**ITEM #1 – Promotion and Reallocation Compensation**

**Staff note:** We are proposing to amend WAC 357-28-110 and WAC 357-28-115 to state that an employee who is promoted or is reallocated to a class with a higher salary range must advance to a step of the range for the new class that is nearest to five percent above their pre-promotional salary. This change is stemming from the new Information Technology Professional Structure implementation that went into effect on July 1, 2019. The ITPS salary schedules for ranges 1-11 are not square which mean that the current two step promotional language does not work for those employees who move in and out of the ITPS. In addition, the purpose of the proposed amendment to WAC 357-28-110(2) is to clarify that if an employer grants a higher increase for internal alignment, retention or other business needs it is done so in accordance with WAC 357-28-090.

The green highlighted texted below are changes since the December rules meeting based on feedback received from stakeholders.

Lead: Brandy Chinn

REFERENCE ONLY

### WAC 357-01-260 Promotion. The appointment to a class with a higher salary range maximum that results in a salary increase.

REFERENCE ONLY

### WAC 357-01-270 Reallocation. The assignment of a position to a different class.

REFERENCE ONLY

**WAC 357-28-090 Can an employer adjust an employee's base salary within the employee's current salary range for recruitment, retention, or other business related reasons?** The employer may adjust an employee's base salary up to step M within the salary range to address issues that are related to recruitment, retention or other business related reason, such as equity, alignment, or competitive market conditions.

AMENDATORY SECTION

**WAC 357-28-110** **Must an employee who is promoted receive a salary increase?** An employee who is promoted must ((~~receive a minimum increase of two steps~~)) advance to a step of the range for the new class that is nearest to five percent above their prepromotional salary, not to exceed step M of the salary range. If the employee's prepromotional salary is set above the maximum of the salary range in accordance with WAC 357-28-040, the promotional increase will be based off of the maximum of the salary range of the class the employee is promoting from. The employer may grant ((~~more than an increase of two steps not to exceed step L~~)) a higher increase~~s~~ if:

(1) Significant increases in duties and responsibilities, as documented by the employer, warrant greater compensation;

(2) The increase is necessary for internal salary alignment, retention of the employee((~~,~~)) or other documented business needs in accordance with WAC 357-28-090; or

(3) The increase is necessary to bring the employee to the minimum of the salary range for the position.

AMENDATORY SECTION

**WAC 357-28-115** **Must an employee occupying a position that is reallocated to a class with a higher salary range receive a salary increase?** An employee occupying a position that is reallocated to a class with a higher salary range must ((~~receive a minimum increase of at least two steps~~)) advance to a step of the range for the new class that is nearest to five percent above their previous salary, not to exceed step M of the salary range in accordance with WAC 357-28-110. ~~If~~When the employee's previous salary ~~is~~ was set above the maximum of the salary range in accordance with WAC 357-28-040, the employee’s salary will be determined as follows:

1. When the employee’s previous salary is the same or lower than the maximum of the new salary range, the salary increase will be based off the maximum of the salary range the employee is ~~promoting~~reallocated from, not to exceed step M of the salary range in accordance with WAC 357-28-110.
2. When the employee’s previous salary is above the salary range of the new class, the employee will retain their current salary in accordance with WAC 357-28-040.

~~and that amount is at or below the maximum of the new range the salary increase will be based off of the maximum of the salary range of the class the employee is reallocated from unless the previous salary is above the salary range of the new class. When the employee's previous salary is above the salary range of the new class, the employee will retain their current salary.~~

**ITEM #2 – ITPS Cleanup**

**Staff note:** The proposed amendment to WAC 357-58-040 is to clarify that that manager positions or managerial employees that are in included in professional structures are excluded from WMS and are not covered by chapter 357-58 WAC. This was an oversight when we reviewed and amended the WACs for the ITPS implementation which became effective on July 1, 2019.

The green highlighted texted below are changes since the December rules meeting based on feedback received from stakeholders.

Lead: Brandy Chinn

AMENDATORY SECTION

**WAC 357-58-040** ((**~~Are there any~~**)) **Which manager positions or managerial employees** ((**~~that are not included in the~~**)) **are excluded from WMS ~~or~~ and not covered by chapter 357-58 WAC?** The following manager positions or managerial employees are excluded from WMS ~~or~~ and not covered by chapter 357-58 WAC:

(1) Manager positions or managerial employees that are exempt from civil service ((~~and~~));

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

(3) Manager positions or managerial employees of institutions of higher education and related boards ((~~are not included in WMS or covered by chapter 357-58 WAC~~)).

**ITEM #3 – ITPS Layoff**

**Staff note:** We are proposing to break up the subsections in WAC 357-46-035 and assign them to separate WAC numbers (WAC 357-46-036, WAC 357-46-037 and WAC 357-46-038) to address the different stages of determining layoff options when a permanent employee is scheduled for layoff.

