**Item #1 - Health Labor Emergency Standards Act (HELSA)**

**Staff note:** Health Emergency Labor Standards Act (HELSA) codified as [RCW 49.17.062](https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fapp.leg.wa.gov%2FRCW%2Fdefault.aspx%3Fcite%3D49.17.062&data=05%7C01%7Crules%40ofm.wa.gov%7Ce7d8d5fdd50746ca8eee08daa723a6e5%7C11d0e217264e400a8ba057dcc127d72d%7C0%7C0%7C638006069113162691%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C3000%7C%7C%7C&sdata=%2BOsN17I%2BvvqcVdpX4WYo1bx7ZZbVN3%2BbyqerzikOE0Q%3D&reserved=0) states “during a public health emergency, no employer may discharge, permanently replace, or in any manner discriminate against an employee who is high risk as a result of the employee seeking accommodation that protects them from the risk of exposure to the infectious or contagious disease, or, if no accommodation is reasonable, utilizing all available leave options, including but not limited to leave without pay and unemployment insurance until completion of the public health emergency or accommodation is made available.” As a result of the passage of HELSA, amendments were made to Chapter 357-31 WAC effective July 1, 2022, to allow high-risk employees, as defined in RCW [**49.17.062**](https://gcc02.safelinks.protection.outlook.com/?url=http%3A%2F%2Fapp.leg.wa.gov%2FRCW%2Fdefault.aspx%3Fcite%3D49.17.062&data=05%7C01%7Crules%40ofm.wa.gov%7Ce7d8d5fdd50746ca8eee08daa723a6e5%7C11d0e217264e400a8ba057dcc127d72d%7C0%7C0%7C638006069113162691%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C3000%7C%7C%7C&sdata=xpgdx%2BN8ncWlz%2F7e%2FwJbBfo2%2FrwnDxof6O%2Bj1gdFxFs%3D&reserved=0), to utilize leave if no accommodation is reasonable during a public health emergency as defined in RCW 49.17.062.

Existing WAC language does not require a declared public health emergency, therefore, may be interpreted to allow for a high-risk employee to utilize all leave types as an accommodation if no other accommodation is reasonable as long as the employee meets the definition of being high-risk. A decision has been made to allow high-risk employees, as defined in RCW 49.17.062, outside of a declared public health emergency to utilize all accrued leave types to protect themselves if no accommodation is reasonable. However, the requirement for employers to approve leave without pay for a high-risk employee if no accommodation is reasonable will be limited to the duration of a declared public health emergency as defined in RCW 49.17.062. We are proposing to amend WAC 357-31-100 and 357-31-327(6) to clarify that an employer must grant the use of leave without pay during a declared public health emergency in accordance with RCW 49.17.062.

Additionally, a policy decision was made to amend WAC 357-31-330(14) to remove the reference to coronavirus 2019 (COVID-19) and instead state the risk of exposure to an infectious or contagious disease to allow for consistent language within WAC. In determining whether to grant leave, an employer will continue to be able to consider current workload demands and business needs that require employees to perform their duties.

We are proposing to amend:

* WAC 357-31-027 to add subsection (8) to state a higher education employer must allow part-time high-risk employee, as defined in RCW 49.17.062, to utilize accrued holiday credit to protect themselves from risk of exposure to an infectious or contagious disease if no accommodation is reasonable. This WAC was inadvertently missed when the July 1, 2022 amendments were initially made.
* WAC 357-31-100(9) to clarify an employer must have a policy that addresses whether a high-risk employee, as defined in RCW 49.17.062, seeking a reasonable accommodation to protect themselves from the risk of exposure to an infectious or contagious disease may be allowed to use their accrued leave and address whether an employee may use leave without pay if the employer determines no other accommodation is reasonable besides the use of leave.
* WAC 357-31-100(10) to add a subsection to state an employer must have a policy that allows a high-risk employee seeking a reasonable accommodation to protect themselves from risk of exposure to an infectious or contagious disease during a public health emergency to use leave without pay if the employer determines no other accommodation is reasonable beside the use of leave in accordance with RCW 49.17.062.
* WAC 357-31-327(6) to clarify that an employer must allow a high-risk employee seeking a reasonable accommodation to protect themselves from the risk of exposure to an infectious or contagious disease during a public health emergency to use leave without pay if the employer determines no other accommodation is reasonable besides the use of leave in accordance with RCW 49.17.062.
* WAC 357-31-330(14) to remove the reference to coronavirus disease 2019 (COVID-19) and instead state risks of exposure to an infectious or contagious disease.

The highlighted green text reflects proposed amendments to WAC 357-31-100 as proposed in rule item #2. The highlighted yellow text reflects changes since the May 9, 2023 Rules Meeting.

Lead: Brittany Trujillo

AMENDATORY SECTION

**WAC 357-31-027** **When must a higher education employer allow a part-time employee to use accrued holiday credit?**

Higher education employers must allow a part-time employee as defined in WAC 357-01-2290(2) to use accrued holiday credit for the following reasons:

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

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

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

(4) In accordance with WAC 357-31-373, an employee must be granted the use of accrued holiday credit to be with a spouse or registered domestic partner who is a member of the armed forces of the United States, National Guard, or reserves after the military spouse or registered domestic partner has been notified of an impending call or order to active duty, before deployment, or when the military spouse or registered domestic partner is on leave from deployment.

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

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

(7) If the employee requests to use their accrued holiday credit when granted a temporary leave of absence for legislative service in accordance with WAC 357-31-374(2).

(8) When a high-risk employee, as defined in RCW [**49.17.062**](http://app.leg.wa.gov/RCW/default.aspx?cite=49.17.062), seeks a reasonable accommodation to protect themselves from the risk of exposure to an infectious or contagious disease and the employer determines no other accommodation is reasonable besides the use of leave.

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**](http://app.leg.wa.gov/WAC/default.aspx?cite=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**](http://app.leg.wa.gov/WAC/default.aspx?cite=357-01) WAC, who is a victim of domestic violence, sexual assault or stalking as defined in RCW [**49.76.020**](http://app.leg.wa.gov/RCW/default.aspx?cite=49.76.020);

(3) Allow an employee to use accrued leave as a supplemental benefit as provided in WAC [**357-31-248**](http://app.leg.wa.gov/WAC/default.aspx?cite=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 18 weeks in accordance with WAC [**357-31-133**](http://app.leg.wa.gov/WAC/default.aspx?cite=357-31-133);

(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**](http://app.leg.wa.gov/WAC/default.aspx?cite=296-128) WAC;

(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**](http://app.leg.wa.gov/WAC/default.aspx?cite=296-128) WAC;

(8) Address whether a general government employee may take additional accrued leave beyond 30 days in a two-year period to participate in life-giving procedures in accordance with RCW [**41.06.570**](http://app.leg.wa.gov/RCW/default.aspx?cite=41.06.570);

