**Item #1 – COVID-19 Vaccination Requirements \*New**

**Staff note:** On August 5, 2022, Governor Jay Inslee issued a revised [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, updating the vaccine requirements for state employees as defined in the directive. The revised directive directs the Office of Financial Management, State Human Resources Division, to pursue rulemaking to establish a permanent requirement for nonrepresented state employees and eligible candidates to be fully vaccinated against COVID-19. This continues the existing vaccine requirement under the Governors [Proclamation 21-14](https://www.governor.wa.gov/sites/default/files/proclamations/21-14%20-%20COVID-19%20Vax%20Washington%20%28tmp%29.pdf), COVID-19 Vaccination Requirement, which is still in effect.

Based on the revised directive and feedback received from our stakeholders there have been changes to the rule items that were presented at the July 12, 2022, rules meeting. Those changes remove the requirement for new employees of state agencies to be vaccinated against COVID-19 with the most up-to-date vaccination, including any additional doses or boosters; clarify the accommodation requirements if an exemption is requested; and clarify which employers must comply with the WAC section.

To implement this directive, we are proposing to:

* Create WAC 357-01-1745 to define “fully vaccinated”.
* Create WAC 357-04-125 to require an employee be fully vaccinated or request an exemption as a condition of employment.
* Create WAC 357-16-197 to require an eligible candidate to provide proof of being fully vaccinated or request an exemption after a conditional offer of employment is made.
* Create WAC 357-19-413 to require 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 add subsection 4 to require 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 replace “can” with “may” in the WAC title and add language to require 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 add subsection 9 to state an agency’s WMS recruitment and selection policy and/or procedure must ensure compliance with the vaccination requirements in accordance with WAC 357-04-125 and WAC 357-16-197.

Lead: Brandy Chinn/Brittany Trujillo

NEW SECTION

**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.

NEW SECTION

**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, or a disability separation in accordance with WAC 357-46-160, or a nondisciplinary separation in accordance with WAC 357-46-195.

This section applies to executive and small cabinet agencies as defined in Directive 22-13, issued June 30, 2022, by the governor or any amendment thereto. Higher education employers, independent agencies, boards, councils, commissions, and separately elected officials may require an employee to meet the requirements of this section.

NEW SECTION

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

After a conditional offer of employment is made, an eligible candidate must provide proof of being fully vaccinated or 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.

This section applies to executive and small cabinet agencies as defined in Directive 22-13, issued June 30, 2022, by the governor or any amendment thereto. Higher education employers, independent agencies, boards, councils, commissions, and separately elected officials may require

REFERENCE ONLY

**WAC 357-19-373 What notification must an employer give a nonpermanent appointee?**

(1) Upon appointment, all nonpermanent appointees must be notified in writing of the conditions of their appointment and/or upon any subsequent change to the conditions of their appointment.

(2) The written notification must at a minimum contain the following information:

(a) The reason for the nonpermanent appointment in accordance with WAC [357-19-360](http://app.leg.wa.gov/WAC/default.aspx?cite=357-19-360);

(b) The hours of work and the base salary;

(c) The anticipated short-term duration or sporadic nature of the appointment;

(d) A statement regarding the receipt or nonreceipt of benefits. If the employee is to receive benefits, the statement shall include which benefits are to be received; and

(e) The right to request remedial action as provided in WAC [357-19-425](http://app.leg.wa.gov/WAC/default.aspx?cite=357-19-425).

NEW SECTION

**WAC 357-19-413 What are the requirements for a nonpermanent employee to be fully vaccinated or 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. A nonpermanent employee who fails to comply must be separated in accordance with WAC 357-19-410.

(2) After a conditional offer of employment for a nonpermanent appointment is made, an eligible candidate must provide proof of being fully vaccinated in accordance with WAC 357-16-197.

REFERENCE ONLY

**WAC 357-19-410 How much notice must an employer give for ending a nonpermanent appointment?**

The end date of a nonpermanent appointment may be set in the appointment letter. If the end date is not set in the appointment letter, the employer must give written notice of the termination date of the nonpermanent appointment. If the employee is a permanent state employee, the employer must provide at least fifteen calendar days' notice. If the employee is not a permanent state employee, the employer must give one work day's notice.

A nonpermanent appointment may be terminated immediately with pay in lieu of the one work day of notice required for nonpermanent employees or the fifteen calendar days' notice required for permanent employees.

For purposes of this rule, written notice may be provided using alternative methods such as email, campus mail, the state mail service, or commercial parcel delivery in accordance with WAC [**357-04-105**](http://app.leg.wa.gov/WAC/default.aspx?cite=357-04-105).

AMENDATORY SECTION

**WAC 357-46-165 When may an employer separate an employee in accordance with WAC 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 where an exemption was approved due to a disability and/or medical condition and the employer is unable to reasonably accommodate the employee.

