add a subsection to state an employer must have a policy that allows a high-risk employee seeking an accommodation to protect themselves from risk of exposure to an infectious or contagious disease during a public health emergency to use leave without pay if the employer determines no other accommodation is reasonable beside the use of leave in accordance with RCW 49.17.062.
* WAC 357-31-130(3) to clarify an employer must allow a high-risk employee to use their accrued sick leave when an employee is seeking an accommodation to protect themselves from the risk of exposure to an infectious or contagious disease if the employer determines no other accommodation is reasonable besides the use of leave.
* WAC 357-31-200(h) to clarify an employer must grant a high-risk employee to use their vacation leave when an employee is seeking an accommodation to protect themselves from the risk of exposure to an infectious or contagious disease if the employer determines no other accommodation is reasonable besides the use of leave.
* WAC 357-31-230(8) to clarify an employer must grant a high-risk employee to use their accrued compensatory time when an employee is seeking an accommodation to protect themselves from the risk of exposure to an infectious or contagious disease if the employer determines no other accommodation is reasonable besides the use of leave.
* WAC 357-31-327(6) to clarify an employer must allow a high-risk employee seeking an accommodation to protect themselves from the risk of exposure to an infectious or contagious disease during a public health emergency to use leave without pay if the employer determines no other accommodation is reasonable besides the use of leave in accordance with RCW 49.17.062.
* WAC 357-31-330(14) to remove the reference to coronavirus disease 2019 (COVID-19) and instead state risks of exposure to an infectious or contagious disease.
* WAC 357-31-567(d) to clarify an employer must grant a high-risk employee to use their recognition leave when an employee is seeking an accommodation to protect themselves from the risk of exposure to an infectious or contagious disease if the employer determines no other accommodation is reasonable besides the use of leave.

The highlighted yellow text indicates changes since the July 11, 2023 Rules Meeting based on stakeholder feedback.

Lead: Brittany Trujillo

AMENDATORY SECTION

**WAC 357-31-027** **When must a higher education employer allow a part-time employee to use accrued holiday credit?**

Higher education employers must allow a part-time employee as defined in WAC 357-01-2290(2) to use accrued holiday credit for the following reasons:

(1) Employees must request to use accrued holiday credit in accordance with the employer's leave policy. When considering employees' requests to use accrued holiday credit, employers must consider their business needs and the wishes of the employee.

(2) An employee must be granted the use of accrued holiday credit to care for a spouse, registered domestic partner, parent, parent-in-law, or grandparent of the employee who has a serious health condition or an emergency health condition, or to care for a minor/dependent child with a health condition that requires treatment or supervision. In accordance with the employer's leave policy, approval of the employee's request to use accrued holiday credit may be subject to verification that the condition exists.

(3) An employee must be granted the use of accrued holiday credit if the employee or the employee's family member, as defined in chapter 357-01 WAC, is a victim of domestic violence, sexual assault, or stalking as defined in RCW 49.76.020. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730.

(4) In accordance with WAC 357-31-373, an employee must be granted the use of accrued holiday credit to be with a spouse or registered domestic partner who is a member of the armed forces of the United States, National Guard, or reserves after the military spouse or registered domestic partner has been notified of an impending call or order to active duty, before deployment, or when the military spouse or registered domestic partner is on leave from deployment.

(5) An employee must be granted the use of accrued holiday credit when requested as a supplemental benefit while receiving a partial wage replacement for paid family and/or medical leave under Title 50A RCW as provided in WAC 357-31-248. Leave taken under this subsection may be subject to verification that the employee has been approved to receive benefits for approved paid family and/or medical leave under Title 50A RCW.

(6) Employers may require that accumulated holiday credit be used before vacation leave is approved, except in those instances where this requirement would result in loss of accumulated vacation leave.

(7) If the employee requests to use their accrued holiday credit when granted a temporary leave of absence for legislative service in accordance with WAC 357-31-374(2).

(8) When a high-risk employee seeks an accommodation to protect themselves from the risk of exposure to an infectious or contagious disease and the employer determines no other accommodation is reasonable besides the use of leave.