The proposed amendment to WAC 357-46-035 is to include what options a permanent employee has when they are scheduled for layoff and restructures the WAC for simplicity. In addition, we are proposing adding language to address when an employee has held permanent status in any abolished IT classes, for layoff purposes, they are considered to have held permanent status in any class at the same or lower salary range maximum within the ITPS.

The proposed new section WAC 357-46-036 is to address what happens if the employee does not have an option under WAC 357-46-035. This language was taken and removed from WAC 357-46-035(2).

The proposed new section WAC 357-46-037 is to address what happens when a class in which the employee previously held permanent status has been revised or abolished. This language was taken and removed from WAC 357-46-035(3).

The proposed new section WAC 357-46-038 is to address if an employee has layoff option rights to classes they held permanent status in prior to any breaks in state service. This language was taken and removed from WAC 357-46-035(4).

The green highlighted texted below are changes since the December rules meeting based on feedback received from stakeholders.

Lead: Brandy Chinn

AMENDATORY SECTION

**WAC 357-46-035** ((**~~Layoff option.~~**)) **What option for placement in a position does a permanent employee have ~~to take a position~~ when the employee is scheduled for layoff?** ((~~(1)~~ **~~What option does a permanent employee have to take a position when the employee is scheduled for layoff?~~**))

(1) The employer will identify a position~~s~~, if available, within the layoff unit((~~,~~)) for a permanent employee who is scheduled for layoff ((~~must be offered the option to take a position, if available,~~)) that meets the following criteria:

(a) The position is comparable to the employee's current position as defined by the employer's layoff procedure;

(b) For revised or abolished job classes, the employer must identify the closest matching class in accordance with WAC 357-46-037.

(c) The employee satisfies the competencies and other position requirements; and

( ~~c~~ d ) The position is funded and vacant, or if no vacant funded position is available, the position is occupied by the employee with the lowest employment retention rating.

(2) The employer will ~~identify~~ consider positions in the following order:

(a) The position is allocated to the class in which the employee holds permanent status at the time of the layoff. If no option to a position in the current class is available, the employee's option is to a position in a class in which the employee has held permanent status that has the same salary range maximum~~. If an employee has held permanent status in any abolished information technology (IT) class, for layoff purposes they will have layoff options in any class within the Information technology professional structure (ITPS) with the same salary range maximum in accordance with subsection (1) of this section.~~

(b) If the employee ((~~has no~~)) does not have an option to take a position that has the same salary range maximum, the employee must be given an opportunity to take a position in a lower class in a class series in which the employee has held permanent status, in descending salary order. The employee does not have to have held permanent status in the lower class in order to be offered the option to take a position in the class.

((~~(b) The position is comparable to the employee's current position as defined by the employer's layoff procedure.~~

~~(c) The employee satisfies the competencies and other position requirements.~~

~~(d) The position is funded and vacant, or if no vacant funded position is available, the position is occupied by the employee with the lowest employment retention rating.~~

~~(2)~~ **~~What if the employee has no option under subsection (1) of this section?~~**

~~(a) If a permanent employee has no option available under subsection (1) of this section, the employer must determine if there is an available position in the layoff unit to offer the employee in lieu of separation that meets the following criteria:~~

~~(i) The position is at the same or lower salary range maximum as the position from which the employee is being laid off;~~

~~(ii) The position is vacant or held by a probationary employee or an employee in a nonpermanent appointment;~~

~~(iii) The position is comparable or less than comparable; and~~

~~(iv) The position is one for which the employee meets the competencies and other position requirements.~~

~~(b) If more than one qualifying position is available, the position with the highest salary range maximum is the one that must be offered.~~

~~(3)~~ **~~What happens when a class in which the employee previously held permanent status has been revised or abolished?~~**

~~(a) If a class in which an employee has previously held permanent status has been revised or abolished, the employer shall determine the closest matching class to offer as a layoff option. The closest matching class must be at the same or lower salary range maximum as the class from which the employee is being laid off.~~

~~(b) For employees who held permanent status in abolished information technology (IT) classes, an employer may use the IT Assessment form along with any other documentation to determine the closest matching class to offer as a layoff option.~~

~~(4)~~ **~~Does an employee have layoff option rights as provided in subsection (1) of this section to classifications the employee held permanent status in prior to any breaks in state service?~~**

~~General government employees have layoff option rights as provided in subsection (1) of this section to classifications the employee has held permanent status in regardless of any breaks in state service.~~

~~Higher education employers must address in their layoff procedure whether or not employees will be given layoff options to classes they held permanent status in prior to any breaks in state service.~~))

NEW SECTION

**WAC 357-46-036** **What if the employee does not have an option under WAC 357-46-035?** (1) If a permanent employee does not have an option available under WAC 357-46-035, the employer must determine if there is an available position in the layoff unit to offer the employee in lieu of separation that meets the following criteria:

(a) The position is at the same or lower salary range maximum as the position from which the employee is being laid off;

(b) The position is vacant, held by a nonpermanent employee or held by a probationary employee ~~or an employee in a nonpermanent appointment~~;

(c) The position is comparable or less than comparable; and

(d) The position is one for which the employee meets the competencies and other position requirements.