REFERENCE ONLY

**WAC 357-46-160 What is a disability separation?**

A disability separation is an action taken to separate an employee from service when the employer determines that the employee is unable to perform the essential functions of the employee's position or class with or without reasonable accommodation due to mental, sensory, or physical incapacity. Disability separation is not a disciplinary action.

AMENDATORY SECTION

**WAC 357-46-195** ((**~~Can~~**)) **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.

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, 49.58.110, WAC 357-16-017, 357-16-215, and 357-16-220; and

(10) Ensure compliance with the vaccination requirements in accordance with WAC 357-04-125 and 357-16-197.

**Item #2 - Legislative Service Leave** **\*New**

**Staff note:** [HB 1927](https://lawfilesext.leg.wa.gov/biennium/2021-22/Pdf/Bills/House%20Passed%20Legislature/1927.PL.pdf#page=1) passed during the 2022 legislative session, Chapter 271, 2022 Laws, effective June 9, 2022. The bill adds a new chapter to [Title 49 RCW](https://apps.leg.wa.gov/rcw/default.aspx?Cite=49) (Labor Regulations), encouraging citizens to serve in the legislature by creating leave provisions for legislative service. Section 3 *requires* an employer to grant a temporary leave of absence without loss of ***job status*** or ***seniority*** to an employee who is a member of the state legislature to perform any official duty during regular and special legislative sessions. The leave granted *may* be unpaid, or the employee may substitute **any** accrued paid leave.

We are proposing to amend Title 357 WAC to align with the new law, specifically to:

* Require an employer to grant an employee’s request to use their accrued leave or leave without pay;
* Allow an employee who is serving a probationary period, trial service period, transitional review period or Washington Management Service review period to resume/complete their review period when the employee returns from the leave of absence due to legislative service;
* State employees who are on an approved leave of absence for legislative service must not have their seniority date adjusted for time spent during a leave of absence for legislative service; and
* Exclude legislative service leave violations under chapter 49.100 RCW from rule violation appeals.

When reviewing the Civil Service Rules for impacts due to the passage of HB 1927, we realized that leave of absence provided under RCW 41.04.120 is not reflected in Title 357 WAC. [RCW 41.04.120](https://app.leg.wa.gov/rcw/default.aspx?cite=41.04.120) (Chapter 164, 1957 Laws) allows for leave of absence by reason of having been elected or appointed to an elective office (service in an elective office) preserving an employee’s civil service status and seniority. Unlike HB 1927, RCW 41.04.120 is not restricted to regular and special legislative sessions.

We are proposing to amend Title 357 WAC to align with the existing law specifically to:

* Require an employer to grant an employee’s request to use leave without pay for service in an elective office in accordance with RCW 41.04.120;
* Allow an employee who is serving a probationary period, trial service period or transitional review period to resume/complete their review period when the employee returns from the leave of absence due to service in an elective office; and
* State employees who are on an approved leave of absence due to service in an elective office must not have their seniority date adjusted for time spent during a leave of absence for service in an elective office.

Lead: Patricia Foshaug

## **Leave**

NEW SECTION

**WAC 357-31-374 When must an employer grant a temporary leave of absence for service in an elected office or for legislative service?**

An employer **must** grant a temporary leave of absence for:

1. Service in an elective office without loss of job status or seniority to an employee by reason of having been elected or appointed to an elective office in accordance with RCW 41.04.120. The employer must grant leave without pay in accordance with WAC 357-31-200.
2. Legislative service without loss of job status or seniority to an employee who is a member of the state Legislature in order for that employee to perform any special duty as a member of the legislature during regular and special legislative sessions in accordance with chapter 49.100 RCW.

(a) The leave of absence may be unpaid or the employee may substitute any combination of accrued paid leave.

(b) An employee seeking a temporary leave of absence must provide notice to the employer:

(i) At least 30 days in advance for a regular legislative session; or

(ii) As soon as the session is proclaimed for a special session.

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**](http://app.leg.wa.gov/WAC/default.aspx?cite=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**](http://app.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**](http://app.leg.wa.gov/WAC/default.aspx?cite=357-31-730).

(4) In accordance with WAC [**357-31-373**](http://app.leg.wa.gov/WAC/default.aspx?cite=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**](http://app.leg.wa.gov/RCW/default.aspx?cite=50A) RCW as provided in WAC [**357-31-248**](http://app.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) 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).

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**](http://app.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**](http://app.leg.wa.gov/WAC/default.aspx?cite=357-31-730);

(d) In accordance with WAC [**357-31-373**](http://app.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; or

(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.

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

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 eighteen weeks in accordance with WAC [**357-31-130**](http://app.leg.wa.gov/WAC/default.aspx?cite=357-31-130);

(6) Address overtime eligible employees that are required to provide medical certification or verification to their employer for the use of paid sick leave under chapter [**296-128**](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 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 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(1); and

(10) 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(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.

