# Explanation of Rule Items #1 through #4

RCW 41.06.070 previously exempted both part-time and temporary employees, as defined by the Office of Financial Management, from state civil service rules (Title 357 WAC). In 2018, the legislature amended RCW 41.06.070 by removing part-time employees from the exemption; only temporary employees, as defined by OFM, are now exempt from civil service rules. Title 357 WAC does not distinguish between part-time and temporary employees for higher education employers; therefore, OFM worked with both higher education employers and union organizations to amend Title 357 WAC to align with the new law. The rule amendments redefine temporary higher education appointments and expand the current general government nonpermanent rules to include higher education employers. These rules were proposed for permanent adoption at the June 10th Special Director’s Meeting. David Schumacher, OFM Director, adopted these rules on permanent basis and these rules will be effective on January 1, 2022.

Based on the rule changes mentioned above, it was determined that additional rule amendments are required in order for higher education employers to implement these changes. The proposed rule items #1 through #4 below are stemming from the part-time/temporary/nonpermanent rule changes.

**Item #1 Part-Time Definitions**

**Staff note:** We are proposing to amend WAC 357-01-229 so that it only applies to general government employees in order to maintain the current state for this workforce. We are proposing to create a new section (WAC 357-01-2290) to distinguish between the two different part-time employment types (scheduled and non-scheduled) at institutions of higher education. This differentiation is needed in order to maintain the current state for employees who are scheduled and to newly defined part-time employment for non-scheduled employees. Historically higher education employees were considered part-time if they were assigned to work more than half-time (50%) and less than that required for a full-time (100%) .The non-scheduled definition (WAC 357-01-2290(2)) is required because historically higher education employees who worked less than half-time (50%) were exempt from civil service rules.

Lead: Patricia Foshaug

AMENDATORY SECTION

**WAC 357-01-229 Part-time general government employee.**

A((~~n~~)) general government employee who is scheduled to work less than that required for a full-time employee.

New Section

**WAC 357-01-2290 Part-time higher education employee.**

A higher education employee who works less than that required for a full-time employee. A part-time employee may be considered one of the following:

(1) Scheduled: An employee who is assigned a schedule with a fixed number of working hours in a workweek that is less than full-time equivalent.

(2) Non-scheduled: An employee who is not assigned a fixed schedule or amount of working time in a workweek.

**ITEM #2 – Holiday Compensation for part-time higher education institution employees**

**Staff note:**  We are proposing to amend WACs 357-31-010, 357-31-025**,** 357-31-030 and 357-31-065 to align with the new part-time definition (WAC 357-01-2290) for higher education employers. We are proposing the following changes to these rules:

* Amend WAC 357-31-010(5) to reference WAC 357-01-2290(1) in order to maintain current state for existing part-time employees and to also apply to non-permanent employees who are assigned an FTE.
* Amend WAC 357-31-010 to create a new subsection (6) to address how holiday compensation is determined for part-time employees who do not have a fixed schedule (as defined in WAC 357-01-2290(2)).
* Create WAC 357-31-021 to state holiday compensation for part-time higher education employees who do not have a set schedule (as defined in WAC 357-01-2290(2)) will be prorated.
* Amend WAC 357-31-025(2) to reference WAC 357-01-2290(1) in order to maintain current state for existing part-time employees and to also apply to non-permanent employees who are assigned an FTE.
* Amend WAC 357-31-025 to create a new subsection (3) to address how many hours part-time higher education employees who do not have a fixed schedule (as defined in WAC 357-01-2290(2)) are compensated for on a holiday.
* Amend WAC 357-31-030(3) to reference WAC 357-01-2290(1) in order to maintain current state for existing part-time employees and to also apply to non-permanent employees who are assigned an FTE.
* Amend WAC 357-31-030 to create a new subsection (4) to address what happens when a holiday falls on a part-time higher education employee’s scheduled day off when the employee does not have a fixed scheduled (as defined in WAC 357-01-229(2)).
* Amend WAC 357-31-065(2) to reference WAC 357-01-2290(1) in order to maintain current state for existing part-time employees and to also apply to non-permanent employees who are assigned an FTE.
* Amend WAC 357-31-065 to create a new subsection (3) to address how many hours part-time higher education employees who do not have a fixed schedule (as defined in WAC 357-01-229(2)) are compensated when taking a personal holiday.

Lead: Patricia Foshaug

AMENDATORY SECTION

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

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

(a) For at least eighty nonovertime hours during the month of the holiday; or

(b) For the entire work shift preceding the holiday.

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

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

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

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

(5) Part-time higher education employees as defined in WAC 357-01-2290(1) who satisfy the requirements of subsection (2) of this section are entitled to the number of paid hours on a holiday that their monthly schedule bears to a full-time schedule. Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this subsection.

