

WSR 22-22-098
PROPOSED RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed November 2, 2022, 8:33 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-13-161.

Title of Rule and Other Identifying Information: Chapter 392-136A WAC, Finance—Shared leave.

Hearing Location(s): On December 8, 2022, at 11:00 a.m., virtual public hearing via Zoom (call-in option also available). Participation link available on office of superintendent of public instruction (OSPI) rules web page k12.wa.us/policy-funding/ospi-rulemaking-activity. The hearing will be held as a virtual public hearing, without a physical meeting space. For participation questions, please email kristin.murphy@k12.wa.us.

Date of Intended Adoption: December 12, 2022.

Submit Written Comments to: T.J. Kelly, OSPI, P.O. Box 47200, Olympia, WA 98504, email Thomas.kelly@k12.wa.us, by December 8, 2022.

Assistance for Persons with Disabilities: Contact Kristin Murphy, OSPI rules coordinator, phone 360-725-6133, TTY 360-664-3631, email kristin.murphy@k12.wa.us, by December 1, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: OSPI is proposing changes to the shared leave rules to align with current language in RCW 41.04.650 through 41.04.671. The purpose is to clearly articulate changes to the shared leave statutes as applicable to school district staff and educational service district staff. Proposed updates, in alignment with statute, include sections related to definitions, eligibility, and use of shared leave.

Reasons Supporting Proposal: Shared leave statutes were amended by the Washington state legislature (HB 2739 (2020)). The proposed changes to chapter 392-136A WAC align with those made to the authorizing and related statutes.

Statutory Authority for Adoption: RCW 28A.400.380.

Rule is not necessitated by federal law, federal or state court decision.

Name of Agency Personnel Responsible for Drafting and Implementation: Thomas Kelly, OSPI, 600 South Washington Street, Olympia, WA; Enforcement: OSPI, 600 South Washington Street, Olympia, WA.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4).

Is exempt under RCW 19.85.030.

Explanation of exemptions: No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendment does not have an impact on small businesses and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

Scope of exemption for rule proposal:

Is fully exempt.

November 2, 2022
Chris P. S. Reykdal

OTS-4139.1

AMENDATORY SECTION (Amending WSR 19-12-013, filed 5/24/19, effective 6/24/19)

WAC 392-136A-020 Definitions. As used in this chapter the term:

- (1) "Annual leave" means vacation leave that an employee accrues and is maintained in records of a district for employees eligible to accrue annual leave.
- (2) "District" means a school district or an educational service district.
- (3) "Domestic violence" ((means:
~~(a) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury, or assault, between family or household members;~~
~~(b) Sexual assault of one family or household member by another family or household member; or~~
~~(c) Stalking as defined in RCW 9A.46.110 of one family or household member by another family or household member)) has the same meaning as set forth in RCW 41.04.655.~~
- (4) "Donated annual leave" means the amount of annual leave donated by a leave donor under the shared leave program.
- (5) "Donated sick leave" means the amount of sick leave donated by a leave donor under the shared leave program.
- (6) "Donated personal holiday" means the amount of personal holiday donated by a leave donor under the shared leave program of an educational service district pursuant to RCW 1.16.050.
- (7) "Employee" means any school district or educational service district employee entitled to use and accrue annual and/or sick leave and for whom accurate leave records are maintained.
- (8) "Employee's relative" means the employee's spouse, registered domestic partner, child, stepchild, grandchild, grandparent, parent, or sibling(~~(, or other close relative by blood or marriage))~~.
- (9) "Extraordinary or severe" means serious or extreme and/or life threatening.
- (10) "Family or household members" has the same meaning as set forth in RCW ((~~26.50.010~~) 10.99.020).
- (11) "Household members" means persons who reside in the same home who have reciprocal duties to and do provide financial support for one another. The term does not include persons sharing the same house when the living style is primarily that of a dormitory or commune.
- (12) "Leave donor" means an employee who has an approved (~~written~~) request for the transfer of annual leave, sick leave, or personal holiday to the shared leave program.
- (13) "Leave recipient" means a current employee who has an approved application to receive shared leave.
- (14) "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))~~).

(15) "Personal holiday" means the additional paid holiday per calendar year granted to an educational service district employee pursuant to RCW 1.16.050.

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

(17) "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.

(18) "Sexual assault" has the same meaning as set forth in RCW 70.125.030.

(19) "Sick leave" means leave granted to an employee for the purpose of absence from work with pay in the event of illness, injury, and emergencies as authorized in RCW 28A.400.300.

(20) "Stalking" has the same meaning as set forth in RCW 9A.46.110.

(21) "State employer" means a state agency, the legislature, an institution of higher education, or a related higher education board.

(22) "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.

(23) "Victim" means a person against whom domestic violence, sexual assault, or stalking has been committed as defined in this section.

[Statutory Authority: RCW 28A.400.380. WSR 19-12-013, § 392-136A-020, filed 5/24/19, effective 6/24/19.]