AMENDATORY SECTION

**WAC 357-31-130** **When 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 WAC.

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

(1) 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) 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) 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) 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 needs additional care, not covered by subsection (6) of this section, who has been exposed to a contagious disease and is required to quarantine.

(5) 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) 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) For family care emergencies per WAC 357-31-290, 357-31-295, 357-31-300 and 357-31-305.

(8) 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 6 of this section.

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

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

(9) 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 paid family and/or medical leave under Title 50A RCW.

(10) 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.

(11) 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.

(12) 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 18 weeks. Sick leave for this purpose must be taken during the first year following the child's birth or placement.

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

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**](http://app.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**](http://app.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**](http://app.leg.wa.gov/WAC/default.aspx?cite=357-31-730).

(f) In accordance with WAC [**357-31-373**](http://app.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**](http://app.leg.wa.gov/WAC/default.aspx?cite=357-31-248).

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

(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 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**](http://app.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**](http://app.leg.wa.gov/WAC/default.aspx?cite=357-31-730).

(4) In accordance with WAC [**357-31-373**](http://app.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**](http://app.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)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 must be granted the use of accrued compensatory time if the employer determines no other accommodation is reasonable besides the use of leave.

(9) An employee must be granted the use of compensatory time when granted a temporary leave of absence for legislative service in accordance with WAC 357-31-374(2).

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**](http://app.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**](http://app.leg.wa.gov/WAC/default.aspx?cite=357-31-730); or

(3) In accordance with WAC [**357-31-373**](http://app.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**](http://app.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 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 357-31-567 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 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;

(b) In accordance with WAC 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;

(c) 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;

(d) 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; and

(e) When an employee requests to use recognition leave when granted a temporary leave of absence for legislative service in accordance with WAC 357-31-374(2).

(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.

## **Job Status**

NEW SECTION

**WAC 357-31-3745 How does a temporary leave of absence for service in an elected office or for** **legislative service impact an employee’s probationary, trial service or transition review period?**

When an employee is granted a temporary leave of absence for service in an elected office or for legislative service during a probationary period, trial service period or transition review period, the employer must suspend the employee’s probationary period, trial service period or transition review period and allow the employee to resume when they return from their leave of absence.

AMENDATORY SECTION

**WAC 357-58-300 Does time spent on leave without pay, ~~or~~ shared leave, time spent on a temporary leave of absence for service in an elected office or legislative service count towards the completion of an employee's review period?**

1. Time spent on leave without pay or shared leave counts towards completion of the employee's review period if the total time does not exceed one hundred seventy-four hours. If the total time on leave without pay or shared leave exceeds one hundred seventy-four the employer determines whether or not the time in excess of one hundred seventy-four hours will count towards completion of the review period. The granting of leave shall be in compliance with chapter [**357-31**](http://app.leg.wa.gov/WAC/default.aspx?cite=357-31) WAC and the Fair Labor Standards Act.
2. Time spent on a temporary leave of absence for service in an elected office or legislative service does not count towards the completion of the employee’s review period. Employees who are granted a temporary leave of absence for service in an elective office or legislative service while serving a review period must have their review period suspended and will be allowed to resume when they return from their leave of absence.

## **Seniority**

REFERENCE ONLY

**WAC 357-01-303 Seniority date (general government).**

For a full-time general government employee, the seniority date is the employee's most recent date of hire into state service (including exempt service) as adjusted for any period of leave without pay which exceeds fifteen consecutive calendar days except when the leave without pay is taken for reasons listed in WAC [**357-46-055**](http://app.leg.wa.gov/WAC/default.aspx?cite=357-46-055).

For a part-time general government employee, the seniority date is calculated by determining the number of actual hours worked and/or in paid status, excluding compensatory time off. Actual hours worked includes overtime hours regardless of whether or not the employee receives monetary payment or compensatory time for the hours worked. Time spent in leave without pay status is not credited unless the leave without pay is taken for reasons listed in WAC [**357-46-055**](http://app.leg.wa.gov/WAC/default.aspx?cite=357-46-055).

AMENDATORY SECTION

**WAC 357-01-304 Seniority date (higher education).**

For higher education employees, the seniority date is determined in accordance with the employer's layoff procedure. The employer's layoff procedure must specify a uniform method for determining the seniority date for employees of the higher education institution or related board who are covered by the civil service rules. ~~Employees on military leave as provided in WAC 357-31-370 must not have their seniority date adjusted for the time spent on military leave without pay.~~ Seniority dates will not be adjusted for any time period an employee is on approved leave without pay for reasons defined in WAC 357-46-053.

AMENDATORY SECTION

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

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

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

(2) Employees on military leave as provided in WAC [**357-31-370**](http://app.leg.wa.gov/WAC/default.aspx?cite=357-31-370) must not have their seniority date adjusted for the time spent on military leave without pay.

