**Item #1 Nondisclosure and Nondisparagement Provisions**

**Staff note:** [SB 5996](https://lawfilesext.leg.wa.gov/biennium/2017-18/Pdf/Bills/Session%20Laws/Senate/5996-S.SL.pdf?q=20220601115014) passed during the 2018 legislative session with an effective date of June 7, 2018. This bill added a new chapter, RCW 49.44.210, Regulations, Violations – Prohibited Practices under Labor Regulations. This bill stated that an employer may not require an employee, as defined in RCW 49.44.210, as a condition of employment, to sign a nondisclosure agreement, waiver, or other document that prevents the employee from disclosing sexual harassment or sexual assault. As a result, [WAC 357-25-027](https://app.leg.wa.gov/wac/default.aspx?cite=357-25-027) was amended to add subsection 17 requiring state agencies to update their sexual harassment policies to align with the new law so there are clear expectations of what is what is not acceptable.

[ESHB 1795](https://lawfilesext.leg.wa.gov/biennium/2021-22/Pdf/Bills/Session%20Laws/House/1795-S.SL.pdf?q=20220509162654) passed during the 2022 legislative session. This bill repeals RCW 49.44.210.

We are proposing to amend WAC 357-25-027 to repeal subsection 17 to align with the changes to the law.

Lead: Brittany Trujillo

AMENDATORY SECTION

**WAC 357-25-027 What must be included in the agency's sexual harassment policy?**

Agencies as defined in RCW 41.06.020 must at a minimum include the following in their policy on sexual harassment:

(1) Indicate who is covered by the policy;

(2) Provide that the employer is committed to providing a working environment free from sexual harassment of any kind;

(3) A statement that sexual harassment is an unlawful employment practice prohibited by Title VII of the Civil Rights Act of 1964 and RCW 49.60;

(4) The definition of sexual harassment as defined by the Equal Employment Opportunity Commission;

(5) Notify the employee or individual of their right to file a complaint with the Washington State Human Rights Commission under RCW 49.60.230 or the Federal Equal Employment Opportunity Commission under Title VII of the Civil Rights Act of 1964;

(6) Identify how and to whom employees or individuals may raise concerns or file complaints. The policy should allow multiple avenues for an employee or individual to raise complaints or concerns and should clearly identify the positions or entities charged with receiving these complaints;

(7) Advise all individuals covered by the policy that the employer is under a legal obligation to respond to allegations concerning a violation of the policy;

(8) Identify the manner by which the employer will respond to alleged violations of the policy, including a formal investigation if necessary;

(9) A statement that the complainant shall be informed of the status and the outcome of an investigation;

(10) Identify the agency's investigation or response procedure;

(11) Define the roles and responsibilities of employees, managers, supervisors, and others covered by the policy with respect to the following:

(a) Preventing or not engaging in sexual harassment;

(b) Responding to concerns or allegations of violations of the policy;

(c) Participation in an investigation under the policy; and

(d) The prohibition against retaliation.

(12) A statement that confidentiality cannot be guaranteed;

(13) A statement that responses to public records requests will be provided in accordance with RCW 42.56.660 and 42.56.675;

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

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

(16) Advise that any employee found to have retaliated against individuals covered by the policy who report allegations of sexual harassment or who participate in an investigation will be subject to corrective and/or disciplinary action, up to and including dismissal.~~; and~~

(~~17) A statement that an employer may not require an employee, as a condition of employment, to sign a nondisclosure agreement, waiver, or other document that prevents the employee from disclosing sexual harassment or sexual assault occurring in the workplace, at work-related events coordinated by or through the employer, or between employees, or between an employer and an employee, off the employment premises in accordance with RCW 49.44.210.~~

~~For the purposes of this subsection, "employee" has the same meaning as defined in RCW 49.44.210.~~