AMENDATORY SECTION

### WAC 357-31-070 When is an employer required to approve an employee's request to use a personal holiday?

 (1) An employer must approve the use of a personal holiday as long as:

(a) The employee is entitled to a personal holiday in accordance with RCW 1.16.050 and WAC 357-31-055;

(b) The employee has requested the personal holiday in accordance with the employer's leave procedures; and

(c) The employee's absence does not interfere with the operational needs of the employer.

(2) At any time, an employer must allow an employee to use part or all of the personal holiday for any of the following reasons:

(a) To care for a minor/dependent child with a health condition that requires treatment or supervision;

(b) To care for a spouse, registered domestic partner, parent, parent-in-law or grandparent of the employee who has a serious health condition or an emergency health condition;

(c) If the employee or the employee's family member is a victim of domestic violence, sexual assault, or stalking as defined in RCW 49.76.020. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730;

(d) In accordance with WAC 357-31-373, for an employee to be with a spouse or registered domestic partner who is a member of the armed forces of the United States, National Guard, or reserves after the military spouse or registered domestic partner has been notified of an impending call or order to active duty, before deployment, or when the military spouse or registered domestic partner is on leave from deployment;

(e) If the employee requests to use their personal holiday as a supplemental benefit while receiving a partial wage replacement for paid family and/or medical leave under Title 50A RCW. Leave taken under this subsection may be subject to verification that the employee has been approved to receive benefits for paid family and/or medical leave under Title 50A RCW;

(f) When a high-risk employee((~~, as defined in RCW 49.17.062,~~)) seeks ((~~a reasonable~~)) an accommodation to protect themselves from the risk of exposure to an infectious or contagious disease and the employer determines no other accommodation is reasonable besides the use of leave; or

(g) If the employee requests to use their personal holiday when granted a temporary leave of absence for legislative service in accordance with WAC 357-31-374(2).

AMENDATORY SECTION

**WAC 357-31-100** **Must an employer have a policy for requesting and approving leave?** Each employer must develop a leave policy which specifies the procedure for requesting and approving all leave, as provided in the civil service rules. The employer's policy must:

(1) Allow an employee to use vacation leave without advance approval when the employee is requesting to use vacation leave to respond to family care emergencies or for an emergency health condition as provided in WAC 357-31-200 (1)(b);

(2) Allow an employee to use a reasonable amount of accrued leave or unpaid leave when the employee is a victim or has a family member, as defined in chapter 357-01 WAC, who is a victim of domestic violence, sexual assault or stalking as defined in RCW 49.76.020;

(3) Allow an employee to use accrued leave as a supplemental benefit as provided in WAC 357-31-248;

(4) Address advance notice from the employee when the employee is seeking leave under subsections (2) and (3) of this section. When advance notice cannot be given because of an emergency or unforeseen circumstances due to domestic violence, sexual assault or stalking, the employee or the employee's designee must give notice to the employer no later than the end of the first day that the employee takes such leave;

(5) Allow an employee to use sick leave for the purpose of parental leave to bond with a newborn, adoptive or foster child. The policy must state the total amount of sick leave allowed to be used beyond 18 weeks in accordance with WAC 357-31-133;

(6) Address overtime eligible employees that are required to provide medical certification or verification to their employer for the use of paid sick leave under chapter 296-128 WAC;

(7) Address overtime eligible employees that are required to provide reasonable notice to their employer for an absence from work for the use of paid sick leave under chapter 296-128 WAC;

(8) Address whether a general government employee may take additional accrued leave beyond 30 days in a two-year period to participate in life-giving procedures in accordance with RCW 41.06.570;

(9) Allow a high-risk employee((~~, as defined in RCW 49.17.062,~~)) seeking ((~~a reasonable~~)) an accommodation to protect themselves from the risk of exposure to an infectious or contagious disease to use their accrued leave ((~~and leave without pay~~)) if the employer determines no other accommodation is reasonable besides the use of leave. The employer may require that the employees request be supported by verification or documentation;

(10) Allow a high-risk employee seeking an accommodation to protect themselves from the risk of exposure to an infectious or contagious disease during a public health emergency to use leave without pay if the employer determines no other accommodation is reasonable besides the use of leave in accordance with RCW 49.17.062;

(11) Allow an employee to use unpaid leave when the employee is granted a temporary leave of absence for service in an elective office in accordance with WAC 357-31-374(1); ((~~and~~

~~(11)~~)) (12) Allow an employee to use unpaid and/or accrued paid leave when the employee is granted a temporary leave of absence for legislative service in accordance with WAC 357-31-374(2). The policy must state employees who request a leave of absence for legislative service must provide notice to the employer at least 30 days in advance for a regular legislative session or as soon as the session is proclaimed for a special session; and

(13) Address whether former employees who are re-employed after five years of their separation may be restored unused sick leave credits in accordance with WAC 357-31-160.

