

Chapter 357-46 WAC

LAYOFF AND SEPARATION

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WAC 357-46-005 What is the impact of a layoff?
Layoff is an employer-initiated action taken in accordance with WAC 357-46-010 that results in:

- (1) Separation from service with an employer;
- (2) Employment in a class with a lower salary range maximum;
- (3) Reduction in the work year; or
- (4) Reduction in the number of work hours.

[Statutory Authority: Chapter 41.06 RCW. 04-18-114, § 357-46-005, filed 9/1/04, effective 7/1/05.]

WAC 357-46-010 What are the reasons for layoff?
(1) Employees may be laid off without prejudice according to

layoff procedures that are consistent with these rules. The reasons for layoff include, but are not limited to, the following:

- (a) Lack of funds;
 - (b) Lack of work; or
 - (c) Organizational change.
- (2) Examples of layoff actions due to lack of work may include, but are not limited to:
- (a) Termination of a project or special employment;
 - (b) Availability of fewer positions than there are employees entitled to such positions;
 - (c) Employee's ineligibility to continue in a position following its reallocation to a class with a higher salary range maximum; or
 - (d) Employee's ineligibility to continue, or choice not to continue, in a position following its reallocation to a class with a lower salary range maximum.
 - (e) Elimination of a position due to the work of the position being competitively contracted.

[Statutory Authority: Chapter 41.06 RCW. 07-17-124, § 357-46-010, filed 8/20/07, effective 9/20/07; 05-19-004, § 357-46-010, filed 9/8/05, effective 10/10/05; 04-18-114, § 357-46-010, filed 9/1/04, effective 7/1/05.]

WAC 357-46-012 Following the award of a contract under the competitive contracting process (as described in Title 236 WAC), how does an employer lay off employees whose positions are being eliminated due to the awarded contract? (1) If an employee business unit as defined by WAC 357-43-001 is not awarded the contract, all employees whose positions are being eliminated are subject to the employer's layoff procedure when the positions are eliminated or reduced.

(2) Employees whose positions are being eliminated who are not part of the employee business unit awarded the contract are subject to the employer's layoff procedure when the employees' positions are eliminated or reduced. (See WAC 357-43-008 for what happens if an employee chooses to not be a part of the employee business unit.)

[Statutory Authority: Chapter 41.06 RCW. 07-11-092, § 357-46-012, filed 5/16/07, effective 7/1/07; 05-19-004, § 357-46-012, filed 9/8/05, effective 10/10/05.]

WAC 357-46-015 How does an employer implement a layoff action? The employer must have a layoff procedure. When the employer determines a layoff is necessary, the procedure must be followed. The layoff procedure must be available either electronically or in writing to employees subject to layoff.

[Statutory Authority: Chapter 41.06 RCW. 04-18-114, § 357-46-015, filed 9/1/04, effective 7/1/05.]

WAC 357-46-020 What must be included in the employer's layoff procedure? The employer's layoff procedure must:

- (1) Identify clearly defined layoff unit(s) that minimize disruption of the employer's total operation and provide options to employees scheduled for layoff;
 - Employers may establish separate and exclusive layoff units for project employment, employee business units, or special employment programs.

(2) Provide opportunities to avoid or minimize layoff, such as transfers, voluntary demotion, voluntary reduced work schedule, or voluntary leave without pay;

(3) Require the appointing authority to provide written notice of layoff to employees in accordance with WAC 357-46-025;

(4) Provide layoff options for permanent employees being laid off as provided in WAC 357-46-035;

(5) Address the time frame in which employees must select a layoff option;

(6) Define what the employer considers when determining the comparability of a position;

(7) Identify the employer's legitimate business requirements if the employer is going to consider those requirements in determining layoff options under WAC 357-46-035;

- Legitimate business requirements may include requirements such as circumstances or characteristics that render a position uniquely sensitive to disruption in continuity such as meeting critical deadlines, continuity in patient care, or research progress.

(8) Describe how employment retention ratings will be calculated, including options for factoring performance into ratings; and

(9) Specify how the employer will break ties when more than one employee has the same employment retention rating.

(10) Higher education employers address in their layoff procedure whether or not employees have layoff list rights to classes they held permanent status in prior to any breaks in state service.

[Statutory Authority: Chapter 41.06 RCW. 10-11-068, § 357-46-020, filed 5/14/10, effective 6/15/10; 07-11-092, § 357-46-020, filed 5/16/07, effective 7/1/07; 04-18-114, § 357-46-020, filed 9/1/04, effective 7/1/05.]

