# Item #1 – Wildfire Rest and Recuperation Leave \*NEW

**Staff note**: We are proposing to:

* Amend WAC 357-31-326(3) to state Department of Natural Resources may grant **two** additional days of leave with pay for rest and recuperation after **14** consecutuve calendar days. If more than one day of leave with pay is granted, they must be taken consecutively.
* Amend WAC 357-28-265 to add subsection 3 to state leave with pay during the employee’s regular work schedule is not considered time worked except when leave is taken on the employee’s regularly scheduled workday for the purpose of rest and recuperation in accordance with WAC 357-31-326.

These changes are stemming from the 2025-2027 tentative collective bargaining agreements for represented employees. A policy decision was made to extend this leave to non-represented employees provided that this leave is funded in the 2025 enacted budget.

The highlighted green text reflects proposed amendments to WAC 357-31-326 as proposed in rule item #2. (Wildfire disaster leave)

The highlighted yellow text reflects proposed amendments to WAC 357-31-326 as proposed in rule item #4. (Pandemic vaccination leave)

Lead: Katie Linehan

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 10 consecutive calendar days performing emergency work under an incident command system, defined in RCW [**38.52.010**](http://app.leg.wa.gov/RCW/default.aspx?cite=38.52.010). The employer may grant ~~one~~two additional days of leave with pay for rest and recuperation after ~~21~~ 14 consecutive calendar days. If more than one day of leave with pay is granted, they must be taken consecutively. ~~performing emergency work under an incident command system~~.

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

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

(6) An employer may grant up to 24 hours of leave with pay per occurrence to employees who are experiencing extraordinary or severe impacts of a wildfire disaster in the event the governor declares a state of emergency in any area of the state of Washington where the employee resides. Examples of extraordinary or severe impacts are displacement from their home temporarily or permanently through evacuation, or significant damage or loss.

The employer may require verification of the extraordinary or severe impacts regarding the use of leave with pay. In order to ensure continued essential services to the public, the employer may consider emergency operations requirements and/or program and staffing replacement requirements in the approval and scheduling of leave under this subsection. Leave under this subsection must be used within 3 months from the date the state of emergency was declared.

AMENDATORY SECTION

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

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

(1) When leave is taken to travel and receive each dose or booster of COVID-19 vaccine in accordance with WAC [**357-31-325**](http://app.leg.wa.gov/WAC/default.aspx?cite=357-31-325); or

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

(3) When leave is taken on the employee’s regularly scheduled workday for the purpose of rest and recuperation in accordance with WAC 357-31-326.

# Item #2 – Wildfire Disaster Leave \*NEW

**Staff note**: We are proposing to amend WAC 357-31-326 to add subsection (6) to allow an employer to grant up to 24 hours of leave with pay for each occurrence to employees who are experiencing extraordinary or severe impacts of a wildfire disaster in the event the Governor declares a state of emergency.

Effective August 24, 2023, WAC 357-31-255, What types of leave may an employee use when absent from work or arriving late to work because of inclement weather, was adopted on an emergency basis to allow an employee leave with pay due to experiencing extraordinary or severe impacts from the 2023 wildfires in response to proclamation 23-05. WAC 357-31-255 currently states “what types of leave may an employee use when absent from work or arriving late to work because of inclement weather”. Since the employee could take wildfire leave mid-day (not just absent from work or arriving late), a decision was made to amend WAC 357-31-326 to avoid any confusion.

These changes are stemming from the 2025-2027 tentative collective bargaining agreements for represented employees. A policy decision was made to extend this leave to non-represented employees provided that this leave is funded in the 2025 enacted budget.

The highlighted blue text reflects proposed amendments to WAC 357-31-326 as proposed in rule item #1. (Wildfire R&R)

The highlighted yellow text reflects proposed amendments to WAC 357-31-326 as proposed in rule item #4. (Pandemic vaccination leave)

Lead: Inna Livingston

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 10 consecutive calendar days performing emergency work under an incident command system, defined in RCW [**38.52.010**](http://app.leg.wa.gov/RCW/default.aspx?cite=38.52.010). The employer may grant ~~one~~two additional days of leave with pay for rest and recuperation after ~~21~~ 14 consecutive calendar days. If more than one day of leave with pay is granted, they must be taken consecutively. ~~performing emergency work under an incident command system~~.