AMENDATORY SECTION

### WAC 357-31-130 When must an employer allow an employee to use their accrued sick leave?

The employer may require medical verification or certification of the reason for sick leave use in accordance with the employer's leave policy and in compliance with chapter 296-128 WAC.

Employers **must** allow the use of accrued sick leave under the following conditions:

(1) An employee's mental or physical illness, disability, injury or health condition that has incapacitated the employee from performing required duties; to accommodate the employee's need for medical diagnosis, care or treatment of a mental or physical illness, injury or health condition; or an employee's need for preventive medical care.

(2) By reason of exposure of the employee to a contagious disease when the employee's presence at work would jeopardize the health of others.

(3) When a high-risk employee((~~, as defined in RCW 49.17.062,~~)) seeks ((~~a reasonable~~)) an accommodation to protect themselves from the risk of exposure to an infectious or contagious disease and the employer determines no other accommodation is reasonable besides the use of leave.

(4) To allow an employee to provide care for a child who has been exposed to a contagious disease and is required to quarantine; or when a household or family member needs additional care, not covered by subsection (6) of this section, who has been exposed to a contagious disease and is required to quarantine.

(5) When the employee's place of business has been closed by order of a public official for any health-related reason, or when an employee's child's school or place of care has been closed for such reason.

(6) To allow an employee to provide care for a family member with a mental or physical illness, injury or health condition; care of a family member who needs medical diagnosis, care or treatment of a mental or physical illness, injury or health condition; or care for a family member who needs preventive medical care.

(7) For family care emergencies per WAC 357-31-290, 357-31-295, 357-31-300 and 357-31-305.

(8) When an employee is required to be absent from work to care for members of the employee's household or relatives of the employee or relatives of the employee's spouse/registered domestic partner who experience an illness or injury, not including situations covered by subsection (6) of this section.

(a) The employer must approve up to five days of accumulated sick leave each occurrence. Employers may approve more than five days.

(b) For purposes of this subsection, "relatives" is limited to spouse, registered domestic partner, child, grandchild, grandparent or parent.

(9) When requested as a supplemental benefit while receiving a partial wage replacement for paid family and/or medical leave under Title 50A RCW as provided in WAC 357-31-248. Leave taken under this subsection may be subject to verification that the employee has been approved to receive benefits for paid family and/or medical leave under Title 50A RCW.

(10) If the employee or the employee's family member, as defined in chapter 357-01 WAC, is a victim of domestic violence, sexual assault or stalking as defined in RCW 49.76.020. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730.

(11) In accordance with WAC 357-31-373, for an employee to be with a spouse or registered domestic partner who is a member of the armed forces of the United States, National Guard, or reserves after the military spouse or registered domestic partner has been notified of an impending call or order to active duty, before deployment, or when the military spouse or registered domestic partner is on leave from deployment.

(12) When an employee requests to use sick leave for the purpose of parental leave to bond with a newborn, adoptive or foster child for a period up to 18 weeks. Sick leave for this purpose must be taken during the first year following the child's birth or placement.

(13) If the employee requests to use sick leave when granted a temporary leave of absence for legislative service in accordance with WAC 357-31-374(2).

AMENDATORY SECTION

### WAC 357-31-200 When must an employer grant the use of vacation leave?

 (1) An employee's request to use vacation leave must be approved under the following conditions:

(a) As a result of the employee's serious health condition.

(b) To care for a spouse, registered domestic partner, parent, parent-in-law, or grandparent of the employee who has a serious health condition or an emergency health condition.

(c) To care for a minor/dependent child with a health condition that requires treatment or supervision.

(d) For parental leave as provided in WAC 357-31-460.

(e) If the employee or the employee's family member, as defined in chapter 357-01 WAC, is a victim of domestic violence, sexual assault, or stalking as defined in RCW 49.76.020. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730.