WAC 357-46-025 How much layoff notice must employers give employees? (1) Probationary employees being separated due to layoff must receive at least one calendar day's notice. (See WAC 357-46-185)

(2) Permanent employees being laid off must receive at least fifteen calendar days' notice unless the employer and employee agree to waive the fifteen day notice period.

[Statutory Authority: Chapter 41.06 RCW. 04-18-114, § 357-46-025, filed 9/1/04, effective 7/1/05.]

WAC 357-46-030 What must be included in the layoff notice? The layoff notice for permanent employees must be in writing and minimally include all the following items:

- (1) The reason or basis for layoff.
- (2) The employee's layoff options as determined by WAC 357-46-035, including any requirement for the employee to serve a transition review period.
- (3) The specific layoff list(s) that the employee is entitled to request placement on according to WAC 357-46-070 and 357-46-080 and information on how to request placement on the statewide layoff list.
- (4) The date by when the employee must select a layoff option.
- (5) The employee's right to appeal the layoff.

[Statutory Authority: Chapter 41.06 RCW. 04-18-114, § 357-46-030, filed 9/1/04, effective 7/1/05.]

WAC 357-46-035 Layoff option. (1) What option does a permanent employee have to take a position when the employee is scheduled for layoff?

Within the layoff unit, a permanent employee scheduled for layoff must be offered the option to take a position, if available, that meets the following criteria:

(a) The position is allocated to the class in which the employee holds permanent status at the time of the layoff. If no option to a position in the current class is available, the employee's option is to a position in a class in which the employee has held permanent status that is at the same salary range. If the employee has no option to take a position at the same salary range, the employee must be given an opportunity to take a position in a lower class in a class series in which the employee has held permanent status, in descending salary order. The employee does not have to have held permanent status in the lower class in order to be offered the option to take a position in the class.

(b) The position is comparable to the employee's current position as defined by the employer's layoff procedure.

(c) The employee satisfies the competencies and other position requirements.

(d) The position is funded and vacant, or if no vacant funded position is available, the position is occupied by the employee with the lowest employment retention rating.

(2) What if the employee has no option under subsection (1) of this section?

(a) If a permanent employee has no option available under subsection (1) of this section, the employer must determine if there is an available position in the layoff unit to offer the employee in lieu of separation that meets the following criteria:

(i) The position is at the same or lower salary range maximum as the position from which the employee is being laid off;

(ii) The position is vacant or held by a probationary employee or an employee in a nonpermanent appointment;

(iii) The position is comparable or less than comparable; and

(iv) The position is one for which the employee meets the competencies and other position requirements.

(b) If more than one qualifying position is available, the position with the highest salary range maximum is the one that must be offered.

(3) What happens when a class in which the employee previously held permanent status has been revised or abolished?

If a class in which an employee has previously held permanent status has been revised or abolished, the employer shall determine the closest matching class to offer as a layoff option. The closest matching class must be at the same or lower salary range maximum as the class from which the employee is being laid off.

(4) Does an employee have layoff option rights as provided in subsection (1) of this section to classifications the employee held permanent status in prior to any breaks in state service?

General government employees have layoff option rights as provided in subsection (1) of this section to classifications the employee has held permanent status in regardless of any breaks in state service.

Higher education employers must address in their layoff procedure whether or not employees will be given layoff options to classes they held permanent status in prior to any breaks in state service.

[Statutory Authority: Chapter 41.06 RCW. 10-11-068, § 357-46-035, filed 5/14/10, effective 6/15/10; 09-17-064, § 357-46-035, filed 8/13/09, effective 9/16/09; 09-11-063, § 357-46-035, filed 5/14/09, effective 6/16/09; 04-18-114, § 357-46-035, filed 9/1/04, effective 7/1/05.]

WAC 357-46-040 What makes one position comparable to another when determining layoff options? Comparability of positions is defined by the employer's layoff procedure, and may include such factors as geographic location, number of hours per week, the shift time of the position, and any other factors as defined by the employer in its layoff procedure.

[Statutory Authority: Chapter 41.06 RCW. 04-18-114, § 357-46-040, filed 9/1/04, effective 7/1/05.]

WAC 357-46-045 How do employers establish competency and other position requirements? In establishing competency and other position requirements, employers may use any of the following documented criteria:

(1) Licensing/certification requirements;

(2) Position description;

(3) Class specification;

(4) Skills/competencies listed on the position's most recent recruitment announcement or the last announcement used to fill the position;

(5) Bona fide occupational requirement(s) approved by the Washington human rights commission; or

(6) Additional documented competencies or requirements not reflected in the position description.

[Statutory Authority: Chapter 41.06 RCW. 04-18-114, § 357-46-045, filed 9/1/04, effective 7/1/05.]