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

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

(6) An employer may grant up to 24 hours of leave with pay per occurrence to employees who are experiencing extraordinary or severe impacts of a wildfire disaster in the event the governor declares a state of emergency in any area of the state of Washington where the employee resides. Examples of extraordinary or severe impacts are displacement from their home temporarily or permanently through evacuation, or significant damage or loss.

The employer may require verification of the extraordinary or severe impacts regarding the use of leave with pay. In order to ensure continued essential services to the public, the employer may consider emergency operations requirements and/or program and staffing replacement requirements in the approval and scheduling of leave under this subsection. Leave under this subsection must be used within 3 months from the date the state of emergency was declared

# **Item #3 – Bereavement Leave** \*NEW

**Staff note:** We are proposing to:

* Amend WAC 357-31-250 to expand the number of days employees are entitled to receive paid bereavement leave from three to five days and to expand the reasons in which an employee is entitled to receive bereavement leave to include loss of pregnancy. We are proposing to add subsection 4 to define loss of pregnancy.
* Amend WAC 357-01-172(3) to expand the definition of family member for bereavement leave reasons provided in WAC 357-31-250.
* Amend WAC 357-01-072 to expand the definition of child for bereavement leave reasons provided in WAC 357-31-250.
* Amend WAC 357-31-248 to add loss of pregnancy if the employee uses bereavement leave as a supplemental benefit if the employee is receiving a partial wage replacement for paid family and/or medical leave.

These changes are stemming from the 2025-2027 tentative collective bargaining agreements for represented employees. A policy decision was made to extend this leave to non-represented employees provided that this leave is funded in the 2025 enacted budget.

Lead: Inna Livingston

AMENDATORY SECTION

## WAC 357-31-250 Are employees entitled to paid bereavement leave?

1. If an employee's family member or household member dies, or for a loss of pregnancy, the employee is entitled to ~~three~~ five days of paid bereavement leave. An employee may request less than ~~three~~ five days of paid bereavement leave.

(2) In accordance with the employer's leave policy, the employer may require verification of the ~~family member's or household member's death~~ paid bereavement leave reasons provided in subsection (1) of this section.

(3) In addition to paid bereavement leave, the employer may approve an employee's request to use paid leave (accrued compensatory time, accrued holiday credit, sick leave, vacation leave, and/or a personal holiday) or to take leave without pay for purposes of bereavement, including for a loss of pregnancy.

(4) For the purpose of this section, for a loss of pregnancy, a qualifying pregnancy is defined as the pregnancy of the employee, including as a surrogate, or employee parent-to-be, including through surrogacy or adoption, where the employee would have been the parent.

AMENDATORY SECTION

## WAC 357-01-172 Family members.

(1) 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.

(2) For the purpose of domestic violence, sexual assault, or stalking provisions within Title 357 WAC, in addition to subsection (1) of this section, 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 [**49.76.020**](http://app.leg.wa.gov/RCW/default.aspx?cite=49.76.020).

(3) For the purpose of using accrued sick leave under WAC [357-31-130](http://app.leg.wa.gov/WAC/default.aspx?cite=357-31-130), and paid bereavement leave under WAC [357-31-250](http://app.leg.wa.gov/WAC/default.aspx?cite=357-31-130) in addition to subsection (1) of this section, family member also includes any individual who regularly resides in the employee's home or where the relationship creates an expectation that the employee care for the person, and that individual depends on the employee for care. Family member does not include an individual who simply resides in the same home with no expectation that the employee cares for the individual.

AMENDATORY SECTION

## WAC 357-01-072 Child.

A biological, adopted, foster child, stepchild, legal ward, or a child of a person standing *in loco parentis*, a child of a legal guardian, or a child of a de facto parent, regardless of age or dependency status. For the purpose of using accrued sick leave under WAC [357-31-130](http://app.leg.wa.gov/WAC/default.aspx?cite=357-31-130), and for bereavement leave under WAC 357-31-250 child also includes a child's spouse or child's registered domestic partner.

AMENDATORY SECTION

## WAC 357-31-248 May an employee use vacation leave, sick leave, personal holiday, compensatory time, holiday credit, recognition leave, bereavement leave, or holiday pay as a supplemental benefit during a period when the employee is receiving partial wage replacement for paid family and/or medical leave under Title [50A](http://app.leg.wa.gov/RCW/default.aspx?cite=50A) RCW?