**Item #2 Classification**

**Staff note:** We are proposing to amend [WAC 357-13-090](https://app.leg.wa.gov/wac/default.aspx?cite=357-13-090) to state when an employee is reallocated to a higher class, the employee must 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 range as provided in WAC [357-28-115](http://app.leg.wa.gov/WAC/default.aspx?cite=357-28-115). This amendment mirrors WAC 357-28-115. Effective May 1, 2020, WACs [357-28-110](https://app.leg.wa.gov/wac/default.aspx?cite=357-28-110) and 357-28-115 were amended to include the nearest to five percent language but WAC 357-13-090 was inadvertently missed. The ITPS salary schedules for ranges 1-11 are not square, which means that the current “two step promotional language” does not work for those employees who move in and out of the ITPS.

Lead: Brittany Trujillo

AMENDATORY SECTION

**WAC 357-13-090 How is an employee affected when his/her position is reallocated?**

|  |  |  |  |
| --- | --- | --- | --- |
| This table is used to determine how an employee whose position is reallocated is affected. | | | |
|  | Employee's position reallocated to: | | |
| Class with a higher salary range maximum | Class with an equal salary range maximum | Class with a lower salary range maximum |
| Reallocation results from: | | | |
| A position review requested by the employee or initiated by the employer | *If the employee has performed the higher level duties for at least six months and meets the competencies and other position requirements*: | *If the employee meets the competencies and other position requirements:* | *If the employee meets the competencies and other position requirements and chooses to remain in the reallocated position*: |
|  | → The employee remains in the position and is appointed with permanent status provided the probationary or trial service period for the class to which the position is reallocated is six months in duration. If the probationary period or trial service period is longer than six months and the employee has not performed higher level duties for the length of the probationary period or trial service period, the employer may require the employee serve the remainder of the probationary or trial service period before gaining permanent status in the reallocated position.  *If the reallocation is the result of a change in the duties of the position and the employee has not performed the higher level duties for six months or more*: | → The employee remains in the position and retains existing appointment status. | → The employee retains appointment status; has the right to be placed on the employer's internal layoff list and in the general government transition pool; and has his/her salary set in accordance with WAC [**357-28-120**](http://app.leg.wa.gov/WAC/default.aspx?cite=357-28-120). |
|  | → The employer must give the employee the opportunity to compete for the position. The employer may choose to promote the employee without competition as long as the employee meets the competencies and any other position requirements. | → The employee retains the previous base salary in accordance with WAC [**357-28-120**](http://app.leg.wa.gov/WAC/default.aspx?cite=357-28-120). | *If the employee chooses to vacate the position or does not meet the competencies and other position requirements*: |
|  | If the employee is not selected for the position, the employer's layoff procedure applies. If the employee is appointed and he/she has already gained permanent status, the employee must serve a trial service period. If the employee has not completed the probationary period, then the new trial service period will overlap provided the higher and lower classes are in the same or a closely related field. If the classes are not in the same or closely related field, then the employee will start their probationary period over in the new class. | *If the employee does not meet the competencies and other position requirements*: | → The employer's layoff procedure applies. |
|  | Upon appointment to the higher class, the employee must advance to a step of the range for the new class that is nearest to five percent above their previous salary ~~s base salary must be increased a minimum of a two step increase~~, not to exceed step M of the range as provided in WAC [**357-28-115**](http://app.leg.wa.gov/WAC/default.aspx?cite=357-28-115). | → The employer's layoff procedure applies. |  |
| The director revising the classification plan. | The employee remains in the position and keeps existing appointment status. See WAC [**357-28-130**](http://app.leg.wa.gov/WAC/default.aspx?cite=357-28-130) for determining the employee's salary. | | |