(f) In accordance with WAC 357-31-373, for an employee to be with a spouse or registered domestic partner who is a member of the armed forces of the United States, National Guard, or reserves after the military spouse or registered domestic partner has been notified of an impending call or order to active duty, before deployment, or when the military spouse or registered domestic partner is on leave from deployment.

(g) When requested as a supplemental benefit while receiving a partial wage replacement for paid family and/or medical leave under Title 50A RCW as provided in WAC 357-31-248.

(h) When a high-risk employee((~~, as defined in RCW 49.17.062,~~)) seeks ((~~a reasonable~~)) an accommodation to protect themselves from the risk of exposure to an infectious or contagious disease and the employer determines no other accommodation is reasonable besides the use of leave.

(i) When the employee requests to use their vacation leave when granted a temporary leave of absence for legislative service in accordance with WAC 357-31-374(2).

(2) In accordance with the employer's leave policy, approval for the reasons listed in (1)(a) through (g) above may be subject to verification that the condition or circumstance exists or that paid family and/or medical leave under Title 50A RCW has been approved.

AMENDATORY SECTION

### WAC 357-31-230 When must an employee be granted the use of accrued compensatory

(1) Employees must request to use accrued compensatory time in accordance with the employer's leave policy. When considering employees' requests, employers must consider their business needs and the wishes of the employee.

(2) An employee must be granted the use of accrued compensatory time to care for a spouse, registered domestic partner, parent, parent-in-law, or grandparent of the employee who has a serious health condition or an emergency health condition, or to care for a minor/dependent child with a health condition that requires treatment or supervision. In accordance with the employer's leave policy, approval of the employee's request to use accrued compensatory time may be subject to verification that the condition exists.

(3) An employee must be granted the use of accrued compensatory time if the employee or the employee's family member, as defined in chapter 357-01 WAC, is a victim of domestic violence, sexual assault, or stalking as defined in RCW 49.76.020. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730.

(4) In accordance with WAC 357-31-373, an employee must be granted the use of accrued compensatory time to be with a spouse or registered domestic partner who is a member of the armed forces of the United States, National Guard, or reserves after the military spouse or registered domestic partner has been notified of an impending call or order to active duty, before deployment, or when the military spouse or registered domestic partner is on leave from deployment.

(5) When requested as a supplemental benefit while receiving a partial wage replacement for paid family and/or medical leave under Title 50A RCW as provided in WAC 357-31-248. Leave taken under this subsection may be subject to verification that the employee has been approved to receive benefits for approved paid family and/or medical leave under Title 50A RCW.

(6) Compensatory time off may be scheduled by the employer during the final 60 days of a biennium.

(7) Employers may require that accumulated compensatory time be used before vacation leave is approved, except in those instances where this requirement would result in loss of accumulated vacation leave.

(8) A high-risk employee((~~, as defined in RCW 49.17.062,~~)) seeking ((~~a reasonable~~)) an accommodation to protect themselves from the risk of exposure to an infectious or contagious disease must be granted the use of accrued compensatory time if the employer determines no other accommodation is reasonable besides the use of leave.

(9) An employee must be granted the use of compensatory time when granted a temporary leave of absence for legislative service in accordance with WAC 357-31-374(2).

AMENDATORY SECTION

**WAC 357-31-327** **When must an employer grant leave without pay?**

An employer must grant leave without pay under the following conditions:

(1) When an employee who is a volunteer firefighter is called to duty to respond to a fire, natural disaster, or medical emergency;

(2) If the employee or the employee's family member, as defined in chapter 357-01 WAC, is a victim of domestic violence, sexual assault, or stalking as defined in RCW 49.76.020. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730; or

(3) In accordance with WAC 357-31-373, for an employee to be with a spouse or registered domestic partner who is a member of the armed forces of the United States, National Guard, or reserves after the military spouse or registered domestic partner has been notified of an impending call or order to active duty, before deployment, or when the military spouse or registered domestic partner is on leave from deployment.

(4) When an employee requests a day off for a reason of faith or conscience or an organized activity conducted under the auspices of a religious denomination, church, or religious organization in accordance with WAC 357-31-052.