WAC 357-46-050 How does an employer determine an employee's employment retention rating? The employer determines an employee's employment retention rating using seniority as calculated in WAC 357-46-055 for general government employees and 357-46-053 for higher education employees. Employers with performance management confirmation may consider properly documented performance in addition to seniority. If performance is not considered, an employee's employment retention rating is equal to the employee's seniority.

[Statutory Authority: Chapter 41.06 RCW. 05-12-084, § 357-46-050, filed 5/27/05, effective 7/1/05; 04-18-114, § 357-46-050, filed 9/1/04, effective 7/1/05.]

WAC 357-46-053 How is a higher education employee's seniority date determined? For higher education employees, the seniority date is determined in accordance with the employer's layoff procedure. The employer's layoff procedure must specify a uniform method for determining the seniority date for employees of the higher education institution or related board who are covered by the civil service rules. Employees on military leave as provided in WAC 357-31-370 must not have their seniority date adjusted for the time spent on military leave without pay.

[Statutory Authority: Chapter 41.06 RCW. 05-12-075, § 357-46-053, filed 5/27/05, effective 7/1/05.]

WAC 357-46-055 How is a general government employee's seniority date determined? (1) For a full-time general government employee, the seniority date is the employee's most recent date of hire into state service as adjusted for any period of leave without pay which exceeds fifteen consecutive calendar days except when the leave without pay is taken for:

- (a) Military leave as provided in WAC 357-31-370;
- (b) Compensable work-related injury or illness leave;
- (c) Government service leave not to exceed two years and one month;
- (d) Educational leave, contingent upon successful completion of the coursework; and/or
- (e) Reducing the effects of layoff.
- (f) When an employee is on leave without pay for more than fifteen consecutive calendar days and the absence is not due to one of the reasons listed above, the employee's seniority date must be moved forward in an amount equal to the number of calendar days on leave without pay.

(2) For a part-time general government employee, the seniority date is calculated by determining the number of actual hours worked and/or in paid status, excluding compensatory time off. Actual hours worked includes overtime hours regardless of whether or not the employee receives monetary payment or compensatory time for the hours worked. Time spent in leave without pay status is not credited unless the leave without pay is taken for:

- (a) Military leave as provided in WAC 357-31-370;
- (b) Compensable work-related injury or illness leave;
- (c) Government service leave not to exceed two years and one month;
- (d) Educational leave, contingent upon successful completion of the coursework; and/or
- (e) Reducing the effects of layoff.

[Statutory Authority: Chapter 41.06 RCW. 09-11-063, § 357-46-055, filed 5/14/09, effective 6/16/09; 05-08-135, § 357-46-055, filed 4/6/05, effective 7/1/05.]

WAC 357-46-056 How does a general government employee's seniority as of June 30, 2005 transfer under Title 357 WAC? A general government employee's unbroken service date as of June 30, 2005 will become the employee's seniority date as of July 1, 2005. From July 1, 2005 forward, any adjustments to the seniority date for leave without pay must be in accordance with WAC 357-46-055.

[Statutory Authority: Chapter 41.06 RCW. 05-08-135, § 357-46-056, filed 4/6/05, effective 7/1/05.]

WAC 357-46-057 When is an employee considered to have a break in state service? An employee has a break in his/her continuous state service if the employee is separated, dismissed, or resigns from state service. A furlough for the purposes of temporary layoff as provided in WAC 357-46-063 is not considered a break in continuous state service.

[Statutory Authority: Chapter 41.06 RCW. 05-12-073, § 357-46-057, filed 5/27/05, effective 7/1/05.]

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WAC 357-46-058 Is a general government employee who is rehired following layoff considered to have had a break in state service? (1) A general government employee laid off in accordance with the provisions of WAC 357-46-010 or 357-58-445 is not considered to have had a break in continuous state service if within two years of separation the employee is appointed to a position.

(2) Upon appointment, a general government employee is reinstated with the anniversary and unbroken service dates the employee had at the time of layoff. A full-time general government employee is given full-time credit toward seniority for the time spent off the payroll due to layoff. As provided in WAC 357-46-055(2) a part-time general government employee's seniority is calculated by determining the number of actual hours worked and/or in paid status, therefore a part-time employee shall not receive seniority credit for the time spent off the payroll due to layoff.

[Statutory Authority: Chapter 41.06 RCW. 09-23-059, § 357-46-058, filed 11/12/09, effective 12/15/09; 09-11-063, § 357-46-058, filed 5/14/09, effective 6/16/09; 05-12-073, § 357-46-058, filed 5/27/05, effective 7/1/05.]