(2) If more than one qualifying position is available, the position with the highest salary range maximum is the one that must be offered.

NEW SECTION

**WAC 357-46-037** **When identifying layoff options, what happens when a class in which the employee previously held permanent status has been revised or abolished?** If a class in which an employee has previously held permanent status has been revised or abolished, the employer shall determine the closest matching class to offer as a layoff option. The closest matching class must be at the same or lower salary range maximum as the class from which the employee is being laid off.

If an employee has previously held permanent status in any abolished information technology (IT) class and it has been determined that the closest matching class falls within the information technology professional structure (ITPS), the employee will have layoff options in any class within the ITPS with the same or lower salary range maximum in accordance with WAC 357-46-035. ~~For employees who held permanent status in abolished information technology (IT) classes~~, To determine the closest matching class to offer, an employer may use the IT assessment form ~~along with~~ and any other documentation which will aid in determining the closest matching class ~~to determine the closest matching class to offer as a layoff option~~.

NEW SECTION

**WAC 357-46-038** **Does an employee have layoff option rights as provided in WAC 357-46-035 to classes the employee held permanent status in prior to any breaks in state service?** General government employees have layoff option rights as provided in WAC 357-46-035 to classes the employee has held permanent status in regardless of any breaks in state service.

Higher education employers must address in their layoff procedure whether or not employees will be given layoff options to classes they held permanent status in prior to any breaks in state service.

**ITEM #4 – Paid Family and Medical Leave**

**Staff note:** The Washington’s Paid Family and Medical Leave, or PFML insurance program, as codified in Title 50A RCW, became effective on October 19, 2017. Beginning January 1, 2020, the Paid Family and Medical Leave, or PFML, program provides a partial wage replacement for Washington workers for an employee’s own medical condition, to care for family members, bonding with a child or for certain military-related events. Under the PFML program, the Employment Security Department will replace up to 90% of an employee’s average weekly wage (up to $1,000 per week). During the 2019 legislative session, the law was amended to allow the employer to offer a “supplemental benefit” to employees while they are on approved PFML.

The proposed new sections addresses the ability for an employee to choose whether or not they want to use their accrued paid leave as a supplemental benefit and defines what leave an employee may use as a supplemental benefit.

The proposed amended sections incorporate the ability to request to use their accrued leave as a supplemental benefit, required updates to employers leave policies and removing the Washington Family Leave Law from WAC 357-31-520.

The proposed new section, WAC 357-31-24, is to allow a higher education employer the ability to deny an employees to use accrued leave as a supplemental benefit during a period to allow for system readiness.

The proposed amendments to WAC 357-31-490 and WAC 357-31-515 are to add shared leave as a type of leave an employee can request for a pregnancy related disability and for parental reasons in accordance with WAC 357-31-390 subsections 1(g) and (1(h).

The green highlighted texted below are changes since the December rules meeting based on feedback received from stakeholders.

Lead: Brandy Chinn

REFERENCE ONLY

### WAC 357-31-390 What criteria does an employee have to meet to be eligible to receive shared leave?

An employee may be eligible to receive shared leave if the agency head or higher education institution president has determined the employee meets the following criteria:

(1) The employee:

(a) Suffers from, or has a relative or household member suffering from, an illness, injury, impairment or physical or mental condition which is of an extraordinary or severe nature;

(b) Has been called to service in the uniformed services;

(c) A state of emergency has been declared anywhere within the United States by the federal or any state government and the employee has the needed skills to assist in responding to the emergency or its aftermath and volunteers their services to either a governmental agency or to a nonprofit organization engaged in humanitarian relief in the devastated area, and the governmental agency or nonprofit organization accepts the employee's offer of volunteer services;

(d) Is a victim of domestic violence, sexual assault or stalking as defined in RCW [41.04.655](http://app.leg.wa.gov/RCW/default.aspx?cite=41.04.655);

(e) Is a current member of the uniformed services or is a veteran as defined under RCW [41.04.005](http://app.leg.wa.gov/RCW/default.aspx?cite=41.04.005), and is attending medical appointments or treatments for a service connected injury or disability;

(f) Is a spouse of a current member of the uniformed services or a veteran as defined under RCW [41.04.005](http://app.leg.wa.gov/RCW/default.aspx?cite=41.04.005), who is attending medical appointments or treatments for a service connected injury or disability and requires assistance while attending appointments or treatments;

(g) Needs the time for parental leave as defined in WAC [357-31-395](https://apps.leg.wa.gov/wac/default.aspx?cite=357-31-395)(3); or

(h) Is sick or temporarily disabled because of a pregnancy disability as defined in WAC [357-31-395](https://apps.leg.wa.gov/wac/default.aspx?cite=357-31-395)(4).

