

Chapter 392-136A WAC
FINANCE—SHARED LEAVE

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WAC

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WAC 392-136A-010 Authority. The authority for this chapter is RCW 28A.400.380, which authorizes the superintendent of public instruction to adopt rules promulgating standards governing the administration of the shared leave program which permits sharing of leave by qualified school district and educational service district employees.

[Statutory Authority: RCW 28A.400.380. WSR 19-12-013, § 392-136A-010, filed 5/24/19, effective 6/24/19.]

WAC 392-136A-015 Purpose. The purpose of this chapter is to set forth standards establishing appropriate parameters for shared leave programs administered by school districts and educational service districts that are consistent with the provisions of RCW 41.04.650 through 41.04.665 and procedures to ensure that the program does not significantly increase the cost of providing leave.

[Statutory Authority: RCW 28A.400.380. WSR 19-12-013, § 392-136A-015, 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.

(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, child, stepchild, grandchild, grandparent, parent, 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.

(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.]

WAC 392-136A-025 Permissibility of shared leave program. Pursuant to RCW 28A.400.380, districts may institute a shared leave program for employees. This chapter shall govern such programs.

[Statutory Authority: RCW 28A.400.380. WSR 19-12-013, § 392-136A-025, 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 or will shortly exhaust leave in accordance with 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.

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

WAC 392-136A-035 Donation of leave. An employee may donate annual leave, sick leave, or all or part of a personal holiday to another employee or pool for purposes of the state leave sharing program under the following conditions:

(1) **Annual leave.**

(a) The leave donor may donate any amount of accrued annual leave provided the donation does not cause the leave donor's annual leave balance to fall below ten days. For the purpose of this section, annual leave does not accrue if the leave donor receives compensation in lieu of accumulating a balance of annual leave.

(b) Employees may not donate excess annual leave that the leave donor would not be able to take because of an approaching date after which the annual leave cannot be used.

(2) **Sick leave.**

(a) The leave donor must have accrued more than twenty-two days of sick leave.

(b) The leave donor may not donate an amount of sick leave that will result in his or her sick leave account going below twenty-two days.

(3) **Personal holiday.** An educational service district employee may donate part or all of his or her personal holiday to specific individuals or pool.

(4) All donated leave must be given voluntarily. No employee shall be coerced, threatened, intimidated, or financially induced into donating leave.

[Statutory Authority: RCW 28A.400.380. WSR 19-12-013, § 392-136A-035, filed 5/24/19, effective 6/24/19.]

WAC 392-136A-040 Exhaustion 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.

(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.

(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.

(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 hours of annual leave and forty hours of sick leave.

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

WAC 392-136A-045 Maximum amount. 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 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.

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

WAC 392-136A-050 Repayment of shared leave used. A leave recipient who uses leave that is donated under the state leave sharing program is not required to repay the value of the leave that he or she used.

[Statutory Authority: RCW 28A.400.380. WSR 19-12-013, § 392-136A-050, filed 5/24/19, effective 6/24/19.]

WAC 392-136A-055 Documentation. An employee may be required to submit the following documentation before the district approves or disapproves the employee's request for shared leave:

(1) For employees seeking shared leave under WAC 392-136A-030 (1)(a), the district may require the employee to submit a medical certificate from a licensed physician or health care practitioner verifying the severe or extraordinary nature and expected duration of the condition.

(2) For employees seeking shared leave under WAC 392-136A-030 (1)(b), the district may require the employee to submit a copy of the military orders verifying the employee's required service in the uniformed services.

(3) For employees seeking shared leave under WAC 392-136A-030 (1)(c), the district may require proof of acceptance of an employee's offer to volunteer for either a governmental agency or a nonprofit organization during a declared state of emergency.

(4) For employees seeking shared leave under WAC 392-136A-030 (1)(d), the district may require that the request be supported by documentation. An employee may satisfy the verification requirement by providing the employer with one or more of the following:

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

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

(c) Evidence from the court or prosecuting attorney that the employee 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 is a victim of domestic violence, sexual assault or stalking; or

(e) Documentation that the employee 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.