(5) When an employee is on approved paid family and/or medical leave under Title 50A RCW. Leave taken under this subsection may be subject to verification that the employee has been approved to receive benefits for paid family and/or medical leave under Title 50A RCW and qualifies for employment protection in accordance with RCW 50A.35.010.

(6) When a high-risk employee((~~, as defined in RCW 49.17.062,~~)) seeks ((~~a reasonable~~)) an accommodation to protect themselves from the risk of exposure to an infectious or contagious disease during a public health emergency and the employer determines no other accommodation is reasonable besides the use of leave in accordance with RCW 49.17.062.

(7) When an employee is granted a temporary leave of absence for service in an elective office or for legislative service in accordance with WAC 357-31-374.

AMENDATORY SECTION

**WAC 357-31-330 For what reasons may an employer grant leave without pay?**

Leave without pay may be allowed for any of the following reasons in accordance with the employer's leave policy:

(1) For any reason leave with pay may be granted, as long as the conditions for leave with pay are met;

(2) Educational leave;

(3) Leave for government service in the public interest;

(4) Military leave of absence as required by WAC 357-31-370;

(5) Parental leave as required by WAC 357-31-460;

(6) Family care emergencies as required by WAC 357-31-295;

(7) Bereavement or condolence;

(8) Absence due to inclement weather as provided in WAC 357-31-255;

(9) To accommodate annual work schedules of employees occupying cyclic year positions as specified in WAC 357-19-295;

(10) Serious health condition of an eligible employee's child, spouse, registered domestic partner, or parent as required by WAC 357-31-525;

(11) Leave taken voluntarily to reduce the effect of an employer's layoff;

(12) Leave that is authorized in advance by the appointing authority as part of a plan to reasonably accommodate a person of disability;

(13) Employees receiving time loss compensation; or

(14) For an employee to protect themselves, or a relative or household member, from ((~~risks related to coronavirus disease 2019 (COVID-19)~~)) risk of exposure to an infectious or contagious disease. In determining whether to grant leave, an employer may consider current workload demands and business needs that require employees to perform their duties.

~~(15) For a high-risk employee seeking a reasonable accommodation to protect themselves from the risk of exposure to an infectious or contagious disease if the employer determines no other accommodation is reasonable besides the use of leave.~~

AMENDATORY SECTION

### WAC 357-31-567 When must an employer grant the use of recognition leave?

(1) An employee's request to use recognition leave must be approved under the following conditions:

(a) An employee must be granted the use of recognition leave if the employee or the employee's family member, as defined in chapter 357-01 WAC, is a victim of domestic violence, sexual assault, or stalking as defined in RCW 49.76.020. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730;

(b) In accordance with WAC 357-31-373, an employee must be granted the use of recognition leave to be with a spouse or registered domestic partner who is a member of the Armed Forces of the United States, National Guard, or Reserves after the military spouse or registered domestic partner has been notified of an impending call or order to active duty, before deployment, or when the military spouse or registered domestic partner is on leave from deployment;

(c) When requested as a supplemental benefit while receiving a partial wage replacement for paid family and/or medical leave under Title 50A RCW as provided in WAC 357-31-248. Leave taken under this subsection may be subject to verification that the employee has been approved to receive benefits for approved paid family and/or medical leave under Title 50A RCW;

(d) When a high-risk employee((~~, as defined in RCW 49.17.062,~~)) seeks ((~~a reasonable~~)) an accommodation to protect themselves from the risk of exposure to an infectious or contagious disease and the employer determines no other accommodation is reasonable besides the use of leave; and

(e) When an employee requests to use recognition leave when granted a temporary leave of absence for legislative service in accordance with WAC 357-31-374(2).

(2) In accordance with the employer's leave policy, approval for the reasons listed in (1)(a) and (b) above may be subject to verification that the condition or circumstance exists.

REFERENCE ONLY

**RCW**[**49.17.062**](http://app.leg.wa.gov/RCW/default.aspx?cite=49.17.062) **Employer—Public health emergency—Infectious or contagious diseases—Positive tests—Reporting, duty, and procedure.**

(1) During a public health emergency:

(a) An employer with more than 50 employees at a workplace or worksite, within 24 hours of confirming that 10 or more of their employees at the workplace or worksite in this state have tested positive for the infectious or contagious disease that is the subject of the public health emergency, must report the positive tests to the department in a form prescribed by the department.

