**Item #1 Veterans Placement Program**

**Staff note:** Governor Jay Inslee’s [Executive Order 19-01](https://www.governor.wa.gov/sites/default/files/exe_order/19-01_VeteranAndMilitaryFamily%20.pdf), *Veteran and Military Family Transition and Readiness Support*, directs state agencies to bridge employment opportunities to increase veteran employment. Veteran placement programs are considered bridge employment opportunities and state employers are strongly encouraged to use them.

We are proposing to:

* Create a new section, WAC 357-01-357, to define Veterans Placement Program (VPP).
* Amend WAC 357-19-400 to state when an employer uses a VPP to fill a nonpermanent position for any reason listed in WAC 357-19-360 the agency may change the status of the appointment to probationary or trial service if the employee held permanent status prior to the nonpermanent appointment.
* Amend WAC 357-58-065 to reflect the title change from performance management confirmation (repeal) to choice performance confirmation (add) under the Washington Management Service (WMS) definitions (see Rule Item #5 below for more detail).
* Amend WAC 357-58-065 to define VPP for WMS employees.
* Amend WAC 357-58-190 to state that an agency’s WMS recruitment and selection policy and/or procedure should consider making appointments from a VPP.

The highlighted yellow text below are changes since November 9, 2021 Rules Meeting.

Lead: Patricia Foshaug

REFERENCE ONLY

### Effective January 1, 2021

### WAC 357-19-360 For what reasons may an employer make nonpermanent appointments?

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 employer is recruiting to fill a vacant position with a permanent appointment;

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

(4) The 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.

NEW SECTION

**WAC 357-01-357 Veterans Placement Program**

A program that is designed to grant transitioning service members and veterans additional support to attain state employment.

AMENDATORY SECTION

**WAC 357-19-400 May an employer convert a nonpermanent appointment to a probationary or trial service appointment?**

(1) When an 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 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 employer needs to fill the position permanently.

(2) When an employer uses a veterans placement program to fill a nonpermanent position for any reason listed in WAC 357-19-360 the employer may change the status of the appointment to probationary or to trial service. ~~if the employee held permanent status prior to the nonpermanent appointment.~~

(3) 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 357-58-065 Definitions for WMS.**

The following definitions apply to chapter 357-58 WAC:

(1) **Break in service.** An employee has a break in continuous state service if the employee is separated, dismissed or resigns from state service. A furlough for the purposes of temporary layoff as provided in WAC 357-58-550 is not considered a break in continuous state service.

(2) **Choice performance confirmation.** Approval granted by the director to an employer allowing the employer to factor in individual employee performance when granting recognition leave.

(3) **Competencies.** Those measurable or observable knowledge, skills, abilities and behaviors critical to success in a key job role or function.

(((3))) (4) **Director.** State human resources director within the office of financial management.

(((4))) (5) **Dismissal.** The termination of an individual's employment for disciplinary reasons.

(((5))) (6) **Employee.** An individual working in the classified service. Employee business unit members are defined in WAC 357-43-001.

(((6))) (7) **Evaluation points.** The points resulting from an evaluation of a position using the managerial job value assessment chart.

(((7))) (8) **Layoff unit.** A clearly identified structure within an employer's organization within which layoff options are determined in accordance with the employer's layoff procedure. Layoff units may be a series of progressively larger units within an employer's organization.

(((8))) (9) **Management bands.** A series of management levels included in the WMS. Placement in a band reflects the nature of management, decision-making environment and policy impact and scope of management accountability and control assigned to the position.

~~(((9)~~ **~~Performance management confirmation.~~** ~~Approval granted by the director to an employer allowing the employer to factor in individual employee performance when granting recognition leave and when making layoff decisions.))~~

(10) **Premium.** Pay added to an employee's base salary on a contingent basis in recognition of special requirements, conditions or circumstances associated with the job.

(11) **Reassignment.** An employer initiated movement of:

(a) A WMS employee from one position to a different position within WMS with the same salary standard and/or evaluation points; or

(b) A WMS position and the employee in that position from one section, department or geographical location to another section, department or geographical location.

(12) **Review period.** A period of time that allows the employer an opportunity to ensure the WMS employee meets the requirements and performance standards of the position.

(13) **Salary standard.** Within a management band a salary standard is the maximum dollar amount assigned to a position in those agencies that use a salary standard in addition to, or in place of, evaluation points.

(14) **Separation.** Separation from state employment for nondisciplinary reasons.

(15) **Suspension.** An absence without pay for disciplinary reasons.

(16) **Transfer.** An employee initiated movement from one position to a different position with the same salary standard and/or same evaluation points.

(17) **Veterans placement program.** A program that is designated to grant transitioning service members and veterans additional support to attain state employment.

(18) **Washington general service (WGS).** The system of personnel administration that applies to classified employees or positions under the jurisdiction of chapter 41.06 RCW which do not meet the definition of manager found in RCW 41.06.022.