An employee may use vacation leave, sick leave, personal holiday, compensatory time, holiday credit, recognition leave, bereavement leave, or holiday pay during a period when the employee is receiving partial wage replacement under Title [**50A**](http://app.leg.wa.gov/RCW/default.aspx?cite=50A) RCW as a supplemental benefit. The use of bereavement leave as a supplemental benefit is limited to the death of an employee's family member, ~~or~~ household member, or a loss of pregnancy in accordance with WAC [357-31-250](http://app.leg.wa.gov/WAC/default.aspx?cite=357-31-250).

Item #4 – Pandemic Vaccination Leave \***NEW**

**Staff note:** We are proposing to:

* Repeal WAC 357-31-325(5), WAC 357-31-326(4), and WAC 357-31-326(5) to remove leave with pay for an employee to receive and/or travel to receive a COVID-19 vaccination;
* Amend WAC 357-31-325(5) to require an employer to grant leave with pay to allow an employee to take a reasonable amount of leave with pay for the employee to travel and receive the Centers for Disease Control and Prevention (CDC)-recommended vaccine(s) during a declared state of emergency due to a pandemic if the vaccine is not offered at the workplace;
* Amend WAC 357-28-265 to state: “leave with pay during the employee’s regular work schedule is not considered time worked except for when leave is taken to travel and receive the CDC-recommended vaccine(s)”.

These changes are stemming from the 2025-2027 tentative collective bargaining agreements for represented employees. A policy decision was made to extend this leave to non-represented employees provided that this leave is funded in the 2025 enacted budget.

The highlighted blue text reflects proposed amendments to WAC 357-31-326 as proposed in rule item #1. (Wildfire R&R)

The highlighted green text reflects proposed amendments to WAC 357-31-326 as proposed in rule item #2. (Wildfire disaster leave)

Lead: Inna Livingston

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](http://app.leg.wa.gov/WAC/default.aspx?cite=357-31-320) and for the following reasons:

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

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

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

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

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

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

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

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

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

(5) To allow an employee to take a reasonable amount of leave with pay for the employee to travel and receive the Centers for Disease Control and Prevention (CDC)- recommended vaccine(s) during a declared state of emergency due to a pandemic 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 CDC-recommended vaccines are unavailable locally. The employer may require that the request for leave be supported by documentation, which may include proof of the vaccination.

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 10 consecutive calendar days performing emergency work under an incident command system, defined in RCW [**38.52.010**](http://app.leg.wa.gov/RCW/default.aspx?cite=38.52.010). The employer may grant ~~one~~two additional days of leave with pay for rest and recuperation after ~~21~~ 14 consecutive calendar days. If more than one day of leave with pay is granted, they must be taken consecutively. ~~performing emergency work under an incident command system~~.

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

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

(6) An employer may grant up to 24 hours of leave with pay per occurrence to employees who are experiencing extraordinary or severe impacts of a wildfire disaster in the event the governor declares a state of emergency in any area of the state of Washington where the employee resides. Examples of extraordinary or severe impacts are displacement from their home temporarily or permanently through evacuation, or significant damage or loss.

The employer may require verification of the extraordinary or severe impacts regarding the use of leave with pay. In order to ensure continued essential services to the public, the employer may consider emergency operations requirements and/or program and staffing replacement requirements in the approval and scheduling of leave under this subsection. Leave under this subsection must be used within 3 months from the date the state of emergency was declared.

AMENDATORY SECTION

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

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

~~(1)~~ ~~W~~when leave is taken to travel and receive the Centers for Disease Control and Prevention - recommended ~~each dose or booster of COVID-19~~ vaccine(s) in accordance with WAC [**357-31-325**](http://app.leg.wa.gov/WAC/default.aspx?cite=357-31-325)(5).~~; or~~

~~(2) When leave is taken to receive each dose or booster of COVID-19 vaccine in accordance with WAC~~[**~~357-31-326~~**](http://app.leg.wa.gov/WAC/default.aspx?cite=357-31-326)~~.~~

# Item #5 – Sick Leave – Clean-up \*NEW

**Staff note:** We are proposing a housekeeping change to WAC 357-31-130(5); removing a displaced comma**.**

Lead: Inna Livingston

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**](http://app.leg.wa.gov/WAC/default.aspx?cite=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 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.

