**ITEM #1 – Washington Minimum Wage Act**

**Staff note:** Effective January 1, 2021, the Department of Labor & Industries updated the minimum weekly standard salary level required to exempt executive, administrative or professional employees from Washington State’s overtime pay requirements. The new state [thresholds](https://lni.wa.gov/forms-publications/F700-207-000.pdf) will be more favorable than the federal threshold of $684/week ($35,568/year), Washington employers will have to adhere to the state thresholds as of 2021.

We are proposing to amend the following WACs to align with the changes to the Washington Minimum Wage Act.

The highlighted green text indicates the updated language since the version that was shared via email on Friday March 5, 2021. This version also includes the feedback that we received at the Rules meeting today, March 9, 2021.

Lead: Caroline Kirk

AMENDATORY SECTION

**WAC 357-01-220 Overtime eligible employee.**

An employee who is covered by the overtime provisions of both chapter 49.46 RCW and the Fair Labor Standards Act.

AMENDATORY SECTION

**WAC 357-01-225 Overtime-exempt employee.**

An employee who is not covered by the overtime provisions of chapter 49.46 RCW beginning January 1, 2021. Prior to January 1, 2021, an employee~~s~~ ~~were~~ not covered by the overtime provisions of the Fair Labor Standards Act.

AMENDATORY SECTION

**WAC 357-19-260 While an employee is in an in-training appointment, what class is used to determine the employee's salary, (((~~work period~~)))overtime eligibility (((~~designation~~)))~~,~~ and performance evaluation?** For each in-training step, the training plan must identify the job class to which the employee's work is being allocated. The employee's salary, (((~~work period~~)))overtime eligibility (((~~designation~~))), and performance evaluation must be based upon the allocated class of the in-training step.

AMENDATORY SECTION

**WAC 357-58-120 What is a disciplinary demotion and what changes may occur in salary?**

Demotion for cause is a disciplinary demotion. A disciplinary demotion results in the:

(1) Assignment of responsibilities which results in a lower salary standard and/or lower evaluation points for the same position or results in the position being placed in the WGS with a lower base salary, or

(2) Movement to a different position that has a lower salary standard and/or lower evaluation points or to a WGS position with a lower base salary.

A disciplinary demotion may result in a salary decrease. If a disciplinary demotion results in a(((~~Any~~))) salary decrease the overtime status of the position may be impacted and must comply with the salary basis test of both chapter 49.46 RCW and the Fair Labor Standards Act.

**ITEM #2 – Reasonable Amount of Leave with Pay for Employee Vaccination**

**Staff note:** The emergency rule amendments to WAC 357-31-325, WAC 357-31-326 and WAC 357-31-330 were filed with the Office of the Code Reviser effective March 1, 2021. WAC 357-31-325 requires a general government employer to grant leave with pay (LWP) to allow an employee to take a reasonable amount of leave with pay for an employee to travel and receive each dose of COVID-19 immunization if the vaccine is not offered at the workplace. WAC 357-31-326(5) allows a general government employer to grant a reasonable amount of LWP for an employee to receive each dose of COVID-19 immunization if the vaccine is offered at the workplace. WAC 357-31-326(6) allows a higher education employer to grant a reasonable amount of LWP for an employee to receive each dose of COVID-19 immunization if the vaccine is not available at the workplace. Employers may authorize leave in excess of one day in extraordinary circumstances, such as to accommodate travel where the vaccine is unavailable locally. Employers may require that the request for leave be supported by documentation. If state or federal law provides paid leave specifically to receive the COVID-19 vaccination, the provisions concerning leave for immunization no longer apply.

WAC 357-31-330 allows an employer to grant leave without pay for an employee to protect themselves, or a relative or household member, from risks related to COVID-19. The amendment to this WAC was inadvertently left off the permanent rule making for previous COVID-19 rule amendments.

Lead: Caroline Kirk

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 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) When a general government employee is required by Centers for Disease Control and Prevention guidelines to self-quarantine due to novel coronavirus disease 2019 (COVID-19), but is otherwise healthy and has not tested positive for COVID-19, and the employer has determined the employee does not have the option to telework. An employer may subsequently determine that a telework option exists for the employee and direct the employee to telework. If the employee is directed to telework under this subsection and declines to do so, the employee must use other available leave options. The employee may receive up to fourteen days of leave with pay under this subsection. 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. An employer may require written verification, including verification submitted electronically, confirming the circumstances warranting the self-quarantine or inability to telework, which may include a signed affidavit from the employee or any other information requested by the employer.

(6) To allow a general government employee to take a reasonable amount of leave with pay for the employee to travel and receive each dose of COVID-19 immunization 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 ~~to~~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.

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. 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) When a higher education employee is required by Centers for Disease Control and Prevention guidelines to self-quarantine due to novel coronavirus disease 2019 (COVID-19), but is otherwise healthy and has not tested positive for COVID-19, and the employer has determined the employee does not have the option to telework. An employer may subsequently determine that a telework option exists for the employee and direct the employee to telework. If the employee is directed to telework under this subsection and declines to do so, the employee must use other available leave options. The employee may receive up to fourteen days of leave with pay under this subsection. 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. An employer may require written verification, including verification submitted electronically, confirming the circumstances warranting the self-quarantine or inability to telework, which may include a signed affidavit from the employee or any other information requested by the employer.

(5) A general government employer may grant a reasonable amount of leave with pay for an employee to receive each dose of COVID-19 immunization 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 ~~to~~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.

(6) A higher education employer may grant a reasonable amount of leave with pay for an employee to receive each dose of COVID-19 immunization 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.

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;

(5) Parental leave as required by WAC 357-31-460;

(6) Family care emergencies as required by WAC 357-31-295;

(7) Bereavement or condolence;

(8) Absence due to inclement weather as provided in WAC 357-31-255;

(9) To accommodate annual work schedules of employees occupying cyclic year positions as specified in WAC 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;

(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; ((~~or~~))

(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 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 ~~to~~in the state of Washington, or any amendment thereto, whichever is later.