(((18))) (19) **Washington management service (WMS).** The system of personnel administration that applies to classified managerial employees or positions under the jurisdiction of RCW 41.06.022 and 41.06.500.

AMENDATORY SECTION

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

An agency's WMS recruitment and selection policy must:

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

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

(3) Support workforce diversity and affirmative action goals;

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

(5) Consider making appointments from a veterans placement program;

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

((~~(6)~~))(7) Ensure compliance with state and federal laws relating to employee selection and nondiscrimination;

((~~(7)~~))(8) Encourage decentralized and regional administration of the recruitment and selection processes when it is appropriate for the agency;

((~~(8)~~))(9) Ensure compliance with requirements governing wage and salary information in accordance with RCW 49.58.100, 49.58.110, WAC 357-16-017, 357-16-215, and 357-16-220.

**Item #2 Cleanup – Part-Time/Temporary Rules**

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

On December 15, 2021, an extension was filed with the Code Revisers Office to extend the implementation rule effective date for the part-time/temporary/non-permanent rules from January 1, 2022, to July 1, 2022. The purpose of this extension was to allow an appropriate amount of time for 1) the Washington State Public Employment Relations Commission to finalize rulemaking and to clarify bargaining unit descriptions; 2) higher education employers and unions to bargain changes for represented employees; 3) and higher education employers to configure their payroll systems.

We are proposing to amend WACs 357-04-045, 357-19-435, WAC 357-19-450 to align with the July 1, 2022, part-time implementation effective date and other housekeeping changes.

Lead: Patricia Foshaug

AMENDATORY SECTION (Effective July 1, 2022)

**WAC 357-04-045** **Which temporary employees of higher education employers 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~~)) 12 consecutive months or less;

(b) The employee is employed for ((~~one thousand fifty~~)) 1,050 hours or less in that same ((~~twelve~~)) 12 consecutive month period which begins from the original date of hire or ((~~January~~)) July 1, 2022, 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](https://apps.leg.wa.gov/wac/default.aspx?cite=357-19-450).

(3) Temporary employees who are exempt under subsection (1) of this section and who work more than ((~~three hundred fifty~~)) 350 hours in a ((~~twelve~~)) 12 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](https://app.leg.wa.gov/wac/default.aspx?cite=357-04-040) are not counted in the ((~~three hundred fifty~~)) 350 hours. For purposes of counting the ((~~three hundred fifty~~)) 350 hours, the ((~~twelve-month~~)) 12-month period will begin on the employee's original date of hire or January 1, 2004, whichever is later.

AMENDATORY SECTION (Effective July 1, 2022)

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

A higher education employer may 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~~)) 1,050 hours in a ((~~twelve~~)) 12 consecutive month period from the original date of hire or ((~~January~~)) July 1, 2022, whichever is later, in accordance with [WAC 357-04-045](https://apps.leg.wa.gov/wac/default.aspx?cite=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)](https://apps.leg.wa.gov/WAC/default.aspx?cite=357-19-441), temporary appointments under this subsection are not exempt from civil service rules.

AMENDATORY SECTION (Effective July 1, 2022)

**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)](https://apps.leg.wa.gov/wac/default.aspx?cite=357-19-435), 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 individual has worked in one or more temporary positions as identified in [WAC 357-04-045](https://apps.leg.wa.gov/wac/default.aspx?cite=357-04-045) for more than ((~~one thousand fifty~~)) 1,050 hours in any ((~~twelve~~)) 12 consecutive month period since the original hire date or ((~~January~~)) July 1, 2022, whichever is later. (Overtime and time worked as a student employee under the provisions of [WAC 357-04-040](https://app.leg.wa.gov/wac/default.aspx?cite=357-04-040) are not counted in the ((~~one thousand fifty~~)) 1,050 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 #3 COVID-19 Rules**

**Staff note:** Engrossed Substitute Senate Bill (ESSB) [5115](http://lawfilesext.leg.wa.gov/biennium/2021-22/Pdf/Bills/Session%20Laws/Senate/5115-S.SL.pdf?q=20210625163532) passed during the 2021 legislative session with an effective date of May 11, 2021. This bill added a new section to chapter 49.17 RCW (codified as [RCW 49.17.062](https://app.leg.wa.gov/RCW/default.aspx?cite=49.17.062)), The Washington Industrial Safety and Health Act. RCW 49.17.062(6)(a) 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.” Employers must allow an employee to use all available leave options including leave without pay. The Washington State Labor and Industries confirmed that leave may be used in any order and employers may not prescribe the type of leave an employee chooses or the order in which leave is taken.

In addition, during the course of the COVID-19 pandemic, certain proclamations and requirements impacted employees and their families. As a result, we are proposing to amend several COVID-19 related rules to 1) expand the reasons in which certain leave options may be provided to employees beyond the state of emergency; 2) clean up language for consistency; and 3) allow employers to consider approving leave based on workload demands and business needs rather than looking at essential services.