**Item #3 Compensation**

**Staff note:** We are proposing clarifying the following compensation WACs.

* [WAC 357-28-190](https://apps.leg.wa.gov/WAC/default.aspx?cite=357-28-190) states an employee must receive a shift premium when an employee is scheduled to work a shift in which majority of hours worked daily or weekly are between 6:00 pm and 6:00 am.; or when an employee is scheduled to work a shift which is split with a minimum of four intervening hours not worked. Prior guidance and the Compensation Plan state that employees who are temporarily assigned to work between 6:00 pm and 6:00 am are also eligible to receive the shift premium. We are proposing to amend [WAC 357-28-190](https://apps.leg.wa.gov/wac/default.aspx?cite=357-28-190) to add the word “regularly” to subsection (a) and add sub-section (c) to clarify that the compensation plan allows for dayshift employees, who are temporarily assigned to work the majority of their hours between 6:00 pm and 6:00 am are eligible receive a shift premium.
* Amend [WAC 357-28-203](https://app.leg.wa.gov/WAC/default.aspx?cite=357-28-203) to clarify when an employee must receive location-based premium pay. [ESHB 1109](https://lawfilesext.leg.wa.gov/biennium/2019-20/Pdf/Bills/Session%20Laws/House/1109-S.SL.pdf?q=20220705100652) passed during the 2019 legislative session with an effective date of May 21, 2019. This bill provided for two premium pays for non-represented employees. Section 207 provides for premium pay to an employee who is assigned to work on McNeil Island at the Special Commitment Center. Section 950 of this bill provides funding for a five percent premium pay for non-represented employees working in King County excluding non-represented employees at the University of Washington. As a result, WAC 357-28-203 was adopted on a permanent basis effective September 23, 2019, to state location-based premium must be paid when an employee is assigned to work on McNeil Island **and** assigned to a permanent duty station in King County. It has brought to our attention that it should state location-based premium must be paid when an employee is assigned to work on McNeil Island **or** assigned to a permanent duty station in King County. We are proposing to amend WAC 357-28-203 to replace “and” with “or”.
* [WAC 357-28-215](https://app.leg.wa.gov/WAC/default.aspx?cite=357-28-215) states employees within the ITPS who are in the entry, journey and senior/specialist levels designated as and performing all the duties as a supervisor, in accordance with WAC 357-01-317, must receive a five percent supervisory pay differential in addition to their **base pay** as long as they meet the definition of a supervisor. Base pay is not defined in Title 357 WAC and this should state **base salary** as defined in [WAC 357-01-040](https://apps.leg.wa.gov/WAC/default.aspx?cite=357-01-040). We are proposing to amend to clarify the supervisory differential is in addition to their base salary, not base pay.

Lead: Brittany Trujillo

AMENDATORY SECTION

**WAC 357-28-190 When must an employee receive shift premium?**

(1) Shift premium at the rate specified in the compensation plan must be paid when:

(a) An employee is regularly scheduled to work a shift in which the majority of hours worked daily or weekly are between 6:00 p.m. and 6:00 a.m.; or

(b) An employee is scheduled to work a shift which is split with a minimum of four intervening hours not worked.

(c) An employee is regularly scheduled to work a day shift but is assigned to work a night or evening shift in which the majority of hours worked are between 6:00 pm and 6:00 am.

(2) Shift premium must be paid for the entire daily or weekly shift that qualifies under subsection (1) of this section. Additionally, these employees are entitled to shift premium for all hours that the employees work adjoining that evening or night shift.

(3) Shift premium may be paid at a monthly rate as specified in the compensation plan for full time employees regularly assigned to a qualifying shift.

(4) An employee assigned to a shift that qualifies for shift premium pay must receive the same shift premium for authorized periods of paid leave and holidays and for up to five days of a temporary assignment to a shift that does not qualify. Continued payment of shift premium for a temporary assignment exceeding five days is at the discretion of the employer.

(5) Compensation under the provisions of this section must be in accordance with the employer's policy, as approved by the director, for the following individuals:

(a) Employees dispatched to emergency response duty under an incident command system as defined in RCW 38.52.010; and

(b) Employees of the department of corrections who are in charge of offenders assigned to assist in forest fire suppression and other emergency incidents.