(9) Allow an ~~a high-risk~~ employee, ~~as defined in RCW~~[**~~49.17.062~~**](http://app.leg.wa.gov/RCW/default.aspx?cite=49.17.062)~~,~~ seeking a reasonable accommodation to protect themselves from the risk of exposure to an infectious or contagious disease to use their accrued leave and ~~leave without pay~~ address whether an employee may use leave without pay if the employer determines no other accommodation is reasonable besides the use of leave;

(10) Allow a high-risk employee seeking a reasonable accommodation to protect themselves from the risk of exposure to an infectious or contagious disease *during a public health emergency* to use leave without pay if the employer determines no other accommodation is reasonable besides the use of leave in accordance with RCW 49.17.062;

(11) Allow an employee to use unpaid leave when the employee is granted a temporary leave of absence for service in an elective office in accordance with WAC [**357-31-374**](http://app.leg.wa.gov/WAC/default.aspx?cite=357-31-374)(1); and

(12)~~(11)~~ Allow an employee to use unpaid and/or accrued paid leave when the employee is granted a temporary leave of absence for legislative service in accordance with WAC [**357-31-374**](http://app.leg.wa.gov/WAC/default.aspx?cite=357-31-374)(2). The policy must state employees who request a leave of absence for legislative service must provide notice to the employer at least 30 days in advance for a regular legislative session or as soon as the session is proclaimed for a special session.

(13) Address whether former employees who are re-employed after five years of their separation may be restored unused sick leave credits in accordance with WAC 357-31-160.

AMENDATORY SECTION

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

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

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

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

(3) In accordance with WAC 357-31-373, for an employee to be with a spouse or registered domestic partner who is a member of the armed forces of the United States, National Guard, or reserves after the military spouse or registered domestic partner has been notified of an impending call or order to active duty, before deployment, or when the military spouse or registered domestic partner is on leave from deployment.

(4) When an employee requests a day off for a reason of faith or conscience or an organized activity conducted under the auspices of a religious denomination, church, or religious organization in accordance with WAC 357-31-052.

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

(6) When a high-risk employee~~, as defined in RCW 49.17.062,~~ seeks a reasonable accommodation to protect themselves from the risk of exposure to an infectious or contagious disease during a public health emergency and the employer determines no other accommodation is reasonable besides the use of leave in accordance with RCW 49.17.062,

(7) When an employee is granted a temporary leave of absence for service in an elective office or for legislative service in accordance with WAC 357-31-374.

AMENDATORY SECTION

**WAC 357-31-330 For what reasons may an employer grant leave without pay?**

Leave without pay may be allowed for any of the following reasons in accordance with the employer's leave policy:

(1) For any reason leave with pay may be granted, as long as the conditions for leave with pay are met;

(2) Educational leave;

(3) Leave for government service in the public interest;

(4) Military leave of absence as required by WAC [**357-31-370**](http://app.leg.wa.gov/WAC/default.aspx?cite=357-31-370);

(5) Parental leave as required by WAC [**357-31-460**](http://app.leg.wa.gov/WAC/default.aspx?cite=357-31-460);

(6) Family care emergencies as required by WAC [**357-31-295**](http://app.leg.wa.gov/WAC/default.aspx?cite=357-31-295);

(7) Bereavement or condolence;

(8) Absence due to inclement weather as provided in WAC [**357-31-255**](http://app.leg.wa.gov/WAC/default.aspx?cite=357-31-255);

(9) To accommodate annual work schedules of employees occupying cyclic year positions as specified in WAC [**357-19-295**](http://app.leg.wa.gov/WAC/default.aspx?cite=357-19-295);

(10) Serious health condition of an eligible employee's child, spouse, registered domestic partner, or parent as required by WAC [**357-31-525**](http://app.leg.wa.gov/WAC/default.aspx?cite=357-31-525);

(11) Leave taken voluntarily to reduce the effect of an employer's layoff;

(12) Leave that is authorized in advance by the appointing authority as part of a plan to reasonably accommodate a person of disability;

(13) Employees receiving time loss compensation; or

(14) For an employee to protect themselves, or a relative or household member, from risk~~s~~ of exposure to an infectious or contagious disease ~~related to coronavirus disease 2019 (COVID-19)~~. In determining whether to grant leave, an employer may consider current workload demands and business needs that require employees to perform their duties.

REFERENCE ONLY

**RCW**[**49.17.062**](http://app.leg.wa.gov/RCW/default.aspx?cite=49.17.062) **Employer—Public health emergency—Infectious or contagious diseases—Positive tests—Reporting, duty, and procedure.**

(1) During a public health emergency:

(a) An employer with more than 50 employees at a workplace or worksite, within 24 hours of confirming that 10 or more of their employees at the workplace or worksite in this state have tested positive for the infectious or contagious disease that is the subject of the public health emergency, must report the positive tests to the department in a form prescribed by the department.

(b) The department must consult with the department of health on the infectious or contagious disease that is the subject of the public health emergency:

(i) Before issuing regulatory guidance, rules, directives, or orders for health care facilities under this section; and

(ii) When investigating health care entities and issuing citations under this section.

(c) The report required in (a) of this subsection may not include any employee names or personal identifying information.

(2) The department may use the reports in subsection (1) of this section to identify potential clusters of infections at specific workplaces or industries and investigate workplaces for violations of this chapter.

(3) During a public health emergency, the name, email and residential addresses, license plate number, and other personally identifiable information regarding employees of the department are exempt from disclosure under chapter [**42.56**](http://app.leg.wa.gov/RCW/default.aspx?cite=42.56) RCW to the extent that the disclosure would violate their right to privacy or pose a risk to their personal safety or security.

(4) This section does not require an employee to disclose any medical condition or diagnosis to their employer.

(5) This section does not alter or eliminate any other reporting obligations an employer has under state or federal law.

(6)(a) During a public health emergency, no employer may discharge, permanently replace, or in any manner discriminate against an employee who is high risk as a result of the employee:

(i) Seeking accommodation that protects them from the risk of exposure to the infectious or contagious disease; or

(ii) If no accommodation is reasonable, utilizing all available leave options, including but not limited to leave without pay and unemployment insurance, until completion of the public health emergency or accommodation is made available.

(b) This subsection (6) does not alter or diminish any existing remedy available to the worker under current state or federal law.

(c) For the purposes of this subsection (6), "an employee who is high risk" means an employee who:

(i) Due to age or an underlying health condition, is at a high risk of severe illness from the disease that is the subject of the public health emergency, as defined by the centers for disease control and prevention; and

(ii) A medical provider has recommended the employee's removal from the workforce because of their high risk of severe illness.

