# Explanation of Rule Items #1 through #4

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

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

**Item #1 Part-Time Definitions**

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

Lead: Patricia Foshaug

AMENDATORY SECTION

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

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

New Section

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

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

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

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

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

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

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

Lead: Patricia Foshaug

AMENDATORY SECTION

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

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

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

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

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

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

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

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

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

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

### FOR REFERENCE ONLY

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

New Section

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

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

AMENDATORY SECTION

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

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

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

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

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

AMENDATORY SECTION

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

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

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

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

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

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

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

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

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

AMENDATORY SECTION

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

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

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

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

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

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

* Amend WAC 357-31-115(3) to reference WAC 357-01-2290(1) in order to maintain current state for existing part-time higher education employees and to also apply to higher education non-permanent employees who are assigned an FTE.
* Amend WAC 357-31-115 to create a new subsection (4) to address how many hours of sick leave a part-time higher education employee who does not have a fixed schedule (as defined in WAC 357-01-2290(2)) earns each month.
* Amend WAC 357-31-121(2) to reference WAC 357-01-2290(1) in order to maintain current state for existing higher education part-time employees and to also apply to non-permanent employees who are assigned an FTE. These employees will continue to accrue one hour for every forty hours worked if they have taken over 80 hours of leave without pay in a month. **Note: This applies only to employees who hold a schedule, not to employees that do not hold a schedule because they would not be submitting leave without pay.**
* Create WAC 357-31-026 to address how vacation and sick leave accrual is prorated for part-time higher-education employees who do not have a fixed schedule (as defined in WAC 357-01-2290(2)).

Lead: Patricia Foshaug

AMENDATORY SECTION

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

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

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

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

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

AMENDATORY SECTION

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

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

(2) Full-time and part-time (part-time employee as defined in WAC 357-01-2290(1)) overtime eligible higher education employees with leave without pay exceeding eighty hours in a month (prorated for part-time) will accrue a minimum of one hour for every forty hours worked.

New Section

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

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

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

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

* Amend WAC 357-31-170(2) to reference WAC 357-01-2290(1) in order to maintain current state for existing higher education part-time employees and to also apply to non-permanent employees who are assigned an FTE.
* Amend WAC 357-31-170 to create a new subsection (3) to address at what rate part-time higher education employees who do not have a fixed schedule (as defined in WAC 357-01-2290(2)) earn each month.
* Amend WAC 357-31-175(2) to reference WAC 357-01-2290(1) in order to maintain current state for existing higher education part-time employees and to also apply to non-permanent employees who are assigned an FTE. **Note: This applies only to employees who hold a schedule, not to employees that do not hold a schedule because they would not be submitting leave without pay in accordance with WAC 357-31-180 (as referenced below).**

Lead: Patricia Foshaug

AMENDATORY SECTION

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

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

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

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

AMENDATORY SECTION

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

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

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

FOR REFERENCE ONLY

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

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

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

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

**ITEM #5 – Juneteenth Holiday**

**Staff note:** Chapter 295, Laws of 2021 **(**Substitute House Bill 1016) passed during the 2021 legislative session with an effective date of July 25, 2021. This bill amends RCW 1.16.050 to add Juneteenth as a legal holiday in recognition of the date of remembrance for the day African slaves learned of their freedom. Moving the day from being a day of recognition to a legal holiday.

We are proposing to amend WAC 357-31-005 to include Juneteenth as a legal holiday.

Lead: Patricia Foshaug

AMENDATORY SECTION

**WAC 357-31-005** **For the purpose of chapter 357-31 WAC, what days are recognized as holidays?**

The following days are designated as holidays for the purpose of chapter 357-31 WAC:

(1) The first day of January (New Year's Day);

(2) The third Monday of January (Martin Luther King, Jr.'s birthday);

(3) The third Monday of February (Presidents' Day);

(4) The last Monday of May (Memorial Day);

(5) The nineteenth day of June (Juneteenth);

(6) The fourth day of July (Independence Day);

((~~(6)~~)) (7) The first Monday in September (Labor Day);

((~~(7)~~)) (8) The eleventh day of November (Veterans Day);

((~~(8)~~)) (9) The fourth Thursday in November (Thanksgiving Day);

((~~(9)~~)) (10) The Friday immediately following the fourth Thursday in November (Native American Heritage Day); and

((~~(10)~~)) (11) The twenty-fifth day of December (Christmas Day).

Higher education employers may designate other days to be observed in place of the above holidays. Holiday schedules for higher education employers may be determined on a calendar or fiscal year basis. When a higher education employer establishes a modified schedule, paid holidays must be granted based on the modified schedule.

**ITEM #6 – Protecting high risk employee seniority date**

**Staff note:** We are proposing to amend WAC 357-46-053 and WAC 357-46-055 to state when an employee is on approved leave without pay as a result of the Governor issuing a proclamation directly related to health and safety their seniority dates must not be adjusted

Emergency rule amendments to WAC 357-46-053 and WAC 357-46-055 were filed with the Office of the Code Reviser on April 16, 2021. We are planning to move forward with permanent rulemaking. Unlike the emergency rules, the permanent rules will not be tied to a specific proclamation but any proclamation issued by the Governor that is related to health and safety.

Lead: Caroline Kirk

AMENDATORY SECTION

**WAC 357-46-053** **How is a higher education employee's seniority date determined?**

For higher education employees, the seniority date is determined as follows:

(1) In accordance with the employer's layoff procedure. The employer's layoff procedure must specify a uniform method for determining the seniority date for employees of the higher education institution or related board who are covered by the civil service rules.

(2) Employees on military leave as provided in WAC 357-31-370 must not have their seniority date adjusted for the time spent on military leave without pay.

(3) ((~~The~~ ))Employees on leave without pay as authorized by a proclamation directly related to health and safety issued by the governor must not have their seniority date adjusted for the time spent on((~~will not be adjusted for the period of~~)) leave without pay ((~~for employees on leave without pay taken due to the novel coronavirus disease 2019 (COVID-19) under the governor's high risk proclamation #20-46. This subsection is effective until the expiration of proclamation #20-46, issued April 13, 2020, by the governor or any amendment thereto, whichever is later~~)).

AMENDATORY SECTION

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

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

(a) Military leave as provided in WAC 357-31-370;

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

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

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

(e) Reducing the effects of layoff.

(f) Leave without pay as authorized by a proclamation directly related to health and safety issued by the governor. ~~((Novel coronavirus disease 2019 (COVID-19) under the governor's high-risk proclamation #20-46. This subsection is effective until the expiration of proclamation #20-46, issued April 13, 2020, by the governor or any amendment thereto, whichever is later.~~))

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

((~~(2)~~)) (3) For a part-time general government employee, the seniority date is calculated by determining the number of actual hours worked and/or in paid status, excluding compensatory time off. Actual hours worked includes overtime hours regardless of whether or not the employee receives monetary payment or compensatory time for the hours worked. Time spent in leave without pay status is not credited unless the leave without pay is taken for:

(a) Military leave as provided in WAC 357-31-370;

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

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

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

(e) Reducing the effects of layoff.

(f) Leave without pay as authorized by a ((~~Novel coronavirus disease 2019 (COVID-19) under the governor's high risk~~)) proclamation directly related to health and safety issued by the governor. ((~~#20-46. This subsection is effective until the expiration of proclamation #20-46, issued April 13, 2020, by the governor or any amendment thereto, whichever is later.~~))