**ITEM #1 – Shared Leave (non-COVID-19)**

**Staff note:** Chapter 6, Laws of 2020 (house bill 2739) passed during the 2020 legislative session. This bill makes several changes to the state shared leave program by amending RCW 41.04.655 (effective June 11, 2020), 41.04.665 (effective March 17, 2020) and adding a new section to chapter 41.04 RCW (effective June 11, 2020).

This bill makes the following changes:

* “Shortly deplete” means an employee may maintain up to 40 hours of applicable leave types in reserve and is not required to deplete all of their leave to qualify for shared leave
* Agency heads may not prevent state employees from using shared leave intermittently or on nonconsecutive days so long as the leave has not been returned
* The requirement that an employee diligently pursue and be found ineligible for industrial insurance wage replacement benefits is removed. An employee receiving wage replacement benefits may not receive more than 25% of their base salary as a result of shared leave.

We are proposing to amend the following WACs to align with the changes to the law.

The highlighted yellow text below are changes since the May 12, 2020 rules meeting.

Lead: Brandy Chinn

AMENDATORY SECTION

**WAC 357-31-395** **What definitions apply to shared leave?**

The following definitions apply to shared leave as defined in RCW 41.04.655:

(1) ((~~As defined in RCW 41.04.655,~~)) "Employee" means any employee of the state, including employees of school districts and educational service districts, who are entitled to accrue sick leave or vacation leave and for whom accurate leave records are maintained.

(2) "Employee's relative" normally must be limited to the employee's spouse, registered domestic partner, child, grandchild, sibling, grandparent, or parent.

(3) "Parental leave" means leave to bond and care for a newborn child after birth or to bond and care for a child after placement for adoption or foster care((~~, for a period of up to sixteen weeks after the birth or placement~~)).

(4) "Pregnancy disability" means a pregnancy-related medical condition or miscarriage.

(5) ((~~"Severe" or "extraordinary" condition is defined as serious, extreme or life threatening.~~

~~(6)~~)) "Service in the uniformed services" means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes active duty, active duty for training, initial active duty for training, inactive duty training, full-time national guard duty including state-ordered active duty and a period for which a person is absent from a position of employment for the purpose of an examination to determine the fitness of the person to perform any such duty.

(6) "Severe" or "extraordinary" condition is defined as serious, extreme or life threatening.

(7) "Uniformed services" means the armed forces, the army national guard, and the air national guard of any state, territory, commonwealth, possession, or district when engaged in active duty for training, inactive duty training, full-time national guard duty, or state active duty, the commissioned corps of the public health service, the coast guard and any other category of persons designated by the President of the United States in time of war or national emergency.

AMENDATORY SECTION

**WAC 357-31-400** **How much shared leave may an employee receive?**

(1) The employer determines the amount of leave, if any, which an employee may receive under these rules. However, an employee must not receive more than five hundred twenty-two days of shared leave during total state employment. An employer may authorize leave in excess of five hundred twenty-two days in extraordinary circumstances for an employee qualifying for shared leave because they are suffering from an illness, injury, impairment, or physical or mental condition which is of an extraordinary or severe nature. A nonpermanent employee who is eligible to use accrued leave or personal holiday may not use shared leave beyond the expected end date of the appointment. Leave used under the sick leave pool program, as described in WAC 357-31-570, is included in the five hundred twenty-two day limit.

(2) An employee receiving shared leave for parental leave in accordance with WAC 357-31-395 may receive up to sixteen weeks immediately after the birth or placement unless the birth parent suffers from a pregnancy disability. When a birth parent suffers from a pregnancy disability the period of sixteen weeks for parental leave begins immediately after the pregnancy disability has ended provided the parental leave is used within the first year of the child’s life.

(3) An employee receiving industrial insurance wage replacement benefits may receive up to twenty-five percent of their base salary from the receipt of shared leave.

(4) Employers are encouraged to consider other methods of accommodating the employee's needs such as modified duty, modified hours, flex-time, or special assignments in place of shared leave.

NEW SECTION

**WAC 357-31-403** **May an employer prevent an employee from using shared leave intermittently or on nonconsecutive days?**

An employer may not prevent an employee from using shared leave intermittently or on nonconsecutive days so long as the leave has not been returned under WAC 357-31-445.

