

Rule Review Meeting – May 8, 2018

ITEM #1 – Department of Children, Youth and Families (DCYF) Background Checks

Staff note: Second Engrossed Second Substitute House Bill 1661, creating the DCYF, was passed during the 2017 Legislative session. Section 807 of this bill amends RCW 41.06.475 to say that the Office of Financial Management shall adopt rules in consultation with the DCYF for the background investigation of current employees and individuals that are being considered for positions with DCYF that will or may have unsupervised access to children. We are proposing the following rule amendments to reflect this change.

The following rule amendments will be filed on an emergency basis effective July 1, 2018.

AMENDATORY SECTION

WAC 357-19-183 Must ~~((DEL))~~ DCYF conduct background checks on all employees in covered positions and individuals being considered for a covered position? (1) The ~~((director))~~ secretary of the department of ~~((early learning ~~(DEL))~~)~~ children, youth and families (DCYF) or designee must conduct background checks on all employees in covered positions and individuals being considered for a covered position.

(2) The requirement for background checks must include the following:

(a) Current employees in covered positions.

(b) Any employee considered for a covered position because of a layoff, reallocation, transfer, promotion, demotion, or other actions that result in the employee being in a covered position.

(c) Any individual being considered for positions which are covered positions.

(3) Considered for positions includes decisions about:

(a) Initial hiring, layoffs, reallocations, transfers, promotions, demotions, or

(b) Other decisions that result in an individual being in a position that will or may have unsupervised access to children as an employee, an intern, or a volunteer.

AMENDATORY SECTION

WAC 357-19-184 Besides the ~~((DEL))~~ DCYF, may other employers conduct background checks on applicants or employees and what is the requirement to notify applicants or employees? (1) Employers may conduct background checks on applicants and/or employees if

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required by state or federal law, or if the employer identifies the need for a background check to verify that the applicant or employee satisfies the position requirements.

(2) Employers who conduct background checks must develop procedures regarding how and when background checks will be conducted. The procedures must include notification to applicants and/or employees if a background check is required.

AMENDATORY SECTION

WAC 357-19-186 For purposes of WAC 357-19-183, what information is considered in a background check conducted by ~~((DELETED))~~ DCYF and what are the results of the background check used for? (1) The background check information considered by the ~~((director))~~ secretary of the ~~((DELETED))~~ DCYF will include but not be limited to conviction records, pending charges, and disciplinary board final decisions.

(2) The results of the background check must be used solely for the purpose of determining the character, suitability and competence of the applicant and/or employee.

AMENDATORY SECTION

WAC 357-19-187 For purposes of WAC 357-19-183, must an employee and/or individual being considered for a covered position authorize the ~~((director))~~ secretary of the ~~((DELETED))~~ DCYF or designee to conduct a background check and what happens if the employee or individual being considered for a covered position does not provide authorization? An employee and/or individual applying for or being considered to remain in a covered position must authorize the ~~((director))~~ secretary of the ~~((DELETED))~~ DCYF or designee to conduct a background check.

Failure to authorize the ~~((director))~~ secretary of the ~~((DELETED))~~ DCYF or designee to conduct a background check disqualifies an employee or individual from consideration for any covered position including their current covered position.

AMENDATORY SECTION

WAC 357-19-188 What happens when a permanent ~~((DELETED))~~ DCYF employee is disqualified because of a background check? (1) A permanent employee with a background check disqualification may be subject to any of the following actions in no specific order:

- (a) Voluntary demotion;
- (b) Job restructuring;

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- (c) Voluntary resignation;
- (d) Job reassignment;
- (e) Nondisciplinary separation in accordance with WAC 357-46-195; or
- (f) Disciplinary action in accordance with WAC 357-40-010.

(2) An appointing authority may use the following interim measures while exploring the availability of actions (not to exceed thirty calendar days except in cases where there are investigations of pending charges):

- (a) Voluntary use of accrued vacation, exchange, and/or compensatory time;
- (b) Authorized leave without pay, if there is no paid leave available, or if the employee chooses not to use paid leave; and/or
- (c) Reassignment to another work location.
- (d) When considering the above actions, the agency will consider the least restrictive means necessary to prevent unsupervised access.

(3) Before a permanent employee may be separated due to a background check disqualification, the search for a noncovered position will occur over a period of thirty calendar days.

AMENDATORY SECTION

WAC 357-19-189 What are the responsibilities of the ((director)) secretary of the ((DEL)) DCYF in carrying out the requirement to conduct background checks? (1) In order to implement the requirements of WAC 357-19-183, the ((director)) secretary of the ((DEL)) DCYF or designee must:

- (a) Notify employees and individuals being considered for covered positions that a background check is required for covered positions; and
- (b) Develop policies and procedures pertaining to background checks.

(2) Information contained in background checks must be used solely for the purpose of determining the character, suitability and competence of the employee and/or individual being considered for covered positions. The information must not be disseminated further. Dissemination and use of such information is governed by the criminal records privacy act, chapter 10.97 RCW. Unlawful dissemination of information protected by the criminal records privacy act is a criminal offense and may result in prosecution and/or disciplinary action as provided in chapter 357-40 WAC. However, results of a background check may be discoverable pursuant to the rules of civil discovery, or subject to disclosure pursuant to a public records request.