(7) For the purposes of this section, "public health emergency" means a declaration or order concerning any infectious or contagious diseases, including a pandemic and is issued as follows:

(a) The president of the United States has declared a national or regional emergency that covers every county in the state of Washington; or

(b) The governor of Washington has declared a state of emergency under RCW [**43.06.010**](http://app.leg.wa.gov/RCW/default.aspx?cite=43.06.010)(12) in every county in the state.

**Item #2 - Sick Leave Restoration**

**Staff note:** [WAC 357-31-160](https://app.leg.wa.gov/wac/default.aspx?cite=357-31-160) addresses when sick leave is restored when a former employee is reemployed. Former employees who are re-employed within five years of their separation from service must be restored unused sick leave credits, if any, to which they were entitled at the time of separation. We are proposing to amend WAC 357-31-160 to state former employees who are re-employed after five years of their separation from service may be restored unused sick leave credits, if any, to which they were entitled at the time of separation in accordance with the employer’s leave policy to coincide with a longstanding rule interpretation.

We are also proposing to amend WAC 357-31-100 to add subsection 13 which states an employer’s leave policy must address whether former employees who are re-employed after five years of their separation may be restored unused sick leave credits in accordance with WAC 357-31-160.

The highlighted green text reflects proposed amendments to WAC 357-31-100 as proposed in rule item #1. The highlighted yellow text reflects changes since May 9, 2023 Rules Meeting based on stakeholder feedback.

Lead: Brittany Trujillo

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**](http://app.leg.wa.gov/WAC/default.aspx?cite=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**](http://app.leg.wa.gov/WAC/default.aspx?cite=357-01) WAC, who is a victim of domestic violence, sexual assault or stalking as defined in RCW [**49.76.020**](http://app.leg.wa.gov/RCW/default.aspx?cite=49.76.020);

(3) Allow an employee to use accrued leave as a supplemental benefit as provided in WAC [**357-31-248**](http://app.leg.wa.gov/WAC/default.aspx?cite=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 18 weeks in accordance with WAC [**357-31-133**](http://app.leg.wa.gov/WAC/default.aspx?cite=357-31-133);

(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**](http://app.leg.wa.gov/WAC/default.aspx?cite=296-128) WAC;

(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**](http://app.leg.wa.gov/WAC/default.aspx?cite=296-128) WAC;

(8) Address whether a general government employee may take additional accrued leave beyond 30 days in a two-year period to participate in life-giving procedures in accordance with RCW [**41.06.570**](http://app.leg.wa.gov/RCW/default.aspx?cite=41.06.570);

(9) Allow a high-risk employee, as defined in RCW [**49.17.062**](http://app.leg.wa.gov/RCW/default.aspx?cite=49.17.062), seeking a reasonable accommodation to protect themselves from the risk of exposure to an infectious or contagious disease to use their accrued leave and ~~leave without pay~~ address whether an employee may use leave without pay if the employer determines no other accommodation is reasonable besides the use of leave;

(10) Allow a high-risk employee seeking a reasonable accommodation to protect themselves from the risk of exposure to an infectious or contagious disease *during a public health emergency* to use leave without pay if the employer determines no other accommodation is reasonable besides the use of leave in accordance with RCW 49.17.062;

(11) Allow an employee to use unpaid leave when the employee is granted a temporary leave of absence for service in an elective office in accordance with WAC [**357-31-374**](http://app.leg.wa.gov/WAC/default.aspx?cite=357-31-374)(1); ~~and~~

(12)~~(11)~~ Allow an employee to use unpaid and/or accrued paid leave when the employee is granted a temporary leave of absence for legislative service in accordance with WAC [**357-31-374**](http://app.leg.wa.gov/WAC/default.aspx?cite=357-31-374)(2). The policy must state employees who request a leave of absence for legislative service must provide notice to the employer at least 30 days in advance for a regular legislative session or as soon as the session is proclaimed for a special session; and

(13) Address whether former employees who are re-employed after five years of their separation may be restored unused sick leave credits in accordance with WAC 357-31-160.

### AMENDATORY SECTION

### WAC 357-31-160 When a former employee is re-employed, is sick leave restored?

### Former employees who are re-employed within five years of their separation from service must be restored unused sick leave credits, if any, to which they were entitled at the time of separation. Former employees who are re-employed after five years of their separation from service may be restored unused sick leave credits~~, if any,~~ ~~to which they were entitled at the time of separation~~ in accordance with the employer’s leave policy. The employee may use the restored balance in accordance with WAC 357-31-130 and 357-31-133.

### If the employee was retired from government service before being re-employed, when the employee subsequently retires again or dies, only that unused sick leave accrued since the date of reemployment minus that taken within the same period may be compensated per the conversion provisions of WAC 357-31-150.

**Item #3 - COVID-19 Vaccination Requirements \*New**

**Staff Note:** Effective May 11, 2023, Governor Inslee rescinded [Directive #22-13.1](https://www.governor.wa.gov/sites/default/files/directive/22-13.1%20-%20COVID-19%20Vaccination%20Standards%20for%20State%20Employees.pdf), COVID-19, Vaccination Standards for State Employees, which directed a COVID-19 vaccination requirement as a condition of employment for state executive and small cabinet agencies. As a result, emergency rules (CR-103E) were filed with the Code Revisers Office, WSR 23-11-036, effective May 11, 2023. We are proposing to remove the following requirements in Title 357 WAC:

* The requirement for nonrepresented state employees who are employed by general government executive and small cabinet agencies, or an eligible candidate for such position, to be fully vaccinated against COVID-19 as a condition of employment, or granted an exemption and approved for an accommodation due to a disability and/or medical condition or sincerely held religious belief that prevents them from receiving the COVID-19 vaccine;
* The requirement for employers to separate an employee, or not hire an eligible candidate, if they cannot provide proof they are fully vaccinated and the employer cannot provide an accommodation; and
* Language that made these requirements optional for higher education employers, independent agencies, boards, councils, commissions, and separately elected officials.

We are proposing to:

* Repeal WAC 357-01-1745 which defines “fully vaccinated.”
* Repeal WAC 357-04-125 which requires an employee be fully vaccinated or request an exemption as a condition of employment.
* Repeal WAC 357-16-197 which states an employer must require an eligible candidate to provide proof of being fully vaccinated or request an exemption after a conditional offer of employment is made.
* Repeal WAC 357-19-413 which requires 1) a nonpermanent employee to be fully vaccinated or request an exemption as a condition of employment; and 2) an eligible candidate to provide proof of being fully vaccinated or request an exemption after a conditional offer of employment is made.
* Amend [WAC 357-46-165](https://apps.leg.wa.gov/WAC/default.aspx?cite=357-46-165) to remove subsection 4 which requires an employer to separate an employee from employment for failure to comply with the COVID-19 vaccination requirements.
* Amend [WAC 357-46-195](https://apps.leg.wa.gov/WAC/default.aspx?cite=357-46-195) to remove language that requires an employer to separate an employee from employment for nondisciplinary reasons for failure to comply with the COVID-19 vaccination requirements.
* Amend [WAC 357-58-190](https://app.leg.wa.gov/wac/default.aspx?cite=357-58-190) to remove subsection 9 which states an agency’s WMS recruitment and selection policy and/or procedure must ensure compliance with the COVID-19 vaccination requirements in accordance with WAC 357-04-125 and WAC 357-16-197.