AMENDATORY SECTION

**WAC 357-31-435** **Must employees use their own leave before using shared leave?**

1) Employees who qualify for shared leave under WAC 357-31-390 (1)(a) must first use all compensatory time, recognition leave as described in WAC 357-31-565((~~,~~)), ~~and~~ personal holiday((~~, sick leave and vacation leave~~)) and holiday credit that they have accrued before using shared leave. The employee is not required to deplete all of their accrued vacation and sick leave and can maintain up to forty hours of vacation leave and forty hours of sick leave.

(2) Employees who qualify for shared leave under WAC 357-31-390 (1)(b) must first use all of their compensatory time, recognition leave as described in WAC 357-31-565((~~,~~)), ~~and~~ personal holiday((~~, accrued vacation leave and paid military leave allowed under RCW 38.40.060~~)) and holiday credit before using shared leave. The employee is not required to deplete all of their accrued vacation leave and paid military leave allowed under RCW 38.40.060 and can maintain up to forty hours of vacation leave and forty hours of military leave.

(3) Employees who qualify for shared leave under WAC 357-31-390 (1)(c) and (d) must first use all compensatory time, recognition leave as described in WAC 357-31-565((~~,~~)) , ~~and~~ personal holiday and holiday credit ((~~and vacation leave~~)) that they have accrued before using shared leave. The employee is not required to deplete all of their accrued vacation leave and can maintain up to forty hours of vacation leave.

(4) Employees who qualify for shared leave under WAC 357-31-390 (1)(e) or (f) must first use all leave as described in WAC 357-31-797.

(5) Employees who qualify for shared leave under WAC 357-31-390 (1)(g) and/or (h) must first use all accrued compensatory time, recognition leave as described in WAC 357-31-565, ~~and~~ personal holiday and holiday credit before using shared leave. The employee is not required to deplete all of their accrued vacation leave and sick leave and can maintain up to forty hours of vacation leave and forty hours of sick leave.

**AMENDATORY SECTION**

**WAC 357-31-687 Must employees use their own leave before receiving shared leave from the uniformed service shared leave pool?**

Employees who are eligible to receive shared leave from the uniformed service shared leave pool must first use all accrued compensatory time, recognition leave as described in WAC 357-31-565, personal holiday, vacation leave, and paid military leave allowed under RCW 38.40.060 before receiving shared leave from the uniformed service shared leave pool. The employee is not required to deplete all of their accrued vacation leave and paid military leave allowed under RCW 38.40.060 and can maintain up to forty hours of vacation leave and forty hours of paid military leave.

**ITEM #2 – Organ Donation**

**Staff note:** Chapter 305, Laws of 2020 (Senate Bill 6123) adds language to chapter 41.06 RCW and requires all executive agencies to allow employees to take paid leave, not to exceed 30 days, in a 2-year period, as needed to participate in life-giving procedures effective June 11, 2020. For the purpose of this bill "life-giving procedures" includes organ donation but does not include donation of blood or plasma. The proposed amendment to amend WAC 357-31-326(1) and subsection (2) to distinguish the term life-giving procedures and donation of blood and plasma between general government and higher education.

The highlighted yellow text below are changes since the May 12, 2020 rules meeting.

Lead: Brandy Chinn

REFERENCE ONLY

### WAC 357-31-320 If an employee has received a subpoena, must the employee be granted a leave of absence with pay?

The employer **must** grant a leave of absence with pay for the employee to respond to a subpoena when:

(1) The employee has been subpoenaed on the employer's behalf; or

(2) The subpoena is for a legal proceeding which is unrelated to the personal or financial matters of the employee.

AMENDATORY SECTION

**WAC 357-31-325** **When must an employer grant leave with pay for other miscellaneous reasons** ((**~~such as to take a state examination~~**))**?**

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

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

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

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

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

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

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

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

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

AMENDATORY SECTION

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

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

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

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

(4) (~~3~~) In accordance with the general government employer's leave policy, an agency may grant leave with pay to allow an employee to take any additional leave beyond thirty days in a two-year period to participate in life-giving procedures.

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 (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 WAC, who is a victim of domestic violence, sexual assault or stalking as defined in RCW 49.76.020;

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

(4) 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;

(5) 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;

(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 WAC; ((~~and~~))

(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 WAC; and

(8) ~~Allow~~ Address if a general government employee may ~~to~~ take additional paid leave beyond thirty days in a two-year period to participate in life-giving procedures in accordance with WAC 357-31-326.

