



**RULE-MAKING ORDER  
PERMANENT RULE ONLY**

**CR-103P (December 2017)  
(Implements RCW 34.05.360)**

**CODE REVISER USE ONLY**

OFFICE OF THE CODE REVISER  
STATE OF WASHINGTON  
FILED

**DATE: May 27, 2022**

**TIME: 4:43 PM**

**WSR 22-12-076**

**Agency:** Office of Financial Management (OFM)

**Effective date of rule:**

**Permanent Rules**

- 31 days after filing.
- Other (specify) July 1, 2022 **(If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)**

**Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?**

- Yes  No If Yes, explain:

**Purpose:** To amend chapter 357-31 WAC to align with Engrossed Substitute Senate Bill (ESSB) 5115 and to align with the COVID-19 response. ESSB 5115 passed during the 2021 legislative session with an effective date of May 11, 2021. This bill added a new section to chapter 49.17 RCW (codified as RCW 49.17.062), The Washington Industrial Safety and Health Act. RCW 49.17.062(6)(a) states “during a public health emergency, no employer may discharge, permanently replace, or in any manner discriminate against an employee who is high risk as a result of the employee seeking accommodation that protects them from the risk of exposure to the infectious or contagious disease, or, if no accommodation is reasonable.” Employers must allow an employee to use all available leave options including leave without pay. The Washington State Labor and Industries confirmed that leave may be used in any order and employers may not prescribe the type of leave an employee chooses or the order in which leave is taken. In addition, during the course of the COVID-19 pandemic, certain proclamations and requirements impacted employees and their families which resulted in the need to expand the reasons in which certain leave options may be provided to employees beyond the state of emergency; clean up language for consistency; and allow employers to consider approving leave based on workload demands and business needs rather than looking at essential services.

To expand leave options for high risk employees seeking an accommodation to protect themselves during a public health emergency if the employer determines no other accommodation is reasonable besides the use of leave; expand sick leave use to employees when the employee needs to provide care for a child, household or family member who has been exposed to a contagious disease and is required to quarantine, or when a child’s school or place of care has been closed for health-related reasons; remove references to the emergency proclamation; repeal outdated language addressing an employee’s eligibility to use compensatory time in lieu of temporary layoff during the 2009-2011 biennium; expand leave with pay options to include COVID-19 booster vaccines; expand leave without pay options from “essential services” to “current workload demands and business needs”

**Citation of rules affected by this order:**

- New: 357-31-133
- Repealed:
- Amended: 357-31-070, 357-31-100, 357-31-130, 357-31-145, 357-31-160, 357-31-200, 357-31-230, 357-31-325, 357-31-326, 357-31-327, 357-31-330, 357-31-490, 357-31-567, 357-31-845
- Suspended:

**Statutory authority for adoption:** Chapter 41.06 RCW

**Other authority:**

**PERMANENT RULE (Including Expedited Rule Making)**

Adopted under notice filed as WSR 22-08-030 on March 28, 2022 (date).  
Describe any changes other than editing from proposed to adopted version:

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name:  
Address:

Phone:  
Fax:  
TTY:  
Email:  
Web site:  
Other:

**Note: If any category is left blank, it will be calculated as zero.  
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.  
A section may be counted in more than one category.**

**The number of sections adopted in order to comply with:**

|                                  |     |          |         |     |          |     |
|----------------------------------|-----|----------|---------|-----|----------|-----|
| Federal statute:                 | New | ___      | Amended | ___ | Repealed | ___ |
| Federal rules or standards:      | New | ___      | Amended | ___ | Repealed | ___ |
| Recently enacted state statutes: | New | <u>1</u> | Amended | 14  | Repealed | ___ |

**The number of sections adopted at the request of a nongovernmental entity:**

|     |     |         |     |          |     |
|-----|-----|---------|-----|----------|-----|
| New | ___ | Amended | ___ | Repealed | ___ |
|-----|-----|---------|-----|----------|-----|

**The number of sections adopted on the agency's own initiative:**

|     |          |         |    |          |     |
|-----|----------|---------|----|----------|-----|
| New | <u>1</u> | Amended | 14 | Repealed | ___ |
|-----|----------|---------|----|----------|-----|

**The number of sections adopted in order to clarify, streamline, or reform agency procedures:**

|     |     |         |     |          |     |
|-----|-----|---------|-----|----------|-----|
| New | ___ | Amended | ___ | Repealed | ___ |
|-----|-----|---------|-----|----------|-----|

**The number of sections adopted using:**

|                                |     |          |         |     |          |     |
|--------------------------------|-----|----------|---------|-----|----------|-----|
| Negotiated rule making:        | New | ___      | Amended | ___ | Repealed | ___ |
| Pilot rule making:             | New | ___      | Amended | ___ | Repealed | ___ |
| Other alternative rule making: | New | <u>1</u> | Amended | 14  | Repealed | ___ |

**Date Adopted:** 05/27/2022

**Name:** Roselyn Marcus

**Title:** Assistant Director of Legal and Legislative Affairs

**Signature:**