(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 health-related reason~~,~~ or after the declaration of an emergency by a local or state government or agency, or by the federal government.

(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**](http://app.leg.wa.gov/WAC/default.aspx?cite=357-31-290), [**357-31-295**](http://app.leg.wa.gov/WAC/default.aspx?cite=357-31-295), [**357-31-300**](http://app.leg.wa.gov/WAC/default.aspx?cite=357-31-300) and [**357-31-305**](http://app.leg.wa.gov/WAC/default.aspx?cite=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**](http://app.leg.wa.gov/RCW/default.aspx?cite=50A) RCW as provided in WAC [**357-31-248**](http://app.leg.wa.gov/WAC/default.aspx?cite=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**](http://app.leg.wa.gov/RCW/default.aspx?cite=50A) RCW.

(10) If the employee or the employee's family member, as defined in chapter [**357-01**](http://app.leg.wa.gov/WAC/default.aspx?cite=357-01) WAC, is a victim of domestic violence, sexual assault or stalking as defined in RCW [**49.76.020**](http://app.leg.wa.gov/RCW/default.aspx?cite=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**](http://app.leg.wa.gov/WAC/default.aspx?cite=357-31-730).

(11) In accordance with WAC [**357-31-373**](http://app.leg.wa.gov/WAC/default.aspx?cite=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).

# Item #6 – Return to Work

**Staff note:** [House Bill 1197](https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Flawfilesext.leg.wa.gov%2Fbiennium%2F2023-24%2FPdf%2FBills%2FSession%2520Laws%2FHouse%2F1197.SL.pdf%3Fq%3D20230531121642&data=05%7C01%7Ckatie.linehan%40ofm.wa.gov%7C9cb6c9648edc4d2e3e0108db94750073%7C11d0e217264e400a8ba057dcc127d72d%7C0%7C0%7C638267002459665032%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C3000%7C%7C%7C&sdata=91ZiismbPPZYhJIiwqJcKtr8%2BbGnJWRCLxJiiLARNM8%3D&reserved=0) passed during the 2023 legislative session (HB 1197), Chapter 171, Laws of 2023, effective July 1, 2025, and applies retroactively. Section 7 of this bill amends [RCW 51.32.090](https://app.leg.wa.gov/rcw/default.aspx?cite=51.32.090) to replace all references of a physician or licensed advanced registered nurse practitioner to an attending provider. Section 2 of the bill created [RCW 51.08.200](https://app.leg.wa.gov/RCW/default.aspx?cite=51.08.200) to define an attending provider. [RCW 41.06.490](https://apps.leg.wa.gov/rcw/default.aspx?cite=41.06.490)(2) requires the OFM Director to adopt rules that “provide for eligibility in the return-to-work program, for a minimum of two years from the date the temporary disability commenced, for any permanent employee who is receiving compensation under RCW 51.32.090 and who is, by reason of his or her temporary disability, unable to return to his or her previous work, but is physically capable of carrying out work of a lighter or modified nature”.

We are proposing to amend [WAC 357-19-530](https://app.leg.wa.gov/WAC/default.aspx?cite=357-19-530)(3), to reflect gender-neutral pronouns and to replace the reference to “a physician or licensed mental health professional” with “an attending provider as defined in RCW 51.08.200”.

Lead: Katie Linehan

AMENDATORY SECTION

## **WAC 357-19-530** Who is eligible to participate in the employer's return-to-work program?

Employees are eligible to participate in the return-to-work employer's program under the following conditions:

(1) The employee is a permanent employee.

(2) The employee is receiving compensation under RCW [**51.32.090**](http://app.leg.wa.gov/RCW/default.aspx?cite=51.32.090).

(3) The employee has a temporary disability which makes ~~him/her~~ them temporarily unable to return to ~~his or her~~ their previous work, but who is capable of carrying out work of a lighter or modified nature as evidenced by a written statement from an ~~physician or licensed mental health professional.~~ attending provider as defined in RCW 51.08.200.