WAC 357-46-059 Is a higher education employee who is rehired following layoff considered to have had a break in state service? (1) A higher education employee laid off in accordance with the provisions of WAC 357-46-010 or 357-58-445 is not considered to have had a break in continuous state service if within two years of separation the employee is appointed to a position:

- (a) From a layoff list; or
- (b) As a promotional candidate in accordance with the employer's promotional policy.

(2) Upon appointment, the higher education employee is reinstated with the seniority and unbroken service the employee had at the time of layoff. Time spent off the payroll due to layoff is treated as leave without pay. Each higher education employer's layoff procedure will define how seniority and unbroken service dates are adjusted for periods of leave without pay.

[Statutory Authority: Chapter 41.06 RCW. 09-23-059, § 357-46-059, filed 11/12/09, effective 12/15/09.]

WAC 357-46-060 Does a veteran receive any preference in layoff? (1) An eligible veteran receives a preference by having their seniority increased. This is done by adding the eligible veteran's total active military service, not to exceed five years, to their unbroken service date.

(2) An eligible veteran is defined as any permanent employee who:

- (a) Has one or more years in active military service in any branch of the armed forces of the United States or who has less than one year's service and is discharged with a disability incurred in the line of duty or is discharged at the convenience of the government; and
- (b) Has received, upon termination of such service:
 - (i) An honorable discharge;
 - (ii) A discharge for physical reasons with an honorable record; or
 - (iii) A release from active military service with evidence of service other than that for which an undesirable, bad conduct, or dishonorable discharge is given.

(3) "An eligible veteran" does not include any person who as a veteran voluntarily retired, as evidenced by the "DD Form 214" or other official military records, with twenty or more years' active military service and has military retirement pay in excess of five hundred dollars per month.

(4) The surviving spouse or surviving registered domestic partner of an eligible veteran is entitled to veteran's seniority preference for up to five years as outlined in subsection (1) and (2) of this section regardless of whether the veteran had at least one year of active military service.

[Statutory Authority: Chapter 41.06 RCW. 10-11-073, § 357-46-060, filed 5/14/10, effective 6/15/10; 09-17-056 and 09-18-113, § 357-46-060, filed 8/13/09 and 9/2/09, effective 12/3/09; 05-12-077, § 357-46-060, filed 5/27/05, effective 7/1/05; 04-18-114, § 357-46-060, filed 9/1/04, effective 7/1/05.]

WAC 357-46-063 May an employer temporarily layoff an employee? For any of the reasons specified in WAC 357-46-010, an employer may temporarily layoff an employee by:

- (1) Reducing the number of hours an employee is scheduled to work; or
- (2) Furloughing the employee.

[Statutory Authority: Chapter 41.06 RCW. 05-12-074, § 357-46-063, filed 5/27/05, effective 7/1/05.]

WAC 357-46-064 Are there any limits to temporary layoff? Under the provisions of WAC 357-46-063, an employer may not:

- (1) Furlough an employee for more than thirty calendar days in a calendar year; or
- (2) Temporarily reduce an employee's regular work schedule to less than twenty hours a week for more than sixty calendar days in a calendar year.

[Statutory Authority: Chapter 41.06 RCW. 05-12-074, § 357-46-064, filed 5/27/05, effective 7/1/05.]

WAC 357-46-065 Under the provisions of temporary layoff, what happens if an employer has less than twenty hours per week of work for an employee to perform? If an employer has less than twenty hours per week of work for an employee to perform during a period of temporary layoff, the employer must notify the employee that he/she is being furloughed. The employer may then offer the available work hours to the employee as a nonpermanent appointment under the provisions of WAC 357-19-360 or temporary appointment under the provisions of WAC 357-19-435.

[Statutory Authority: Chapter 41.06 RCW. 05-12-074, § 357-46-065, filed 5/27/05, effective 7/1/05.]

WAC 357-46-066 What is the notice requirement to temporarily layoff an employee? An employer must provide the employee seven calendar days' notice of temporary layoff. The temporary layoff notice must inform the employee of their status during temporary layoff and the expected duration of the temporary layoff. Notice of temporary layoff may be provided by using alternative methods as described in WAC 357-04-105.

[Statutory Authority: Chapter 41.06 RCW. 10-23-040, § 357-46-066, filed 11/10/10, effective 12/13/10; 05-12-074, § 357-46-066, filed 5/27/05, effective 7/1/05.]

(11/10/11)

WAC 357-46-067 What is an employee's status during temporary layoff? (1) The following applies during a temporary layoff:

(a) An employee's anniversary, seniority, and unbroken service dates are not adjusted for periods of time spent on temporary layoff;

(b) An employee's vacation and sick leave accruals will not be impacted by periods of time spent on temporary layoff;

(c) An employee's holiday compensation will not be impacted by periods of time spent on temporary layoff; and

(d) The duration of an employee's probationary period or trial service period shall not be extended for periods of time spent on temporary layoff.