Lead: Brittany Trujillo

REPEAL

**~~WAC 357-01-1745 Fully vaccinated.~~**

~~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.~~

REPEAL

**~~WAC 357-04-125 Must an employee provide proof of being fully vaccinated as a condition of employment?~~**

~~As a condition of employment, an employee must be 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 a requested exemption is granted, an employer must determine whether or not the employee can be reasonably accommodated. If the employer determines an employee can be accommodated in accordance with state and federal laws, the employee may continue their employment. An employee who fails to meet this condition of employment will be subject to a separation in accordance with WAC~~[**~~357-19-410~~**](http://app.leg.wa.gov/WAC/default.aspx?cite=357-19-410)~~, or a disability separation in accordance with WAC~~[**~~357-46-160~~**](http://app.leg.wa.gov/WAC/default.aspx?cite=357-46-160)~~, or a nondisciplinary separation in accordance with WAC~~[**~~357-46-195~~**](http://app.leg.wa.gov/WAC/default.aspx?cite=357-46-195)~~.~~

~~This section applies to executive and small cabinet agencies as defined in Directive 22-13.1, issued August 5, 2022, by the governor. Higher education employers, independent agencies, boards, councils, commissions, and separately elected officials may require an employee to meet the requirements of this section.~~

REPEAL

**~~WAC 357-16-197 Must an employer require an eligible candidate to provide proof of being fully vaccinated?~~**

~~After a conditional offer of employment is made, an employer must require an eligible candidate to provide proof of being fully vaccinated or to request an exemption due to a disability and/or medical condition or if the requirement conflicts with an eligible candidate's sincerely held religious belief, practice, or observance. If a requested exemption is granted, an employer must determine whether or not the eligible candidate can be reasonably accommodated. If the employer determines an eligible candidate can be accommodated in accordance with state and federal laws, the eligible candidate may be considered for employment. If the employer cannot provide an accommodation and the eligible candidate does not provide proof of being fully vaccinated, the employer may not consider the eligible candidate for employment.~~

~~This section applies to executive and small cabinet agencies as defined in Directive 22-13.1, issued August 5, 2022, by the governor. Higher education employers, independent agencies, boards, councils, commissions, and separately elected officials may require an eligible candidate to meet the requirements of this section.~~

REPEAL

**~~WAC 357-19-413 What are the requirements for a nonpermanent employee to be fully vaccinated or for an employer to require an eligible candidate to provide proof of being fully vaccinated?~~**

~~(1) A nonpermanent employee must comply with the COVID-19 vaccination requirements set forth in WAC~~[**~~357-04-125~~**](http://app.leg.wa.gov/WAC/default.aspx?cite=357-04-125)~~. A nonpermanent employee who fails to comply must be separated in accordance with WAC~~[**~~357-19-410~~**](http://app.leg.wa.gov/WAC/default.aspx?cite=357-19-410)~~.~~

~~(2) After a conditional offer of employment for a nonpermanent appointment is made, an employer must require an eligible candidate to provide proof of being fully vaccinated in accordance with WAC~~[**~~357-16-197~~**](http://app.leg.wa.gov/WAC/default.aspx?cite=357-16-197)~~.~~

AMENDATORY SECTION

**WAC 357-46-165 When may an employer separate an employee in accordance with WAC**[**357-46-160**](http://app.leg.wa.gov/WAC/default.aspx?cite=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 an employee from employment for failure to comply with the COVID-19 vaccination requirements set forth in WAC~~[**~~357-04-125~~**](http://app.leg.wa.gov/WAC/default.aspx?cite=357-04-125)~~where an exemption was approved due to a disability and/or medical condition and the employer is unable to reasonably accommodate the employee.~~

AMENDATORY SECTION

**WAC 357-46-195 May 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 an employee from employment for nondisciplinary reasons for failure to comply with the COVID-19 vaccination requirements set forth in WAC~~[**~~357-04-125~~**](http://app.leg.wa.gov/WAC/default.aspx?cite=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 and/or procedure 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**](http://app.leg.wa.gov/RCW/default.aspx?cite=49.58.100), [**49.58.110**](http://app.leg.wa.gov/RCW/default.aspx?cite=49.58.110), WAC [**357-16-017**](http://app.leg.wa.gov/WAC/default.aspx?cite=357-16-017), [**357-16-215**](http://app.leg.wa.gov/WAC/default.aspx?cite=357-16-215), and [**357-16-220**](http://app.leg.wa.gov/WAC/default.aspx?cite=357-16-220); and

~~(10) Ensure compliance with the COVID-19 vaccination requirements in accordance with WAC~~[**~~357-04-125~~**](http://app.leg.wa.gov/WAC/default.aspx?cite=357-04-125)~~and~~[**~~357-16-197~~**](http://app.leg.wa.gov/WAC/default.aspx?cite=357-16-197)~~.~~

**Item #4 – Exempt Return Rights \*New**

**Staff note:** [ESHB 1361](https://app.leg.wa.gov/billsummary?BillNumber=1361&Year=2023&Initiative=false) passed during the 2023 legislative session, Chapter 148,Laws of 2023, effective July 23, 2023. Section 3 of this bill amends RCW 41.06.070, Exemptions to chapter – Right of reversion, to add subsection 6 which suspends a persons right to reversion during the pendency of an workplace investigation if the allegations being investigated could result in a finding of gross misconduct or malfeasance.

We are proposing to amend WAC 357-04-030, 357-19-195 and 357-19-200 to clarify an employee’s right to return from exempt to classified service is suspended during the pendency of an investigation when they have given notice that they are the subject of an active workplace investigation in which the allegations being investigated, if founded, could result in a finding of gross misconduct or malfeasance. We are also proposing to create WAC 357-19-197 to require the receiving employer to verify the employee was not terminated from the exempt position for gross misconduct or malfeasance or has been given notice that they are subject of an active workplace investigation in which the allegations being investigated, if founded, could result in a finding of gross misconduct or malfeasance.