**ITEM #3 – Agency’s Sexual Harassment Policy – Records of Harassment or Stalking**

**Staff note:** Engrossed Substitute House Bill 1692 passed during the 2019 legislative session with an effective date of July 1, 2020. This bill adds new sections to Chapter 42.56 RCW, Public Records Act. Three of these sections were codified as RCW 42.56.660, 42.56.665 and 42.56.675. This bill prevents an employer from disclosing records of harassment or stalking. If the requestor is a different party (not the person alleged to have been involved) requesting records of an employee, who has notified the employer of harassment or stalking, the employer must immediately notify the employee. If the employee seeks an injunction the employee must in turn notify the employer.

We are proposing to amend WAC 357-25-027 what must be included in the agency’s sexual harassment policy, to add subsection 13 to state responses to public records requests will be in accordance with the new laws.

The highlighted yellow text below are changes since the May 12, 2020 rules meeting.

Lead: Caroline Kirk

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](http://app.leg.wa.gov/RCW/default.aspx?cite=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 ~~S~~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](http://app.leg.wa.gov/RCW/default.aspx?cite=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 ~~S~~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 ~~S~~statement that confidentiality cannot be guaranteed;

(13) A ~~S~~statement that responses to public records requests will be provided in accordance with RCW 42.56.660~~, 42.56.665~~ 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;

~~(14)~~(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;

~~(15)~~(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

~~(16)~~(17) A ~~S~~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](http://app.leg.wa.gov/RCW/default.aspx?cite=49.44.210).

For the purposes of this subsection, "employee" has the same meaning as defined in RCW [49.44.210](http://app.leg.wa.gov/RCW/default.aspx?cite=49.44.210).

**ITEM #4 – Part-time and Temporary Rules**

**Staff note:** [RCW 41.06.070](https://apps.leg.wa.gov/RCW/default.aspx?cite=41.06.070) formerly exempted both part-time and temporary employees, as defined by the Office of Financial Management, from state civil service laws. 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 laws ([Laws of 2018, chapter 246, section 1](http://lawfilesext.leg.wa.gov/biennium/2017-18/Pdf/Bills/Session%20Laws/House/2669.SL.pdf)). The current civil service rules (Title 357 WAC) do not distinguish between part-time and temporary employees of higher education institutions. We are proposing the following rule amendments in order to bring the civil service rules into alignment with the new law.

The preproposal statement of inquiry ([CR-101](https://www.ofm.wa.gov/sites/default/files/public/rulemaking/rules_dev/WSR_19-16-028_CR101.pdf)) was filed with the Office of the Code Reviser on July 26, 2019, WSR 19-16-028.

A decision was made to delay implementation due to COVID-19 and we plan to take to a future Director’s meeting with an effective date of January 1, 2021 (an email was sent out to stakeholders on March 30, 2020). The yellow highlighted text refers to the updated date of January 1, 2021.

Lead: Brandy Chinn

AMENDATORY SECTION

**WAC 357-04-015** **Who is not covered by civil service rules?**

The civil service rules do not apply to positions specifically exempted in individual agency statutes, chapter 41.06 RCW, and to the following:

(1) Washington state patrol trooper cadets in training for commissioning as troopers in the Washington state patrol;

(2) The executive director, ((~~his/her~~)) the executive director's confidential secretary, assistant directors, and professional education employees of the state board for community and technical colleges; and

(3) Inmate, student, ((~~part-time,~~)) or temporary employees, and part-time professional consultants, as defined by the ((~~Washington personnel resources board~~)) director in WAC 357-04-040, 357-04-045, 357-04-050, and 357-04-055.

AMENDATORY SECTION

**WAC 357-04-035** **Who defines exempt status for student**((**~~, part-time, or~~**)) **employees, temporary employees, and part-time professional consultants for higher education employers?**

In accordance with RCW 41.06.070, the ((~~board~~)) director defines exemptions for student((~~, part-time or~~)) employees, temporary employees, and part-time professional consultants. Higher education employers must use the definitions in WAC 357-04-040, 357-04-045, and 357-04-050 as the criteria for identifying positions in these categories of employment that are exempt from civil service rules.