(5) For employees seeking shared leave under WAC 392-136A-030 (1)(e) or (f), the district may require the employee provide a veterans affairs benefits summary letter from the U.S. Department of Veterans Affairs and a copy of "DD Form 214" or a letter from the employee's command indicating the employee is a current member of the uniformed services and verifying that:

(a) The employee is attending medical appointments or treatments for a service connected injury or disability including U.S. Department of Veterans Affairs compensation and pension examinations; or

(b) The employee is a spouse of a veteran who requires assistance while attending medical appointments or treatments for a service connected injury or disability including U.S. Department of Veterans Affairs compensation and pension examinations.

(6) For employees seeking shared leave under WAC 392-136A-030 (1)(g), the district may require verification of the birth or adoption of the child or proof of a current foster parent license or a court document for foster care or placement.

(7) For employees seeking shared leave under WAC 392-136A-030 (1)(h), the employer may require a medical certification from a licensed physician or health care practitioner verifying that the employee has a pregnancy disability.

[Statutory Authority: RCW 28A.400.380. WSR 19-12-013, § 392-136A-055, filed 5/24/19, effective 6/24/19.]

WAC 392-136A-060 Calculation of shared leave benefit—Proration.

Shared leave between employees of the same district shall be calculated as follows:

(1) The leave recipient shall be paid his or her regular rate of pay. Therefore, the value of one hour of shared leave may cover more or less than one hour of the recipient's salary. The dollar value of the leave shall be converted from the donor to the recipient. The leave received shall be coded as shared leave and shall be maintained separately from all other leave balances.

(2) In the alternative, the dollar value of the leave donated shall be ignored and the leave shall be calculated on a day donated and day received basis.

[Statutory Authority: RCW 28A.400.380. WSR 19-12-013, § 392-136A-060, filed 5/24/19, effective 6/24/19.]

WAC 392-136A-065 Shared leave benefits—Transfers between districts—Calculations of donated leave amounts. (1) Districts shall have the option, as a matter of board policy, of allowing their employees to share leave with employees of other districts or state employers, or to receive leave from employees of other districts or state employers.

(2) The leave recipient shall be paid his or her regular rate of pay. Therefore, the value of one hour of shared leave may cover more or less than one hour of the recipient's salary.

(3) Leave shared between districts and/or state employers shall be calculated in a format designated by the office of superintendent of public instruction. Donated shared leave shall be converted into the dollar equivalent. Received shared leave shall be converted from the dollar amount received into days to be paid. Shared leave shall be transferred between districts and/or state employers based on the dollar equivalent computed under this section.

(4) Leave received shall be coded as shared leave and shall be maintained separately from all other leave balances.

[Statutory Authority: RCW 28A.400.380. WSR 19-12-013, § 392-136A-065, filed 5/24/19, effective 6/24/19.]

WAC 392-136A-070 Unused shared leave. (1) Any shared leave not used by the leave recipient during each incident or occurrence as determined by the district must be returned to the leave donor(s).

(2) If shared leave has been granted for a leave recipient who suffers from an illness, injury, impairment, or physical mental condition which is of an extraordinary or severe nature, unused shared leave may not be returned to the leave donor until one of the following occurs:

(a) The district receives a statement from the leave recipient's licensed physician or health care practitioner verifying that the illness or injury is resolved; or

(b) The leave recipient is released by his or her licensed physician or health care practitioner to return to the leave recipient's normal schedule; has not received additional medical treatment for his or her current condition or any other qualifying condition for at least six months; and his or her licensed physician or health care practitioner has declined, in writing, the leave recipient's request for a statement indicating the leave recipient's condition has been resolved.

(3) The remaining unused shared leave must be returned to the leave donors and reinstated to the respective donors' appropriate leave balances.

(4) Any portion of a personal holiday that is accrued by an educational service district employee, donated as shared leave, and then returned during the same calendar year to the leave donor may be taken by the leave donor.

[Statutory Authority: RCW 28A.400.380. WSR 19-12-013, § 392-136A-070, 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.

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