Lead: Brittany Trujillo

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**](http://app.leg.wa.gov/RCW/default.aspx?cite=41.06.070), 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**](http://app.leg.wa.gov/WAC/default.aspx?cite=357-19-195), [**357-19-200**](http://app.leg.wa.gov/WAC/default.aspx?cite=357-19-200), and [**357-19-205**](http://app.leg.wa.gov/WAC/default.aspx?cite=357-19-205). The employee has the right to return to the highest class of a position in which the employee previously held permanent status or to a position of a similar nature and salary; as long as the employee has not been given written notice that they are subject of an active workplace investigation which may result in a finding of gross misconduct or malfeasance or 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 the employee previously held permanent status or to a position of similar nature and salary~~. The right to return is suspended during the pendency of an active workplace investigation which may result in a finding of gross misconduct or malfeasance.

For purposes of this section “written notice” includes notice sent by email to the employee’s work email address.

AMENDATORY SECTION

### WAC 357-19-195 If a permanent employee in a classified position accepts an appointment to an exempt position, what is the employee's right to return to a position in the classified service?

A permanent employee who accepts an appointment to an exempt position has the right to return to classified service at any time as long as the employee has not been given written notice they are subject of an active workplace investigation which may result in a finding of gross misconduct or malfeasance or the employee was not terminated from an exempt position for gross misconduct or malfeasance. The right to return is suspended during the pendency of an active workplace investigation which may result in a finding of gross misconduct or malfeasance.

The employee's right is to a position in the highest class in which the employee previously held permanent status or to a position of similar nature and salary. The return right is to the most recent employer with which permanent status in the highest class was held. A position in the highest class does not necessarily mean return to the most recent employer.

If upon an employee being returned to a classified position there are fewer positions than there are employees entitled to such positions, the employer's layoff procedure applies.

For purposes of this section, “written notice” includes notice sent by email to the employee’s work email address.

NEW SECTION

**WAC 357-19-197 What information must a receiving employer verify when a permanent employee exercises their right to return to classified service from an exempt appointment?**

When a permanent employee exercises their right to return to classified service from an exempt appointment in accordance with RCW 41.06.070, the receiving employer must verify the employee has not been given written notice that they are subject of an active workplace investigation which may result in a finding of gross misconduct or malfeasance or was not terminated from the exempt position for gross misconduct or malfeasance. For purposes of this section, “written notice” includes notice sent by email to the employee’s work email address.

AMENDATORY SECTION

### WAC 357-19-200 When must an employee apply to return to classified service from exempt service?

Employees exercising return rights should provide as much advance notice as is practicable to the receiving employer. The employee must apply to return to classified service within thirty calendar days of:

|  |  |
| --- | --- |
| • | Separation from employment in the exempt position, or |
| • | Separation from employment in any subsequent exempt position if there is no break in state service of more than thirty calendar days between initial and subsequent exempt appointments. |

Employees who apply for return to classified service within thirty calendar days must be returned to a position at the time of separation from the exempt appointment or the time of application, whichever is later.

Employees have the right to exercise their right to return to classified service as long as they have not been given written notice that they are subject of an active workplace investigation which may result in a finding of gross misconduct or malfeasance, or the employee was not terminated from the exempt position for gross misconduct or malfeasance.

For purposes of this section, “written notice” includes notice sent by email to the employee’s work email address.

REFERENCE ONLY

**WAC 357-58-450 How does a WMS employee return from an exempt appointment?**

When an exempt employee has the right to return under WAC [**357-04-030**](http://app.leg.wa.gov/WAC/default.aspx?cite=357-04-030) to a WMS position the return will be accomplished as provided in WAC [**357-19-195**](http://app.leg.wa.gov/WAC/default.aspx?cite=357-19-195), [**357-19-200**](http://app.leg.wa.gov/WAC/default.aspx?cite=357-19-200), and [**357-58-132**](http://app.leg.wa.gov/WAC/default.aspx?cite=357-58-132).

**Item #5 – Overtime Eligibility Determination**

**Staff note:** A policy decision has been made to no longer require general government employers to request director approval when a non-represented employee’s position is changed from overtime eligible to overtime exempt. This change aligns with the represented workforce. We are proposing to repeal WAC 357-28-245 to remove this requirement and we are proposing to amend WAC 357-58-160 to remove the reference to WAC 357-28-245.

We are planning to propose permanent adoption at the August 10, 2023 Director’s Meeting.

Lead: Patricia Foshaug

REPEAL

**~~WAC 357-28-245 Is approval required when a general government employer changes a position's overtime eligibility designation?~~**

~~Approval from the director is required when a general government employer changes a position's overtime eligibility designation to overtime-exempt or law enforcement.~~

AMENDATORY SECTION

**WAC 357-58-160 How are hours of work established for WMS employees?**

Agencies must assign each WMS position to one of the overtime eligibility designations identified in the compensation plan and determine the position's work week.

For overtime eligible employees, compensation must be in accordance with the following sections of chapter 357-28 WAC:

((WAC 357-28-245))

WAC 357-28-250

WAC 357-28-255

WAC 357-28-260

WAC 357-28-265

WAC 357-28-275

WAC 357-28-280

WAC 357-28-285

**ITEM #6 – Step M Clean-Up**

**Staff note:** On July 1, 2013, new rules were adopted to implement a new Step M that was provided in the 2013 – 2015 operating budget. Step M was originally implemented as a longevity step to allow employees who have been at the top step (step L) in the same salary range for six years to progress to step M. We are proposing the following rule amendments to clarify certain scenarios based on questions received since inception:

* [WAC 357-28-082](https://apps.leg.wa.gov/WAC/default.aspx?cite=357-28-082) states an employee cannot be appointed to step M upon initial hire. [WAC 357-28-090](https://app.leg.wa.gov/wac/default.aspx?cite=357-28-090) allows an employer to adjust an employee’s base salary up to step M to address issues related to recruitment, retention or other business related reasons. WAC 357-28-090 contradicts WAC 357-28-082. We are proposing to amend WAC 357-28-082 to align with WAC 357-28-090 allowing an employee to be appointed to step M upon initial hire for recruitment, retention or other business related reasons.
* [WAC 357-28-084](https://apps.leg.wa.gov/WAC/default.aspx?cite=357-28-084) states an employee cannot be appointed to step M upon demotion unless the employee was previously at step M of the salary range they are demoting from or if the employee was previously at step M in the salary range of the class the employee is demoting to. We are proposing to add to subsections (3), (4), (5) to clarify an employee may be appointed to step M if the demotion is a result of a reasonable accommodation; or as a result of layoff in accordance with [WAC 357-28-135](https://app.leg.wa.gov/WAC/default.aspx?cite=357-28-135); or for recruitment and retention or other business related reasons in accordance with [WAC 357-28-090](https://app.leg.wa.gov/wac/default.aspx?cite=357-28-090).
* [WAC 357-28-086](https://app.leg.wa.gov/wac/default.aspx?cite=357-28-086) states if an employee is currently at step L of a salary range, the employee will progress to step M of that same salary range six years from the date they were advanced or appointed to step L regardless of what has transpired in between. We are proposing to amend subsection (1) to state an employee may be appointed to step M as a result of a layoff option to align in accordance with [WAC 357-28-088](https://apps.leg.wa.gov/wac/default.aspx?cite=357-28-088).
* [WAC 357-28-088](https://apps.leg.wa.gov/wac/default.aspx?cite=357-28-088) states if an employee transfers to a position, the time at step L in the previous position will count towards the six-year requirement for step M. If an employee is demoted the time at step L in the previous position will not count towards the six years to qualify for step M except in accordance with WAC 357-28-135(2). An employee may be appointed to step M if they are demoted as a result of a reasonable accommodation or as a result of a layoff. We are proposing to amend WAC 357-28-088 to clarify that if an employee may be placed at step M for these reasons.
* [WAC 357-28-120](https://app.leg.wa.gov/WAC/default.aspx?cite=357-28-120) states when an employee is occupying a position and it is reallocated to a class with the same or lower salary range, they must be placed within the new salary range at an amount equal to their previous base salary. If their previous base salary exceeds the new range, their base salary must be set equal to step M of the salary range. The employee’s base salary may be set higher than step M but not exceeding their previous base salary, if allowed by the employer’s salary determination policy. We are proposing to amend WAC 357-28-120 to clarify that an employee’s base salary may be set higher than step M until the employee vacates the position or their salary falls within the new salary range and to reflect gender neutral pronouns.
* [WAC 357-28-135](https://apps.leg.wa.gov/wac/default.aspx?cite=357-28-135) We are proposing to amend WAC 357-28-135 to clarify an employee whose previous base salary was at step M of a salary range when accepting a layoff option to a position with a lower salary range maximum at the time of being appointed must be placed at step M of the new salary range; and to clarify an employee whose previous base salary was at step L of a salary range when accepting a layoff option to a position with a lower salary range, any previous time spent at step L will count towards the requirement to progress to step M of the new salary range. Additionally, we are proposing to re-organize the layout of the section for clarity. These changes are not intended to modify the intent of the section.
* [WAC 357-28-155](https://app.leg.wa.gov/wac/default.aspx?cite=357-28-155) addresses how an employee’s salary is determined upon demotion. We are proposing to amend WAC 357-28-155 to add subsection (2) to state if the demotion is a result of a reasonable accommodation, they may be appointed to step M in accordance with WAC 357-28-084.

Lead: Brittany Trujillo

AMENDATORY SECTION

**WAC 357-28-082** **Is step M on the salary schedule different than other salary steps?**

Step M is a longevity step. An employee cannot be appointed to step M upon initial hire unless for recruitment and retention or other business related reasons in accordance with WAC 357-28-090.

REFERENCE ONLY

**WAC 357-28-090 Can an employer adjust an employee's base salary within the employee's current salary range for recruitment, retention, or other business related reasons?**

The employer may adjust an employee's base salary up to step M within the salary range to address issues that are related to recruitment, retention or other business related reason, such as equity, alignment, or competitive market conditions.

AMENDATORY SECTION

**WAC 357-28-084** ((**~~Can~~**)) **May an employee be appointed to step M upon demotion (voluntary or involuntary)?**

An employee cannot be appointed to step M upon demotion (voluntary or involuntary) unless:

(1) The employee was at step M of the salary range from which the employee is demoting ((~~or~~));

(2) The employee was previously at step M in the salary range of the class the employee is demoting to;

(3) The demotion is a result of a reasonable accommodation;

(4) The employee was appointed to a position due to layoff action in accordance with WAC 357-28-135; or

(5) For recruitment and retention or other business related reasons in accordance with WAC 357-28-090.

AMENDATORY SECTION

**WAC 357-28-086** **When may an employee progress to step M of the salary range?**

(1) If an employee is currently at step L of a salary range, the employee will progress to step M of that same salary range six years from the date they were advanced or appointed to step L. The progression to step M is regardless of what has transpired in the six years since the employee was appointed to step L, provided that the employee is at step L in the same pay range as the pay range the employee was in at the beginning of the six-year period except in accordance with WAC 357-28-088.

(2) With director approval, higher education institutions may make all movements to step M effective:

(a) The first of the current month for actions occurring between the first and the ((~~fifteenth~~)) 15th of the month; or

(b) The first of the following month for actions occurring between the ((~~sixteenth~~)) 16th and the end of the month.

AMENDATORY SECTION

**WAC 357-28-088** **If an employee transfers or demotes will the time spent at step L count towards the six years to qualify for step M in the new position?**

If an employee transfers to a position the time at step L in the previous position will count towards the six years to qualify for step M in the new position.

If an employee is demoted (voluntary or involuntary), the time at step L in the previous position will not count towards the six years to qualify for step M except if the demotion is a result of a reasonable accommodation or due to layoff action in accordance with WAC 357-28-135((~~(2)~~)) (4).

AMENDATORY SECTION

**WAC 357-28-120** **What is the base salary of an employee occupying a position that is reallocated to a class with the same or lower salary range?**

An employee occupying a position that is reallocated to a class with the same or lower salary range must be placed within the new salary range at an amount equal to ((~~his/her~~)) their previous base salary. If the previous base salary exceeds the new salary range, the employee's base salary must be set equal to step M of the salary range for the reallocated position. The employee's base salary may be set higher than step M if allowed by the employer's salary determination policy, but not exceeding the previous base salary, ((~~if allowed by the employer's salary determination policy~~)) until such time as the employee vacates the position or their salary falls within the new salary range.

AMENDATORY SECTION

**WAC 357-28-135** **How is an employee's salary determined when the employee is appointed to a position due to a layoff action?**

(1) The base salary of an employee ((~~appointed to a position due to a layoff action must be~~)) who accepts a layoff option must have their salary determined as follows:

((~~(1) An employee who~~)) (a) Accepts a layoff option to a different position with the same salary range keeps the same base salary.

((~~(2) An employee who accepts a demotion in lieu of layoff or~~)) (b) Accepts a layoff option to a position with a lower salary range maximum must be placed within the new range at a salary equal to the employee's previous base salary. If the previous base salary exceeds the new range, the employee's base salary must be set equal to step M of the new salary range((~~. If the employee's previous base salary was at step M of the salary range the employee must be placed at step M of the new salary range~~)).

((~~(3)~~)) (2) The base salary of an employee who is appointed from an internal or statewide layoff list must have their salary determined as follows:

(a) Appointed to a position with the same range as the position from which the employee was laid off must be placed within the range at a salary equal to the employee's previous base salary.

((~~(4) An employee who is~~)) (b) Appointed ((~~from an internal or statewide layoff list~~)) to a position with a lower range maximum than the position from which the employee was laid off must have the salary determined by the employer's salary determination policy.

(3) An employee whose previous base salary was at step M of a salary range when accepting a layoff option to a position with a lower salary range maximum at the time of being appointed must be placed at step M of the new salary range.

