**ITEM #1 – Leave for visits to determine assessment from the Employee Assistance Program**

**Staff Note:** We are proposing to amend WAC 357-31-325(1) to state that an employee must be allowed to use paid leave to receive up to three visits for assessment from the Employee Assistance Program. Based on current practice, an assessment from EAP may take up to three visits to determine the employee’s needs.

Lead: Kristie Wilson

AMENDATORY SECTION

**WAC 357-31-325** **Must an employer grant leave with pay for other miscellaneous reasons such as to take a state examination?** Leave with pay **must** be granted to an employee:

(1) To allow an employee to receive up to three visits for assessment from the employee assistance program.

(2) When an employee is scheduled to take an examination or participate in an interview for a position with a state employer during scheduled work hours.

(a) Employers may limit the number of occurrences or the total amount of paid leave that will be granted to an employee to participate in an interview or take an examination during scheduled work hours.

(b) Employers may deny an employee's request to participate in an interview or take an examination during scheduled work hours based upon operational necessity.

(3) When an employee is required to appear during working hours for a physical examination to determine physical fitness for military service.

**ITEM #2 – Expanding Definition of Relative for Purposes of Shared Leave**

**Staff note:** WAC 357-31-395 defines specific terms as they apply to shared leave.We are proposing to expand the definition of “employee’s relative” to include sibling.

Lead: Brandy Chinn

FOR REFERENCE ONLY

**WAC 357-31-390 What criteria does an employee have to meet to be eligible to receive shared leave?** An employee may be eligible to receive shared leave if the agency head or higher education institution president has determined the employee meets the following criteria:

(1) The employee:

(a) Suffers from, or has a relative or household member suffering from, an illness, injury, impairment or physical or mental condition which is of an extraordinary or severe nature;

(b) Has been called to service in the uniformed services;

(c) A state of emergency has been declared anywhere within the United States by the federal or any state government and the employee has the needed skills to assist in responding to the emergency or its aftermath and volunteers their services to either a governmental agency or to a nonprofit organization engaged in humanitarian relief in the devastated area, and the governmental agency or nonprofit organization accepts the employee's offer of volunteer services;

(d) Is a victim of domestic violence, sexual assault or stalking as defined in RCW [41.04.655](http://app.leg.wa.gov/RCW/default.aspx?cite=41.04.655);

(e) Is a current member of the uniformed services or is a veteran as defined under RCW [41.04.005](http://app.leg.wa.gov/RCW/default.aspx?cite=41.04.005), and is attending medical appointments or treatments for a service connected injury or disability;

(f) Is a spouse of a current member of the uniformed services or a veteran as defined under RCW [41.04.005](http://app.leg.wa.gov/RCW/default.aspx?cite=41.04.005), who is attending medical appointments or treatments for a service connected injury or disability and requires assistance while attending appointments or treatments;

(g) Needs the time for parental leave as defined in WAC [357-31-395](http://apps.leg.wa.gov/WAC/default.aspx?cite=357-31-395)(3); or

(h) Is sick or temporarily disabled because of a pregnancy disability as defined in WAC [357-31-395](http://apps.leg.wa.gov/WAC/default.aspx?cite=357-31-395)(4).

(2) The condition(s) listed in subsection (1) of this section is likely to cause, the employee to go on leave without pay status or terminate state employment.

(3) The employee's absence and the use of shared leave are justified.

(4) The employee has depleted or will shortly deplete leave in accordance with WAC [357-31-435](http://apps.leg.wa.gov/WAC/default.aspx?cite=357-31-435). If the employee qualifies under subsection (1)(g) or (h) of this section the employee is not required to deplete all of their vacation leave or sick leave in accordance with WAC [357-31-435](http://apps.leg.wa.gov/WAC/default.aspx?cite=357-31-435).