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AMENDATORY SECTION

WAC 357-19-191 Does a permanent employee of ((DEL)) DCYF who is disqualified from a covered position as a result of a background check have the right to request a review of the disqualification? A permanent employee of ((DEL)) DCYF who is disqualified from a covered position as a result of a background check has the right to present to the ((director)) secretary of the ((DEL)) DCYF or designee evidence that mitigates convictions, pending charges, and disciplinary board final decisions including, but not limited to:

- (1) The employee's background check authorization and disclosure form;
- (2) The employee's age at the time of conviction, charge, or disciplinary board final decision;
- (3) The nature and severity of the conviction, charge, or disciplinary board final decision;
- (4) The length of time since the conviction, charge, or disciplinary board final decision;
- (5) The nature and number of previous offenses;
- (6) Vulnerability of the child to which the employee will or may have unsupervised access; and
- (7) The relationship between the potentially disqualifying event and the duties of the employee.

ITEM #2 – Clarifying the calculation of military leave

Staff note: House Bill 2851 passed during the 2018 Legislative session with an effective date of June 7, 2018. This bill amends RCW 38.40.060 to clarify the calculation of a day of military leave for officers and employees when the officer or employee is working a shift that begins on one calendar day and ends on the next calendar day or a work shift that begins on one calendar day and ends later than the next calendar day.

The following rule amendment will be filed on an emergency basis effective June 7, 2018.

AMENDATORY SECTION

WAC 357-31-360 Must employees who have been ordered to required military duty, training, drills, or required to appear for a physical examination be granted paid military leave? (1) Employees must be granted military leave with pay not to exceed twenty-one working days during each year, beginning October 1st and ending the following September 30th, in order to report for required military duty, training duty in the Washington National Guard

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or the Army, Navy, Air Force, Coast Guard, or Marine Corps reserves of the United States or any organized reserve or armed forces of the United States, or to report for drills including those in the National Guard under Titles 10 and 32 U.S.C., or state active status.

(2) The employee is charged military leave only for the days that ~~((they are))~~ the employee is scheduled to work. If the employee is scheduled to work a shift that begins on one calendar day and ends on the next calendar day, the employee is charged military leave only for the first calendar day. If the employee is scheduled to work a shift that begins on one calendar day and ends later than the next calendar day, the employee is charged military leave for each calendar day except the calendar day on which the shift ends.

~~((2))~~ (3) Military leave with pay is in addition to any vacation and sick leave to which an employee is entitled and does not reduce benefits, performance ratings, privileges~~((;))~~ or pay.

~~((3))~~ (4) During paid military leave, the employee must receive the normal base salary.

~~((4))~~ (5) Employees required to appear during working hours for a physical examination to determine physical fitness for military service must receive full pay for the time required to complete the examination.

Employees who are not yet in the military may use paid miscellaneous leave for this purpose. Employees who are already in the military may use paid military leave as described in this section. An employee who is currently in the military may use paid miscellaneous leave for this purpose if they do not have paid military leave available.

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ITEM #3 – Adding part-time employees to civil service

Staff note: House Bill 2669 passed during the 2018 Legislative session with an effective date of June 7, 2018. This bill amends RCW 41.06.070 to include part-time employees in state civil service.

The following **draft** rule amendments were developed in consultation with the University of Washington, State Board of Community and Technical Colleges and Labor Relations staff. The intent of the following draft rule amendments was to clarify the difference between part-time and temporary employees and to follow the intent of the bill.

Although this bill is effective June 7, 2018, we will **not** be proposing emergency adoption and will go through the regular rule making process, beginning with a CR101, to ensure we receive and address all comments in relation to this proposal.

NEW SECTION

WAC 357-01-xxx Part-time employee . An employee who is scheduled to work twenty or more hours per week but less than ((that required for)) a full-time employee with the understanding of continuing employment for six months or more.

For reference only (no change):

WAC 357-01-327 Temporary appointment.

An appointment made by a higher education employer under the provisions of WAC 357-19-435.

AMENDATORY SECTION

WAC 357-04-015 Who is not covered by civil service rules? The civil service rules do not apply to positions specifically exempted in individual agency statutes, chapter 41.06 RCW, and to the following:

- (1) Washington state patrol trooper cadets in training for commissioning as troopers in the Washington state patrol;
- (2) The executive director, ~~((his/her))~~ the executive director's confidential secretary, assistant directors, and professional education employees of the state board for community and technical colleges; and
- (3) Inmate, student, ~~((part-time,))~~ or temporary employees, and part-time professional consultants, as defined by the Washington personnel resources board in WAC 357-04-040, 357-04-045, 357-04-050, and 357-04-055.

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AMENDATORY SECTION

WAC 357-04-035 Who defines exempt status for student(~~(, part-time,)~~) or temporary employees and part-time professional consultants for higher education employers? In accordance with RCW 41.06.070, the board defines exemptions for student(~~(, part-time,)~~) or temporary employees and part-time professional consultants. Higher education employers must use the definitions in WAC 357-04-040, 357-04-045, and 357-04-050 as the criteria for identifying positions in these categories of employment that are exempt from civil service rules.