(4) An employee whose previous base salary was at step L of a salary range when accepting a layoff option to a position with a lower salary range, any previous time spent at step L will count towards the requirement to get to step M of the new salary range.

AMENDATORY SECTION

**WAC 357-28-155** **How is an employee's salary determined upon demotion?**

(1) The base salary of an employee who accepts a demotion in lieu of layoff must be set in accordance with WAC 357-28-135.

(2) If the demotion is a result of a reasonable accommodation, they may be appointed to step M in accordance with WAC 357-28-084.

(3) An employee demoted for any other reason must be paid within the salary range of the class to which the position is allocated. The employee's base salary must be determined in accordance with the employer's salary determination policy.

**Item #7 – Wage and Salary**

**Staff note:** [ESSB 5761](https://lawfilesext.leg.wa.gov/biennium/2021-22/Pdf/Bills/Session%20Laws/Senate/5761-S.SL.pdf#page=1) passed during the 2022 legislative session, Chapter 242, Laws 2022, with an effective date of January 1, 2023. The bill amends [RCW 49.58.110](https://app.leg.wa.gov/RCW/default.aspx?cite=49.58.110), to state an employer must disclose the wage scale and salary range, and provide a general description of all the benefits or other compensation to be offered to the hired applicant in each posting for a job opening. It also states upon request of an employee who is offered an internal transfer to a new position or promotion that the employer must provide the employee with the wage scale or the salary range.

We are proposing to amend:

* WAC 357-16-017 (1) to state an employer must disclose the salary range or management band in each job positing and include a general description of all benefits and other compensation.

We are also proposing to add that “salary range” for the purpose of this section includes step M; and that “Management band” is the most reasonable and genuinely expected range that an agency has identified within their salary administration policy for Washington Management Service.

In addition, we are proposing to repeal the language in WAC that states “If no salary range or management band exists, an employer must provide the minimum wage set by the employer prior to posting the position or appointing an employee to another position” to align with the changes in the bill.

Note: WAC 357-16-017(2)The Department of Labor and Industries interprets the movement between positions (transfer/promotion/ voluntary or involuntary demotion/reversions/in-training appointments/WMS acting appointments/nonpermanent appointments) would **likely be** considered internal transfers and thus employers must provide the wage scale or salary range to employees upon request.

We are also proposing the following amendments as clean up items.

* WAC 357-16-220(2) adding language to clarify that based on the Department of Labor and Industries interpretation, an offer of employment with compensation by the employer and acceptance of the offer by the applicant would constitute the element of “negotiation.” In other words, an employer may confirm an applicant’s wage or salary history after an offer of employment with compensation is made by the employer and the offer is accepted by the applicant. Past SHR interpretation stemming from HB 1696 (2019) stated that if an employee accepts an offer of employment and no negotiation took place than the employer could not confirm an individual’s wage or salary history.

In addition, during the 2019 (HB 1696) rule making the nonpermanent appointment language was inadvertently missed. We are proposing amending:

* WAC 357-19-377(5) to state nonpermanent appointments are subject to the requirements governing wage and salary information in accordance with RCW [49.58.100](http://app.leg.wa.gov/RCW/default.aspx?cite=49.58.100), [49.58.110](http://app.leg.wa.gov/RCW/default.aspx?cite=49.58.110), WAC [357-16-017](http://app.leg.wa.gov/WAC/default.aspx?cite=357-16-017), [357-16-215](http://app.leg.wa.gov/WAC/default.aspx?cite=357-16-215), and [357-16-220](http://app.leg.wa.gov/WAC/default.aspx?cite=357-16-220).
* WAC 357-19-380 to state that other chapters of civil service rules may apply to nonpermanent appointments where specifically stated.

Lead: Patricia Foshaug

AMENDATORY SECTION

**WAC 357-16-017 When must an employer ((provide)) disclose the salary range or management band, other compensation and a description of benefits for a position?** In accordance with RCW 49.58.110, an employer must ((provide)) disclose the salary range or management band in the following circumstances:

(1) ((Upon request of an individual for employment after an employer has initially offered the individual the position)) In each job posting which includes a general description of all the benefits and other compensation; and

(2) Upon request of a current employee who is offered an appointment to another position.

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

(3) For the purposes of this section:

(a) "Employer" also includes those employers with fewer than ((fifteen)) 15 employees;

(b) "Salary range" includes Step M; and

(c) "Management band" is the most reasonable and genuinely expected range that an agency has identified within their salary administration policy for Washington management services.

REFERENCE ONLY

**WAC 357-16-215 May an employer seek the wage or salary history of an individual for employment?**

In accordance with RCW [49.58.100](http://app.leg.wa.gov/RCW/default.aspx?cite=49.58.100), an employer may not:

(1) Seek the wage or salary history of an individual applying for employment, including current employees, from the individual or the individual's current or former employer; or

(2) Require that an individual's prior wage or salary history meet certain criteria, except as provided in WAC [357-16-220](http://app.leg.wa.gov/WAC/default.aspx?cite=357-16-220).

For the purposes of this section "employer" also includes those employers with fewer than fifteen employees.

AMENDATORY SECTION

**WAC 357-16-220 May an employer confirm an individual's wage or salary history?**

In accordance with RCW 49.58.100, an employer may confirm an individual's wage or salary history if:

(1) The individual has voluntarily disclosed their wage or salary history; or

(2) After the employer has negotiated an offer and made an offer of employment including compensation to the individual. Negotiation includes an offer of employment with compensation by the employer and acceptance of the offer by the applicant.

For the purposes of this section "employer" also includes those employers with fewer than ((fifteen)) 15 employees.

AMENDATORY SECTION

**WAC 357-19-377 What provisions apply to nonpermanent appointments?**

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) Employers may underfill a position with a nonpermanent appointment.

(5) 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.

AMENDATORY SECTION

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

The leave and holiday provisions of chapter 357-31 WAC and compensation provisions of chapter 357-28 WAC apply to employees in nonpermanent appointments. Other chapters of civil service rules may apply where specifically stated.

**Item #8 – Pregnancy Disability and Parental Leave - Cleanup Items**

**Staff note:** We are proposing to amend WAC 357-31-500 to remove the term “permanent”. Under Washington State Law Against Discrimination (Chapter 49.60 RCW) and Title VII of the Civil Rights Act of 1964 or the Pregnancy Discrimination Act an employee does not have to hold permanent status to qualify for a leave of absence for reasons of pregnancy disability and childbirth. Prior to Civil Service Reform, Disability Leave was addressed under Higher Education, Title 251 WAC and not under General Government Title 356 WAC. The current language in WAC 357-31-500 stemmed from the former language in the higher education rules (Title 251 WAC).