(2) An employee who is temporarily laid off is not entitled to:

(a) Layoff rights, including the ability to bump any other position or be placed on the employer's internal or statewide layoff list;

(b) Payment for their vacation leave balance; and

(c) Use of their accrued vacation leave for hours the employee is not scheduled to work if the temporary layoff was due to lack of funds.

(3) If the temporary layoff was not due to lack of funds, an employer may allow an employee to use accrued vacation leave in lieu of temporary layoff.

[Statutory Authority: Chapter 41.06 RCW. 10-23-040, § 357-46-067, filed 11/10/10, effective 12/13/10; 09-11-063, § 357-46-067, filed 5/14/09, effective 6/16/09; 05-12-074, § 357-46-067, filed 5/27/05, effective 7/1/05.]

WAC 357-46-068 At the conclusion of a temporary layoff, does an employee have the right to return to the position he/she held immediately prior to being temporarily laid off? At the conclusion of the temporary layoff, the employee has the right to resume the position he/she held immediately prior to being temporarily laid off. The employee returns with the same status and percentage of appointment he/she held prior to the layoff.

[Statutory Authority: Chapter 41.06 RCW. 05-12-074, § 357-46-068, filed 5/27/05, effective 7/1/05.]

WAC 357-46-069 How is an employee's temporary layoff day determined when an employee works a night shift schedule which begins one calendar day and ends on the next? For employees working a shift which begins on one calendar day and ends on the next, the twenty-four hour period during which the temporary layoff occurs must be determined by the employer to start either at the start of the shift that begins on the day of temporary layoff, or the start of the shift that precedes the day of temporary layoff. For example:

The employer has determined that July 12th will be a temporary layoff day. The employee's regular work schedule is 6:00 p.m. to 3:00 a.m. Sunday through Thursday. The employer must determine if the employee's temporary layoff will occur for the shift which begins at 6:00 p.m. on July 11th or the shift that begins at 6:00 p.m. on July 12th.

[Statutory Authority: Chapter 41.06 RCW. 10-23-040, § 357-46-069, filed 11/10/10, effective 12/13/10.]

WAC 357-46-070 Which employees are eligible to have their name placed on an employer's internal layoff list? (1) Permanent employees of the employer who satisfy the following criteria must have their name placed on the employer's internal layoff list if the employee exercises this option within the two-year eligibility period:

(a) **Employees who are laid off or have been notified in writing by the employer that they are scheduled to be laid off** are eligible to be on the internal layoff list for classes in which they held permanent status at the same or lower salary range and lower classes in the same class series. Permanent status is not required for the lower classes in the class series. For purposes of this subsection "employees" includes Washington management service (WMS) employees who are laid off or have been notified by the employer that they are scheduled to be laid off and who have held permanent status in Washington general service. WMS employees only have layoff list rights to classes which the highest step of the salary range is equal to or below the WMS salary at the time of layoff or notification of layoff.

(b) **Employees who accept a voluntary demotion in lieu of layoff** are eligible to be on the internal layoff list for the class from which they demoted and classes at that salary range and lower salary ranges in which the employee held permanent status and lower classes in the same class series. Permanent status is not required for the lower classes in the class series. Washington management service (WMS) employees who accept a voluntary demotion in lieu of layoff are eligible to be on the internal layoff list for classes in which they held permanent status. WMS employees only have layoff list rights to classes which the highest step of the salary range is equal to or below the WMS salary at the time of the demotion.

(c) **Employees who accepted less than comparable positions** as defined by the employer's layoff procedure are eligible to be on the internal layoff list for classes in which they held permanent status at the same or lower salary range and lower classes in the same class series. Permanent status is not required for the lower classes in the class series.

(d) **Employees who have not successfully completed a trial service period and are placed in a nonpermanent position following reversion** are eligible to be on the internal layoff list for classes in which the employee previously held permanent status.

(e) **Employees who remain in a position reallocated to a lower salary range** are eligible to be on the internal layoff list for the class the employee held permanent status in prior to the reallocation.

(2) Employees who have been demoted for cause from a class are **not** eligible to be on the internal layoff list for that class.

(3) General government employees have layoff list rights to all classifications the employee has held permanent status in regardless of any breaks in state service.

Higher education employers must address in their layoff procedure whether or not employees will be given layoff rights to classes they held permanent status in prior to any breaks in state service.