We are proposing to:

* Amend WACs 357-31-070(f), 357-31-200(h), and 357-31-327(6) to require employers to allow a high risk employee seeking a reasonable accommodation to use their personal holiday, vacation leave, and leave without pay to protect themselves during a public health emergency if the employer determines no other accommodation is reasonable besides the use of leave.
* Amend WAC 357-31-100(5) to change the reference from WAC 357-31-130 to WAC 357-31-133 due to separating out WAC 357-31-130 into two separate WACs. Amend WAC 357-31-100 to add subsection (9) state an employer’s leave policy must allow a high risk employee seeking reasonable accommodation to use their accrued leave or leave without pay to protect themselves during a public health emergency if the employer determines no other accommodation is reasonable besides the use of leave.
* Repeal WAC 357-31-130(2) and create a new section, WAC 357-31-133, to distinguish between when an employer must and when an employer may approve the use of sick leave. Renumber subsections in previous WAC 357-31-130(1).
  + Amend WAC 357-31-145 to remove the reference to subsection (1) in WAC 357-31-130 due to becoming its own WAC.
  + Amend WACs 357-31-160, 357-31-490 and 357-31-845 to add the reference to new WAC 357-31-133 due to separating out WAC 357-31-130 into two separate WACs.
* Amend WAC 357-31-130 to add a new requirement (subsection 3) for employers to allow a high risk employee seeking a reasonable accommodation to use their accrued sick leave to protect themselves during a public health emergency if the employer determines no other accommodation is reasonable besides the use of leave.
* Amend WAC 357-31-130 to add a new requirement (subsection 4) for employers to allow employees to use their accrued sick leave when the employee needs to provide care for a child who has been exposed to a contagious disease and is required to quarantine; or when a household or family member who has been exposed to a contagious disease and is required to to quarantine.
* Amend WAC 357-31-133(4) to remove the reference to the emergency proclamation. We recognize the state of emergency is still in effect; however, the impacts of COVID may continue longer than expected. *Note this was previously WAC 357-31-130(2)(d).*
* Amend WAC 357-31-230(8) to repeal outdated language when an employee whose monthly full-time base salary is two thousand five hundred dollars or less is eligible to use compensatory time in lieu of temporary layoff during the 2009-2011 biennium; and replace subsection (8) with the requirement for employers to allow a high risk employee seeking a reasonable accommodation to use accrued compensatory time to protect themselves during a public health emergency if the employer determines no other accommodation is reasonable besides the use of leave.
* Amend WAC 357-31-325(5) to require general government employers to allow employees to use leave with pay when they are seeking a COVID-19 booster when the vaccine is not offered at the worksite. Correct the reference to “immunization” to vaccine for consistency in the WAC. We recognize the state of emergency is still in effect; however, the impacts of COVID-19 may continue longer than expected. We are proposing to remove the reference to the emergency proclamation, 20-05, in the event it goes away. Removing the reference to the emergency proclamation will require an employer to grant leave with pay to an employee who must travel to receive any future COVID-19 vaccines or boosters beyond the state of emergency.
* Amend WAC 357-31-326(4) to allow a general government employer to approve leave with pay for employees when they are seeking a COVID-19 booster when the vaccine is offered at the worksite and amending the reference to “immunization” to vaccine for consistency in the WAC. We recognize the state of emergency is still in effect; however, the impacts of COVID-19 may continue longer than expected. We are proposing to remove the reference to the emergency proclamation, 20-05, in the event it goes away. Removing the reference to the emergency proclamation will require an employer to grant leave with pay to an employee who must travel to receive any future COVID-19 vaccines or boosters beyond the state of emergency
* Amend WAC 357-31-326 (5) to allow a higher education employer to approve leave with pay for employees when they are seeking a COVID-19 booster. Correct the reference to “immunization” to vaccine for consistency in the WAC. We recognize the state of emergency is still in effect; however, the impacts of COVID-19 may continue longer than expected. We are proposing to remove the reference to the emergency proclamation, 20-05, in the event it goes away. Removing the reference to the emergency proclamation will require an employer to grant leave with pay to an employee who must travel to receive any future COVID-19 vaccines or boosters beyond the state of emergency.
* Amend WAC 357-31-330(14) to change the reasons in which an employer may grant leave without pay from stating “essential services” to “current workload demands and business needs” and allows an employee to protect themselves or a relative or household member, from risks related to COVID-19. We recognize the state of emergency is still in effect; however, the impacts of COVID-19 may continue longer than expected. We are proposing to remove the reference to the emergency proclamation, 20-05, in the event it goes away. Removing the reference to the emergency proclamation will allow an employer to grant leave without pay for an employee beyond the state of emergency.
* Amend WAC 357-31-567 to add new subsection (1)(d) to require employers to allow a high risk employee seeking a reasonable accommodation to use their recognition leave to protect themselves during a public health emergency if the employer determines no other accommodation is reasonable besides the use of leave. To repeal section (3) which is outdated language from the 2009-2011 biennium which allowed employees whose monthly full-time equivalent base salary is two thousand five hundred dollars or less to use recognition leave in lieu of temporary layoff.

