

Chapter 82-56 WAC

UNDUE HARDSHIP

WAC

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WAC 82-56-010 Purpose. (1) Chapter 168, Laws of 2014, provides that state and political subdivision employees are entitled to two unpaid holidays per calendar year for a reason of faith or conscience or an organized activity conducted under the auspices of a religious denomination, church, or religious organization. The employer must allow the employee to take unpaid leave for up to two such holidays unless the employee's absence would impose an undue hardship on the employer or the employee is necessary to maintain public safety. Chapter 168, Laws of 2014, directs the director of the office of financial management to establish the definition of "undue hardship" by rule.

(2) The purpose of this chapter is to establish the definition of "undue hardship" for purposes of chapter 168, Laws of 2014.

(3) This chapter applies to employees of the state and its political subdivisions, including:

- (a) Employees of school districts;
- (b) Nonclassified employees of institutions of higher education who hold appointments or are employed under contracts to perform services for periods of less than twelve consecutive months;
- (c) Employees of public institutions of higher education; and
- (d) Employees of community colleges, technical colleges, and workforce training programs.

[Statutory Authority: 2014 c 168 § 2. WSR 14-23-022, § 82-56-010, filed 11/10/14, effective 12/11/14.]

WAC 82-56-020 Definition of undue hardship. For purposes of chapter 168, Laws of 2014, "undue hardship" means an action requiring significant difficulty or expense to the employer. The following factors should be considered in determining whether approving unpaid leave results in an undue hardship to the employer:

(1) The number, composition, and structure of staff employed by the employing entity or in the requesting employee's program.

(2) The financial resources of the employing entity or the requesting employee's program.

(3) The number of employees requesting leave for each day subject to such a request.

(4) The financial impact on the employing entity or requesting employee's program resulting from the employee's absence and whether that impact is greater than a de minimus cost to the employer in relation to the size of the employing entity or requesting employee's program.

(5) Impact on the employing entity, the requesting employee's program, workplace safety or public safety.

(11/10/14)

(6) Type of operations of the employing entity or requesting employee's program.

(7) Geographic location of the employee or geographic separation of the particular program to the operations of the employing entity.

(8) Nature of the employee's work.

(9) Deprivation of another employee's job preference or other benefit guaranteed by a bona fide seniority system or collective bargaining agreement.

(10) Any other impact on the employing entity's operation or requesting employee's program due to the employee's absence.

[Statutory Authority: 2014 c 168 § 2. WSR 14-23-022, § 82-56-020, filed 11/10/14, effective 12/11/14.]

WAC 82-56-030 Application of definition of undue hardship to request. (1) In determining whether the employee's absence would result in an undue hardship to the employing entity, the employer must make a case-by-case determination based on the specific objective facts and circumstances, not assumed information, present at the time of each request.

(2)(a) The existence of a collective bargaining agreement or bona fide seniority system does not in and of itself relieve the employing entity from determining whether there would be an undue hardship if the request was granted.

(b) When an employee is represented by a union, in determining whether the employee's absence would result in an undue hardship, the request must be reconciled, when feasible, with the provisions of the applicable collective bargaining agreement.

(c) If the employee is covered under a collective bargaining agreement, the employing agency must determine whether the request can be granted without violating that agreement.

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[Statutory Authority: 2014 c 168 § 2. WSR 14-23-022, § 82-56-030, filed 11/10/14, effective 12/11/14.]