(6) Exceptions to shift premium provisions may be approved by the director.

(7) For higher education employers, shift premium must not apply to police and fire officers where special pay salaries are correlated with a rotating shift in accordance with local practice.

(8) Employees may waive shift premium.

(9) Employees who voluntarily request to work a shift as described in subsection (1)(a), ~~and~~ (b) and (c) of this section will not be eligible for shift premium.

AMENDATORY SECTION

**WAC 357-28-203 When must an employee receive location based premium pay?**

Location based premium pay at the rate specified in the compensation plan must be paid when an employee is:

(1) Assigned to work on McNeil Island at the special commitment center and for each day the employee is physically working on the island. Days in paid status not working on the island will not qualify for premium pay; ~~and~~ or

(2) Assigned to a permanent duty station in King County.

(a) This subsection does not apply to employees who are employed by the University of Washington.

(b) When an employee is no longer permanently assigned to a King County duty station they will not be eligible for location based premium pay.

AMENDATORY SECTION

**WAC 357-28-215 When must an employee receive supervisory pay differential?**

Employees within the information technology professional structure who are in the entry, journey and senior/specialist levels designated as and performing all the duties of a supervisor, in accordance with WAC [**357-01-317**](http://app.leg.wa.gov/WAC/default.aspx?cite=357-01-317), must receive a five percent supervisory pay differential in addition to their base salary ~~pay~~ as long as they meet the definition of supervisor.

REFERENCE SECTION

**WAC 357-01-040 Base salary.**

The dollar amount of the salary within the salary range to which the employee is entitled, before any deductions, and exclusive of additional compensation of any kind, such as premiums.

**Item #4 – COVID-19**

**Staff note:**

On June 30, 2022, Governor Jay Inslee issued [directive 22-13](https://www.governor.wa.gov/sites/default/files/directive/22-13%20-%20State%20employment%20COVID%20vaccine%20requirement%20%28tmp%29.pdf), COVID-19 Vaccination Standards for State Employees, directing state agencies to pursue efforts for ongoing requirements for state employees to be vaccinated against COVID-19 as a policy matter. The Governor directs the Office of Financial Management State Human Resources Division to take necessary steps to continue the requirement for nonrepresented employees to be fully vaccinated and require new employees to be vaccinated against COVID-19 with the most up-to-date vaccination, including any additional doses or boosters, as recommended by the CDC. Although the Governors [Proclamation 21-14](https://www.governor.wa.gov/sites/default/files/proclamations/21-14%20-%20COVID-19%20Vax%20Washington%20%28tmp%29.pdf), COVID-19 Vaccination Requirement remains in effect, we are proposing to pursue as a policy matter. For awareness, there is no change to current accommodation processes for those with exemptions for religious or medical reasons.

To implement this directive, we are proposing to:

* Create WAC 357-04-125 to state as a condition of employment, an employee must become fully vaccinated with one of the authorized COVID-19 vaccines or request an exemption due to a disability and/or medical condition or if the requirement conflicts with an employee’s sincerely held religious belief, practice, or observance. If an exemption is granted, there must be an approved accommodation. If an employee fails to meet this condition of employment, they will be subject to a non-disciplinary separation in accordance with [WAC 357-46-195](https://apps.leg.wa.gov/WAC/default.aspx?cite=357-46-195), separation in accordance with [WAC 357-19-410](https://apps.leg.wa.gov/WAC/default.aspx?cite=357-19-410) or a disability separation in accordance with [WAC 357-46-160](https://apps.leg.wa.gov/WAC/default.aspx?cite=357-46-160). “Fully vaccinated” against COVID-19 is defined as two weeks after they have received the second dose in a two-dose series of a COVID-19 vaccine or a single-dose COVID-19 vaccine authorized for emergency use, licensed, or otherwise authorized or approved by the FDA or listed for emergency use or otherwise approved by the World Health Organization.
* Create WAC 357-16-197 to state an eligible candidate must provide proof of being up-to-date with one of the authorized COVID-19 vaccines or request an exemption due to a disability and/or medical condition or if the requirement conflicts with an employee’s sincerely held religious belief, practice, or observance after a conditional offer of employment is made. If an exemption is granted, there must be an approved accommodation. “Up-to-date” with COVID-19 vaccination is defined as having received all doses in the primary series and all boosters recommended for them by the CDC Advisory Committee on Immunization Practices when they become eligible.
* Amend [WAC 357-19-373](https://apps.leg.wa.gov/WAC/default.aspx?cite=357-19-373) to add subsection 3 to state after a conditional offer of employment is made an eligible nonpermanent candidate must provide proof of being up to date with COVID-19 vaccination in accordance with WAC 357-16-197.
* Create WAC 357-19-413 to state the COVID-19 vaccine requirements set forth in WAC 357-04-125 apply to nonpermanent employees. This WAC also requires an employer to separate a nonpermanent employee who fails to comply with the COVID-19 vaccine requirement in accordance with [WAC 357-19-410](https://apps.leg.wa.gov/WAC/default.aspx?cite=357-19-410).
* Amend [WAC 357-46-165](https://apps.leg.wa.gov/WAC/default.aspx?cite=357-46-165) to add subsection 4 to state an employer must separate a permanent employee from employment for failure to comply with the COVID-19 vaccination requirements set forth in WAC 357-04-125 where an exemption was approved due to a disability or medical condition and the employer is unable to reasonably accommodate the employee.
* Amend [WAC 357-46-195](https://apps.leg.wa.gov/WAC/default.aspx?cite=357-46-195) to state an employer must separate a permanent employee from employment for nondisciplinary reasons for failure to comply with the COVID-19 vaccination requirements set forth in WAC 357-04-125.
* Amend [WAC 357-58-190](https://app.leg.wa.gov/wac/default.aspx?cite=357-58-190) to add subsection 9 to state an agency’s WMS recruitment and selection policy and/or procedure must ensure compliance with the vaccination requirements in accordance with WAC 357-04-125 and WAC 357-16-197.

Lead: Brandy Chinn/Brittany Trujillo

**NEW SECTION**

**WAC 357-04-125 Must an employee provide proof of being fully vaccinated with one of the authorized COVID-19 vaccines as a condition of employment?**

As a condition of employment, an employee must become fully vaccinated or request an exemption due to a disability and/or medical condition or if the requirement conflicts with an employee's sincerely held religious belief, practice, or observance. If the exemption is granted, there must be an approved accommodation in order for an employee to continue their employment. An employee who fails to meet this condition of employment will be subject to nondisciplinary separation in accordance with WAC 357-46-195, or separation in accordance with WAC 357-19-410, or a disability separation in accordance with WAC 357-46-160.

For the purposes of this section, a person is "fully vaccinated" against COVID-19 two weeks after they have received the second dose in a two-dose series of a COVID-19 vaccine or a single-dose COVID-19 vaccine authorized for emergency use, licensed, or otherwise authorized or approved by the U.S. Food and Drug Administration or listed for emergency use or otherwise approved by the World Health Organization.

**NEW SECTION**

**WAC 357-16-197 Must an eligible candidate provide proof of being up-to-date with one of the authorized COVID-19 vaccines?**

After a conditional offer of employment is made, an eligible candidate must provide proof of being up-to-date with one of the authorized COVID-19 vaccines or request an exemption due to a disability and/or medical condition or if the requirement conflicts with an employee's sincerely held religious belief, practice, or observance. If the exemption is granted, there must be an approved accommodation. For the purpose of this section, a person is "up-to-date" with their COVID-19 vaccination when they have received all doses in the primary series and all boosters recommended for them by the U.S. Centers for Disease Control Advisory Committee on Immunization Practices, when they become eligible.