(6)Part-time higher education employees as defined in WAC 357-01-2290(2) who are in pay status during the month of the holiday qualify for holiday pay on a pro rata basis in accordance with WAC 357-31-021 except that part-time employees hired during the month of the holiday will not receive compensation for holidays that occur prior to their hire date.

### FOR REFERENCE ONLY

### WAC 357-31-020 For general government part-time employees, how is holiday compensation prorated? Compensation for holidays (including personal holiday) for part-time general government employees will be proportionate to the number of hours in pay status in the month to that required for full-time employment, excluding all holiday hours. Time spent on temporary layoff as provided in WAC [357-46-063](https://apps.leg.wa.gov/wac/default.aspx?cite=357-46-063) is considered time in pay status for the purpose of this section.

New Section

### WAC 357-31-021 For part-time higher education employees, how is holiday compensation prorated?

Compensation for holidays (including personal holiday) for part-time higher education employees who meet the definition in WAC 357-01-2290(2) will be proportionate to the number of hours in pay status in the same month of the holiday to that required for full-time employment, excluding all holiday hours. Part-time employees hired during the month of the holiday will not receive compensation for holidays that occur prior to their hire date.

### FOR REFERENCE ONLY

### WAC 357-31-045 If an employee resigns or is dismissed or separated during a month in which there is a holiday, will he/she be compensated for the holiday?

### Employees who resign or are dismissed or separated before a holiday do not qualify for holidays occurring after the effective date of resignation, dismissal or separation.

AMENDATORY SECTION

**WAC 357-31-025 How many hours are higher education employees compensated for on a holiday?**

When a holiday as designated under WAC 357-31-005 falls on a higher education employee's scheduled work day:

(1) Full-time employees receive eight hours of regular holiday pay per holiday. Any differences between the scheduled shift for the day and eight hours may be adjusted by use of vacation leave, use of accumulation of compensatory time as appropriate, or leave without pay.

(2) Part-time higher education employees as defined in WAC 357-01-2290(1) are entitled to the number of paid hours on a holiday that their monthly schedule bears to a full-time schedule. Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this subsection.

(3) Part-time higher education employees as defined in WAC 357-01-2290(2) are entitled to the number of paid hours on a holiday on a pro rata basis in accordance with WAC 357-31-021.

AMENDATORY SECTION

**WAC** **357-31-030 What happens when a holiday falls on an employee's scheduled day off?**

When a holiday (as identified in WAC 357-31-005) falls on an employee's regularly scheduled day off, the employer must provide that employee an in-lieu of holiday as follows:

(1) For a full-time employee who is eligible for holiday compensation, the employer may:

(a) Designate the prior or the following work day as the holiday;

(b) Provide the employee with equivalent paid time off; or

(c) Allow the employee to request an alternate work day to observe as the holiday. The employer may require that the employee request an alternate day off within the same pay period as the holiday.

(2) For a part-time general government employee who is eligible for holiday compensation, the employer must compensate the employee on a pro rata basis in accordance with WAC 357-31-020.

(3) For a part-time higher education employee as defined in WAC 357-01-2290(1) who is eligible for holiday compensation, the employee is entitled to the equivalent paid time off for the holiday that their monthly schedule bears to a full-time schedule.

(4) For a part-time higher education employee as defined in WAC 357-01-2290(2) who is eligible for holiday compensation, the employer must compensate the employee on a pro rata basis in accordance with WAC 357-31-021.

AMENDATORY SECTION

**WAC 357-31-065 How many hours are higher education employees compensated for when taking a personal holiday?**

(1) Full-time employees receive eight hours of regular holiday pay on a personal holiday. Any differences between the scheduled shift for the day and eight hours may be adjusted by use of vacation leave, use or accumulation of compensatory time as appropriate, or leave without pay.

(2) Part-time higher education employees as defined in WAC 357-01-2290(1) are entitled to the number of paid hours on a personal holiday that their monthly schedule bears to a full-time schedule.

(3) Part-time higher education employees as defined in WAC 357-01-2290(2) are entitled the number of paid hours on a personal holiday on a pro rata basis in accordance with WAC 357-31-021.