(3) Employees on leave without pay as authorized by a proclamation issued by the governor directly related to health and safety must not have their seniority date adjusted for the time spent on leave without pay.

(4) Employees on an approved leave of absence in accordance with WAC 357-31-374 must not have their seniority date adjusted for time spent during the leave of absence.

AMENDATORY SECTION

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

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

(a) Military leave as provided in WAC [**357-31-370**](http://app.leg.wa.gov/WAC/default.aspx?cite=357-31-370);

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

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

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

(e) Reducing the effects of layoff;

(f) Leave without pay as authorized by a proclamation issued by the governor directly related to health and safety; and/or

(g) Leave as provided in WAC 357-31-374.

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

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

(a) Military leave as provided in WAC [**357-31-370**](http://app.leg.wa.gov/WAC/default.aspx?cite=357-31-370);

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

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

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

(e) Reducing the effects of layoff; ~~and/or~~

(f) Leave without pay as authorized by a proclamation issued by the governor directly related to health and safety~~.~~, and/or

(g) Leave as provided in WAC 357-31-374.

## **Appeals**

AMENDATORY SECTION

**WAC 357-52-010 What actions may be appealed?**

(1) Within WGS, the following actions may be appealed:

(a) Any permanent WGS employee subject to the statutory jurisdiction of the board who is dismissed, suspended, demoted, or separated or whose base salary is reduced may appeal to the board.

(b) Any employee, subject to the statutory jurisdiction of the board who adversely is affected by a violation of the state civil service law (chapter [**41.06**](http://app.leg.wa.gov/RCW/default.aspx?cite=41.06) RCW) or the rules contained in Title 357 WAC, may appeal to the board as follows:

(i) For a violation of state civil service law or rules relating to a layoff action, excluding removal from a layoff list, the employee may appeal directly to the board.

(ii) For a violation of state civil service law or rules relating to any other subject, including removal from a layoff list, the employee may appeal directly to the board, except as provided in WAC [**357-49-010**](http://app.leg.wa.gov/WAC/default.aspx?cite=357-49-010)(1) and chapter 49.100 RCW.

(c) An employee in a position at the time of its allocation or reallocation or the employer may appeal to the personnel resources board by filing written exceptions to the director's review determination.

(d) An employee whose position has been exempted from chapter [**41.06**](http://app.leg.wa.gov/RCW/default.aspx?cite=41.06) RCW or the exclusive bargaining unit representative for a vacant position that has been exempted from chapter [**41.06**](http://app.leg.wa.gov/RCW/default.aspx?cite=41.06) RCW may appeal the exemption to the board.

(e) An individual or the employer may appeal remedial action to the board by filing written exceptions to the director's review determination.

(2) Within WMS, the following actions may be appealed:

(a) Any permanent Washington management service employee who is dismissed, suspended, demoted, laid off, or separated, or whose base salary is reduced may appeal to the board. A determination of which Washington management service positions will be eliminated in a layoff action is not subject to appeal.

(b) For a violation of state civil service law or rules pertaining to WMS employees, a WMS employee who is adversely affected by a violation of the state civil service law (chapter [**41.06**](http://app.leg.wa.gov/RCW/default.aspx?cite=41.06) RCW) or the rules pertaining to WMS employees (chapter [**357-58**](http://app.leg.wa.gov/WAC/default.aspx?cite=357-58) WAC) may appeal directly to the board, except violations under chapter 49.100 RCW.

(c) An employee whose position has been exempted from chapter [**41.06**](http://app.leg.wa.gov/RCW/default.aspx?cite=41.06) RCW may appeal the exemption to the board.

**Item #3 - Paid Family and Medical Leave – Supplemental benefits**

**Staff Note:** The Washington’s Paid Family and Medical Leave, or PFML insurance program, as codified in Title 50A RCW, became effective on October 19, 2017. Beginning January 1, 2020, the Paid Family and Medical Leave, or PFML, program provides a partial wage replacement for Washington workers for an employee’s own medical condition, to care for family members, bonding with a child or for certain military-related events. Under the PFML program, the Employment Security Department will replace up to 90% of an employee’s average weekly wage (up to $1,000 per week). During the 2019 legislative session, the law was amended to allow the employer to offer a “supplemental benefit” to employees while they are on approved PFML.

[2SSB 5649](chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https:/lawfilesext.leg.wa.gov/biennium/2021-22/Pdf/Bills/Session%20Laws/Senate/5649-S2.SL.pdf) passed during the 2022 legislative session with an effective date of June 9, 2022. The bill expanded Title 50A RCW to provide seven calendar days of leave to an employee following the death of their child when the employee would have:

1. been approved for medical leave for the birth of their child; or
2. approved for family leave to bond with their child during the first 12 months after the child’s birth or placement.