(2) The condition(s) listed in subsection (1) of this section is likely to cause, the employee to go on leave without pay status or terminate state employment.

(3) The employee's absence and the use of shared leave are justified.

(4) The employee has depleted or will shortly deplete leave in accordance with WAC [357-31-435](https://apps.leg.wa.gov/wac/default.aspx?cite=357-31-435). If the employee qualifies under subsection (1)(g) or (h) of this section the employee is not required to deplete all of their vacation leave or sick leave in accordance with WAC [357-31-435](https://apps.leg.wa.gov/wac/default.aspx?cite=357-31-435).

(5) The employee has abided by employer rules regarding:

(a) Sick leave use if the employee qualifies under subsection (1)(a), (d), (g), or (h) of this section; or

(b) Military leave if the employee qualifies under subsection (1)(b) of this section.

(6) If the illness or injury is work-related and the employee has diligently pursued and been found to be ineligible for benefits under chapter [51.32](http://app.leg.wa.gov/RCW/default.aspx?cite=51.32) RCW if the employee qualifies under subsection (1)(a) of this section.

AMENDATORY SECTION

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

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

(a) The employee is entitled to a personal holiday in accordance with RCW [**1.16.050**](http://app.leg.wa.gov/RCW/default.aspx?cite=1.16.050) and WAC [**357-31-055**](https://apps.leg.wa.gov/WAC/default.aspx?cite=357-31&full=true#357-31-055);

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

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

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

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

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

(c) If the employee or the employee's family member is a victim of domestic violence, sexual assault, or stalking as defined in RCW [**49.76.020**](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**](https://apps.leg.wa.gov/WAC/default.aspx?cite=357-31&full=true#357-31-730); ~~or~~

(d) In accordance with WAC [**357-31-373**](https://apps.leg.wa.gov/WAC/default.aspx?cite=357-31&full=true#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; or~~.~~

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

AMENDATORY SECTION

**WAC 357-31-100 Must an employer have a policy for requesting and approving leave?**

Each employer must develop a leave policy which specifies the procedure for requesting and approving all leave, as provided in the civil service rules. The employer's policy must:

(1) Allow an employee to use vacation leave without advance approval when the employee is requesting to use vacation leave to respond to family care emergencies or for an emergency health condition as provided in WAC [**357-31-200**](https://apps.leg.wa.gov/WAC/default.aspx?cite=357-31&full=true#357-31-200) (1)(b);

(2) Allow an employee to use a reasonable amount of accrued leave or unpaid leave when the employee is a victim or has a family member, as defined in chapter [**357-01**](https://apps.leg.wa.gov/WAC/default.aspx?cite=357-01) WAC, who 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);

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

(~~34~~) Address advance notice from the employee when the employee is seeking leave under subsections (2) and (3) of this section. When advance notice cannot be given because of an emergency or unforeseen circumstances ~~due to domestic violence, sexual assault or stalking~~ the employee or the employee's designee must give notice to the employer no later than the end of the first day that the employee takes such leave;

~~(45)~~ Allow an employee to use sick leave for the purpose of parental leave to bond with a newborn, adoptive or foster child. The policy must state the total amount of sick leave allowed to be used beyond eighteen weeks in accordance with WAC [**357-31-130**](https://apps.leg.wa.gov/WAC/default.aspx?cite=357-31&full=true#357-31-130);

(~~5~~6) Address overtime eligible employees that are required to provide medical certification or verification to their employer for the use of paid sick leave under chapter [**296-128**](https://apps.leg.wa.gov/WAC/default.aspx?cite=296-128) WAC; and

(~~6~~7) Address overtime eligible employees that are required to provide reasonable notice to their employer for an absence from work for the use of paid sick leave under chapter [**296-128**](https://apps.leg.wa.gov/WAC/default.aspx?cite=296-128) WAC.

AMENDATORY SECTION

**WAC 357-31-130** **When may an employee use 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**](https://apps.leg.wa.gov/WAC/default.aspx?cite=296-128) WAC.

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

(a) 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.

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

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

(d) 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.