AMENDATORY SECTION

**WAC 357-04-045** **Which** ((**~~part-time or~~**)) **temporary employees of higher education employers are exempt from civil service rules?**

((~~Persons employed to work one thousand fifty hours or less in a twelve consecutive month period from the original date of hire or October 1, 1989, whichever is later, are exempt from civil service rules.~~)) (1) Temporary higher education employees are exempt from civil service rules under the following circumstances:

(a) The employee is employed twelve consecutive months or less;

(b) The employee is employed for one thousand fifty hours or less in that same twelve consecutive month period which begins from the original date of hire or January 1, 2021, whichever is later; and

(c) The employee is limited to one appointment only with the same higher education employer that meets the criteria in (a) and (b) of this subsection.

(2) Temporary appointments under the provisions of this section are subject to remedial action in accordance with WAC 357-19-450.

(3) Temporary employees who are ((~~either~~)) exempt under ((~~this~~)) subsection ((~~or exceptions authorized under WAC 357-19-440,~~)) (1) of this section and who work more than three hundred fifty hours in a twelve consecutive month period from the original date of hire or January 1, 2004, whichever is later, may be included in an appropriate bargaining unit for purposes of collective bargaining, as determined by the public employment relations commission. Overtime and time worked as a student employee under the provisions of WAC 357-04-040 are not counted in the three hundred fifty hours. For purposes of counting the three hundred fifty hours, the twelve-month period will begin on the employee's original date of hire or January 1, 2004, whichever is later. ((~~The next twelve-month period will repeat accordingly. For example:~~

~~The employee's original date of hire is June 1, 2009. The twelve-month period would be June 1, 2009, through May 31, 2010. The next twelve-month period would be June 1, 2010, through May 31, 2011. This pattern will continue.~~

~~Once the employee works at least three hundred fifty hours in a job classification in the collective bargaining unit the employee remains in that collective bargaining unit until the end of the first twelve-month period (as described in this section) in which the employee does not work at least three hundred fifty hours in a job classification that is in the collective bargaining unit. An employee who has not worked sufficient hours in a bargaining unit job classification to remain in the bargaining unit, is excluded from the bargaining unit until the employee again works at least three hundred fifty hours in a bargaining unit job classification in a twelve-month period (as described in this section).~~

~~Temporary appointment under the provisions of this section may be subject to remedial action in accordance with WAC 357-19-450, if the number of hours worked exceeds one thousand fifty hours in a twelve consecutive month period from the original date of hire or October 1, 1989, whichever is later. Overtime and time worked as a student employee under the provisions of WAC 357-04-040 are not counted in the one thousand fifty hours. For purposes of counting the one thousand fifty hours, the twelve-month period will begin on the employee's original date of hire or October 1, 1989, whichever is later. The next twelve-month period will repeat accordingly. For example:~~

~~The employee's original date of hire is June 1, 2009. The twelve-month period would be June 1, 2009, through May 31, 2010. The next twelve-month period would be June 1, 2010, through May 31, 2011. This pattern will continue.~~))

NEW SECTION

**WAC 357-04-046** **May a higher education employer make subsequent appointments for temporary employees who have exhausted their temporary appointment as identified in WAC 357-04-045?**

Higher education employers may hire employees who have exhausted their temporary appointment as identified in WAC 357-04-045 if the employee is appointed as a nonpermanent or permanent employee in accordance with chapter 357-19 WAC.

AMENDATORY SECTION

**WAC 357-04-055** **Who defines exempt status for student**((**~~, part-time,~~**)) **or temporary employees; part-time professional consultants; and inmates for general government employers and what types of positions are exempt?**

In accordance with RCW 41.06.070, the ((~~board~~)) director defines exemptions for student((~~, part-time~~)) or temporary employees; part-time professional consultants; and inmates. The following types of general government employees are exempt from civil service rules:

(1) Part-time local health officers;

(2) ((~~Persons employed on a part-time, or temporary basis for medical, nursing or other professional service and who are not engaged in the performance of administrative duties;~~

~~(3) Part-time or~~)) Temporary employees who are enrolled as full-time students in recognized educational institutions and whose employment is largely to provide a training opportunity, and all temporary employees not in federal grant-in-aid programs;

((~~(4)~~)) (3) Patient and resident help in general government residential facilities;

((~~(5)~~)) (4) Inmate help in general government correctional facilities; and

((~~(6)~~)) (5) Skilled and unskilled labor employed temporarily on force account; construction and maintenance projects; or employed on temporary seasonal single phases of agricultural production or harvesting; or as determined by the director to be equivalent.