(5) The employee has abided by employer rules regarding:

(a) Sick leave use if the employee qualifies under subsection (1)(a), (d), (g), or (h) of this section; or

(b) Military leave if the employee qualifies under subsection (1)(b) of this section.

(6) If the illness or injury is work-related and the employee has diligently pursued and been found to be ineligible for benefits under chapter [51.32](http://app.leg.wa.gov/RCW/default.aspx?cite=51.32) RCW if the employee qualifies under subsection (1)(a) of this section.

AMENDATORY SECTION

**WAC 357-31-395 What definitions apply to shared leave?** (1) As defined in RCW 41.04.655, "employee" means any employee of the state, including employees of school districts and educational service districts, who are entitled to accrue sick leave or vacation leave and for whom accurate leave records are maintained.

(2) "Employee's relative" normally must be limited to the employee's spouse, registered domestic partner, child, grandchild, sibling, grandparent or parent.

(3) "Parental leave" means leave to bond and care for a newborn child after birth or to bond and care for a child after placement for adoption or foster care, for a period of up to sixteen weeks after the birth or placement.

(4) "Pregnancy disability" means a pregnancy-related medical condition or miscarriage.

(5) "Severe" or "extraordinary" condition is defined as serious, extreme or life threatening.

(6) "Service in the uniformed services" means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes active duty, active duty for training, initial active duty for training, inactive duty training, full-time national guard duty including state-ordered active duty and a period for which a person is absent from a position of employment for the purpose of an examination to determine the fitness of the person to perform any such duty.

(7) "Uniformed services" means the armed forces, the army national guard, and the air national guard of any state, territory, commonwealth, possession, or district when engaged in active duty for training, inactive duty training, full-time national guard duty, or state active duty, the commissioned corps of the public health service, the coast guard and any other category of persons designated by the President of the United States in time of war or national emergency.

**ITEM #3 – Reasonable Accommodation**

**Staff note:** Chapter 294, Laws of 2017 (Substitute Senate Bill 5835) was passed during the 2017 Legislative session with an effective date of July 23, 2017. This bill states that it is an unfair practice for any employer to fail or refuse to make reasonable accommodation for an employee for pregnancy or a pregnancy related health condition unless the employer can demonstrate that doing so would impose an undue hardship. We are proposing the following rule amendments to reflect these changes (these amendments are in red text).

Additionally, Chapter 47, Laws of 2018 (House Bill 2661) was passed during the 2018 Legislative session with an effective date of June 7, 2018. This bill states that victims of domestic violence, sexual assault, or stalking are able to have reasonable safety accommodations in the workplace. We are proposing the follow rule amendments to reflect these changes (these amendments are in blue text).

The text highlighted in yellow are what has been updated since the September Rules meeting.

Lead: Brandy Chinn

AMENDATORY SECTION

**WAC 357-26-005** **What is the purpose of this chapter?** The purpose of chapter 357-26 WAC is to provide guidance to employers regarding reasonable accommodation ((~~as it specifically relates to employment and separation due to disability within the provisions of the civil service rules~~)) for the following reasons:

(1) Disability;

(2) Pregnancy; and

(3) Safety.

AMENDATORY SECTION

**WAC 357-26-010** **When must an employer** ((~~provide reasonable accommodation~~))reasonably accommodate a disability**?** An employer must reasonably accommodate a known disability of a qualified candidate or employee as required by chapter 49.60 RCW and the federal Americans with Disabilities Act.

AMENDATORY SECTION

**WAC 357-26-015** **What actions may an employer take to** ((~~provide reasonable accommodation~~))reasonably accommodate a disability**?** For persons with disabilities, as defined by state or federal law, reasonable accommodation may include, but is not limited to:

(1) Accommodation in application procedures, testing, and the interview process; or

(2) Modifications or adjustments to a job, work method, or work environment that make it possible for a qualified person with a disability to perform the essential functions of a position, or enjoy the benefits and privileges of employment equal to employees without disabilities.