[Statutory Authority: Chapter 41.06 RCW. 09-17-063, § 357-46-070, filed 8/13/09, effective 9/16/09; 09-11-063, § 357-46-070, filed 5/14/09, effective 6/16/09; 04-18-114, § 357-46-070, filed 9/1/04, effective 7/1/05.]

WAC 357-46-075 Can an employee be on an internal layoff list for classes with a higher salary range than the class from which the employee is being laid off? An employee may be on the internal layoff list for classes with a higher salary range than the class from which the employee is being laid off as long as the employee has held permanent status in the higher class and the employer's layoff procedure allows access to higher level classes.

[Statutory Authority: Chapter 41.06 RCW. 04-18-114, § 357-46-075, filed 9/1/04, effective 7/1/05.]

WAC 357-46-080 Which employees are eligible to have their name placed on an employer's statewide layoff list? (1) Permanent employees who satisfy the following criteria must have their name placed on the statewide layoff list for other employers if the employee exercises this option within the two-year eligibility period:

(a) Laid off or notified in writing by the employer they are scheduled to be laid off;

(b) Accepted a voluntary demotion in lieu of layoff; or

(c) Accepted less-than-comparable positions at the time of layoff.

For purposes of this subsection "employees" includes Washington management service (WMS) employees who have held permanent status in Washington general service.

(2) All employees who meet the criteria in subsection (1) of this section are eligible to be on the statewide layoff list for classes in which they held permanent status at the same or lower salary range and lower classes in the same class series. Permanent status is not required in the lower classes in the same class series. General government employees have statewide layoff list rights to classes in which they held permanent status which are at a higher salary range and lower classes in the same class series. Higher education employees do not have access to the statewide layoff list for higher level classes unless the employer's layoff procedure allows.

(3) WMS employees only have layoff list rights to classes in which the highest step of the salary range is equal to or below the WMS salary at the time of layoff or notification of layoff, or at the time of demotion.

(4) General government employees have layoff list rights to all classifications the employee has held permanent status in regardless of any breaks in state service.

(5) Higher education employers must address in their layoff procedure whether or not employees will be given layoff list rights to classes they held permanent status in prior to any breaks in state service.

(6) Employees who have been demoted for cause from a class are **not** eligible to be on the statewide layoff list for that class.

[Statutory Authority: Chapter 41.06 RCW. 10-11-068, § 357-46-080, filed 5/14/10, effective 6/15/10; 09-17-063, § 357-46-080, filed 8/13/09, effective 9/16/09; 09-11-063, § 357-46-080, filed 5/14/09, effective 6/16/09; 04-18-114, § 357-46-080, filed 9/1/04, effective 7/1/05.]

WAC 357-46-085 How are eligible candidates certified from the internal and statewide layoff list? Certification from the employer's internal layoff list and the statewide layoff list must be made in accordance with WAC 357-16-130.

[Statutory Authority: Chapter 41.06 RCW. 04-18-114, § 357-46-085, filed 9/1/04, effective 7/1/05.]

WAC 357-46-090 What is the purpose of the general government transition pool program? The purpose of the transition pool program is to minimize the effects of staff reductions on general government employees while meeting needs of general government employers to fill vacant positions. The program does not apply to higher education employees.

[Statutory Authority: Chapter 41.06 RCW. 04-18-114, § 357-46-090, filed 9/1/04, effective 7/1/05.]

WAC 357-46-095 Who is eligible for the general government transition pool program? The following individuals are eligible to participate in the general government transition pool program:

(1) All general government permanent employees separated by layoff or notified by their employer that they are at risk of layoff. This includes Washington management service permanent employees who are separated by layoff or notified by their employer that they are at risk of layoff;

(2) All general government permanent employees who are reverted and not returned to a permanent position in the class in which the employee last held permanent status;

(3) Employees who are eligible to participate in the return-to-work initiative program in accordance with chapter 357-19 WAC;

(4) Permanent Washington management service employees who accept a position in Washington general service and are being voluntarily or involuntarily reverted during the trial service period;

(5) Former permanent classified general government employees who have submitted a written request for reemployment within two (2) years of disability separation and who have met the reemployment requirements of WAC 357-19-475;

(6) General government employee business unit members whose contract has expired or been terminated; and

(7) Permanent Washington management service employees who accept acting appointments and who do not return on the agreed upon date in accordance with WAC 357-58-275.

[Statutory Authority: Chapter 41.06 RCW. 09-11-063, § 357-46-095, filed 5/14/09, effective 6/16/09; 05-21-058, § 357-46-095, filed 10/13/05, effective 11/15/05; 05-12-077, § 357-46-095, filed 5/27/05, effective 7/1/05; 04-18-114, § 357-46-095, filed 9/1/04, effective 7/1/05.]