(e) For family care emergencies per WAC [**357-31-290**](https://apps.leg.wa.gov/WAC/default.aspx?cite=357-31&full=true#357-31-290), [**357-31-295**](https://apps.leg.wa.gov/WAC/default.aspx?cite=357-31&full=true#357-31-295), [**357-31-300**](https://apps.leg.wa.gov/WAC/default.aspx?cite=357-31&full=true#357-31-300) and [**357-31-305**](https://apps.leg.wa.gov/WAC/default.aspx?cite=357-31&full=true#357-31-305).

(f) 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 (1)(d) of this section.

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

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

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

 (h) If the employee or the employee's family member, as defined in chapter [**357-01**](https://apps.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**](https://apps.leg.wa.gov/WAC/default.aspx?cite=357-31&full=true#357-31-730).

(~~h~~i) In accordance with WAC [**357-31-373**](https://apps.leg.wa.gov/WAC/default.aspx?cite=357-31&full=true#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.

(i) 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 eighteen weeks. Sick leave for this purpose must be taken during the first year following the child's birth or placement.

(2) Employers **may** allow the use of accrued sick leave under the following conditions:

(a) For condolence or bereavement;

(b) When an employee is unable to report to work due to inclement weather in accordance with the employer's policy on inclement weather as described in WAC [**357-31-255**](https://apps.leg.wa.gov/WAC/default.aspx?cite=357-31&full=true#357-31-255); or

(c) To bond with a newborn, adoptive or foster child for a period beyond eighteen weeks as allowed in subsection (1)(i) of this section. Sick leave for this purpose must be taken during the first year following the child's birth or placement. The total amount of sick leave allowed to be used, beyond subsection (1)(i) of this section must be addressed in the employer's leave policy in accordance with WAC 357-31-100.

AMENDATORY SECTION

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

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

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

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

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

(d) For parental leave as provided in WAC [**357-31-460**](https://apps.leg.wa.gov/WAC/default.aspx?cite=357-31&full=true#357-31-460).

(e) If the employee or the employee's family member, as defined in chapter [**357-01**](https://apps.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**](https://apps.leg.wa.gov/WAC/default.aspx?cite=357-31&full=true#357-31-730).

(f) In accordance with WAC [**357-31-373**](https://apps.leg.wa.gov/WAC/default.aspx?cite=357-31&full=true#357-31-373), for an employee to be with a spouse or registered domestic partner who is a member of the armed forces of the United States, National Guard, or reserves after the military spouse or registered domestic partner has been notified of an impending call or order to active duty, before deployment, or when the military spouse or registered domestic partner is on leave from deployment.

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

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

AMENDATORY SECTION

**WAC 357-31-230 When ~~can~~ may an employee use accrued compensatory time?**

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

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

(3) An employee must be granted the use of accrued compensatory time if the employee or the employee's family member, as defined in chapter [**357-01**](https://apps.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**](https://apps.leg.wa.gov/WAC/default.aspx?cite=357-31&full=true#357-31-730).

(4) In accordance with WAC [**357-31-373**](https://apps.leg.wa.gov/WAC/default.aspx?cite=357-31&full=true#357-31-373), an employee must be granted the use of accrued compensatory time to be with a spouse or registered domestic partner who is a member of the armed forces of the United States, National Guard, or reserves after the military spouse or registered domestic partner has been notified of an impending call or order to active duty, before deployment, or when the military spouse or registered domestic partner is on leave from deployment.

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

(~~5~~6) Compensatory time off may be scheduled by the employer during the final sixty days of a biennium.

(~~6~~7) Employers may require that accumulated compensatory time be used before vacation leave is approved, except in those instances where this requirement would result in loss of accumulated vacation leave.

(~~7~~8) During the 2009-2011 fiscal biennium only, an employee whose monthly full-time equivalent base salary is two thousand five hundred dollars or less is eligible to use compensatory time in lieu of temporary layoff as described in chapter 32, Laws of 2010.

NEW SECTION

**WAC 357-31-247 May an employee use leave if the employee is approved to receive partial wage replacement for paid family and/or medical leave under Title 50A RCW?** An employee who is approved to receive partial wage replacement for paid family and/or medical leave under Title 50A RCW may choose to receive partial wage replacement for paid family and/or medical leave exclusively, use accrued paid leave exclusively, or combine the partial wage replacement for paid family and/or medical leave and accrued paid leave as a supplemental benefit.

NEW SECTION

**WAC 357-31-248 ~~What happens if~~ May an employee use~~s accrued~~ vacation leave, ~~accrued~~ sick leave, personal holiday, ~~accrued~~ compensatory time, recognition leave, or holiday pay ~~or receives shared leave~~ 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 RCW?** An employee may ~~who~~ use~~s~~ ~~accrued~~ vacation leave, ~~accrued~~ sick leave, personal holiday, ~~accrued~~ compensatory time, recognition leave, or holiday pay ~~or shared leave pay~~ during a period when the employee is receiving partial wage replacement under Title 50A RCW ~~is entitled to partial wage replacement and full pay for vacation leave, sick leave, compensatory time, recognition leave and shared leave~~ as a supplemental benefit.