**Item #3 – Sick Leave for part-time higher education employees**

**Staff note:** We are proposing to amend WACs 357-31-115 and 357-31-121 and to create a new section, WAC 357-31-026, to align with the new part-time definition (WAC 357-01-2290)for higher education employers. We are proposing the following changes:

* Amend WAC 357-31-115(3) to reference WAC 357-01-2290(1) in order to maintain current state for existing part-time higher education employees and to also apply to higher education non-permanent employees who are assigned an FTE.
* Amend WAC 357-31-115 to create a new subsection (4) to address how many hours of sick leave a part-time higher education employee who does not have a fixed schedule (as defined in WAC 357-01-2290(2)) earns each month.
* Amend WAC 357-31-121(2) to reference WAC 357-01-2290(1) in order to maintain current state for existing higher education part-time employees and to also apply to non-permanent employees who are assigned an FTE. Based off of rule feedback received, we are proposing change the calculation of sick leave for overtime eligible (full-time and part-time employees as defined in WAC 357-01-2290(1)) from accruing a minimum of one hour to every 40 hours worked to state these employees will earn a monthly accrual proportionate to the number of hours in pay status, in the month to that required for full-time employment. **Note: This WAC applies only to employees who hold a schedule, not to employees that do not hold a schedule because they would not be submitting leave without pay.**
* Create WAC 357-31-026 to address how vacation and sick leave accrual is prorated for part-time higher-education employees who do not have a fixed schedule (as defined in WAC 357-01-2290(2)).

The highlighted yellow text are changes since July 13, 2021 Rules Meeting.

Lead: Patricia Foshaug

New Section

### WAC 357-31-026 For higher education part-time employees, how is leave accrual prorated?

### Vacation and sick leave accruals for part-time higher education employees as defined in WAC 357-01-2290(2) will be proportionate to the number of hours in pay status in the month to that required for full-time employment. Sick leave accruals must not exceed eight hours in a month.

AMENDATORY SECTION

**WAC 357-31-115 How many hours of sick leave does an employee earn each month?**

(1) Full-time employees earn eight hours of sick leave per month.

(2) Part-time general government employees earn sick leave on a pro rata basis in accordance with WAC 357-31-125.

(3) Part-time higher education employees as defined in WAC 357-01-2290(1) earn sick leave on the same pro rata basis that their appointment bears to a full-time appointment. Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this subsection.

(4) Part-time higher education employees as defined in WAC 357-01-2290(2) earn sick leave on a pro rata basis in accordance with WAC 357-31-026.

AMENDATORY SECTION

**WAC 357-31-121 Do overtime eligible employees accrue sick leave if they have taken leave without pay during the month?**

(1) Full-time overtime eligible general government employees who are in pay status for less than eighty hours in a month, earn a monthly accrual proportionate to the number of hours in pay status, in the month to that required for full-time employment. Sick leave accruals must not exceed eight hours in a month. Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this section.

(2) Full-time and part-time (part-time employee as defined in WAC 357-01-2290(1)) overtime eligible higher education employees with leave without pay exceeding eighty hours in a month (prorated for part-time) ~~will accrue a minimum of one hour for every forty hours worked.~~ will earn a monthly accrual proportionate to the number of hours in pay status, in the month to that required for full-time employment. Sick leave accruals must not exceed eight hours in a month.

**Item #4 –Vacation Leave for part-time higher education employees**

**Staff note:** We are proposing to amend WACs 357-31-170 and 357-31-175 to align with the new part-time definition (WAC 357-01-2290) for higher education employers. We are proposing the following changes:

* Amend WAC 357-31-166 to add subsection (4). This is to provide clarity on what employment is not credited towards the vacation leave accrual rate. For example, if an employee works in a 1050 appointment that time is not credited towards the rate of vacation leave accrual. This same language is included in WAC 357-31-165 which applies to general government employees.
* Amend WAC 357-31-170(2) to reference WAC 357-01-2290(1) in order to maintain current state for existing higher education part-time employees and to also apply to non-permanent employees who are assigned an FTE.
* Amend WAC 357-31-170 to create a new subsection (3) to address at what rate part-time higher education employees who do not have a fixed schedule (as defined in WAC 357-01-2290(2)) earn each month.
* Amend WAC 357-31-175(2) to reference WAC 357-01-2290(1) in order to maintain current state for existing higher education part-time employees and to also apply to non-permanent employees who are assigned an FTE. **Note: This applies only to employees who hold a schedule, not to employees that do not hold a schedule because they would not be submitting leave without pay in accordance with WAC 357-31-180 (as referenced below).** We are also proposing to amend subsection WAC 357-31-175(2) to mirror the changes to sick leave when i-1433 was implemented. This was oversite when the sick leave rules were updated from 10 working days to 80 hours as a result of i-1433. This change is based of feedback received from stakeholders.
* Amend WAC 357-31-180(2) based on the feedback we received to mirror the changes to sick leave when i-1433 was implemented. This was oversite when the sick leave rules were updated from 10 working days to 80 hours as a result of i-1433. This change is based of feedback received from stakeholders. Note: At the July rules meeting this was only a reference.

The highlighted yellow text are changes since July 13, 2021 Rules Meeting.