AMENDATORY SECTION

**WAC 357-26-020** **What is the requirement for employers to have a policy and procedure covering** ((~~reasonable~~))disability **accommodation?** (1) In accordance with the policy statement requirements of WAC 357-25-025, employers must develop and maintain a policy statement on reasonable accommodation.

(2) In accordance with state and federal laws, employers must develop and make readily available a procedure regarding reasonable accommodation of employees with disabilities.

(a) Each employee who requests reasonable accommodation must be provided access to the employer's reasonable accommodation procedure in an accessible format.

(b) Employees who request reasonable accommodation must be notified in writing that in the event ((~~he or she~~)) they cannot be accommodated in ~~his or her~~ their current position, and placement in an alternative vacant position is not possible, the appointing authority may initiate a disability separation in accordance with WAC 357-46-160.

AMENDATORY SECTION

**WAC 357-26-025** **May an employee who is unable to perform the essential functions of a position** due to a disability **request to be separated from employment?** An employee who is unable to perform the essential functions of the employee's position due to mental, sensory, or physical incapacity may notify the employer that ~~he or she does~~ they do not wish to pursue accommodation and would like to be separated from employment. In this case, the appointing authority is not required to consider a reasonable accommodation and may initiate a disability separation in accordance with WAC 357-46-160.

NEW SECTION

**WAC 357-26-030** **When must an employer provide reasonable pregnancy accommodations?** An employer must provide reasonable pregnancy accommodations to employees who are pregnant or have a pregnancy-related health condition as required in RCW 43.10.005.

NEW SECTION

**WAC 357-26-035** **What actions must an employer take to provide reasonable pregnancy accommodations?** (1) An employer must provide employees who are pregnant or have a pregnancy-related health condition a reasonable pregnancy accommodation, which includes the following:

(a) Providing more frequent, longer, or flexible restroom breaks;

(b) Modifying a no food or drink policy;

(c) Providing seating or allowing an employee to sit more frequently if the job requires standing;

(d) Job restructuring, part-time or modified work schedules, reassignment to a vacant position, or acquiring or modifying equipment, devices, or an employee's work station;

(e) Providing a temporary transfer to a less strenuous or less hazardous position;

(f) Providing assistance with manual labor and limits on lifting;

(g) Scheduling flexibility for prenatal visits; and

(h) Any other reasonable pregnancy accommodation an employee may request.

(2) An employer must give reasonable consideration to an employee's request for an accommodation in consultation with information provided on pregnancy accommodation by the department of labor and industries or the employee's attending health care provider.

(3) An employer cannot require an employee who is pregnant or has a pregnancy-related health condition take leave if another reasonable pregnancy accommodation can be provided.

~~(4) The employer may deny a reasonable pregnancy-related accommodation based on undue hardship, which means an action requiring significant difficulty or expense, to the employer's program, enterprise or business for pregnancy accommodations listed in subsection (1)(d) through (h) of this section. The employer may not claim undue hardship for the pregnancy accommodations listed in subsection (1)(a) through (c) of this section or for limits on lifting over seventeen pounds.~~

(~~54~~) The employer is not required to create additional employment that the employer would not otherwise have created, unless the employer does so or would do so for other classes of employees who need accommodation.

NEW SECTION

**WAC 357-26-040 When may an employer deny a reasonable pregnancy-related accommodation?** The employer may deny a reasonable pregnancy-related accommodation based on undue hardship, which means an action requiring significant difficulty or expense, to the employer's program, enterprise or business for pregnancy accommodations listed in WAC 357-26-035(1)(d) through (h). The employer may not claim undue hardship for the pregnancy accommodations listed in WAC 357-26-035(1)(a) through (c)or for limits on lifting over seventeen pounds.