We are proposing to amend WAC 357-31-248 to add bereavement leave as a supplemental benefit during a period an employee is receiving partial wage replacement for paid family and/or medical leave for the death of an employee’s family member or household member.

The highlighted yellow text below are changes since the August rules items that have been shared via stakeholder communication on August 5, 2022, Rule Meeting Cancelation August 9, 2022.

Lead: Patricia Foshaug

AMENDATORY SECTION

**WAC 357-31-248 May an employee use vacation leave, sick leave, personal holiday, compensatory time, holiday credit, recognition leave, bereavement leave, or holiday pay as a supplemental benefit during a period when the employee is receiving partial wage replacement for paid family and/or medical leave under Title**[**50A**](http://app.leg.wa.gov/RCW/default.aspx?cite=50A)**RCW?**

An employee may use vacation leave, sick leave, personal holiday, compensatory time, holiday credit, recognition leave, bereavement leave, or holiday pay during a period when the employee is receiving partial wage replacement under Title [**50A**](http://app.leg.wa.gov/RCW/default.aspx?cite=50A) RCW as a supplemental benefit. The use of bereavement leave as a supplemental benefit is limited to the death of an employee’s family member or household member in accordance with WAC 357-31-250.

REFERENCE ONLY

**WAC 357-31-250 Are employees entitled to paid bereavement leave?**

(1) If an employee's family member or household member dies, the employee is entitled to three days of paid bereavement leave. An employee may request less than three days of paid bereavement leave.

(2) In accordance with the employer's leave policy, the employer may require verification of the family member's or household member's death.

(3) In addition to paid bereavement leave, the employer may approve an employee's request to use paid leave (accrued compensatory time, accrued holiday credit, sick leave, vacation leave, and/or a personal holiday) or to take leave without pay for purposes of bereavement.

**Item #4 - Nondisclosure and Nondisparagement Provisions**

**Staff note:** [SB 5996](https://lawfilesext.leg.wa.gov/biennium/2017-18/Pdf/Bills/Session%20Laws/Senate/5996-S.SL.pdf?q=20220601115014) passed during the 2018 legislative session with an effective date of June 7, 2018. This bill added a new chapter, RCW 49.44.210, Regulations, Violations – Prohibited Practices under Labor Regulations. This bill stated that an employer may not require an employee, as defined in RCW 49.44.210, as a condition of employment, to sign a nondisclosure agreement, waiver, or other document that prevents the employee from disclosing sexual harassment or sexual assault. As a result, [WAC 357-25-027](https://app.leg.wa.gov/wac/default.aspx?cite=357-25-027) was amended to add subsection 17 requiring state agencies to update their sexual harassment policies to align with the new law so there are clear expectations of what is what is not acceptable.

[ESHB 1795](https://lawfilesext.leg.wa.gov/biennium/2021-22/Pdf/Bills/Session%20Laws/House/1795-S.SL.pdf?q=20220509162654) passed during the 2022 legislative session. This bill repeals RCW 49.44.210. We are proposing to amend WAC 357-25-027 to repeal subsection 17 to align with the changes to the law.

To date, we have not received any feedback or concerns on this rules item, therefore, we are planning to propose permanent adoption at the next Director’s meeting on November 10, 2022.

Lead: Brittany Trujillo

AMENDATORY SECTION

**WAC 357-25-027 What must be included in the agency's sexual harassment policy?**

Agencies as defined in RCW 41.06.020 must at a minimum include the following in their policy on sexual harassment:

(1) Indicate who is covered by the policy;

(2) Provide that the employer is committed to providing a working environment free from sexual harassment of any kind;

(3) A statement that sexual harassment is an unlawful employment practice prohibited by Title VII of the Civil Rights Act of 1964 and RCW 49.60;

(4) The definition of sexual harassment as defined by the Equal Employment Opportunity Commission;

(5) Notify the employee or individual of their right to file a complaint with the Washington State Human Rights Commission under RCW 49.60.230 or the Federal Equal Employment Opportunity Commission under Title VII of the Civil Rights Act of 1964;

(6) Identify how and to whom employees or individuals may raise concerns or file complaints. The policy should allow multiple avenues for an employee or individual to raise complaints or concerns and should clearly identify the positions or entities charged with receiving these complaints;

(7) Advise all individuals covered by the policy that the employer is under a legal obligation to respond to allegations concerning a violation of the policy;

(8) Identify the manner by which the employer will respond to alleged violations of the policy, including a formal investigation if necessary;

(9) A statement that the complainant shall be informed of the status and the outcome of an investigation;

(10) Identify the agency's investigation or response procedure;

(11) Define the roles and responsibilities of employees, managers, supervisors, and others covered by the policy with respect to the following:

(a) Preventing or not engaging in sexual harassment;

(b) Responding to concerns or allegations of violations of the policy;

(c) Participation in an investigation under the policy; and

(d) The prohibition against retaliation.