REFERENCE ONLY

**RCW**[**41.06.490**](http://app.leg.wa.gov/RCW/default.aspx?cite=41.06.490) **State employee return-to-work program.**

In addition to the rules adopted under RCW [**41.06.150**](http://app.leg.wa.gov/RCW/default.aspx?cite=41.06.150), the director shall adopt rules establishing a state employee return-to-work program. The program shall, at a minimum:

(1) Direct each agency to adopt a return-to-work policy. The program shall allow each agency program to take into consideration the special nature of employment in the agency;

(2) Provide for eligibility in the return-to-work program, for a minimum of two years from the date the temporary disability commenced, for any permanent employee who is receiving compensation under RCW [**51.32.090**](http://app.leg.wa.gov/RCW/default.aspx?cite=51.32.090) and who is, by reason of his or her temporary disability, unable to return to his or her previous work, but who is physically capable of carrying out work of a lighter or modified nature;

(3) Require each agency to name an agency representative responsible for coordinating the return-to-work program of the agency;

(4) Provide that applicants receiving appointments for classified service receive an explanation of the return-to-work policy;

(5) Require training of supervisors on implementation of the return-to-work policy, including but not limited to assessment of the appropriateness of the return-to-work job for the employee; and

(6) Coordinate participation of applicable employee assistance programs, as appropriate.

REFERENCE ONLY

**RCW**[**51.08.200**](http://app.leg.wa.gov/RCW/default.aspx?cite=51.08.200) **Attending provider. *(Effective July 1, 2025.)***

"Attending provider" means a person who is a member of the health care provider network established under RCW [51.36.010](http://app.leg.wa.gov/RCW/default.aspx?cite=51.36.010), is treating injured workers within the person's scope of practice, and is licensed under Title [18](http://app.leg.wa.gov/RCW/default.aspx?cite=18) RCW in one of the following professions: Physicians, chapter [18.71](http://app.leg.wa.gov/RCW/default.aspx?cite=18.71) RCW; osteopathy, chapter [18.57](http://app.leg.wa.gov/RCW/default.aspx?cite=18.57) RCW; chiropractic, chapter [18.25](http://app.leg.wa.gov/RCW/default.aspx?cite=18.25) RCW; naturopathy, chapter [18.36A](http://app.leg.wa.gov/RCW/default.aspx?cite=18.36A) RCW; podiatric medicine and surgery, chapter [18.22](http://app.leg.wa.gov/RCW/default.aspx?cite=18.22) RCW; dentistry, chapter [18.32](http://app.leg.wa.gov/RCW/default.aspx?cite=18.32) RCW; optometry, chapter [18.53](http://app.leg.wa.gov/RCW/default.aspx?cite=18.53) RCW; in the case of claims solely for mental health conditions, psychology, chapter [18.83](http://app.leg.wa.gov/RCW/default.aspx?cite=18.83) RCW; physician assistants, chapter [18.71A](http://app.leg.wa.gov/RCW/default.aspx?cite=18.71A) RCW; and licensed advanced registered nurse practitioners, chapter [18.79](http://app.leg.wa.gov/RCW/default.aspx?cite=18.79) RCW.

REFERENCE ONLY

**RCW**[**51.32.090**](http://app.leg.wa.gov/RCW/default.aspx?cite=51.32.090) **Temporary total disability—Partial restoration of earning power—Return to available work—When employer continues wages—Limitations—Finding—Rules. *(Effective July 1, 2025.)***

(1) When the total disability is only temporary, the schedule of payments contained in RCW [**51.32.060**](http://app.leg.wa.gov/RCW/default.aspx?cite=51.32.060) (1) and (2) shall apply, so long as the total disability continues.

(2) Any compensation payable under this section for children not in the custody of the injured worker as of the date of injury shall be payable only to such person as actually is providing the support for such child or children pursuant to the order of a court of record providing for support of such child or children.

(3)(a) As soon as recovery is so complete that the present earning power of the worker, at any kind of work, is restored to that existing at the time of the occurrence of the injury, the payments shall cease. If and so long as the present earning power is only partially restored, the payments shall:

(i) For claims for injuries that occurred before May 7, 1993, continue in the proportion which the new earning power shall bear to the old; or

(ii) For claims for injuries occurring on or after May 7, 1993, equal eighty percent of the actual difference between the worker's present wages and earning power at the time of injury, but: (A) The total of these payments and the worker's present wages may not exceed one hundred fifty percent of the average monthly wage in the state as computed under RCW [**51.08.018**](http://app.leg.wa.gov/RCW/default.aspx?cite=51.08.018); (B) the payments may not exceed one hundred percent of the entitlement as computed under subsection (1) of this section; and (C) the payments may not be less than the worker would have received if (a)(i) of this subsection had been applicable to the worker's claim.