NEW SECTION

**WAC 357-31-249 May a higher education employer deny an employee’s request to use accrued leave in accordance with WAC 357-31-248 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 RCW?** A higher education employer may deny an employee’s request to use accrued leave in accordance with WAC 357-31-248 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 RCW from May 1, 2020, to August 1, 2020, to allow for system readiness.

AMENDATORY SECTION

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

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

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

(2) If the employee or the employee's family member, as defined in chapter [**357-01**](https://apps.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**](https://apps.leg.wa.gov/WAC/default.aspx?cite=357-31&full=true#357-31-730); or

(3) In accordance with WAC [**357-31-373**](https://apps.leg.wa.gov/WAC/default.aspx?cite=357-31&full=true#357-31-373), for an employee to be with a spouse or registered domestic partner who is a member of the armed forces of the United States, National Guard, or reserves after the military spouse or registered domestic partner has been notified of an impending call or order to active duty, before deployment, or when the military spouse or registered domestic partner is on leave from deployment.

(4) When an employee requests a day off for a reason of faith or conscience or an organized activity conducted under the auspices of a religious denomination, church, or religious organization in accordance with WAC [**357-31-052**](https://apps.leg.wa.gov/WAC/default.aspx?cite=357-31&full=true#357-31-052).

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

AMENDATORY SECTION

**WAC 357-31-335 How long can an employee remain on leave without pay?**

The employer determines the length of time an employee may remain on leave without pay ~~unless an employee is on approved paid family and/or medical leave under Title 50A RCW. If the employee is on approved paid family and/or medical leave under Title 50A RCW, the length of leave is determined by the Employment Security Department. In all other circumstances.~~ The employer's leave policy must address any limitations on the length of time for which leave without pay will be approved. When an employee has been approved to receive benefits for approved paid family and/or medical leave under Title 50A RCW and qualifies for employment protection in accordance with RCW 50A.35.010, an employee must remain on leave without pay while receiving a partial wage replacement.

AMENDATORY SECTION

**WAC 357-31-490 Will time off for parental leave be paid or unpaid?**

(1) Parental leave may be a combination of vacation leave, personal holiday, compensatory time, shared leave and leave of absence without pay. Sick leave may be used if the criteria in WAC [**357-31-130**](https://apps.leg.wa.gov/WAC/default.aspx?cite=357-31&full=true#357-31-130) are met. The combination and use of paid and unpaid leave during a parental leave is at the employee's choice.

(2) If necessary while on approved parental leave, the employee must be allowed to use a minimum of eight hours per month of the accrued paid leave identified in subsection (1) of this section during a parental leave of absence without pay to provide for continuation of benefits as provided by the public employees' benefits board. The employer designates when during the month paid leave will be interspersed to maintain benefits.

AMENDATORY SECTION

**WAC** **357-31-515 Will time off during the period of disability leave due to pregnancy and/or childbirth be paid?**

Disability leave due to pregnancy and/or childbirth may be a combination of sick leave, vacation leave, personal holiday, compensatory time, shared leave and leave without pay. The combination and use of paid and unpaid leave must be per the choice of the employee.

AMENDATORY SECTION

**357-31-520 How does the Family and Medical Leave Act of 1993 and the ~~family leave law~~ Washington Paid Family and Medical Leave Act interact with the civil service rules?**

Benefits provided through state laws and civil service rules must not be diminished or withheld in complying with the Family and Medical Leave Act of 1993 ~~(FMLA)~~ or the Washington Paid Family and Medical Leave Act.

~~Washington’s Paid Family and Medical Leave program (chapter 50A RCW) Washington's family leave law (chapter~~[**~~49.78~~**](http://app.leg.wa.gov/RCW/default.aspx?cite=49.78)~~RCW) generally is similar to and runs concurrently with the federal FMLA for those provisions outlined in WAC~~[**~~357-31-525~~**](https://apps.leg.wa.gov/WAC/default.aspx?cite=357-31&full=true#357-31-525)~~(1)(a) through (c) but also allows leave to be taken for the care of an employee's registered domestic partner with a serious health condition. However, Washington's family leave law does not address exigency leave, described in WAC~~[**~~357-31-525~~**](https://apps.leg.wa.gov/WAC/default.aspx?cite=357-31&full=true#357-31-525)~~(1)(d), or leave for a covered service member, described in WAC~~[**~~357-31-525~~**](https://apps.leg.wa.gov/WAC/default.aspx?cite=357-31&full=true#357-31-525)~~(2). Therefore, an employer is not required to provide exigency leave or leave for a covered service member for a registered domestic partner.Because the FMLA does not recognize registered domestic partners, an absence to care for an employee's registered domestic partner is not counted towards the twelve weeks of the FMLA entitlement described in WAC~~[**~~357-31-525~~**](https://apps.leg.wa.gov/WAC/default.aspx?cite=357-31&full=true#357-31-525)~~. For example:~~