AMENDATORY SECTION

**WAC 357-19-435** **For what reasons may a higher education employer** ((**~~make~~**)) **appoint an individual to a temporary appointment?**

A higher education employer may ((~~make~~)) appoint an individual to a temporary appointment for the following reasons:

(1) The number of hours to be worked by the individual will not exceed one thousand fifty hours in ((~~any~~)) a twelve consecutive month period from the original date of hire ((~~or October 1, 1989~~)) or January 1, 2021, whichever is later, in accordance with WAC 357-04-045; or

(2) The employing official formally assigns a classified employee the duties and responsibilities of a higher-level class for a period of less than six consecutive months. In accordance with WAC 357-19-441(2), temporary appointments under this subsection are not exempt from civil service rules.

AMENDATORY SECTION

**WAC 357-19-440** **What provisions govern higher education temporary appointments?**

(1) Temporary appointments may be made without regard to rules on recruitment,

assessment((~~,~~)) and certification as provided in chapter 357-16 WAC.

(2) Each higher education employer must develop for director approval a procedure which indicates the employer's system for controlling and monitoring ((~~exempt part-time and~~)) temporary positions as identified in WAC 357-04-045. The procedure must include a mechanism to access and report hours worked by an individual temporary employee.

(3) ((~~A higher education employer may petition the director in writing for approval of exceptions to the one thousand fifty hours threshold as specified in WAC 357-19-435(1).~~

~~(4)~~)) No temporary appointment shall take the place of employees laid off under the provisions of WAC 357-46-010.

AMENDATORY SECTION

**WAC 357-19-450** **When may the director take remedial action for individuals in higher education temporary appointments and what does remedial action include?**

For individuals in higher education temporary appointments under the provisions of WAC 357-19-435(1), the director may take remedial action to confer permanent status, set base salary((~~,~~)) and establish seniority when it is determined that the following conditions exist:

(1) The ((~~employee~~)) individual has worked in one or more temporary positions as identified in WAC 357-04-045 for more than one thousand fifty hours in any twelve consecutive month period since the original hire date or ((~~October 1, 1989~~)) January 1, 2021, whichever is later. (Overtime and time worked as a student employee under the provisions of WAC 357-04-040 are not counted in the one thousand fifty hours.)

(2) The position or positions are subject to civil service.

(3) The employee has not taken part in any willful failure to comply with these rules.

**ITEM #5 – Non-permanent Rules**

**Staff note:** We are proposing to expand the current General Government non-permanent rules so that Institutions of Higher Education may use to fill non-permanent appointments.

Since the February rules meeting, a decision was made not to amend WAC 357-19-375 to expand to higher education employers because seasonal appointments as addressed in subsection 2 does not currently apply to higher education employers. Instead we are proposing to add a new section, WAC 357-19-376 to state that higher education employees may receive consecutive nonpermanent appointments as long as any subsequent appointment is to a different position.

A decision was made to delay implementation due to COVID-19 and we plan to take to a future Director’s meeting with an effective date of January 1, 2021 (an email was sent out to stakeholders on March 30, 2020).

Lead: Brandy Chinn

### REFERENCE ONLY (NO CHANGE)

### WAC 357-19-375 Can an employee receive consecutive general governmentnonpermanent appointments?

Individuals may receive consecutive nonpermanent appointments as long as:

(1) Any subsequent appointment is to a different position; or

(2) The multiple appointments are of a seasonal nature but don't meet the definition of seasonal appointment because each appointment last less than five months in duration during any consecutive twelve-month period.

### REFERENCE ONLY (NO CHANGE)

### WAC 357-19-380 What provisions of the civil service rules apply to nonpermanent employees?

The leave and holiday provisions of chapter [357-31](https://apps.leg.wa.gov/WAC/default.aspx?cite=357-31) WAC and compensation provisions of chapter [357-28](https://apps.leg.wa.gov/WAC/default.aspx?cite=357-28) WAC apply to employees in nonpermanent appointments.

AMENDATORY SECTION

**WAC 357-01-210** Nonpermanent **appointment.**

An appointment made by ((~~a general government~~)) an employer under the provisions of WAC 357-19-360.