Lead: Brittany Trujillo

AMENDATORY SECTION

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

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

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

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

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

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

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

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

(c) If the employee or the employee's family member is a victim of domestic violence, sexual assault, or stalking as defined in RCW [49.76.020](http://app.leg.wa.gov/RCW/default.aspx?cite=49.76.020). An employer may require the request for leave under this section be supported by verification in accordance with WAC [357-31-730](https://apps.leg.wa.gov/WAC/default.aspx?cite=357-31-730);

(d) In accordance with WAC [357-31-373](https://apps.leg.wa.gov/WAC/default.aspx?cite=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;

(e) If the employee requests to use their personal holiday as a supplemental benefit while receiving a partial wage replacement for paid family and/or medical leave under Title [50A](http://app.leg.wa.gov/RCW/default.aspx?cite=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](http://app.leg.wa.gov/RCW/default.aspx?cite=50A) RCW; or

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

(3) Allow an employee to use accrued leave as a supplemental benefit as provided in WAC [357-31-248](https://apps.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 eighteen weeks in accordance with WAC [~~357-31-130~~](https://apps.leg.wa.gov/WAC/default.aspx?cite=357-31-130) 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](https://apps.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](https://apps.leg.wa.gov/WAC/default.aspx?cite=296-128) WAC; ~~and~~

(8) Address whether a general government employee may take additional accrued leave beyond thirty 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); and

(9) Allow 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 and the employer determines no other accommodation is reasonable besides the use of leave.

AMENDATORY SECTION

### WAC 357-31-130 When ~~may~~ must an employer allow an employee to use their accrued sick leave?

The employer may require medical verification or certification of the reason for sick leave use in accordance with the employer's leave policy and in compliance with chapter [296-128](https://apps.leg.wa.gov/WAC/default.aspx?cite=296-128) WAC.

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

(1 ~~a~~) An employee's mental or physical illness, disability, injury or health condition that has incapacitated the employee from performing required duties; to accommodate the employee's need for medical diagnosis, care or treatment of a mental or physical illness, injury or health condition; or an employee's need for preventive medical care.

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

(3 ~~c~~) 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 and the employer determines no other accommodation is reasonable besides the use of leave.

(4 ~~d~~) To allow an employee to provide care for a child who has been exposed to a contagious disease and is required to quarantine; or when a household or family member that has been exposed to a contagious disease and is required to quarantine.

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

(6 ~~d~~) To allow an employee to provide care for a family member with a mental or physical illness, injury or health condition; care of a family member who needs medical diagnosis, care or treatment of a mental or physical illness, injury or health condition; or care for a family member who needs preventive medical care.

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

(8 ~~(f)~~ When an employee is required to be absent from work to care for members of the employee's household or relatives of the employee or relatives of the employee's spouse/registered domestic partner who experience an illness or injury, not including situations covered by subsection (1)(d) of this section.

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

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

~~(~~9 ~~g)~~ When requested as a supplemental benefit while receiving a partial wage replacement for paid family and/or medical leave under Title [50A](http://app.leg.wa.gov/RCW/default.aspx?cite=50A) RCW as provided in WAC [357-31-248](https://apps.leg.wa.gov/WAC/default.aspx?cite=357-31-248). 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](http://app.leg.wa.gov/RCW/default.aspx?cite=50A) RCW.

(10 ~~h)~~ If the employee or the employee's family member, as defined in chapter [357-01](https://apps.leg.wa.gov/WAC/default.aspx?cite=357-01) WAC, is a victim of domestic violence, sexual assault or stalking as defined in RCW [49.76.020](http://app.leg.wa.gov/RCW/default.aspx?cite=49.76.020). An employer may require the request for leave under this section be supported by verification in accordance with WAC [357-31-730](https://apps.leg.wa.gov/WAC/default.aspx?cite=357-31-730).

(11 ~~i)~~ In accordance with WAC [357-31-373](https://apps.leg.wa.gov/WAC/default.aspx?cite=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.

(12~~j)~~ When an employee requests to use sick leave for the purpose of parental leave to bond with a newborn, adoptive or foster child for a period up to eighteen weeks. Sick leave for this purpose must be taken during the first year following the child's birth or placement.

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

~~(a) For condolence or bereavement;~~

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

~~(c) To bond with a newborn, adoptive or foster child for a period beyond eighteen weeks as allowed in subsection (1)(i) of this section. Sick leave for this purpose must be taken during the first year following the child's birth or placement. The total amount of sick leave allowed to be used, beyond subsection (1)(i) of this section must be addressed in the employer's leave policy in accordance with WAC~~ [~~357-31-100~~](https://apps.leg.wa.gov/WAC/default.aspx?cite=357-31-100)~~; or~~

~~(d) When a child is a family member of an employee or member of an employee's household and the child's school or place of care has been closed while proclamation 20-05, issued February 29, 2020, by the governor and declaring an emergency in the state of Washington, or any amendment thereto, is in effect.~~

NEW SECTION

**WAC 357-31-133 When may an employer allow an employee to use their accrued sick leave?**

The employer may require verification or certification of the reason for sick leave use in accordance with the employer's leave policy.