We are proposing to amend WAC 357-31-480 to update the correct reference from RCW 49.78.390 to RCW 50A.15.110. RCW 49.78.390 was repealed in 2018 therefore is no longer applicable. Parental leave is in addition to any leave for sickness or temporary disability as provided under the Federal Family and Medical Leave Act of 1993 and the Washington Paid Family and Medical Leave Act.

Lead: Patricia Foshaug

### AMENDATORY SECTION

**WAC 357-31-500 When must disability leave due to pregnancy and/or childbirth be granted?**

Leave of absence must be granted for the period of time that ((a permanent)) an employee is sick or temporarily disabled because of pregnancy and/or childbirth.

### AMENDATORY SECTION

**WAC 357-31-480 Is parental leave in addition to any leave for sickness or temporary disability because of pregnancy and/or childbirth?** ((Under RCW 49.78.390,)) Consistent with RCW 50A.15.110, parental leave under Title 50A RCW and the family leave required by the Federal Family and Medical Leave Act of 1993 (Act Feb. 5, 1993, P.L. 103-3, 107 Stat. 6) must be in addition to any leave for sickness or temporary disability because of pregnancy or childbirth as provided in WAC 357-31-500.

REFERENCE ONLY

### RCW [50A.15.110](http://app.leg.wa.gov/RCW/default.aspx?cite=50A.15.110) Leave available under other laws—Coordination.

(1) Leave under this title and leave under the federal family and medical leave act of 1993 (Act Feb. 5, 1993, P.L. 103-3, 107 Stat. 6, as it existed on October 19, 2017) is in addition to any leave for sickness or temporary disability because of pregnancy or childbirth.

(2) Unless otherwise expressly permitted by the employer, leave taken under this title must be taken concurrently with any leave taken under the federal family and medical leave act of 1993 (Act Feb. 5, 1993, P.L. 103-3, 107 Stat. 6, as it existed on October 19, 2017).

**Item #9 - Compensation**

**Staff note:** We are proposing to amend [WAC 357-58-141](https://apps.leg.wa.gov/WAC/default.aspx?cite=357-58-141) 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 357-58-141 was adopted on a permanent basis effective September 23, 2019, to state location based premium must be paid when an WMS employee is assigned to work on McNeil Island **and** assigned to a permanent duty station in King County. It has been 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 357-58-141 to replace “and” with “or”.

Lead: Brittany Trujillo

AMENDATORY SECTION

### WAC 357-58-141 When must a Washington management service (WMS) employee receive location based premium pay?

Location based premium pay at the rate specified in the compensation plan must be paid when a WMS 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. When an employee is no longer permanently assigned to a King County duty station they will not be eligible for location based premium pay.

**Item #10 – Cleanup USSLP and VISSLP Shared Leave Pools**

**Staff note:** We proposed this rule item at the June 2021 rules review meeting and it was placed on hold due to other priority items. We are proposing to amend the following rules to clarify that an employee is able to maintain a balance of 40 hours of applicable leave types before receiving shared leave from the Uniformed Service and Veterans' in-state serviceshared leave pools. The proposed amendment to WAC 357-31-687 is to clarify that an employee is not required to deplete all of their accrued vacation leave and paid military leave before receiving shared leave from the Uniformed Service Shared Leave Pool. The proposed amendment to WAC 357-31-797 is to clarify an employee is not required to deplete all of their accrued vacation leave and sick leave before receiving shared leave from the Veterans’ In-State Service Shared Leave Pool.

Lead: Patricia Foshaug

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, accrued holiday credit, recognition leave as described in WAC 357-31-565, and 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 40 hours of vacation leave and 40 hours of paid military leave.

AMENDATORY SECTION

**WAC 357-31-797** **Must employees use their own leave before receiving shared leave from the veterans' in-state service shared leave pool?**

Employees who are eligible to receive shared leave from the veterans' in-state service shared leave pool must first use all accrued compensatory time, accrued holiday credit, recognition leave as described in WAC 357-31-565, and personal holiday((, sick leave, and vacation leave)) before receiving shared leave from the veterans' in-state service shared leave pool. The employee is not required to deplete all of their accrued vacation leave and sick leave and can maintain up to 40 hours of vacation leave and 40 hours of sick leave.

**Item #11 – Leave to Obtain Vaccination, Hours Worked**

**Staff note:** [WAC 357-31-325](https://apps.leg.wa.gov/wac/default.aspx?cite=357-31-325)(5) requires an employer to grant leave with pay to a general government employee to travel and receive each dose or booster of COVID-19 vaccine if the vaccine is not offered at the workplace. [WAC 357-31-326(4)](https://apps.leg.wa.gov/wac/default.aspx?cite=357-31-326) states a general government employer may grant a reasonable amount of leave with pay for an employee to receive each dose or booster of COVID-19 vaccine if the vaccine is offered at the workplace. [WAC 357-31-326(5)](https://apps.leg.wa.gov/wac/default.aspx?cite=357-31-326) states a higher education employer may grant a reasonable amount of leave with pay for an employee to receive each dose of booster of COVID-19 vaccine if the vaccine is not offered at the workplace. [WAC 357-28-265](https://app.leg.wa.gov/wac/default.aspx?cite=357-28-265) states for the purposes of computing eligibility for overtime compensation, leave with pay during an employee’s regular work schedule is not considered time worked. Washington State Labor and Industries [provided guidance](https://lni.wa.gov/agency/outreach/coronavirus-covid-19-vaccines-and-paid-sick-leave-common-questions) that states if an employer requires employees to receive a COVID-19 vaccine, the time associated with receiving the vaccine must be considered hours worked and overtime must be paid under the Washington State Minimum Wage Act.

We are proposing to amend WAC 357-28-265 to state leave with pay during the employee’s regular work schedule **is not** considered time worked **except** when leave is taken to travel and receive each dose or booster of COVID-19 vaccination in accordance with WAC 357-31-325 and 357-31-326.

Lead: Brittany Trujillo

AMENDATORY SECTION 

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

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

(1) When leave is taken to travel and receive each dose or booster of COVID-19 vaccine in accordance with WAC 357-31-325; or

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

REFERENCE ONLY

### WAC 357-31-325 When must an employer grant leave with pay for other miscellaneous reasons?

Leave with pay **must** be granted to an employee in accordance with WAC [**357-31-320**](http://app.leg.wa.gov/WAC/default.aspx?cite=357-31-320) and for the following reasons:

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

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

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

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

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

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

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

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

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

REFERENCE ONLY

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

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

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

(3) In the department of natural resources, leave with pay equivalent to one regular workshift **may** be allowed for the purpose of rest and recuperation after 10 consecutive calendar days performing emergency work under an incident command system, defined in RCW [**38.52.010**](http://app.leg.wa.gov/RCW/default.aspx?cite=38.52.010). The employer may grant one additional day of leave with pay for rest and recuperation after 21 consecutive calendar days performing emergency work under an incident command system.

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

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