Lead: Patricia Foshaug

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 - Twelve days (eight hours per month);

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

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

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

(e) During the eighth, ninth, and tenth years of total state employment - Sixteen days (ten hours, forty minutes per month);

(f) During the eleventh year of total state employment - Seventeen days (eleven hours, twenty minutes per month);

(g) During the twelfth year of total state employment - Eighteen days (twelve hours per month);

(h) During the thirteenth year of total state employment - Nineteen days (twelve hours, forty minutes per month);

(i) During the fourteenth year of total state employment - Twenty days (thirteen hours, twenty minutes per month);

(j) During the fifteenth year of total state employment - Twenty-one days (fourteen hours per month);

(k) During the sixteenth and succeeding years of total state employment - Twenty-two days (fourteen hours, forty 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: 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) Employment exempt by the provisions of WAC [**357-04-040**](https://apps.leg.wa.gov/wac/default.aspx?cite=357-04-040), [**357-04-045**](https://apps.leg.wa.gov/wac/default.aspx?cite=357-04-045), [**357-04-050**](https://apps.leg.wa.gov/wac/default.aspx?cite=357-04-050), [**357-04-055**](https://apps.leg.wa.gov/wac/default.aspx?cite=357-04-055) is not credited for the purposes of computing the rate of vacation leave accrual.

AMENDATORY SECTION

**WAC 357-31-170 At what rate do part-time employees accrue vacation leave?**

(1) Part-time general government employees accrue vacation leave hours on a pro rata basis in accordance with WAC 357-31-125.

(2) Part-time higher education employees as defined in WAC 357-01-2290(1) accrue on the same pro rata basis that their appointment bears to a full-time appointment. Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this subsection.

(3) Part-time higher education employees as defined in WAC 357-01-2290(2) earn vacation leave on a pro rata basis in accordance with WAC 357-31-026.

AMENDATORY SECTION

**WAC 357-31-175 Do employees accrue vacation leave if they have taken leave without pay during the month?**

(1) Full-time general government employees who are in pay status for less than eighty nonovertime hours in a month do not earn a monthly accrual of vacation leave. Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this subsection.

(2) Full-time and part-time (part-time employee as defined in WAC 357-01-2290(01)) higher education employees ((~~who have more than ten working days of~~)) with leave without pay exceeding eighty hours in a month (prorated for part-time) do not earn a monthly accrual of vacation leave. Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this subsection.

AMENDATORY SECTION

**WAC 357-31-180 When an employee has taken leave without pay during the month is the employee's rate of accrual adjusted for the leave without pay?**

Leave without pay taken for military leave of absence without pay, for temporary layoff as provided in WAC 357-46-063, or for scheduled mandatory periods of leave without pay for employees in cyclic year positions do not affect the rate at which employees accrue vacation leave. For all other periods of leave without pay, the following applies:

(1) When a general government employee takes leave without pay which exceeds fifteen consecutive calendar days, the employee's anniversary date and unbroken service date are adjusted in accordance with WAC 357-31-345. These adjustments affect the rate at which an employee accrues vacation leave.

(2) When a higher education employee takes more than ((~~ten working days~~)) eighty hours (prorated for part-time) of leave without pay, that month does not qualify as a month of employment under WAC 357-31-165. Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this subsection.

**Item #5 LWOP Impacts on Anniversary, Unbroken and Periodic Increment Dates for General Government Employees \*New\***

**Staff note:** We are proposing to amend the following WACs to remove the requirement for a general government employer to adjust an employee’s anniversary date, unbroken service date and periodic increment date (PID) for any period of leave without pay (LWOP) which exceeds fifteen consecutive calendar days.

The purpose of these proposed amendments is to address the following:

* Equal treatment between employees who submit LWOP and hourly employees (who are not required to submit LWOP).
* Equal treatment between hourly employees across the enterprise if an agency requires an hourly employee to submit LWOP.

“Hourly employees (who positively time reporting) do not need to submit LWOP; **although some do when required by agency policy**. If an hourly employee does not work for period of 15 consecutive days or more, and no LWOP was submitted, **then typically** their anniversary, unbroken, and PID dates are not adjusted.

* Easier for Employers to administer, not requiring employers to decipher which employees need to have anniversary, unbroken service and PID dates manual adjusted.
* Less manual date adjustments for Employers. Manual date adjustments are a pain for employers. There is not an easy way to identify and count the LWOP days (because LWOP is reported as hours not days), so it is a manual and time-consuming process. (This is different than adjusting seniority dates for actual worked because a general government employer can run a report that provides the number of actual hours worked in a given time period).
* Easier application of anniversary and PID for transfers between General Government non-represented and represented employees.
* Easier application of anniversary and PID for transfers between General Government and Institutions of Higher Education.