AMENDATORY SECTION

**WAC 357-19-360** **For what reasons may** ((**~~a general government~~**)) **an employer make nonpermanent appointments?**

((~~A general government~~)) An employer may fill a position with a nonpermanent appointment when any of the following conditions exist:

(1) A permanent employee is absent from the position;

(2) The ((~~agency~~)) employer is recruiting to fill a vacant position with a permanent appointment;

(3) The ((~~agency~~)) employer needs to address a short-term immediate workload peak or other short-term needs;

(4) The ((~~agency~~)) employer is not filling a position with a permanent appointment due to the impending or actual layoff of a permanent employee(s); or

(5) The nature of the work is sporadic and does not fit a particular pattern.

AMENDATORY SECTION

**WAC 357-19-365** **When is it inappropriate for** ((**~~a general government~~**)) **an employer to fill a position with a nonpermanent appointment to address a short-term immediate workload peak or other short-term needs?**

((~~General government~~)) Employers **must not** fill a position with a nonpermanent appointment under the provisions of WAC 357-19-360(3) when the work of the position is scheduled, ongoing and permanent in nature. If at any time during a nonpermanent appointment, a short-term workload peak or other short term need becomes ongoing and permanent in nature, the employer must take action to fill the position on a permanent basis.

AMENDATORY SECTION

**WAC 357-19-370** **How long** ((**~~can a general government~~**)) **may a nonpermanent**

**appointment last?**

(1) ((~~Agencies~~)) Employers are encouraged to limit the duration of a nonpermanent

appointment to twelve months from the appointment date.

(2) A nonpermanent appointment for a reason specified in WAC 357-19-360 (1) through (4) **must not** exceed twenty-four months unless the director has approved an extension of the appointment due to the continued absence of a permanent employee. An employer may choose to not count time spent in formal training programs towards the twenty-four month limit. On-the-job training is not considered a formal training program for purposes of this rule.

AMENDATORY SECTION

**WAC 357-19-373** **What notification must** ((**~~a general government~~**)) **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.

NEW SECTION

**WAC 357-19-376** **May an employee receive consecutive higher education nonpermanent appointments?**

Individuals may receive consecutive nonpermanent appointments as long as any subsequent appointment is to a different position.

AMENDATORY SECTION

**WAC 357-19-377** **What provisions apply to** ((**~~general government~~**)) **nonpermanent appointments?**

((~~General government~~)) Nonpermanent appointments are subject to the following provisions:

(1) Nonpermanent appointees must meet the competencies and other requirements of the position to which they are appointed.

(2) Nonpermanent appointments may be filled on a noncompetitive basis which means the employer is not required to comply with the rules on recruitment, assessment((~~,~~)) and certification as provided in chapter 357-16 WAC.

(3) Nonpermanent appointments may be filled using the competitive process specified in chapter 357-16 WAC as long as the eligible applicant indicates a willingness to accept a nonpermanent appointment.

(4) ((~~Agencies~~)) Employers may underfill a position with a nonpermanent appointment.

AMENDATORY SECTION

**WAC 357-19-385** ((**~~Can~~**)) **May a permanent employee accept a nonpermanent appointment?**

A permanent employee may accept a ((~~general government~~)) nonpermanent appointment.

AMENDATORY SECTION

**WAC 357-19-388** **What notices must employees and their employers provide each other when an employee accepts a nonpermanent appointment?**

Employees who accept a nonpermanent appointment must give their current employers at least fourteen calendar days' notice before moving to a nonpermanent appointment. The current ((~~agency~~)) employer and employee may agree to waive or shorten the notice period.  
When the current employer receives the employee's notice, the employee's permanent ((~~agency~~)) employer must notify the employee in writing of ((~~his/her~~)) the employee's return right at the conclusion of the nonpermanent appointment.  
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.

AMENDATORY SECTION

**WAC 357-19-400** ((**~~Can the agency~~**)) **May an employer convert a** ((**~~general government~~**)) **nonpermanent appointment to a probationary or trial service appointment?**

(1) When an ((~~agency~~)) employer uses a competitive process to make a nonpermanent appointment to fill a position in the absence of a permanent employee or fill a position nonpermanently due to the impending or actual layoff of a permanent employee(s), the ((~~agency~~)) employer may change the status of the appointment to probationary or if the employee held permanent status prior to the nonpermanent appointment to trial service if:

(a) The permanent employee does not return to the position or the layoff action has been implemented; and

(b) The ((~~agency~~)) employer needs to fill the position permanently.