~~If an employee uses twelve weeks of leave to care for their registered domestic partner during a twelve-month period, and no other FMLA leave was used, the employee is still entitled to his or her full twelve-week FMLA entitlement during the same twelve-month period, as the leave used was provided for a purpose not covered by FMLA; however, if an employee uses twelve weeks of leave to care for their parent or for another FMLA qualifying reason, then during that same twelve-month period the employer would not be required to provide additional leave under Washington's family leave law to care for the employee's registered domestic partner because the twelve-week entitlement under FMLA and Washington's family leave law has been exhausted.~~

AMENDATORY SECTION

**WAC 357-31-567** **When must an employer grant the use of recognition leave?** (1) An employee's request to use recognition leave must be approved under the following conditions:

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

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

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

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

(3) During the 2009-2011 fiscal biennium only, an employee whose monthly full-time equivalent base salary is two thousand five hundred dollars or less is eligible to use recognition leave in lieu of temporary layoff as described in chapter 32, Laws of 2010.

**ITEM #5 – Director’s Review and Personnel Resources Board filings**

**Staff note:** The purpose of the proposed amendments to WAC 357-49-023 and WAC 357-52-225 is to allow Director’s review requests and Personnel Resources Board appeals to be filed online. Filing by fax, by mail or in person are still acceptable avenues for filing.

We are proposing to amend WAC 357-49-023(2) and WAC 357-52-225(2) to update the fax filing requirements. We are also proposing to amend WAC 357-49-023(3) which removes email as on option to file director’s review requests because of online filing capabilities. The new subsection (3) in both rules states that director’s review requests and appeal requests are considered filed when a legible copy is received.

Since the December rules meeting there has been no feedback from stakeholders.

Lead: Caroline Kirk

AMENDATORY SECTION

**WAC 357-49-023 ~~For purposes of this chapter, how must documents be filed with the director~~How must director’s review requests be filed with the director?** ~~(1) For the purposes of this chapter, documents~~Director’s review requests must be filed with the director by ~~F~~filing online through the director’s website, by fax or by mail.~~:~~ (1) Director's review requests are considered filed when received in the director's ~~review~~ office in Olympia, Washington during the office hours of 8:00 a.m. to 5:00 p.m. Monday through Friday. ~~Documents~~Director’s review requests received in the director’s ~~review~~ office in Olympia, Washington outside of office hours or on a legal holiday will be deemed filed on the next business day. .

(2)~~Documents~~Director’s review requests filed by fax must have a cover page identifying the addressee; the person making the transmission, including the address, telephone ~~and fax~~ number; and the review to which the documents are related.

(3)~~Documents~~Director’s review requests are considered filed when a legible copy of the documents is received in accordance with subsection (1) of this section.

~~(2)~~ **~~Filing by fax:~~**

~~(a) Documents by fax are considered filed when a legible copy of the documents is received. If transmission begins after office hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding legal holidays, the document will be deemed filed on the next business day.~~

~~(b) Documents by fax must have a cover page identifying the addressee; the person making the transmission, including the address, telephone and fax number; the review to which the document relates; the date of transmission; and the total number of pages included in the transmission.~~

~~(c) The person attempting to file by fax bears the risk that the papers may not be timely received or legibly printed, regardless of the cause. If the fax is not legible, it will not be considered sent.~~

~~(3)~~ **~~Filing by electronic mail (email)~~**~~: If the document is sent after office hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding legal holidays, the document will be deemed filed on the next business day.~~

AMENDATORY SECTION

**WAC 357-52-225 ~~For purposes of this chapter how~~How must ~~written~~appeal requests ~~documents~~ be filed with the board?** ~~(1) For the purposes of this chapter~~Appeal requests must be filed with the board by ~~F~~filing online through the board’s website, by fax or by mail.~~:generally. Papers that must be filed with the board~~(1) Appeal requests are considered ~~to be~~ filed ~~only~~ when ~~the papers are actually~~ received in the board's office in Olympia, Washington during the office hours of 8:00 a.m. to 5:00 p.m. Monday through Friday. ~~Documents~~Appeal requests received in the board’s office in Olympia, Washington outside of office hours or on a legal holiday will be deemed filed on the next business day.

(2) ~~Documents~~Appeal requests filed by fax must have a cover page identifying the addressee; the person making the transmission, including the address, telephone ~~and fax~~ number; and the appeal to which the documents are related.