**AMENDATORY SECTION**

**WAC 357-19-373 What notification must an employer give a nonpermanent appointee?** (1) Upon appointment, all nonpermanent appointees must be notified in writing of the conditions of their appointment and/or upon any subsequent change to the conditions of their appointment.

(2) The written notification must at a minimum contain the following information:

(a) The reason for the nonpermanent appointment in accordance with WAC 357-19-360;

(b) The hours of work and the base salary;

(c) The anticipated short-term duration or sporadic nature of the appointment;

(d) A statement regarding the receipt or nonreceipt of benefits. If the employee is to receive benefits, the statement shall include which benefits are to be received; and

(e) The right to request remedial action as provided in WAC 357-19-425.

(3) After a conditional offer of employment is made, an eligible candidate must provide proof of being up-to-date with COVID-19 vaccination in accordance with WAC 357-16-197.

**NEW SECTION**

**WAC 357-19-413 Must a nonpermanent employee comply with the COVID-19 vaccine requirements set forth in WAC 357-04-125?**

A nonpermanent employee must comply with the COVID-19 vaccination requirements set forth in WAC 357-04-125. A nonpermanent employee who fails to comply must be separated in accordance with WAC 357-19-410.

**REFERENCE ONLY**

**WAC 357-19-410 How much notice must an employer give for ending a nonpermanent appointment?**

The end date of a nonpermanent appointment may be set in the appointment letter. If the end date is not set in the appointment letter, the employer must give written notice of the termination date of the nonpermanent appointment. If the employee is a permanent state employee, the employer must provide at least fifteen calendar days' notice. If the employee is not a permanent state employee, the employer must give one work day's notice.

A nonpermanent appointment may be terminated immediately with pay in lieu of the one work day of notice required for nonpermanent employees or the fifteen calendar days' notice required for permanent employees.

For purposes of this rule, written notice may be provided using alternative methods such as email, campus mail, the state mail service, or commercial parcel delivery in accordance with WAC [**357-04-105**](http://app.leg.wa.gov/WAC/default.aspx?cite=357-04-105).

**AMENDATORY SECTION**

**WAC 357-46-165 When may an employer separate an employee in accordance with WAC 357-46-160?**

An employer may separate an employee due to disability when any of the following circumstances exist:

(1) The employer is unable to reasonably accommodate the employee.

(2) The employer has medical documentation of the employee's inability to work in any capacity.

(3) The employee requests separation due to disability and the employer has medical information which documents that the employee cannot perform the essential functions of the employee's position or class.

(4) The employer must separate a permanent employee from employment for failure to comply with the COVID-19 vaccination requirements set forth in WAC 357-04-125 where an exemption was approved due to a disability or medical condition and the employer is unable to reasonably accommodate the employee.

**REFERENCE ONLY**

**WAC 357-46-160 What is a disability separation?**

A disability separation is an action taken to separate an employee from service when the employer determines that the employee is unable to perform the essential functions of the employee's position or class with or without reasonable accommodation due to mental, sensory, or physical incapacity. Disability separation is not a disciplinary action.

**AMENDATORY SECTION**

**WAC 357-46-195 Can an employer separate an employee for nondisciplinary reasons?** An employer may separate a permanent employee from a position or from employment for nondisciplinary reasons such as failure to comply with the conditions of employment which may or may not have existed at the time of initial appointment or failure to authorize or to pass a background check required by the position.

The employer may consider other employment options such as transfer or voluntary demotion in lieu of separation.

The employer must separate a permanent employee from employment for nondisciplinary reasons for failure to comply with the COVID-19 vaccination requirements set forth in WAC 357-04-125.

**AMENDATORY SECTION**

**WAC 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) Consider making appointments from a veterans placement program;

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

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

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

(9) Ensure compliance with requirements governing wage and salary information in accordance with RCW 49.58.100, 49.58.110, WAC 357-16-017, 357-16-215, and 357-16-220; and

(10) Ensure compliance with the vaccination requirements in accordance with WAC 357-04-125 and WAC 357-16-197.