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

(1) For condolence or bereavement;

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

(3) To bond with a newborn, adoptive or foster child for a period beyond eighteen weeks as allowed in WAC 357-31-130 (1)(j). Sick leave for this purpose must be taken during the first year following the child's birth or placement. The total amount of sick leave allowed to be used, beyond WAC 357-31-130 (1)(i) must be addressed in the employer's leave policy in accordance with WAC [357-31-100](https://apps.leg.wa.gov/WAC/default.aspx?cite=357-31-100); or

(4) When a child is a family member of an employee or member of an employee's household and the child's school or place of care has been closed((~~while proclamation 20-05, issued February 29, 2020, by the governor and declaring an emergency in the state of Washington, or any amendment thereto, is in effect~~)).

AMENDATORY SECTION

### WAC 357-31-145 When an employee is on vacation leave and a condition listed in WAC [357-31-130](http://app.leg.wa.gov/WAC/default.aspx?cite=357-31-130)~~(1)~~ arises, can the employee use sick leave in place of vacation leave?

When a condition listed in WAC [357-31-130](http://app.leg.wa.gov/WAC/default.aspx?cite=357-31-130)~~(1)~~ arises while the employee is on vacation leave, the employer may allow the employee to use accrued sick leave in place of vacation leave. The employee must request the use of accrued sick leave in place of vacation leave according to the employer's leave policy.

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. The employee may use the restored balance in accordance with WAC [357-31-130](http://app.leg.wa.gov/WAC/default.aspx?cite=357-31-130) and WAC 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](http://app.leg.wa.gov/WAC/default.aspx?cite=357-31-150).

AMENDATORY SECTION

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

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

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

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

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

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

(e) If the employee or the employee's family member, as defined in chapter [357-01](https://apps.leg.wa.gov/WAC/default.aspx?cite=357-01) WAC, is a victim of domestic violence, sexual assault, or stalking as defined in RCW [49.76.020](http://app.leg.wa.gov/RCW/default.aspx?cite=49.76.020). An employer may require the request for leave under this section be supported by verification in accordance with WAC [357-31-730](https://apps.leg.wa.gov/WAC/default.aspx?cite=357-31-730).

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

(g) When requested as a supplemental benefit while receiving a partial wage replacement for paid family and/or medical leave under Title [50A](http://app.leg.wa.gov/RCW/default.aspx?cite=50A) RCW as provided in WAC [357-31-248](https://apps.leg.wa.gov/WAC/default.aspx?cite=357-31-248).

(h) 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 and the employer determines no other accommodation is reasonable besides the use of leave.

(2) In accordance with the employer's leave policy, approval for the reasons listed in (1)(a) through (g) above may be subject to verification that the condition or circumstance exists or that paid family and/or medical leave under Title [50A](http://app.leg.wa.gov/RCW/default.aspx?cite=50A) RCW has been approved.

AMENDATORY SECTION

### WAC 357-31-230 When ~~may~~ must an employee use accrued compensatory time?

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

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

(3) An employee must be granted the use of accrued compensatory time if the employee or the employee's family member, as defined in chapter [357-01](https://apps.leg.wa.gov/WAC/default.aspx?cite=357-01) WAC, is a victim of domestic violence, sexual assault, or stalking as defined in RCW [49.76.020](http://app.leg.wa.gov/RCW/default.aspx?cite=49.76.020). An employer may require the request for leave under this section be supported by verification in accordance with WAC [357-31-730](https://apps.leg.wa.gov/WAC/default.aspx?cite=357-31-730).

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

(5) When requested as a supplemental benefit while receiving a partial wage replacement for paid family and/or medical leave under Title [50A](http://app.leg.wa.gov/RCW/default.aspx?cite=50A) RCW as provided in WAC [357-31-248](https://apps.leg.wa.gov/WAC/default.aspx?cite=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](http://app.leg.wa.gov/RCW/default.aspx?cite=50A) RCW.

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

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

(8) ((~~During the 2009-2011 fiscal biennium only, an employee whose monthly full-time equivalent base salary is two thousand five hundred dollars or less is eligible to use compensatory time in lieu of temporary layoff as described in chapter 32, Laws of 2010~~)) A high risk employee, as defined in RCW 49.17.062, seeking a reasonable accommodation must be granted the use of accrued compensatory time when the employee needs 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 357-31-325 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 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. 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 ((~~immunization~~))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 is effective until the expiration of proclamation 20-05, issued February 29, 2020, by the governor and declaring an emergency in the state of Washington, or any amendment thereto, whichever is later.~~ ))This subsection no longer applies if state or federal law otherwise provides paid leave specifically for employees to receive the COVID-19 ((~~immunization~~)) vaccine.