NEW SECTION

**WAC 357-26-045** **When an employee is pregnant or has a pregnancy-related health condition and requests a reasonable pregnancy accommodation what documentation may the employee be required to submit?** When an employee is pregnant or has a pregnancy-related health condition and requests a reasonable pregnancy accommodation, the employee may be required to submit written certification from their licensed physician or health care professional for those pregnancy accommodations listed in WAC 357-26-035 (1)(d) through (h). An employee is not required to submit written certification for pregnancy accommodations listed in WAC 357-26-035 (1)(a) through (c) or for limits lifting over seventeen pounds.

NEW SECTION

**WAC 357-26-050** **When must an employer provide reasonable safety accommodations?** An employer must provide reasonable safety accommodations to an applicant or employee who is a victim of domestic violence or an employee whose family member, as defined in chapter 357-01 WAC, is a victim of domestic violence, sexual assault, or stalking as required in chapter 49.76 RCW.

NEW SECTION

**WAC 357-26-055** **What actions must an employer take to provide safety accommodations?** (1) An employer must provide an applicant, or employee who is a victim of domestic violence or an employee whose family member, as defined in chapter 357-01 WAC, is a victim of domestic violence, sexual assault, or stalking, a reasonable safety accommodation, which includes, but is not limited to the following:

(a) A transfer or reassignment;

(b) Modified schedule;

(c) Changed work telephone number, work email address, and/or workstation;

(d) Installed lock;

(e) Implemented safety procedure; or

(f) Any other adjustment to a job structure, workplace facility, or work requirement in response to actual or threatened domestic violence, sexual assault, or stalking.

(2) Leave taken in accordance with chapter 357-31 WAC may be considered a reasonable safety accommodation.

(3) The employer may deny a reasonable safety accommodation based on an undue hardship, which means an action requiring significant difficulty or expense.

NEW SECTION

**WAC 357-26-060** **When an employee or the employee’s family member ~~who~~ is a victim of domestic violence, sexual assault or stalking ~~or has a family member who is a victim of domestic violence, sexual assault, or stalking~~ and the employee is seeking~~s~~ a reasonable safety accommodation, what documentation may the ~~individual~~ employee be required to submit?** (1) When an employee or the employee’s family member, as defined in chapter 357-01 WAC, ~~who~~ is a victim of domestic violence, sexual assault or stalking ~~or who has a family member, as defined in chapter 357-01 WAC, who is a victim,~~ and is seeking~~s~~ a reasonable safety accommodation, the employer may require ~~that the request be supported by verification. A~~an employee ~~may satisfy the verification requirement by~~ to provide~~ing the employer with~~ one or more of the following:

(a) A police report indicating that the employee or employee's family member was a victim of domestic violence, sexual assault, or stalking;

(b) A court order protecting or separating the employee or the employee's family member from the perpetrator of the act of domestic violence, sexual assault, or stalking;

(c) Evidence from the court or prosecuting attorney that the employee or the employee's family member appeared, or is scheduled to appear, in court in connection with an incident of domestic violence, sexual assault, or stalking;

(d) An employee's written statement that the employee or the employee's family member is a victim of domestic violence, sexual assault, or stalking and the safety accommodation requested is to protect the employee from domestic violence, sexual assault, or stalking; or

(e) Documentation that the employee or the employee's family member is a victim of domestic violence, sexual assault, or stalking, from any of the following persons from whom the employee or employee's family member sought assistance in addressing the domestic violence, sexual assault, or stalking: An advocate for victims of domestic violence, sexual assault, or stalking; an attorney; a member of the clergy; or a medical or other professional.~~;~~

~~(f) An employee's written statement that the employee or the employee's family member is a victim of domestic violence, sexual assault, or stalking and the safety accommodation requested is to protect the employee from domestic violence, sexual assault, or stalking.~~

(2) If the victim of domestic violence, sexual assault, or stalking is the employee's family member, as defined in chapter 357-01 WAC, verification of the familial relationship between the employee and the victim may include, but is not limited to: A statement from the employee; a birth certificate; a court document; or other similar documentation.