(2) At the discretion of the appointing authority, time spent in the nonpermanent appointment may count towards the probationary or trial service period for the permanent position.

AMENDATORY SECTION

**WAC 357-19-420** **What are the appeal rights of** ((**~~general government~~**)) **nonpermanent employees?**

Employees without permanent status appointed to ((~~general government~~)) nonpermanent appointments have no appeal rights with the exception of remedial action as provided in WAC 357-19-430.

AMENDATORY SECTION

**WAC 357-19-425** **How does a** ((**~~general government~~**)) **nonpermanent employee request remedial action?**

Requests for remedial action by nonpermanent employees must be received in writing within thirty days as provided in chapter 357-49 WAC. Following a director's review of the remedial action request, an employee may file exceptions to the director's decision in accordance with chapter 357-52 WAC.

AMENDATORY SECTION

**WAC 357-19-430** **When may the director take remedial action for** ((**~~general government~~**)) **nonpermanent employees and what does remedial action include?**

The director may take remedial action to confer permanent status, set base salary, and establish seniority when it is determined that the following conditions exist:

(1) The employer has made an appointment that does not comply with rules on nonpermanent appointment; or

(2) The duration of a nonpermanent appointment as defined in WAC 357-19-360 (1) through (4) has exceeded twenty-four months without director approval.

**ITEM #6 – RCW 41.06.070 Cleanup**

**Staff note:** Chapter 246, Laws of 2018 (House Bill 2669) became effective on June 7, 2018. HB 2669 amended RCW 41.06.070 to remove the part-time employee exemption from civil service law (as described in item #2 above). This amendment also resulted in changes to existing subsections. As a result, the references to RCW 41.06.070(3) in WACs 357-04-020, 357-04-025 and 357-04-030 need to be amended to reflect the correct references in RCW 41.06.070. Rather than citing a specific subsection, a decision was made to just cite the RCW in case the ordering of the RCW changes in the future to avoid needing to clean up the rules.

A decision was made to delay implementation due to COVID-19 and we plan to take to a future Director’s meeting with an effective date of January 1, 2020 (an email was sent out to stakeholders on March 30, 2020).

Lead: Brandy Chinn

AMENDATORY SECTION

**WAC 357-04-020** **May the director exempt other positions from civil service?**

The director may provide for further exemptions for general government positions involving substantial responsibility for formulating basic agency or executive policy or involving directing and controlling program operations of an agency or a major administrative division of an agency in accordance with the provisions and procedures of RCW 41.06.070((~~(3)~~)).

AMENDATORY SECTION

**WAC 357-04-025** **What rights does a classified employee have when the position** ((**~~he/she~~**)) **the employee holds is exempted from the civil service rules?**

As required by RCW 41.06.070((~~(3)~~)) and 41.06.170, an employee holding a classified position has the following rights if the position is exempted from the application of the civil service rules:

(1) If the employee previously held permanent status in another classified position, the employee has the right to return to the highest class of position previously held, or to a position of similar nature and salary in accordance with WAC 357-19-220.

(2) The employee may appeal the exemption of the position in accordance with chapter 357-52 WAC.

AMENDATORY SECTION

**WAC 357-04-030** **What right does an employee have to return to the classified service from exempt service?**

As required by RCW 41.06.070((~~(3)~~)), any employee having permanent status in a classified position who accepts an appointment in an exempt position has the right to return to classified service in accordance with WAC 357-19-195, 357-19-200, and 357-19-205. As long as the employee was not terminated from the exempt position for gross misconduct or malfeasance, the employee has the right to return to the highest class of position in which ((~~he/she~~)) the employee previously held permanent status or to a position of similar nature and salary.

**ITEM #7 – Written Certifications for Reasonable Accommodations for the Expression of Breast Milk**

**Staff Note:** HB 2266 passed during the 2020 legislative session effective June 11, 2020. This bill amends RCW 43.10.005 by adding language to state an employer may not require an employee to provide written certification from a health care professional when the employee requests a reasonable accommodation for the expression of breast milk. We are proposing the following amendments to reflect this change. In addition, we are proposing to add the reasons in which an employer must provide a reasonable pregnancy accommodation back into WAC 357-26-035.