(b) No compensation shall be payable under this subsection (3) unless the loss of earning power shall exceed five percent.

(c) The prior closure of the claim or the receipt of permanent partial disability benefits shall not affect the rate at which loss of earning power benefits are calculated upon reopening the claim.

(4)(a) The legislature finds that long-term disability and the cost of injuries is significantly reduced when injured workers remain at work following their injury. To encourage employers at the time of injury to provide light duty or transitional work for their workers, wage subsidies and other incentives are made available to employers insured with the department.

(b) Whenever the employer of injury requests that a worker who is entitled to temporary total disability under this chapter be certified by the attending provider as able to perform available work other than his or her usual work, the employer shall furnish to the attending provider, with a copy to the worker, a statement describing the work available with the employer of injury in terms that will enable the attending provider to relate the activities of the job to the worker's disability. The attending provider shall then determine whether the worker is able to perform the work described. The worker's temporary total disability payments shall continue until the worker is released by his or her attending provider for the work, and begins the work with the employer of injury. If the work thereafter comes to an end before the worker's recovery is sufficient in the judgment of his or her attending provider to permit him or her to return to his or her usual job, or to perform other available work offered by the employer of injury, the worker's temporary total disability payments shall be resumed. Should the available work described, once undertaken by the worker, impede his or her recovery to the extent that in the judgment of his or her attending provider he or she should not continue to work, the worker's temporary total disability payments shall be resumed when the worker ceases such work.

(c) To further encourage employers to maintain the employment of their injured workers, an employer insured with the department and that offers work to a worker pursuant to this subsection (4) shall be eligible for reimbursement of the injured worker's wages for light duty or transitional work equal to fifty percent of the basic, gross wages paid for that work, for a maximum of sixty-six workdays within a consecutive twenty-four month period. In no event may the wage subsidies paid to an employer on a claim exceed ten thousand dollars. Wage subsidies shall be calculated using the worker's basic hourly wages or basic salary, and no subsidy shall be paid for any other form of compensation or payment to the worker such as tips, commissions, bonuses, board, housing, fuel, health care, dental care, vision care, per diem, reimbursements for work-related expenses, or any other payments. An employer may not, under any circumstances, receive a wage subsidy for a day in which the worker did not actually perform any work, regardless of whether or not the employer paid the worker wages for that day.

(d) If an employer insured with the department offers a worker work pursuant to this subsection (4) and the worker must be provided with training or instruction to be qualified to perform the offered work, the employer shall be eligible for a reimbursement from the department for any tuition, books, fees, and materials required for that training or instruction, up to a maximum of one thousand dollars. Reimbursing an employer for the costs of such training or instruction does not constitute a determination by the department that the worker is eligible for vocational services authorized by RCW [**51.32.095**](http://app.leg.wa.gov/RCW/default.aspx?cite=51.32.095) and \* [**51.32.099**](http://app.leg.wa.gov/RCW/default.aspx?cite=51.32.099).

(e) If an employer insured with the department offers a worker work pursuant to this subsection (4), and the employer provides the worker with clothing that is necessary to allow the worker to perform the offered work, the employer shall be eligible for reimbursement for such clothing from the department, up to a maximum of four hundred dollars. However, an employer shall not receive reimbursement for any clothing it provided to the worker that it normally provides to its workers. The clothing purchased for the worker shall become the worker's property once the work comes to an end.

(f) If an employer insured with the department offers a worker work pursuant to this subsection (4) and the worker must be provided with tools or equipment to perform the offered work, the employer shall be eligible for a reimbursement from the department for such tools and equipment and related costs as determined by department rule, up to a maximum of two thousand five hundred dollars. An employer shall not be reimbursed for any tools or equipment purchased prior to offering the work to the worker pursuant to this subsection (4). An employer shall not be reimbursed for any tools or equipment that it normally provides to its workers. The tools and equipment shall be the property of the employer.

(g) An employer may offer work to a worker pursuant to this subsection (4) more than once, but in no event may the employer receive wage subsidies for more than sixty-six days of work in a consecutive twenty-four month period under one claim. An employer may continue to offer work pursuant to this subsection (4) after the worker has performed sixty-six days of work, but the employer shall not be eligible to receive wage subsidies for such work.