(3) ~~Documents~~Appeal requests are considered filed when a legible copy of the documents is received in accordance with subsection (1) of this section.

**~~(2) Filing by telephone facsimile.~~**

~~(a) Written documents filed with the board by telephone facsimile~~Documents are considered filed~~received~~ when a legible copy of the documents ~~is reproduced on the board's telephone facsimile equipment in the board's office~~ is received. ~~If transmission begins after customary office hours, which are 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding legal holidays, the document will be deemed filed on the next business day.~~

~~(b) Any document filed with the board by telephone facsimile should be preceded by~~ Documents by fax must have a cover page identifying the addressee; the person~~party~~ making the transmission, including the address, telephone and fax~~telephone facsimile~~ number ~~of such party~~; the appeal to which the documents are related ~~relates; the date of transmission; and the total number of pages included in the transmission~~.

~~(c) The party attempting to file papers by telephone facsimile bears the risk that the papers will not be timely received or legibly printed, regardless of the cause. If the telephone facsimile is not legible, it will be considered as if it had never been sent.~~

~~(d) The original of any document filed by telephone facsimile should be mailed to the board within twenty-four hours of the time that the telephone facsimile was sent.~~

~~(e) The filing of papers by electronic mail ("email") is not authorized without the express prior approval of the board, and only under such circumstances as the board allows.~~

**ITEM #6 – Wage and Salary History Information**

**Staff note:** Engrossed Substitute House Bill (ESHB) 1696 passed during the 2019 legislative session with an effective date of July 28, 2019. This bill amends RCW 49.58.005 and adds new sections to chapter 49.58 RCW which prohibits an employer from seeking the wage or salary history of an applicant for employment or from a current or former employer. The bill also prohibits the employer from requiring that the applicant’s prior wage or salary history meet certain criteria. This bill also requires employers, upon request of an applicant for employment, to provide the wage or salary range for the position for which the applicant is applying. We are proposing the following rules to align with these new requirements.

The green highlighted texted below are changes since the December rules meeting based on legal review. In WAC 357-16-220 subsection (2) legal has determined that we cannot change the intent of the law by adding “or” and the law is clear that it states “and.” An employer must negotiate and have made an offer of employment to an individual prior to looking at the wage and salary history of an individual. If an employee accepts an offer of employment and no negotiation happens then the employer cannot check the individual’s wage or salary history information.

Lead: Caroline Kirk

NEW SECTION

**WAC 357-16-017 When must the employer provide the salary range or management band for a position?** In accordance with RCW 49.58.110, the employer must provide the salary range or management band in the following circumstances: (1) Upon request of an individual for employment after the employer has initially offered the individual the position; and (2) Upon request of a current employee who is offered an appointment to another position.

If no salary range or management band exists, the employer must provide the minimum wage set by the employer prior to posting the position or appointing an employee to another position.

For the purposes of this section “employer” includes those employers with ~~15 or~~ less than 15 employees.

NEW SECTION

**WAC 357-16-215 May an employer seek the wage or salary history of an individual for employment?** In accordance with RCW 49.58.100, an employer may not: (1) Seek the wage or salary history of an individual~~, including current employees, who are~~ applying for employment, including current employees, from the individual or the individual’s current or former employer; or (2) Require that an individual’s prior wage or salary history meet certain criteria, except as provided in WAC 357-16-220.

For the purposes of this section “employer” includes those employers with ~~15 or~~ less than 15 employees.

NEW SECTION

**WAC 357-16-220 May an employer confirm an individual’s wage or salary history?** In accordance with RCW 49.58.100, an employer may confirm an individual’s wage or salary history if: (1) The individual has voluntarily disclosed their wage or salary history; or (2) After the employer has negotiated an offer and~~/or~~ made an offer of employment including compensation to the individual.

For the purposes of this section “employer” includes those employers with ~~15 or~~ less than 15 employees.

AMENDATORY SECTION

**357-58-190 What must be addressed in agency's WMS recruitment and selection policy and/or procedure?** An agency's WMS recruitment and selection policy must:

(1) Provide for the ability to consider any or all qualified candidates for hire, promotion, or internal movement;

(2) Ensure that hiring decisions are fair, objective, and based on the evaluation of leadership and other job related competencies and characteristics required for successful job performance and performance management;

(3) Support workforce diversity and affirmative action goals;

(4) Consider the career development of the agency's employees and other state employees;

(5) Ensure that hiring decisions are not based on patronage or political affiliation;

(6) Ensure compliance with state and federal laws relating to employee selection and nondiscrimination;

(7) Encourage decentralized and regional administration of the recruitment and selection processes when it is appropriate for the agency.

 (8) Ensure compliance with requirements governing wage and salary information in accordance with state law and WACs 357-16-017, 357-16-215 and 357-16-220.