The changes below in highlighted yellow and in red font are new proposed changes to the version that was emailed Friday, August 6, 2021. Instead of repealing subsection 1 which would result in a full-time employee receiving a full vacation leave accrual in the months they have less than 80 non-overtime hours, we believe this should be prorated instead to mirror how leave accrual is pro-rated for part-time GG employees. This would mean that these employees would earn a monthly accrual proportionate to the number of hours in pay status, in the month to that required for full-time employment.

Lead: Caroline Kirk

AMENDATORY SECTION

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

For employees of general government agencies, anniversary date is the unbroken service date plus prior state service ~~minus leave without pay when it exceeds fifteen consecutive calendar days as provided in WAC~~[**~~357-31-345~~**](https://apps.leg.wa.gov/WAC/default.aspx?cite=357-31-345). The anniversary date is used to determine when vacation leave over two hundred forty hours is lost and for computing the rate of vacation leave accrual beginning with the fifth year of total state employment.

AMENDATORY SECTION

**WAC 357-01-348 Unbroken service date (general government).**

The date a general government employee began current continuous state service. This date is used for computing the rate of vacation leave accrual through and including the employee's fourth year of continuous service. ~~The unbroken service date is adjusted by leave without pay when it exceeds fifteen consecutive calendar days as provided in WAC~~[**~~357-31-345~~**](https://apps.leg.wa.gov/WAC/default.aspx?cite=357-31-345)~~.~~

AMENDATORY SECTION

### WAC 357-28-055 How is the periodic increment date determined for a general government employee?

(1) For a general government employee appointed to a position before July 1, 2005, the employee's periodic increment date as of June 30, 2005, is retained.

(2) For a general government employee appointed to a position on or after July 1, 2005, whose base salary is set at the minimum of the salary range, the periodic increment date is six months from the date of appointment.

(3) For a general government employee appointed to a position on or after July 1, 2005, whose base salary is set above the minimum but below step L of the salary range, the periodic increment date is twelve months from date of appointment.

(4) A general government employee appointed to a position on or after July 1, 2005, whose base salary is set at step L of the range will not have a periodic increment date set. If the employee later receives a new appointment, the periodic increment date will be set at that time, as described in this section.

(5) Once a general government employee's periodic increment date is set, it remains the same unless:

(a) The periodic increment date is advanced or postponed in accordance with WAC [**357-28-070**](https://apps.leg.wa.gov/WAC/default.aspx?cite=357-28-070); or

~~(b) The periodic increment date is adjusted for leave without pay in accordance with WAC~~[**~~357-31-345~~**](https://apps.leg.wa.gov/WAC/default.aspx?cite=357-31-345)~~.~~

(~~c~~b) The periodic increment date is reset in accordance with subsections (2) and (3) of this section when an employee is rehired after a break in service.

AMENDATORY SECTION

### WAC 357-31-175 Do employees accrue vacation leave if they have taken leave without pay during the month?

~~(1) Full-time general government employees who are in pay status for less than eighty nonovertime hours in a month do not earn a monthly accrual of vacation leave. Time spent on temporary layoff as provided in WAC~~[**~~357-46-063~~**](https://apps.leg.wa.gov/WAC/default.aspx?cite=357-46-063)~~is considered time in pay status for the purpose of this subsection.~~ (1) Full-time general government employees who are in pay status for less than eighty nonovertime hours in a month ~~do not~~ earn a monthly accrual of vacation leave proportionate to the number of hours in pay status, in the month to that required for full-time employment. Time spent on temporary layoff as provided in WAC [**357-46-063**](https://apps.leg.wa.gov/WAC/default.aspx?cite=357-46-063) is considered time in pay status for the purpose of this subsection.

(2) Full-time and part-time (part-time employee as defined in WAC 357-01-2290(01)) higher education employees ((~~who have more than ten working days of~~)) with leave without pay exceeding eighty hours in a month (prorated for part-time) do not earn a monthly accrual of vacation leave. Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this subsection.

AMENDATORY SECTION

### WAC 357-31-180 When an employee has taken leave without pay during the month is the employee's rate of accrual adjusted for the leave without pay?

Leave without pay taken for military leave of absence without pay, for temporary layoff as provided in WAC [**357-46-063**](https://apps.leg.wa.gov/WAC/default.aspx?cite=357-46-063), or for scheduled mandatory periods of leave without pay for employees in cyclic year positions do not affect the rate at which employees accrue vacation leave. For all other periods of leave without pay, the following applies:

~~(1) When a general government employee takes leave without pay which exceeds fifteen consecutive calendar days, the employee's anniversary date and unbroken service date are adjusted in accordance with WAC~~[**~~357-31-345~~**](https://apps.leg.wa.gov/WAC/default.aspx?cite=357-31-345)~~. These adjustments affect the rate at which an employee accrues vacation leave.~~

(2) When a higher education employee takes more than ((~~ten working days~~)) eighty hours (prorated for part-time) of leave without pay, that month does not qualify as a month of employment under WAC 357-31-165. Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this subsection.