AMENDATORY SECTION

**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 ten 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 twenty-one 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 ((~~immunization~~)) 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 is effective until the expiration of proclamation 20-05, issued February 29, 2020, by the governor and declaring an emergency in the state of Washington, or any amendment thereto, whichever is later.~~)) This subsection no longer applies if state or federal law otherwise provides paid leave specifically for employees to receive the COVID-19 ((~~immunization~~)) 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 ((~~immunization~~)) 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 is effective until the expiration of proclamation 20-05, issued February 29, 2020, by the governor and declaring an emergency in the state of Washington, or any amendment thereto, whichever is later.~~)) This subsection no longer applies if state or federal law otherwise provides paid leave specifically for employees to receive the COVID-19 ((~~immunization~~)) vaccine.

AMENDATORY SECTION

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

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

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

(2) If the employee or the employee's family member, as defined in chapter [357-01](https://apps.leg.wa.gov/WAC/default.aspx?cite=357-01) WAC, is a victim of domestic violence, sexual assault, or stalking as defined in RCW [49.76.020](http://app.leg.wa.gov/RCW/default.aspx?cite=49.76.020). An employer may require the request for leave under this section be supported by verification in accordance with WAC [357-31-730](https://apps.leg.wa.gov/WAC/default.aspx?cite=357-31-730); or

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

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

(5) When an employee is on approved paid family and/or medical leave under Title [50A](http://app.leg.wa.gov/RCW/default.aspx?cite=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](http://app.leg.wa.gov/RCW/default.aspx?cite=50A) RCW and qualifies for employment protection in accordance with RCW [50A.35.010](http://app.leg.wa.gov/RCW/default.aspx?cite=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 and the employer determines no other accommodation is reasonable besides the use of leave.

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 risks 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 ((~~whether the employee is needed to provide essential services because the employee is a health care provider, an emergency responder or otherwise necessary to maintain public safety. This subsection is effective until the expiration of proclamation 20-05, issued February 29, 2020, by the governor and declaring an emergency in the state of Washington, or any amendment thereto, whichever is later~~)).

AMENDATORY SECTION (Effective July 1, 2022)

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

(1) Parental leave may be a combination of vacation leave, personal holiday, compensatory time, holiday credit, shared leave and leave of absence without pay. Sick leave may be used if the criteria in WAC 357-31-130 and WAC 357-31-133 are met. The combination and use of paid and unpaid leave during a parental leave is at the employee's choice.

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

AMENDATORY SECTION

**WAC 357-31-567 When must an employer grant the use of recognition leave?**

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

(a) An employee must be granted the use of recognition leave if the employee or the employee's family member, as defined in chapter [357-01](https://apps.leg.wa.gov/WAC/default.aspx?cite=357-01) WAC, is a victim of domestic violence, sexual assault, or stalking as defined in RCW [49.76.020](http://app.leg.wa.gov/RCW/default.aspx?cite=49.76.020). An employer may require the request for leave under this section be supported by verification in accordance with WAC [357-31-730](https://apps.leg.wa.gov/WAC/default.aspx?cite=357-31-730);

(b) In accordance with WAC [357-31-373](https://apps.leg.wa.gov/WAC/default.aspx?cite=357-31-373), an employee must be granted the use of recognition leave to be with a spouse or registered domestic partner who is a member of the Armed Forces of the United States, National Guard, or Reserves after the military spouse or registered domestic partner has been notified of an impending call or order to active duty, before deployment, or when the military spouse or registered domestic partner is on leave from deployment; and

(c) When requested as a supplemental benefit while receiving a partial wage replacement for paid family and/or medical leave under Title [50A](http://app.leg.wa.gov/RCW/default.aspx?cite=50A) RCW as provided in WAC [357-31-248](https://apps.leg.wa.gov/WAC/default.aspx?cite=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](http://app.leg.wa.gov/RCW/default.aspx?cite=50A) RCW.

(d) A high risk employee, as defined in RCW 49.17.062, seeking a reasonable accommodation must be granted the use of recognition leave when the employee needs 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.

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

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

AMENDATORY SECTION

### WAC 357-31-845 What definitions apply to the foster parent shared leave pool?

The following definitions apply to the foster parent shared leave pool:

"Caring for" means taking a foster child to health care appointments, court appointments, visitation with family members and/or any other reasons that sick leave may be used for in WAC [357-31-130](http://app.leg.wa.gov/WAC/default.aspx?cite=357-31-130) and WAC 357-31-133.

"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 as defined in RCW [41.04.655](http://app.leg.wa.gov/RCW/default.aspx?cite=41.04.655).

"Monthly salary" means the monthly salary and special pay and shift differential, or the monthly equivalent for hourly employees. Monthly salary does not include overtime pay, callback pay, standby pay or performance bonuses.

"Preparing for" means arranging a foster child's living space, enrolling in school, and/or enrolling in child care.

