

WSR 24-10-106  
PROPOSED RULES  
DEPARTMENT OF  
RETIREMENT SYSTEMS

[Filed May 1, 2024, 9:26 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-20-113.

Title of Rule and Other Identifying Information: Holiday leave bank cash-out.

Hearing Location(s): On June 10, 2024, at 11:00 a.m., online via Microsoft Teams, link is available on <https://www.drs.wa.gov/sitemap/rules/#proposed-rule-hearings>, Meeting ID 258 763 758 022, Passcode FsczED, phone 833-322-1218, Code 121 353 30#.

Date of Intended Adoption: June 14, 2024.

Submit Written Comments to: Bianca Stoner, Department of Retirement Systems (DRS), P.O. Box 48380, Olympia, WA 98504-8380, email [drs.rules@drs.wa.gov](mailto:drs.rules@drs.wa.gov), by June 6, 2024.

Assistance for Persons with Disabilities: Contact Bianca Stoner, phone 360-664-7291, TTY 711, email [drs.rules@drs.wa.gov](mailto:drs.rules@drs.wa.gov), by June 6, 2024.

Statutory Authority for Adoption: RCW 41.50.050.

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

Name of Proponent: DRS, governmental.

Name of Agency Personnel Responsible for Implementation: Mike Ricchio, DRS, P.O. Box 48380, Olympia, WA 98504-8380, 360-664-7227.

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. RCW 34.05.328 (5)(a)(i) does not apply to this proposed rule and DRS is not voluntarily making it applicable to the agency.

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).

Explanation of exemptions: Rules from DRS only affect members and beneficiaries of the state retirement systems and participating public employers. As a result, the rules do not affect small businesses.

Scope of exemption for rule proposal:

Is fully exempt.

May 1, 2024  
Bianca Stoner  
Rules Coordinator

## OTS-5303.2

AMENDATORY SECTION (Amending WSR 20-24-109, filed 12/1/20, effective 1/1/21)

**WAC 415-104-370 Overtime is included in LEOFF Plan 2 basic salary.** Overtime, additional pay earned for working time in excess of regularly scheduled shift(s), is a salary or wage for services ren-

dered. Overtime payments are considered part of basic salary for LEOFF Plan 2. Overtime includes, but is not limited to:

(1) **Additional pay for working on a holiday.** If a member receives an extra payment for working on a (~~scheduled~~) recognized holiday, the payment is overtime. The employer may make the additional payment when the holiday occurs or in a lump sum at some other time. In either case, the payment is considered to be basic salary for LEOFF Plan 2 (~~(7)~~).

(a) What are recognized holidays for purposes of holiday leave banks? Holidays recognized by either the state of Washington, the federal government, or formalized by an organization; and tied to a specific date. An employer must identify the recognized holidays associated with the hours that are added to the holiday leave bank.

(b) Are personal or floating holidays considered recognized holidays for purposes of holiday leave bank cash outs? No. Personal or floating holidays are not tied to a specific date and are not considered recognized holidays for the purposes of holiday leave bank cash outs.

**Examples:** A firefighter works on Christmas day. As compensation for working on a holiday, the firefighter is given the option of taking some other day off with pay or receiving an extra day's pay. If the firefighter opts for the extra day of pay, this payment is overtime and is LEOFF Plan 2 basic salary. If the firefighter opts to take a day off instead, this is paid leave that qualifies as LEOFF Plan 2 basic salary.

Some employers create holiday leave banks for these employees, and it is considered a regular workday if an employee works on the holiday. Later, the employee may use hours from the holiday leave bank to take a day off and/or cash out all or some of the hours in the future. These cashed out days are reportable if the accrued leave was associated with (~~state or federal~~) recognized holidays. Report the cash out in the months the holidays occurred.

If the employer does not track the holidays worked, or does not separate out personal or floating holidays from recognized holidays, the employer should use the FIFO (first in, first out) method to report compensation for the holiday bank cash out. Recognized holidays would be accounted for before personal or floating holidays.

(2) **Callback pay**, which is a special rate of pay some employers provide members for being called back to work after the end of the member's regular shift;

(3) **Court pay**, which is an additional payment for appearing in court or performing other duties outside of a member's regularly scheduled shift.

(4) **Compensatory time (comp time)**, is paid time off given to an employee instead of overtime pay in compensation for extra hours of work. However, if the employee later receives this leave as a paid cash out, that payment is for overtime previously worked and therefore is basic salary. Basic salary is earned when the service is rendered, rather than when the payment is made. If the comp time is used as leave, it is reported as leave when used.

**Example:** An employee works eight additional hours in March and receives ((~~twelve~~)) 12 hours of comp time. The employer has a policy that all unused comp time must be paid out at the end of the fiscal year in June. When this cash out is paid to the employee, the compensation and eight hours were earned in March and should be reported as such. If the comp time is used as leave, it is reported as leave whenever it is used.