WAC 357-46-100 Who administers and establishes operating procedures for the general government transition pool program? The department of enterprise services administers the general government transition pool program. The director develops and implements appropriate operating procedures to facilitate the program. The operating procedures include the following requirements:

(1) General government employers must provide for consideration of transition pool candidates when a certified pool contains eligible candidates other than candidates from the employer's internal or statewide layoff list or the employer's internal promotional eligibles.

(11/10/11)

(2) Transition pool candidates must satisfy the competency and other position requirements to be considered for a position.

[Statutory Authority: Chapter 41.06 RCW. 11-23-054, § 357-46-100, filed 11/10/11, effective 12/13/11; 07-03-053, § 357-46-100, filed 1/12/07, effective 2/15/07; 06-03-073, § 357-46-100, filed 1/12/06, effective 2/13/06; 05-19-005, § 357-46-100, filed 9/8/05, effective 10/10/05; 04-18-114, § 357-46-100, filed 9/1/04, effective 7/1/05.]

WAC 357-46-105 Do employees have the right to appeal actions taken within the transition pool program? Employees participating in the transition pool program do not have the right of appeal within this program.

[Statutory Authority: Chapter 41.06 RCW. 04-18-114, § 357-46-105, filed 9/1/04, effective 7/1/05.]

WAC 357-46-110 Must employees who are appointed to a position through the layoff process serve any type of review period? An employer may require a six-month transition review period when an employee is appointed to a position as a layoff option or is appointed from the internal or statewide layoff list or the general government transition pool. (See WAC 357-46-115 for exceptions to this rule.) The transition review period may be extended for leave without pay in accordance with WAC 357-31-355.

[Statutory Authority: Chapter 41.06 RCW. 09-11-063, § 357-46-110, filed 5/14/09, effective 6/16/09; 05-12-077, § 357-46-110, filed 5/27/05, effective 7/1/05; 04-18-114, § 357-46-110, filed 9/1/04, effective 7/1/05.]

WAC 357-46-115 When is a transition review period not allowed? Employers are not allowed to require a transition review period when an employee is being appointed to a comparable position with the same job duties as the position the employee held permanent status in prior to layoff. The employer determines the comparability of the position.

[Statutory Authority: Chapter 41.06 RCW. 04-18-114, § 357-46-115, filed 9/1/04, effective 7/1/05.]

WAC 357-46-120 What are the employer's obligations when the employer requires a transition review period? (1) When an employer requires a transition review period, the employer must provide the employee with written notice of the transition review period.

(2) During the transition review period, the employer must provide the employee with instruction and/or training in the duties of the new position.

(3) For purposes of this rule, written notice may be provided using alternative methods such as e-mail, campus mail, the state mail service, or commercial parcel delivery in accordance with WAC 357-04-105.

[Statutory Authority: Chapter 41.06 RCW. 09-11-063, § 357-46-120, filed 5/14/09, effective 6/16/09; 04-18-114, § 357-46-120, filed 9/1/04, effective 7/1/05.]

WAC 357-46-125 What happens if an employee does not complete the transition review period? (1) The employer may involuntarily separate an employee from a position during the transition review period or the employee may choose to voluntarily separate from a position. The employer must give seven calendar days' written notice to an employee who is being separated during a transition review

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period. If during the last seven days of the transition review period, the employee commits an egregious act which warrants separation, the employer may immediately separate the employee without seven calendar days' notice. An employee may voluntarily separate a maximum of three times as a result of a single layoff action.

(2) When an employee who is serving a transition review period following appointment to a position as a layoff option is separated from the position during the transition review period, the following applies:

(a) The employee must be provided with a layoff option in accordance with WAC 357-46-035 if the employer involuntarily separates the employee; or

(b) The employee's name is placed on any layoff lists for which the employee is eligible if the employee voluntarily separates.

(3) When an employee who is serving a transition review period following appointment from a layoff list or the general government transition pool is separated from the position during a transition review period, the employee's name is reinstated on any layoff list from which it was removed at the time of placement in the position. The employee remains on the list until the employee's initial eligibility expires or they are rehired. The time served during the transition review period does not extend the period of eligibility for a layoff list or the transition pool.

(4) Separation during the transition review period is not subject to appeal.

[Statutory Authority: Chapter 41.06 RCW. 10-11-070, § 357-46-125, filed 5/14/10, effective 6/15/10; 05-12-078, § 357-46-125, filed 5/27/05, effective 7/1/05; 04-18-114, § 357-46-125, filed 9/1/04, effective 7/1/05.]