(b) The department must consult with the department of health on the infectious or contagious disease that is the subject of the public health emergency:

(i) Before issuing regulatory guidance, rules, directives, or orders for health care facilities under this section; and

(ii) When investigating health care entities and issuing citations under this section.

(c) The report required in (a) of this subsection may not include any employee names or personal identifying information.

(2) The department may use the reports in subsection (1) of this section to identify potential clusters of infections at specific workplaces or industries and investigate workplaces for violations of this chapter.

(3) During a public health emergency, the name, email and residential addresses, license plate number, and other personally identifiable information regarding employees of the department are exempt from disclosure under chapter [**42.56**](http://app.leg.wa.gov/RCW/default.aspx?cite=42.56) RCW to the extent that the disclosure would violate their right to privacy or pose a risk to their personal safety or security.

(4) This section does not require an employee to disclose any medical condition or diagnosis to their employer.

(5) This section does not alter or eliminate any other reporting obligations an employer has under state or federal law.

(6)(a) During a public health emergency, no employer may discharge, permanently replace, or in any manner discriminate against an employee who is high risk as a result of the employee:

(i) Seeking accommodation that protects them from the risk of exposure to the infectious or contagious disease; or

(ii) If no accommodation is reasonable, utilizing all available leave options, including but not limited to leave without pay and unemployment insurance, until completion of the public health emergency or accommodation is made available.

(b) This subsection (6) does not alter or diminish any existing remedy available to the worker under current state or federal law.

(c) For the purposes of this subsection (6), "an employee who is high risk" means an employee who:

(i) Due to age or an underlying health condition, is at a high risk of severe illness from the disease that is the subject of the public health emergency, as defined by the centers for disease control and prevention; and

(ii) A medical provider has recommended the employee's removal from the workforce because of their high risk of severe illness.

(7) For the purposes of this section, "public health emergency" means a declaration or order concerning any infectious or contagious diseases, including a pandemic and is issued as follows:

(a) The president of the United States has declared a national or regional emergency that covers every county in the state of Washington; or

(b) The governor of Washington has declared a state of emergency under RCW [**43.06.010**](http://app.leg.wa.gov/RCW/default.aspx?cite=43.06.010)(12) in every county in the state.

**Item #6 – Exempt Return Rights**

**Staff note:** [ESHB 1361](https://app.leg.wa.gov/billsummary?BillNumber=1361&Year=2023&Initiative=false) passed during the 2023 legislative session, Chapter 148,Laws of 2023, effective July 23, 2023. Section 3 of this bill amends RCW 41.06.070, Exemptions to chapter – Right of reversion, to add subsection 6 which suspends a persons right to reversion during the pendency of an workplace investigation if the allegations being investigated could result in a finding of gross misconduct or malfeasance.

We are proposing to amend WAC 357-04-030, 357-19-195 and 357-19-200 state that if an employee exercises their return to classified service from exempt service, the right of return may not be exercised if the employee is terminated from the exempt position for gross misconduct or malfeasance, or during the pendency of an investigation if the employee has been given written notice that they are the subject of an active workplace investigation which may result in a finding of gross misconduct or malfeasance. We are also proposing to create WAC 357-19-197 to require the receiving employer to verify the employee was the subject of an active pending workplace investigation of which the employee was given written notice, and which may result in a finding of gross misconduct or malfeasance or was not terminated from the exempt position for gross misconduct or malfeasance; and the employee was not terminated from the exempt position for gross misconduct or malfeasance. For purposes of these rules, “written notice” includes notice sent by email to the employee’s work email address; and “pendency of an investigation” lasts until the employer has taken final appropriate action based on the finding of the investigation.

The highlighted yellow text reflects changes since July 11, 2023 Rules Meeting based on stakeholder feedback and consultation with OFM Legal.