AMENDATORY SECTION

**WAC 357-31-345 How does leave without pay affect a general government employee's ~~anniversary date, unbroken service date, periodic increment date, and~~ seniority date?**

~~(1) For a general government employee, the anniversary date, unbroken service date, and periodic increment date is adjusted for any period of leave without pay which exceeds fifteen consecutive calendar days except when the leave without pay is taken for:~~

~~(a) Military leave of absence without pay as provided in WAC~~[**~~357-31-370~~**](https://app.leg.wa.gov/WAc/default.aspx?cite=357-31-370)~~;~~

~~(b) Compensable work-related injury or illness leave;~~

~~(c) Government service leave not to exceed two years and one month;~~

~~(d) Educational leave, contingent upon successful completion of the coursework; and/or~~

~~(e) Voluntarily reducing the effect of an employer's layoff.~~

~~(2) When an employee is on leave without pay for more than fifteen consecutive calendar days and the absence is not due to one of the reasons listed above, the employee's anniversary date, unbroken service date and periodic increment date must be moved forward in an amount equal to the number of calendar days on leave without pay.~~

(3) For a general government employee the seniority date is adjusted for leave without pay in accordance with WAC [**357-46-055**](https://app.leg.wa.gov/WAc/default.aspx?cite=357-46-055).

### FOR REFERENCE ONLY

### WAC 357-46-055 How is a general government employee's seniority date determined?

(1) For a full-time general government employee, the seniority date is the employee's most recent date of hire into state service (including exempt service) as adjusted for any period of leave without pay which exceeds fifteen consecutive calendar days except when the leave without pay is taken for:

(a) Military leave as provided in WAC [**357-31-370**](https://app.leg.wa.gov/WAc/default.aspx?cite=357-31-370);

(b) Compensable work-related injury or illness leave;

(c) Government service leave not to exceed two years and one month;

(d) Educational leave, contingent upon successful completion of the coursework; and/or

(e) Reducing the effects of layoff.

(f) When an employee is on leave without pay for more than fifteen consecutive calendar days and the absence is not due to one of the reasons listed above, the employee's seniority date must be moved forward in an amount equal to the number of calendar days on leave without pay.

(2) For a part-time general government employee, the seniority date is calculated by determining the number of actual hours worked and/or in paid status, excluding compensatory time off. Actual hours worked includes overtime hours regardless of whether or not the employee receives monetary payment or compensatory time for the hours worked. Time spent in leave without pay status is not credited unless the leave without pay is taken for:

(a) Military leave as provided in WAC [**357-31-370**](https://app.leg.wa.gov/WAc/default.aspx?cite=357-31-370);

(b) Compensable work-related injury or illness leave;

(c) Government service leave not to exceed two years and one month;

(d) Educational leave, contingent upon successful completion of the coursework; and/or

(e) Reducing the effects of layoff.

**Item #6 LWOP Impacts on vacation leave accrual date and periodic increment date for Higher Education Employees \*New\***

**Staff note:** We are proposing to amend the following WACs to remove the requirement for a higher education employer to adjust an employee’s vacation leave accrual date and PID for any period of leave without pay (LWOP) which ten working days consecutive calendar days.

The purpose of these proposed amendments is to address the following:

* Equal treatment between employees who submit LWOP and hourly employees (who are not required to submit LWOP because they positively report their time)
* Less manual date adjustments for Employers. Manual date adjustments are a pain for employers. There is not an easy way to identify and count the LWOP days (because LWOP is reported as hours not days), so it is a manual and time-consuming process.
* Easier application of anniversary and PID dates for transfers between General Government and Institutions of Higher Education.

The changes below in highlighted yellow and in red font are new proposed changes to the version that was emailed Friday, August 6, 2021. Instead of repealing subsection 2 which would result in a full-time and part-time schedule employee to receive a full vacation leave accrual in the months they have more than 80 hours LWOP (prorated for part-time scheduled). We believe this should be prorated instead to mirror the proposed rule 31-026 for part-time HE employees. This would mean that these employees would earn a monthly accrual proportionate to the number of hours in pay status, in the month to that required for full-time employment.

Lead: Brandy Chinn

### FOR REFERENCE ONLY

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

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

AMENDATORY SECTION

**WAC 357-28-056 How is the periodic increment date determined for a higher education employee?**

(1) For a higher education employee appointed to a position before July 1, 2005, the employee's periodic increment date as of June 30, 2005, is retained.