AMENDATORY SECTION

WAC 357-04-045 Which (~~(part-time or)~~) temporary employees of higher education employers are exempt from civil service rules? Persons employed to work one thousand fifty hours or less in a twelve consecutive month period from the original date of hire or October 1, 1989, whichever is later, are exempt from civil service rules.

Employees who are either exempt under this subsection or exceptions authorized under WAC 357-19-440, and who work more than three hundred fifty hours in a twelve consecutive month period from the original date of hire or January 1, 2004, whichever is later, may be included in an appropriate bargaining unit for purposes of collective bargaining, as determined by the public employment relations commission. Overtime and time worked as a student employee under the provisions of WAC 357-04-040 are not counted in the three hundred fifty hours. For purposes of counting the three hundred fifty hours, the twelve-month period will begin on the employee's original date of hire or January 1, 2004, whichever is later. The next twelve-month period will repeat accordingly. For example:

The employee's original date of hire is June 1, 2009. The twelve-month period would be June 1, 2009, through May 31, 2010. The next twelve-month period would be June 1, 2010, through May 31, 2011. This pattern will continue.

Once the employee works at least three hundred fifty hours in a (~~(job classification)~~) position in the collective bargaining unit the employee remains in that collective bargaining unit until the end of the first twelve-month period (as described in this section) in which the employee does not work at least three hundred fifty hours in a (~~(job classification)~~) position that is in the collective bargaining unit. An employee who has not worked sufficient hours in a bargaining unit (~~(job classification)~~) position to remain in the bargaining unit, is excluded from the bargaining unit until the employee again works at least three hundred fifty hours in a bargaining unit (~~(job classification)~~) position in a twelve-month period (as described in this section).

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Temporary appointment under the provisions of this section may be subject to remedial action in accordance with WAC 357-19-450, if the number of hours worked exceeds one thousand fifty hours in a twelve consecutive month period from the original date of hire or October 1, 1989, whichever is later. Overtime and time worked as a student employee under the provisions of WAC 357-04-040 are not counted in the one thousand fifty hours. For purposes of counting the one thousand fifty hours, the twelve-month period will begin on the employee's original date of hire or October 1, 1989, whichever is later. The next twelve-month period will repeat accordingly. For example:

The employee's original date of hire is June 1, 2009. The twelve-month period would be June 1, 2009, through May 31, 2010. The next twelve-month period would be June 1, 2010, through May 31, 2011. This pattern will continue.

AMENDATORY SECTION

WAC 357-04-055 Who defines exempt status for student(~~(,part-time,)~~) or temporary employees(~~(;)~~), part-time professional consultants(~~(;)~~) and inmates for general government employers and what types of positions are exempt? In accordance with RCW 41.06.070, the board defines exemptions for student(~~(,part-time)~~) or temporary employees(~~(;)~~), part-time professional consultants(~~(;)~~) and inmates. The following types of general government employees are exempt from civil service rules:

- (1) Part-time local health officers;
- (2) Persons employed on a (~~(part-time, or)~~) temporary basis for medical, nursing or other professional service and who are not engaged in the performance of administrative duties;
- (3) ~~Part-time or~~ Temporary employees who are enrolled as full-time students in recognized educational institutions and whose employment is largely to provide a training opportunity, and all temporary employees not in federal grant-in-aid programs;
- (4) Patient and resident help in general government residential facilities;
- (5) Inmate help in general government correctional facilities; and
- (6) Skilled and unskilled labor employed temporarily on force account; construction and maintenance projects; or employed on temporary seasonal single phases of agricultural production or harvesting; or as determined by the director to be equivalent.

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AMENDATORY SECTION

WAC 357-19-435 For what reasons may a higher education employer make a temporary appointment?

A higher education employer may make a temporary appointment for the following reasons:

(1) To perform work in the absence of an employee on leave for more than six consecutive months;

(2) When ~~t~~The number of hours to be worked by the ~~individual employee~~ will not exceed one thousand fifty hours in any twelve consecutive month period from the original date of hire or October 1, 1989, whichever is later, in accordance with WAC 357-04-045; or

(23) When ~~¶~~the employing official formally assigns a classified employee the duties and responsibilities of a higher-level class for a period of less than six consecutive months.

AMENDATORY SECTION

WAC 357-19-440 What provisions govern higher education temporary appointments? (1)

Temporary appointments may be made without regard to rules on recruitment, assessment, and certification as provided in chapter 357-16 WAC.

(2) Each higher education employer must develop for director approval a procedure which indicates the employer's system for controlling and monitoring exempt ~~part-time and~~ temporary positions as identified in WAC 357-04-045. The procedure must include a mechanism to access and report hours worked by an individual temporary employee.

(3) A higher education employer may petition the director in writing for approval of exceptions to the one thousand fifty hours threshold as specified in WAC 357-19-435~~(42)~~.

(4) No temporary appointment shall take the place of employees laid off under the provisions of WAC 357-46-010.