(12) A statement that confidentiality cannot be guaranteed;

(13) A statement that responses to public records requests will be provided in accordance with RCW 42.56.660 and 42.56.675;

(14) Advise that retaliation against individuals covered by the policy who report allegations of sexual harassment or who participate in an investigation is prohibited;

(15) Advise that any employee found to have violated the policy will be subject to corrective and/or disciplinary action, up to and including dismissal; and

(16) Advise that any employee found to have retaliated against individuals covered by the policy who report allegations of sexual harassment or who participate in an investigation will be subject to corrective and/or disciplinary action, up to and including dismissal.~~; and~~

(~~17) A statement that an employer may not require an employee, as a condition of employment, to sign a nondisclosure agreement, waiver, or other document that prevents the employee from disclosing sexual harassment or sexual assault occurring in the workplace, at work-related events coordinated by or through the employer, or between employees, or between an employer and an employee, off the employment premises in accordance with RCW 49.44.210.~~

~~For the purposes of this subsection, "employee" has the same meaning as defined in RCW 49.44.210.~~

**Item #5 - General Government Leave without Pay Impacts on Service Dates/Seniority – Clean-Up \*New**

**Staff note:** On July 1, 2022, amendments to civil service rules related to Leave Without Pay impacts to service dates went into effect. The amendments in part removed the requirement for a general government employer to adjust an employee's anniversary date, unbroken service date, and PID for any period of LWOP which exceeds 15 consecutive calendar days. The LWOP impacts to seniority remained under WAC 357-31-345 which refers to seniority date adjustment for LWOP in accordance with WAC 357-46-055. WAC 357-31-350 has similar language making WAC 357-31-345 redundant. We are proposing to repeal WAC 357-31-345 as a clean-up item.

Lead: Patricia Foshaug

REPEAL

**~~WAC 357-31-345 How does leave without pay affect a general government employee's seniority date?~~**

~~A general government employee's seniority date is adjusted for leave without pay in accordance with WAC~~[**~~357-46-055~~**](http://app.leg.wa.gov/WAC/default.aspx?cite=357-46-055)~~.~~

REFERENCE ONLY

**WAC 357-31-350 How does leave without pay affect a general government employee's seniority date?**

WAC [**357-46-055**](http://app.leg.wa.gov/WAC/default.aspx?cite=357-46-055) describes how leave without pay affects a general government employee's seniority date.

REFERENCE ONLY

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

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

(a) Military leave as provided in WAC [**357-31-370**](http://app.leg.wa.gov/WAC/default.aspx?cite=357-31-370);

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

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

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

(e) Reducing the effects of layoff; and/or

(f) Leave without pay as authorized by a proclamation issued by the governor directly related to health and safety.

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

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

(a) Military leave as provided in WAC [**357-31-370**](http://app.leg.wa.gov/WAC/default.aspx?cite=357-31-370);

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

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

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

(e) Reducing the effects of layoff; and/or

(f) Leave without pay as authorized by a proclamation issued by the governor directly related to health and safety.

**Item #6 - Sick leave – Clean-Up \*New**

**Staff Note:** During the 2019 legislative session, Title 50A RCW, Family and Medical Leave (PFML), was amended to allow an employer to offer supplemental benefits to employees while they are on approved PFML. WAC 357-31-130 was amended to add subsection (1)(g) to allow an employee to use accrued sick leave as a supplemental benefit. When adding subsection (1)(g) there was an oversight to reflect the renumbering to WAC 357-31-130 (2)(c).

Effective July 1, 2022, several COVID-19 related rules were amended to expand the reasons in which certain leave options may be provided to employees beyond the state of emergency. WAC 357-31-130(2) was repealed and a new section, WAC 357-31-133, was created to distinguish between when an employer must and when an employer may approve the use of sick leave. The renumeration oversight from 2019 was not corrected during that time.

We are proposing to amendment WAC 357-31-133(3) to reference the correct subsection under WAC 357-31-130(12) as a clean-up item.

Lead: Patricia Foshaug

REFERENCE ONLY

**WAC 357-31-130** **When 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 WAC.

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

(1) 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) 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) 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) 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 needs additional care, not covered by subsection (6) of this section, who has been exposed to a contagious disease and is required to quarantine.

(5) 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) 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) For family care emergencies per WAC 357-31-290, 357-31-295, 357-31-300 and 357-31-305.

(8) 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 6 of this section.

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

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

(9) 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 paid family and/or medical leave under Title 50A RCW.

(10) 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.

(11) 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.

(12) 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 18 weeks. Sick leave for this purpose must be taken during the first year following the child's birth or placement.