(2) For a higher education employee appointed to a position on or after July 1, 2005, whose base salary is set at the minimum of the salary range, the periodic increment date is six months from the date of appointment.

(3) For a higher education employee appointed to a position on or after July 1, 2005, whose base salary is set above the minimum but below step L of the salary range, the periodic increment date is twelve months from date of appointment.

(4) Once a higher education employee's periodic increment date is set, it remains the same unless:

(a) The periodic increment date is advanced or postponed in accordance with WAC [**357-28-070**](https://apps.leg.wa.gov/WAC/default.aspx?cite=357-28-070); or

(b) The employee is appointed to another position with a different salary range maximum. Upon subsequent appointment, the provisions of subsection (2) and (3) of this section apply.

(c) The periodic increment date is reset in accordance with subsections (2) and (3) of this section when an employee is rehired after a break in service.

~~(d) The periodic increment date is adjusted for leave without pay in accordance with WAC~~[~~357-31-346~~](https://apps.leg.wa.gov/WAC/default.aspx?cite=357-31-346)~~.~~

AMENDATORY SECTION

### WAC 357-31-175 Do employees accrue vacation leave if they have taken leave without pay during the month?

(1) Full-time general government employees who are in pay status for less than eighty nonovertime hours in a month do not earn a monthly accrual of vacation leave. Time spent on temporary layoff as provided in WAC [**357-46-063**](https://apps.leg.wa.gov/WAC/default.aspx?cite=357-46-063) is considered time in pay status for the purpose of this subsection.

~~(2) Full-time and part-time (part-time employee as defined in WAC 357-01-2290(01)) higher education employees ((who have more than ten working days of)) with leave without pay exceeding eighty hours in a month (prorated for part-time) do not earn a monthly accrual of vacation leave. Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this subsection.~~ (2) Full-time and part-time (part-time employee as defined in WAC 357-01-2290(01)) higher education employees ((~~who have more than ten working days of)~~) with leave without pay exceeding eighty hours in a month (prorated for part-time) ~~do not~~ earn a monthly accrual of vacation leave proportionate to the number of hours in pay status in the month to that required for full-time employment. Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this subsection.

AMENDATORY SECTION

**WAC 357-31-180 When an employee has taken leave without pay during the month is the employee's rate of accrual adjusted for the leave without pay?**

Leave without pay taken for military leave of absence without pay, for temporary layoff as provided in WAC [**357-46-063**](https://apps.leg.wa.gov/WAC/default.aspx?cite=357-46-063), or for scheduled mandatory periods of leave without pay for employees in cyclic year positions do not affect the rate at which employees accrue vacation leave. For all other periods of leave without pay, the following applies:

(1) When a general government employee takes leave without pay which exceeds fifteen consecutive calendar days, the employee's anniversary date and unbroken service date are adjusted in accordance with WAC [**357-31-345**](https://apps.leg.wa.gov/WAC/default.aspx?cite=357-31-345). These adjustments affect the rate at which an employee accrues vacation leave.

~~(2) When a higher education employee takes more than ((ten working days)) eighty hours (prorated for part-time) of leave without pay, that month does not qualify as a month of employment under WAC 357-31-165. Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this subsection.~~

REPEAL

**~~WAC 357-31-346 Does leave without pay affect a higher education employee's periodic increment date?~~**

~~For a higher education employee, the periodic increment date will be moved forward by one month when any period of leave without pay which exceeds ten working days in a month except when the leave without pay is taken for:~~

~~(1) Military leave of absence without pay as provided in WAC~~[**~~357-31-370~~**](https://apps.leg.wa.gov/WAC/default.aspx?cite=357-31-370)~~;~~

~~(2) Compensable work-related injury or illness leave; and/or~~

~~(3) Scheduled periods of leave without pay for cyclic appointments in accordance with WAC~~[**~~357-19-295~~**](https://apps.leg.wa.gov/WAC/default.aspx?cite=357-19-295)~~.~~

**Item #7 Leave with Pay and Quarantine \*New\***

**Staff note:** We are proposing to amend the following WACs to remove the requirement for a general government employer to grant leave with pay (LWP) when an employee is required by Centers of Disease Control and Prevention (CDC) guidelines to self-quarantine due to the novel coronavirus disease 2019 (COVID-19), but is otherwise healthy and has not tested positive for COVID-19 and the employer has determined the employee does not have the option to telework. Repeal WAC 357-31-326(4) to remove the option for higher education employers to grant LWP when an employee is required by CDC guidelines to self-quarantine due to COVID-19, but is otherwise healthy and has not tested positive for COVID-19 and the employer has determined the employee does not have the option to telework.