**Item #4 Choice Performance Confirmation**

**Staff note:** In September 2016 SHR launched the Choice Performance Confirmation pilot program, a modified version of the Performance Management Confirmation program. The pilot was designed to assist state employers in the development of a performance management program that 1) creates and manages a performance-based culture; 2) links individual, team and organizational performance goals; 3) meaningfully distinguishes among different levels of performance; and 4) develops a fair and transparent performance program. The pilot program included changes to the performance-based incentives for confirmed agencies. While the CPC was operating as a pilot program, it remained operating under the PMC program title. During the preparation for the pilot, SHR met with all CPC confirmed agencies to solicit feedback and recommendations. During that process, SHR learned that participating agencies had never and do not intend on using layoff as part of the program. We are proposing to remove layoff as an option for performance-based incentives. Removing the language ‘factor employee performance when making layoff decisions’ will not impact on confirmed agencies

We are proposing to amend several WACs to reflect the Choice Performance Confirmation program title change and remove language referencing the ability to factor employee performance when making layoff decisions.

Lead: Brittany Trujillo

NEW SECTION

**WAC 357-01-073 Choice Performance Confirmation.**

Approval granted by the director to an employer allowing the employer to factor in individual employer performance when granting recognition leave.

REPEAL

**~~WAC 357-01-230 Performance management confirmation.~~**

~~Approval granted by the director to an employer allowing the employer to factor in individual employee performance when granting recognition leave or when making layoff decisions.~~

AMENDATORY SECTION

**WAC 357-31-565 May employers grant paid leave for purposes of recognition?**

Employers who have received choice performance ~~management~~ confirmation may grant employees up to five days of paid leave within a twelve-month period to recognize outstanding accomplishments or the achievement of predefined work goals by individual employees or units. Leave granted under this provision:

(1) Is not payable upon layoff, dismissal, separation, or resignation or transferable between employers;

(2) Must be used within twelve months of the leave being granted.

AMENDATORY SECTION

**WAC 357-37-050 May an employer factor in employee performance when granting recognition leave ~~and when making layoff decisions~~?**

An employer may factor in an employee's performance when granting recognition leave and ~~when making layoff decisions~~ if the employer has received choice performance ~~management~~ confirmation.

AMENDATORY SECTION

**WAC 357-37-055 How does an employer receive choice performance ~~management~~ confirmation which enables them to factor in employee performance when granting recognition leave ~~and when making layoff decisions~~?**

Employers may request choice performance ~~management~~ confirmation from the director. The director will use the elements listed in WAC 357-37-060 to assess and evaluate an employer's readiness to fairly and objectively factor in employee performance when granting recognition leave ~~and when making layoff decisions~~. If the director determines that the employer has developed a performance management program that encompasses the necessary elements, the employer will be granted choice performance ~~management~~ confirmation.

AMENDATORY SECTION

**WAC 357-37-060 What elements will the director evaluate to determine if an employer should be granted choice performance ~~management~~ confirmation?**

The director will evaluate the following elements to determine if an employer should receive choice performance ~~management~~ confirmation:

(1) Executive commitment to a performance-based culture;

(2) Present status of performance management in the organization;

(3) Defined roles and responsibilities for implementing and sustaining a performance management system;

(4) Policy and process for holding managers accountable for properly carrying out their roles and responsibilities in performance management;

(5) Internal policies and procedures for a performance management system;

(6) Strategy for communicating to employees regarding policies, procedures and timelines for performance management;

(7) Performance management orientation and training for managers and supervisors;

(8) Internal mechanisms for managing funding for performance-based recognition leave;

(9) Implementation of a performance and development plan for all employees subject to performance factor decisions; and

(10) Process for monitoring and measuring success.

AMENDATORY SECTION

**WAC 357-46-020 What must be included in the employer's layoff procedure?**

The employer's layoff procedure must:

(1) Identify clearly defined layoff unit(s) that minimize disruption of the employer's total operation and provide options to employees scheduled for layoff;

• Employers may establish separate and exclusive layoff units for project employment, employee business units, or special employment programs.

(2) Provide opportunities to avoid or minimize layoff, such as transfers, voluntary demotion, voluntary reduced work schedule, or voluntary leave without pay;

(3) Require the appointing authority to provide written notice of layoff to employees in accordance with WAC 357-46-025;

(4) Provide layoff options for permanent employees being laid off as provided in WAC 357-46-035;

(5) Address the time frame in which employees must select a layoff option;

(6) Define what the employer considers when determining the comparability of a position;

(7) Identify the employer's legitimate business requirements if the employer is going to consider those requirements in determining layoff options under WAC 357-46-035;

• Legitimate business requirements may include requirements such as circumstances or characteristics that render a position uniquely sensitive to disruption in continuity such as meeting critical deadlines, continuity in patient care, or research progress.

(8) Describe how employment retention ratings will be calculated~~, including options for factoring performance into ratings;~~ and

(9) Specify how the employer will break ties when more than one employee has the same employment retention rating.

(10) Higher education employers address in their layoff procedure whether or not employees have layoff list rights to classes they held permanent status in prior to any breaks in state service.