(h) An employer shall not receive any wage subsidies or reimbursement of any expenses pursuant to this subsection (4) unless the employer has completed and submitted the reimbursement request on forms developed by the department, along with all related information required by department rules. No wage subsidy or reimbursement shall be paid to an employer who fails to submit a form for such payment within one year of the date the work was performed. In no event shall an employer receive wage subsidy payments or reimbursements of any expenses pursuant to this subsection (4) unless the worker's attending provider has restricted him or her from performing his or her usual work and the worker's attending provider has released him or her to perform the work offered.

(i) Payments made under (b) through (g) of this subsection are subject to penalties under RCW [**51.32.240**](http://app.leg.wa.gov/RCW/default.aspx?cite=51.32.240)(5) in cases where the funds were obtained through willful misrepresentation.

(j) Once the worker returns to work under the terms of this subsection (4), he or she shall not be assigned by the employer to work other than the available work described without the worker's written consent, or without prior review and approval by the worker's attending provider. An employer who directs a claimant to perform work other than that approved by the attending provider and without the approval of the worker's attending provider shall not receive any wage subsidy or other reimbursements for such work.

(k) If the worker returns to work under this subsection (4), any employee health and welfare benefits that the worker was receiving at the time of injury shall continue or be resumed at the level provided at the time of injury. Such benefits shall not be continued or resumed if to do so is inconsistent with the terms of the benefit program, or with the terms of the collective bargaining agreement currently in force.

(l) In the event of any dispute as to the validity of the work offered or as to the worker's ability to perform the available work offered by the employer, the department shall make the final determination pursuant to an order that contains the notice required by RCW [**51.52.060**](http://app.leg.wa.gov/RCW/default.aspx?cite=51.52.060) and that is subject to appeal subject to RCW [**51.52.050**](http://app.leg.wa.gov/RCW/default.aspx?cite=51.52.050).

(5) An employer's experience rating shall not be affected by the employer's request for or receipt of wage subsidies.

(6) The department shall create a Washington stay-at-work account which shall be funded by assessments of employers insured through the state fund for the costs of the payments authorized by subsection (4) of this section and for the cost of creating a reserve for anticipated liabilities. Employers may collect up to one-half the fund assessment from workers.

(7) No worker shall receive compensation for or during the day on which injury was received or the three days following the same, unless his or her disability shall continue for a period of fourteen consecutive calendar days from date of injury: PROVIDED, That attempts to return to work in the first fourteen days following the injury shall not serve to break the continuity of the period of disability if the disability continues fourteen days after the injury occurs.

(8) Should a worker suffer a temporary total disability and should his or her employer at the time of the injury continue to pay him or her the wages which he or she was earning at the time of such injury, such injured worker shall not receive any payment provided in subsection (1) of this section during the period his or her employer shall so pay such wages: PROVIDED, That holiday pay, vacation pay, sick leave, or other similar benefits shall not be deemed to be payments by the employer for the purposes of this subsection.

(9) In no event shall the monthly payments provided in this section:

(a) Exceed the applicable percentage of the average monthly wage in the state as computed under the provisions of RCW [**51.08.018**](http://app.leg.wa.gov/RCW/default.aspx?cite=51.08.018) as follows:

|  |  |  |  |
| --- | --- | --- | --- |
|  | AFTER | PERCENTAGE |  |
|  | June 30, 1993 | 105% |  |
|  | June 30, 1994 | 110% |  |
|  | June 30, 1995 | 115% |  |
|  | June 30, 1996 | 120% |  |

(b) For dates of injury or disease manifestation after July 1, 2008, be less than fifteen percent of the average monthly wage in the state as computed under RCW [**51.08.018**](http://app.leg.wa.gov/RCW/default.aspx?cite=51.08.018) plus an additional ten dollars per month if the worker is married and an additional ten dollars per month for each child of the worker up to a maximum of five children. However, if the monthly payment computed under this subsection (9)(b) is greater than one hundred percent of the wages of the worker as determined under RCW [**51.08.178**](http://app.leg.wa.gov/RCW/default.aspx?cite=51.08.178), the monthly payment due to the worker shall be equal to the greater of the monthly wages of the worker or the minimum benefit set forth in this section on June 30, 2008.

(10) If the supervisor of industrial insurance determines that the worker is voluntarily retired and is no longer attached to the workforce, benefits shall not be paid under this section.

(11) The department shall adopt rules as necessary to implement this section.