**Background:** WAC 357-26-035 was amended in 2019 as a result of SHB 1930 which passed during the 2019 legislative session with an effective date of July 28, 2019. Subsections (1)(a) through (h) were removed and RCW 43.10.005 was referenced instead. This bill amends RCW 43.10.005 to expand the definition of pregnancy to include the employee’s need to express breast milk and expands the definition of reasonable accommodation to state an employer must provide “reasonable break time for an employee to express breast milk for two years after the child’s birth each time the employee has need to express the milk and providing a private location, other than a bathroom, if such a location exists at the place of business or worksite, which may be used by the employee to express breast milk. If the business location does not have a space for the employee to express milk, the employer shall work with the employee to identify a convenient location and work schedule to accommodate their needs.

After further review, a decision was made to amend WAC 357-26-035 to add the specific accommodations back into the WAC that were removed in 2019. We believe adding the reasons will add clarity surrounding when an employer must provide a reasonable pregnancy accommodations thus resulting in less confusion.

Lead: Caroline Kirk

AMENDATORY SECTION

### WAC 357-26-035 What actions must an employer take to provide reasonable pregnancy accommodations?

(1) An employer must provide employees who are pregnant or have a pregnancy-related health condition a reasonable pregnancy accommodation, which includes the following:(( ~~for reasons as required in RCW~~ [~~43.10.005~~](http://app.leg.wa.gov/RCW/default.aspx?cite=43.10.005)~~.~~))

(a) Providing more frequent, longer, or flexible restroom breaks;

(b) Modifying a no food or drink policy;

(c) Providing seating or allowing an employee to sit more frequently if the job requires standing;

(d) Providing reasonable break time for an employee to express breast milk for two years after the child’s birth each time the employee has need to express the milk and providing a private location, other than a bathroom, if such a location exists at the place of business or worksite, which may be used by the employee to express breast milk. If the business location does not have a space for the employee to express breast milk, the employer shall work with the employee to identify a convenient location and work schedule to accommodate their needs;

(e) Job restructuring, part-time or modified work schedules, reassignment to a vacant position, or acquiring or modifying equipment, devices, or an employee’s work station;

(f) Providing a temporary transfer to a less strenuous or less hazardous position;

(g) Providing assistance with manual labor and limits on lifting;

(h) Scheduling flexibility for prenatal visits; and

(i) Any further pregnancy accommodation an employee may request and to which an employer must give reasonable consideration in consultation with information provided on pregnancy accommodation by the department of labor and industries or the employee’s attending health care provider.

(2) An employer cannot require an employee who is pregnant or has a pregnancy-related health condition to take leave if another reasonable pregnancy accommodation can be provided.

(3) The employer is not required to create additional employment that the employer would not otherwise have created, unless the employer does so or would do so for other classes of employees who need accommodation.

AMENDATORY SECTION

**WAC 357-26-040 When may an employer deny a reasonable pregnancy-related accommodation?**

The employer may deny a reasonable pregnancy-related accommodation based on undue hardship, which means an action requiring significant difficulty or expense, to the employer's program, enterprise or business for pregnancy accommodations listed in WAC [**357-26-035**](https://apps.leg.wa.gov/WAC/default.aspx?cite=357-26-035) (1)((~~(d)~~))(e) through (i)((~~(h)~~)). The employer may not claim undue hardship for the pregnancy accommodations listed in WAC [**357-26-035**](https://apps.leg.wa.gov/WAC/default.aspx?cite=357-26-035) (1)(a) through (d)((~~(c)~~)) or for limits on lifting over seventeen pounds.

AMENDATORY SECTION

**WAC 357-26-045 When an employee is pregnant or has a pregnancy-related health condition and requests a reasonable pregnancy accommodation what documentation may the employee be required to submit?**

When an employee is pregnant or has a pregnancy-related health condition and requests a reasonable pregnancy accommodation, the employee may be required to submit written certification from their licensed physician or health care professional for those pregnancy accommodations listed in WAC [**357-26-035**](https://apps.leg.wa.gov/WAC/default.aspx?cite=357-26-035) (1)((~~(d)~~))(e) through (i)((~~(h)~~)). The employer may not claim undue hardship for the pregnancy accommodations listed in WAC [**357-26-035**](https://apps.leg.wa.gov/WAC/default.aspx?cite=357-26-035) (1)(a) through (d)((~~(c)~~)) or for limits on lifting over seventeen pounds.