AMENDATORY SECTION

**WAC 357-46-050 How does an employer determine an employee's employment retention rating?**

The employer determines an employee's employment retention rating using seniority as calculated in WAC 357-46-055 for general government employees and 357-46-053 for higher education employees. ~~Employers with performance management confirmation may consider properly documented performance in addition to seniority. If performance is not considered, an employee's employment retention rating is equal to the employee's seniority.~~

AMENDATORY SECTION

**WAC 357-58-065 Definitions for WMS.**

The following definitions apply to chapter 357-58 WAC:

(1) **Break in service.** An employee has a break in continuous state service if the employee is separated, dismissed or resigns from state service. A furlough for the purposes of temporary layoff as provided in WAC 357-58-550 is not considered a break in continuous state service.

(2) **Choice performance confirmation.** Approval granted by the director to an employer allowing the employer to factor in individual employee performance when granting recognition leave.

(3) **Competencies.** Those measurable or observable knowledge, skills, abilities and behaviors critical to success in a key job role or function.

(((3))) (4) **Director.** State human resources director within the office of financial management.

(((4))) (5) **Dismissal.** The termination of an individual's employment for disciplinary reasons.

(((5))) (6) **Employee.** An individual working in the classified service. Employee business unit members are defined in WAC 357-43-001.

(((6))) (7) **Evaluation points.** The points resulting from an evaluation of a position using the managerial job value assessment chart.

(((7))) (8) **Layoff unit.** A clearly identified structure within an employer's organization within which layoff options are determined in accordance with the employer's layoff procedure. Layoff units may be a series of progressively larger units within an employer's organization.

(((8))) (9) **Management bands.** A series of management levels included in the WMS. Placement in a band reflects the nature of management, decision-making environment and policy impact and scope of management accountability and control assigned to the position.

~~(((9)~~ **~~Performance management confirmation.~~** ~~Approval granted by the director to an employer allowing the employer to factor in individual employee performance when granting recognition leave and when making layoff decisions.))~~

(10) **Premium.** Pay added to an employee's base salary on a contingent basis in recognition of special requirements, conditions or circumstances associated with the job.

(11) **Reassignment.** An employer initiated movement of:

(a) A WMS employee from one position to a different position within WMS with the same salary standard and/or evaluation points; or

(b) A WMS position and the employee in that position from one section, department or geographical location to another section, department or geographical location.

(12) **Review period.** A period of time that allows the employer an opportunity to ensure the WMS employee meets the requirements and performance standards of the position.

(13) **Salary standard.** Within a management band a salary standard is the maximum dollar amount assigned to a position in those agencies that use a salary standard in addition to, or in place of, evaluation points.

(14) **Separation.** Separation from state employment for nondisciplinary reasons.

(15) **Suspension.** An absence without pay for disciplinary reasons.

(16) **Transfer.** An employee initiated movement from one position to a different position with the same salary standard and/or same evaluation points.

(17) **Veterans placement program.** A program that is designated to grant transitioning service members and veterans additional support to attain state employment.

(18) **Washington general service (WGS).** The system of personnel administration that applies to classified employees or positions under the jurisdiction of chapter 41.06 RCW which do not meet the definition of manager found in RCW 41.06.022.

(((18))) (19) **Washington management service (WMS).** The system of personnel administration that applies to classified managerial employees or positions under the jurisdiction of RCW 41.06.022 and 41.06.500.

AMENDATORY SECTION

**WAC 357-58-425 May an employer factor in employee performance when granting recognition leave ~~and when making layoff decisions~~ for WMS employees?**

A general government employer may factor in an employee's performance when granting recognition leave ~~and when making layoff decisions~~ if the employer has received choice performance ~~management~~ confirmation.

AMENDATORY SECTION

**WAC 357-58-430 How does an employer receive choice performance ~~management~~ confirmation which enables them to factor in performance when granting recognition leave ~~and when making layoff decisions~~ for WMS employees?**

Employers may request choice performance ~~management~~ confirmation from the director for WMS employees. The director will use the elements listed in WAC 357-58-435 to assess and evaluate an employer's readiness to fairly and objectively factor in performance when granting recognition leave ~~and when making layoff decisions~~. If the director determines that the employer has developed a performance management program that encompasses the necessary elements, the employer will be granted choice performance ~~management~~ confirmation.

AMENDATORY SECTION

**WAC 357-58-435 What elements will the director evaluate to determine if an employer should be granted choice performance ~~management~~ confirmation?** The director will evaluate the following elements to determine if an employer should receive choice performance ~~management~~ confirmation:

(1) Executive commitment to a performance-based culture;

(2) Present status of performance management in the organization;

(3) Defined roles and responsibilities for implementing and sustaining a performance management system;

(4) Policy and process for holding managers accountable for properly carrying out their roles and responsibilities in performance management;

(5) Internal policies and procedures for a performance management system;

(6) Strategy for communicating to employees regarding policies, procedures and timelines for performance management;

(7) Performance management orientation and training for managers and supervisors;

(8) Internal mechanisms for managing funding for performance-based recognition leave;

(9) Implementation of a performance and development plan for all employees subject to performance factor decisions; and

(10) Process for monitoring and measuring success.