These proposed amendments are to align chapter 357-31 WAC with the progression of the COVID-19 response resulting from a change in circumstances including increased availability of testing and vaccine along with updated CDC requirements/guidelines for preventing the spread of COVID-19. Based on the updated guidelines and the availability and effectiveness of the COVID-19 vaccine, leave with pay is no longer needed for individuals to self-quarantine.

This was filed with the Code Reviser’s Office as expedited rule making (CR-105) on August 9, 2021, as WSR 21-17-041. This rule is being proposed under the expedited rule making process that will eliminate the need for Office of Financial Management to hold a public hearing, if you would like to object to this use of the expedited rule making process you must express your objections in writing as reflected on page 2 of WSR 21-17-041 or email the Rules Team at rules@ofm.wa.gov for assistance. Below are the links to this document along with the language as provided in OTS 3225.1

Lead: Caroline Kirk

AMENDATORY SECTION

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

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

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

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

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

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

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

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

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

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

(5) ((~~When a general government employee is required by Centers for Disease Control and Prevention guidelines to self-quarantine due to novel coronavirus disease 2019 (COVID-19), but is otherwise healthy and has not tested positive for COVID-19, and the employer has determined the employee does not have the option to telework. An employer may subsequently determine that a telework option exists for the employee and direct the employee to telework. If the employee is directed to telework under this subsection and declines to do so, the employee must use other available leave options. The employee may receive up to fourteen days of leave with pay under this subsection. This subsection is effective until the expiration of proclamation 20-05, issued February 29, 2020, by the governor and declaring an emergency in the state of Washington, or any amendment thereto, whichever is later. An employer may require written verification, including verification submitted electronically, confirming the circumstances warranting the self-quarantine or inability to telework, which may include a signed affidavit from the employee or any other information requested by the employer.~~

~~(6)~~)) To allow a general government employee to take a reasonable amount of leave with pay for the employee to travel and receive each dose of COVID-19 immunization if the vaccine is not offered at the workplace. An employer may authorize leave in excess of one day in extraordinary circumstances, such as to accommodate travel where the vaccine is unavailable locally. The employer may require that the request for leave be supported by documentation, which may include proof of the vaccination. This subsection is effective until the expiration of proclamation 20-05, issued February 29, 2020, by the governor and declaring an emergency in the state of Washington, or any amendment thereto, whichever is later. This subsection no longer applies if state or federal law otherwise provides paid leave specifically for employees to receive the COVID-19 immunization.

AMENDATORY SECTION

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

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

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

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

(4) ((~~When a higher education employee is required by Centers for Disease Control and Prevention guidelines to self-quarantine due to novel coronavirus disease 2019 (COVID-19), but is otherwise healthy and has not tested positive for COVID-19, and the employer has determined the employee does not have the option to telework. An employer may subsequently determine that a telework option exists for the employee and direct the employee to telework. If the employee is directed to telework under this subsection and declines to do so, the employee must use other available leave options. The employee may receive up to fourteen days of leave with pay under this subsection. This subsection is effective until the expiration of proclamation 20-05, issued February 29, 2020, by the governor and declaring an emergency in the state of Washington, or any amendment thereto, whichever is later. An employer may require written verification, including verification submitted electronically, confirming the circumstances warranting the self-quarantine or inability to telework, which may include a signed affidavit from the employee or any other information requested by the employer.~~

~~(5)~~)) A general government employer may grant a reasonable amount of leave with pay for an employee to receive each dose of COVID-19 immunization if the vaccine is offered at the workplace. An employer may authorize leave in excess of one day for receipt of the vaccine in extraordinary circumstances, such as to accommodate travel where the vaccine is unavailable locally. The employer may require that the request for leave be supported by documentation, which may include proof of the vaccination. This subsection is effective until the expiration of proclamation 20-05, issued February 29, 2020, by the governor and declaring an emergency in the state of Washington, or any amendment thereto, whichever is later. This subsection no longer applies if state or federal law otherwise provides paid leave specifically for employees to receive the COVID-19 immunization.

((~~(6)~~)) (5) A higher education employer may grant a reasonable amount of leave with pay for an employee to receive each dose of COVID-19 immunization if the vaccine is not offered at the workplace. An employer may authorize leave in excess of one day for receipt of the vaccine in extraordinary circumstances, such as to accommodate travel where the vaccine is unavailable locally. The employer may require that the request for leave be supported by documentation, which may include proof of the vaccination. This subsection is effective until the expiration of proclamation 20-05, issued February 29, 2020, by the governor and declaring an emergency in the state of Washington, or any amendment thereto, whichever is later. This subsection no longer applies if state or federal law otherwise provides paid leave specifically for employees to receive the COVID-19 immunization.