

WSR 24-14-105
PROPOSED RULES
OFFICE OF
FINANCIAL MANAGEMENT
[Filed July 1, 2024, 11:39 a.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: WAC 357-25-027

What must be included in the agency's sexual harassment policy?

Hearing Location(s): On August 8, 2024, at 8:30 a.m., Zoom meeting (with call-in option) <https://ofm-wa-gov.zoom.us/j/81889336350?pwd=TzYzY05oL3FrSW5UTnBEeEk5ODVvQT09>, ID 818 8933 6350, Call in 253-215-8782, Passcode 171240.

Date of Intended Adoption: August 15, 2024.

Submit Written Comments to: Brandy Chinn, Office of Financial Management (OFM), 1500 Jefferson Street S.E., P.O. Box 47500, Olympia, WA 98504, email brandy.chinn@ofm.wa.gov, by 11:59 p.m., August 1, 2024.

Assistance for Persons with Disabilities: Contact OFM, TTY 711 or 1-800-833-6384, by 11:59 p.m., August 1, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Chapter 133, Laws of 2022 (ESHB 1795), passed during the 2022 legislative session with an effective date of June 9, 2022. This bill prohibits nondisclosure and nondisparagement provisions from employers regarding illegal acts of discrimination, harassment, retaliation, wage and hour violations, and sexual assault. This bill repeals RCW 49.44.210 and replaces it with RCW 49.44.211. The proposed amendments to WAC 357-25-027 repeal subsection (17) to replace with updated language and amend the "employee" definition reference from RCW 49.44.210 to RCW 49.44.211 to align with the changes in law.

Reasons Supporting Proposal: To align WAC 357-25-027 with the requirements in the new law (chapter 133, Laws of 2022).

Statutory Authority for Adoption: RCW 41.06.150.

Statute Being Implemented: RCW 49.44.211.

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

Name of Proponent: OFM, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Brandy Chinn, 1500 Jefferson Street S.E., Olympia, WA 98504, 360-878-2901.

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. Rules are related to internal government operations and are not subject to violation by a nongovernmental party. See RCW 34.05.328 (5)(b)(ii) for exemption.

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(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

Scope of exemption for rule proposal:

Is fully exempt.

July 1, 2024
Nathan Sherrard

OTS-4004.3

AMENDATORY SECTION (Amending WSR 20-24-021, filed 11/20/20, effective 12/28/20)

WAC 357-25-027 What must be included in the agency's sexual harassment policy? Agencies as defined in RCW 41.06.020 must at a minimum include the following in their policy on sexual harassment:

- (1) Indicate who is covered by the policy;
- (2) Provide that the employer is committed to providing a working environment free from sexual harassment of any kind;
- (3) A statement that sexual harassment is an unlawful employment practice prohibited by Title VII of the Civil Rights Act of 1964 and RCW 49.60;
- (4) The definition of sexual harassment as defined by the Equal Employment Opportunity Commission;
- (5) Notify the employee or individual of their right to file a complaint with the Washington State Human Rights Commission under RCW 49.60.230 or the Federal Equal Employment Opportunity Commission under Title VII of the Civil Rights Act of 1964;
- (6) Identify how and to whom employees or individuals may raise concerns or file complaints. The policy should allow multiple avenues for an employee or individual to raise complaints or concerns and should clearly identify the positions or entities charged with receiving these complaints;
- (7) Advise all individuals covered by the policy that the employer is under a legal obligation to respond to allegations concerning a violation of the policy;
- (8) Identify the manner by which the employer will respond to alleged violations of the policy, including a formal investigation if necessary;
- (9) A statement that the complainant shall be informed of the status and the outcome of an investigation;
- (10) Identify the agency's investigation or response procedure;
- (11) Define the roles and responsibilities of employees, managers, supervisors, and others covered by the policy with respect to the following:
 - (a) Preventing or not engaging in sexual harassment;
 - (b) Responding to concerns or allegations of violations of the policy;
 - (c) Participation in an investigation under the policy; and
 - (d) The prohibition against retaliation.
- (12) A statement that confidentiality cannot be guaranteed;
- (13) A statement that responses to public records requests will be provided in accordance with RCW 42.56.660 and 42.56.675;
- (14) Advise that retaliation against individuals covered by the policy who report allegations of sexual harassment or who participate in an investigation is prohibited;
- (15) Advise that any employee found to have violated the policy will be subject to corrective and/or disciplinary action, up to and including dismissal;

(16) Advise that any employee found to have retaliated against individuals covered by the policy who report allegations of sexual harassment or who participate in an investigation will be subject to corrective and/or disciplinary action, up to and including dismissal; and

(17) A statement that an employer may not require an employee (~~as a condition of employment, to sign a nondisclosure agreement, waiver, or other document that prevents the employee from disclosing sexual harassment or sexual assault occurring in the workplace, at work-related events coordinated by or through the employer, or between employees, or between an employer and an employee, off the employment premises in accordance with RCW 49.44.210~~) to sign an agreement that prevents the employee from disclosing or discussing conduct or the existence of a settlement involving conduct described in RCW 49.44.211 and that it is a violation for the employer to discharge or otherwise discriminate or retaliate against the employee for disclosing or discussing such conduct.

For the purposes of this subsection, "employee" has the same meaning as defined in RCW (~~49.44.210~~) 49.44.211.