AMENDATORY SECTION (Amending WSR 19-12-013, filed 5/24/19, effective 6/24/19)

WAC 392-136A-030 Eligibility. In the event a district implements a shared leave program, an employee shall be eligible to receive shared leave if the district has determined the employee meets the following conditions:

(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 his or her 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;

(e) Is a current member of the uniformed services or is a veteran as defined under RCW 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, who is attending medical appointments or treatments for a service connected injury or disability and requires assistance while attending appointment or treatment;

(g) Needs the time for parental leave; or

(h) Is sick or temporarily disabled because of pregnancy disability.

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

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

(4) The employee has (~~exhausted~~) depleted or will shortly (~~exhaust~~) deplete leave in accordance with RCW 41.04.665(13) and WAC 392-136A-040. (~~If the employee qualifies under subsection (1)(g) or (h) of this section, the employee is not required to deplete all of his or her annual leave or sick leave in accordance with WAC 392-136A-040.~~)

(5) The employee has abided by district policies regarding:

(a) Sick leave use if the employee qualifies under subsection

(1)(a), (d), (g), or (h) of this section; or

(b) Military leave use if the employee qualifies under subsection

(1)(b) of this section.

(6) If the illness or injury is work-related, the employee has diligently pursued and been found to be ineligible for benefits under chapter 51.32 RCW.

(7) The employee's job is one in which annual leave, sick leave, military leave, or personal holiday can be used and accrued.

(8) In accordance with RCW 41.04.665 (1)(f), and until the expiration of proclamation 20-05, issued February 29, 2020, by the governor and declaring a state of emergency in the state of Washington, or any amendment thereto, whichever is later, an employee may receive shared leave as a result of the 2019 novel coronavirus (COVID-19). The use of shared leave may be permitted if the employee, or a relative, or household member is isolated or quarantined as recommended, requested, or ordered by a public health official or health care provider as a result of suspected or confirmed infection with or exposure to the 2019 novel coronavirus (COVID-19).

A school district may permit use of shared leave under this subsection without considering the requirements of subsections (1) through (5) of this section.

[Statutory Authority: RCW 28A.400.380. WSR 19-12-013, § 392-136A-030, filed 5/24/19, effective 6/24/19.]

AMENDATORY SECTION (Amending WSR 19-12-013, filed 5/24/19, effective 6/24/19)

WAC 392-136A-040 ((Exhaustion)) Depletion of leave. (1) Employees who qualify for shared leave under WAC 392-136A-030 (1)(a) must first use all of their personal holiday, accrued sick leave, and accrued annual leave before using shared leave. The employee is not required to deplete all of their accrued annual and sick leave and can maintain up to 40 hours of annual leave and 40 hours of sick leave.

(2) Employees who qualify for shared leave under WAC 392-136A-030 (1)(b) must first use all of their personal holiday, accrued vacation leave, and paid military leave allowed under RCW 38.40.060 before using shared leave. The employee is not required to deplete all of their accrued annual leave and paid military leave allowed under RCW 38.40.060 and can maintain up to 40 hours of annual leave and 40 hours of paid military leave.

(3) Employees who qualify for shared leave under WAC 392-136A-030 (1)(c) and (d) must first use all personal holiday and annual leave that they have accrued before using shared leave. The employee is not required to deplete all of their accrued annual leave and can maintain up to 40 hours of annual leave.

(4) Employees who qualify for shared leave under WAC 392-136A-030 (1)(e) or (f) must first use all personal holiday, sick leave, and annual leave before using shared leave.

(5)(a) Educational service district employees who qualify for shared leave under WAC 392-136A-030 (1)(g) and/or (h) must first use their personal holiday before using shared leave; and

(b) Employees who qualify for shared leave under WAC 392-136A-030 (1)(g) and/or (h) are not required to deplete all of their accrued annual leave and sick leave and can maintain up to (~~forty~~) 40 hours of annual leave and (~~forty~~) 40 hours of sick leave.

(c) Employees qualifying for shared leave under WAC 392-136A-030 (1)(g) and/or (h) must use leave in accordance with RCW 41.04.671.

[Statutory Authority: RCW 28A.400.380. WSR 19-12-013, § 392-136A-040, filed 5/24/19, effective 6/24/19.]

AMENDATORY SECTION (Amending WSR 19-12-013, filed 5/24/19, effective 6/24/19)

WAC 392-136A-045 Maximum amount. (1) The district determines the amount of shared leave, if any, which a leave recipient may receive. However, a leave recipient must not receive more than (~~five hundred twenty-two~~) 522 days of shared leave during total district employment.

Districts are encouraged to consider other methods of accommodating the employee's needs such as modified duty, modified hours, flex-time, or special assignments in place of shared leave.

(2) The district may not prevent an employee from using shared leave intermittently or on nonconsecutive days so long as the leave has not been returned under WAC 392-136A-070.

[Statutory Authority: RCW 28A.400.380. WSR 19-12-013, § 392-136A-045, filed 5/24/19, effective 6/24/19.]

AMENDATORY SECTION (Amending WSR 19-12-013, filed 5/24/19, effective 6/24/19)

WAC 392-136A-075 Annual conversion of accumulated sick leave.

The provisions of this chapter shall not reduce the ability of the employee to convert accumulated sick leave under WAC ((~~392-136A-015~~)) 392-136-015.

[Statutory Authority: RCW 28A.400.380. WSR 19-12-013, § 392-136A-075, filed 5/24/19, effective 6/24/19.]