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

AMENDATORY 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**](http://app.leg.wa.gov/WAC/default.aspx?cite=357-31-255);

(3) To bond with a newborn, adoptive or foster child for a period beyond 18 weeks as allowed in WAC [**357-31-130**](http://app.leg.wa.gov/WAC/default.aspx?cite=357-31-130) ~~(1)(j)~~ (12). 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**](http://app.leg.wa.gov/WAC/default.aspx?cite=357-31-130) ~~(1)(i)~~ (12) must be addressed in the employer's leave policy in accordance with WAC [**357-31-100**](http://app.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:

(a) The child's school or place of care has been closed by order or recommendation of a public official for any health-related reason; or

(b) The child has been exposed to a contagious disease and is required to quarantine.

**Item #7 - Classification**

**Staff note:** We are proposing to amend [WAC 357-13-090](https://app.leg.wa.gov/wac/default.aspx?cite=357-13-090) to state when an employee is reallocated to a higher class, the employee must advance to a step of the range for the new class that is nearest to five percent above their previous salary, not to exceed step M of the range as provided in WAC [357-28-115](http://app.leg.wa.gov/WAC/default.aspx?cite=357-28-115). This amendment mirrors WAC 357-28-115. Effective May 1, 2020, WACs [357-28-110](https://app.leg.wa.gov/wac/default.aspx?cite=357-28-110) and 357-28-115 were amended to include the nearest to five percent language but WAC 357-13-090 was inadvertently missed. The ITPS salary schedules for ranges 1-11 are not square, which means that the current “two step promotional language” does not work for those employees who move in and out of the ITPS.

To date, we have not received any feedback or concerns on this rules item, therefore, we are planning to propose permanent adoption at the next Director’s meeting on November 10, 2022.

Lead: Brittany Trujillo

AMENDATORY SECTION

**WAC 357-13-090 How is an employee affected when his/her position is reallocated?**

|  |  |  |  |
| --- | --- | --- | --- |
| This table is used to determine how an employee whose position is reallocated is affected. | | | |
|  | Employee's position reallocated to: | | |
| Class with a higher salary range maximum | Class with an equal salary range maximum | Class with a lower salary range maximum |
| Reallocation results from: | | | |
| A position review requested by the employee or initiated by the employer | *If the employee has performed the higher level duties for at least six months and meets the competencies and other position requirements*: | *If the employee meets the competencies and other position requirements:* | *If the employee meets the competencies and other position requirements and chooses to remain in the reallocated position*: |
|  | → The employee remains in the position and is appointed with permanent status provided the probationary or trial service period for the class to which the position is reallocated is six months in duration. If the probationary period or trial service period is longer than six months and the employee has not performed higher level duties for the length of the probationary period or trial service period, the employer may require the employee serve the remainder of the probationary or trial service period before gaining permanent status in the reallocated position.  *If the reallocation is the result of a change in the duties of the position and the employee has not performed the higher level duties for six months or more*: | → The employee remains in the position and retains existing appointment status. | → The employee retains appointment status; has the right to be placed on the employer's internal layoff list and in the general government transition pool; and has his/her salary set in accordance with WAC [**357-28-120**](http://app.leg.wa.gov/WAC/default.aspx?cite=357-28-120). |
|  | → The employer must give the employee the opportunity to compete for the position. The employer may choose to promote the employee without competition as long as the employee meets the competencies and any other position requirements. | → The employee retains the previous base salary in accordance with WAC [**357-28-120**](http://app.leg.wa.gov/WAC/default.aspx?cite=357-28-120). | *If the employee chooses to vacate the position or does not meet the competencies and other position requirements*: |
|  | If the employee is not selected for the position, the employer's layoff procedure applies. If the employee is appointed and he/she has already gained permanent status, the employee must serve a trial service period. If the employee has not completed the probationary period, then the new trial service period will overlap provided the higher and lower classes are in the same or a closely related field. If the classes are not in the same or closely related field, then the employee will start their probationary period over in the new class. | *If the employee does not meet the competencies and other position requirements*: | → The employer's layoff procedure applies. |
|  | Upon appointment to the higher class, the employee must advance to a step of the range for the new class that is nearest to five percent above their previous salary ~~s base salary must be increased a minimum of a two step increase~~, not to exceed step M of the range as provided in WAC [**357-28-115**](http://app.leg.wa.gov/WAC/default.aspx?cite=357-28-115). | → The employer's layoff procedure applies. |  |
| The director revising the classification plan. | The employee remains in the position and keeps existing appointment status. See WAC [**357-28-130**](http://app.leg.wa.gov/WAC/default.aspx?cite=357-28-130) for determining the employee's salary. | | |