Lead: Brittany Trujillo

AMENDATORY SECTION

**WAC 357-04-030** **What right does an employee have to return to the classified service from exempt service?** As required by RCW 41.06.070, any employee having permanent status in a classified position who accepts an appointment in an exempt position has the right to return to classified service in accordance with WAC 357-19-195, 357-19-200, and 357-19-205. ((~~As long as the employee was not terminated from the exempt position for gross misconduct or malfeasance,~~)) The employee has the right to return to the highest class of position in which the employee previously held permanent status or to a position of similar nature and salary. The right of return may not be exercised if the employee is terminated from the exempt position for gross misconduct or malfeasance, or during the pendency of an investigation if the employee has been given written notice that they are the subject of an active workplace investigation which may result in a finding of gross misconduct or malfeasance.

For purposes of this section:

(1) "Written notice" includes notice sent by email to the employee's work email address; and

(2) "Pendency of an investigation" lasts until the employer has taken final appropriate action based on the finding of the investigation.

AMENDATORY SECTION

**WAC 357-19-195** **If a permanent employee in a classified position accepts an appointment to an exempt position, what is the employee's right to return to a position in the classified service?** A permanent employee who accepts an appointment to an exempt position has the right to return to classified service at any time ((~~as long as the employee was not~~)). However, the right of return may not be exercised if the employee is terminated from an exempt position for gross misconduct or malfeasance, or during the pendency of an investigation if the employee has been given written notice that they are the subject of an active workplace investigation which may result in a finding of gross misconduct or malfeasance.

The employee's right is to a position in the highest class in which the employee previously held permanent status or to a position of similar nature and salary. The return right is to the most recent employer with which permanent status in the highest class was held. A position in the highest class does not necessarily mean return to the most recent employer.

If upon an employee being returned to a classified position there are fewer positions than there are employees entitled to such positions, the employer's layoff procedure applies.

For purposes of this section:

(1) "Written notice" includes notice sent by email to the employee's work email address; and

(2) "Pendency of an investigation" lasts until the employer has taken final appropriate action based on the finding of the investigation.

NEW SECTION

**WAC 357-19-197** **What information must a receiving employer verify when a permanent employee exercises their right to return to classified service from an exempt appointment?**

(1) When a permanent employee exercises their right to return to classified service from an exempt appointment in accordance with RCW 41.06.070, the receiving employer must verify:

(a) The employee is not the subject of an active pending workplace investigation of which the employee was given written notice, and which may result in a finding of gross misconduct or malfeasance or was not terminated from the exempt position for gross misconduct or malfeasance; and

(b) The employee was not terminated from the exempt position for gross misconduct or malfeasance.

(2) For purposes of this section:

(a) "Written notice" includes notice sent by email to the employee's work email address; and

(b) "Pendency of an investigation" lasts until the employer has taken final appropriate action based on the finding of the investigation.

AMENDATORY SECTION

**WAC 357-19-200** **When must an employee apply to return to classified service from exempt service?** Employees exercising return rights should provide as much advance notice as is practicable to the receiving employer. The employee must apply to return to classified service within ((~~thirty~~)) 30 calendar days of:

|  |  |
| --- | --- |
| • | Separation from employment in the exempt position, or |
| • | Separation from employment in any subsequent exempt position if there is no break in state service of more than ((~~thirty~~)) 30 calendar days between initial and subsequent exempt appointments. |

Employees who apply for return to classified service within ((~~thirty~~)) 30 calendar days must be returned to a position at the time of separation from the exempt appointment or the time of application, whichever is later.

The right of return may not be exercised if the employee is terminated from the exempt position for gross misconduct or malfeasance, or during the pendency of an investigation if the employee has been given written notice that they are the subject of an active workplace investigation which may result in a finding of gross misconduct or malfeasance.

For purposes of this section:

(1) "Written notice" includes notice sent by email to the employee's work email address; and

(2) "Pendency of an investigation" lasts until the employer has taken final appropriate action based on the finding of the investigation.

REFERENCE ONLY

**WAC 357-58-450 How does a WMS employee return from an exempt appointment?**

When an exempt employee has the right to return under WAC [**357-04-030**](http://app.leg.wa.gov/WAC/default.aspx?cite=357-04-030) to a WMS position the return will be accomplished as provided in WAC [**357-19-195**](http://app.leg.wa.gov/WAC/default.aspx?cite=357-19-195), [**357-19-200**](http://app.leg.wa.gov/WAC/default.aspx?cite=357-19-200), and [**357-58-132**](http://app.leg.wa.gov/WAC/default.aspx?cite=357-58-132).