**Item #8 - Compensation**

**Staff note:** We are proposing clarifying the following compensation WACs.

* [WAC 357-28-190](https://apps.leg.wa.gov/WAC/default.aspx?cite=357-28-190) states an employee must receive a shift premium when an employee is scheduled to work a shift in which majority of hours worked daily or weekly are between 6:00 pm and 6:00 am.; or when an employee is scheduled to work a shift which is split with a minimum of four intervening hours not worked. Prior guidance and the Compensation Plan state that employees who are temporarily assigned to work between 6:00 pm and 6:00 am are also eligible to receive the shift premium. We are proposing to amend [WAC 357-28-190](https://apps.leg.wa.gov/wac/default.aspx?cite=357-28-190) to add the word “regularly” to subsection (a) and add sub-section (c) to clarify that the compensation plan allows for dayshift employees, who are temporarily assigned to work the majority of their hours between 6:00 pm and 6:00 am are eligible receive a shift premium.
* Amend [WAC 357-28-203](https://app.leg.wa.gov/WAC/default.aspx?cite=357-28-203) 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 357-28-203 was adopted on a permanent basis effective September 23, 2019 to state location based premium must be paid when an employee is assigned to work on McNeil Island **and** assigned to a permanent duty station in King County. It has 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 357-28-203 to replace “and” with “or”.
* [WAC 357-28-215](https://app.leg.wa.gov/WAC/default.aspx?cite=357-28-215) states employees within the ITPS who are in the entry, journey and senior/specialist levels designated as and performing all the duties as a supervisor, in accordance with WAC 357-01-317, must receive a five percent supervisory pay differential in addition to their **base pay** as long as they meet the definition of a supervisor. Base pay is not defined in Title 357 WAC and this should state **base salary** as defined in [WAC 357-01-040](https://apps.leg.wa.gov/WAC/default.aspx?cite=357-01-040). We are proposing to amend to clarify the supervisory differential is in addition to their base salary, not base pay.

To date, we have not received any feedback or concerns on this rules item, therefore, we are planning to propose permanent adoption at the next Director’s meeting on November 10, 2022.

Lead: Brittany Trujillo

AMENDATORY SECTION

**WAC 357-28-190 When must an employee receive shift premium?**

(1) Shift premium at the rate specified in the compensation plan must be paid when:

(a) An employee is regularly scheduled to work a shift in which the majority of hours worked daily or weekly are between 6:00 p.m. and 6:00 a.m.; or

(b) An employee is scheduled to work a shift which is split with a minimum of four intervening hours not worked.

(c) An employee is regularly scheduled to work a day shift but is assigned to work a night or evening shift in which the majority of hours worked are between 6:00 pm and 6:00 am.

(2) Shift premium must be paid for the entire daily or weekly shift that qualifies under subsection (1) of this section. Additionally, these employees are entitled to shift premium for all hours that the employees work adjoining that evening or night shift.

(3) Shift premium may be paid at a monthly rate as specified in the compensation plan for full time employees regularly assigned to a qualifying shift.

(4) An employee assigned to a shift that qualifies for shift premium pay must receive the same shift premium for authorized periods of paid leave and holidays and for up to five days of a temporary assignment to a shift that does not qualify. Continued payment of shift premium for a temporary assignment exceeding five days is at the discretion of the employer.

(5) Compensation under the provisions of this section must be in accordance with the employer's policy, as approved by the director, for the following individuals:

(a) Employees dispatched to emergency response duty under an incident command system as defined in RCW 38.52.010; and

(b) Employees of the department of corrections who are in charge of offenders assigned to assist in forest fire suppression and other emergency incidents.

(6) Exceptions to shift premium provisions may be approved by the director.

(7) For higher education employers, shift premium must not apply to police and fire officers where special pay salaries are correlated with a rotating shift in accordance with local practice.

(8) Employees may waive shift premium.

(9) Employees who voluntarily request to work a shift as described in subsection (1)(a), ~~and~~ (b) and (c) of this section will not be eligible for shift premium.

AMENDATORY SECTION

**WAC 357-28-203 When must an employee receive location based premium pay?**

Location based premium pay at the rate specified in the compensation plan must be paid when an 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.

(a) This subsection does not apply to employees who are employed by the University of Washington.

(b) When an employee is no longer permanently assigned to a King County duty station they will not be eligible for location based premium pay.

AMENDATORY SECTION

**WAC 357-28-215 When must an employee receive supervisory pay differential?**

Employees within the information technology professional structure who are in the entry, journey and senior/specialist levels designated as and performing all the duties of a supervisor, in accordance with WAC [**357-01-317**](http://app.leg.wa.gov/WAC/default.aspx?cite=357-01-317), must receive a five percent supervisory pay differential in addition to their base salary ~~pay~~ as long as they meet the definition of supervisor.

REFERENCE SECTION

**WAC 357-01-040 Base salary.**

The dollar amount of the salary within the salary range to which the employee is entitled, before any deductions, and exclusive of additional compensation of any kind, such as premiums.