WAC 357-46-130 How long is an individual eligible to have his/her name on an employer's internal and statewide layoff list? An individual is eligible to have his/her name on an employer's internal and statewide layoff lists for two years from the effective date of the qualifying action.

[Statutory Authority: Chapter 41.06 RCW. 04-18-114, § 357-46-130, filed 9/1/04, effective 7/1/05.]

WAC 357-46-135 What causes an individual's name to be removed from a layoff list? (1) An individual's name **must** be removed from an internal layoff list or statewide layoff list at the request of the individual or upon an employee's retirement, resignation, expiration of eligibility or dismissal from the employer.

(2) An individual's name **may** be removed from the internal and/or statewide layoff list for a class when:

(a) The individual is appointed to a permanent position in the class. The individual may also be removed from the internal and/or statewide layoff list for any classes with a lower salary range maximum in that class series.

(b) The individual is appointed to a permanent position in a class with a higher salary range maximum in a different class series.

(c) The individual has been certified from the layoff list and waives consideration for a position in the class three times.

(d) The employer or the director's office determines good and sufficient reason exists.

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[Statutory Authority: Chapter 41.06 RCW. 11-23-054, § 357-46-135, filed 11/10/11, effective 12/13/11; 09-11-063, § 357-46-135, filed 5/14/09, effective 6/16/09; 06-15-064, § 357-46-135, filed 7/13/06, effective 8/14/06; 06-03-071, § 357-46-135, filed 1/12/06, effective 2/13/06; 04-18-114, § 357-46-135, filed 9/1/04, effective 7/1/05.]

WAC 357-46-140 What is the notice requirement when an individual's name has been removed from an internal or statewide layoff list? An individual whose name has been removed from an internal or statewide layoff list in accordance with WAC 357-46-135 (2)(b), (c), and (d) must be notified in writing at the time of removal. The notification must provide the specific reason for the removal and inform the individual of the right to request a review of the removal under the provisions of WAC 357-46-145. Only individuals who have had their name removed under the provisions of WAC 357-46-135 (2)(b), (c), and (d) have the right to request a review of the removal.

For purposes of this rule, written notice may be provided using alternative methods such as e-mail, campus mail, the state mail service, or commercial parcel delivery in accordance with WAC 357-04-105.

[Statutory Authority: Chapter 41.06 RCW. 06-03-071, § 357-46-140, filed 1/12/06, effective 2/13/06; 05-01-184, § 357-46-140, filed 12/21/04, effective 7/1/05.]

WAC 357-46-145 To whom and by when must an individual request a review of the removal from an internal or statewide layoff list? (1) Requests for review of removal from a layoff list must be made to the employer when:

(a) The removal is based on the employer's determination that good and sufficient reason exists under the provisions of WAC 357-46-135 (2)(d); or

(b) The employer is responsible for maintaining the layoff list and removed the individual for a reason listed in WAC 357-46-135 (2)(b) or (c).

If the individual is not in agreement with the results of the employer's review, he/she may request a director's review of the removal.

(2) Requests for review of removal from a layoff list must be made in accordance with WAC 357-49-010 when:

(a) The removal is based on the determination by the director's office that good and sufficient reason exists under the provisions of WAC 357-46-135 (2)(d);

(b) The department of enterprise services is responsible for maintaining the layoff list and removed the individual for a reason listed in WAC 357-46-135 (2)(a), (b) or (c); or

(c) The individual is not in agreement with the results of the employer's review of the removal.

(3) The request for a review must be received at the employer's office within twenty calendar days or the director's office within thirty calendar days following notice of the action for which a review is requested.

[Statutory Authority: Chapter 41.06 RCW. 11-23-054, § 357-46-145, filed 11/10/11, effective 12/13/11; 06-03-071, § 357-46-145, filed 1/12/06, effective 2/13/06; 05-16-042, § 357-46-145, filed 7/27/05, effective 9/1/05; 04-18-114, § 357-46-145, filed 9/1/04, effective 7/1/05.]

WAC 357-46-147 What procedure must an employer use to review the removal of an individual from an internal or statewide layoff list under the provisions of WAC

357-46-140? Each employer must develop a review procedure that specifies the procedure the employer will use to review the removal of an individual's name from an internal or statewide layoff list. The procedure must minimally specify that the review will be conducted by a representative of the employer that was not involved in the action under review.

[Statutory Authority: Chapter 41.06 RCW. 05-01-189, § 357-46-147, filed 12/21/04, effective 7/1/05.]

WAC 357-46-150 If an employee wants to resign from employment, how much notice should the employee give the employer? An employee who intends to resign from state service should provide his/her resignation to the appointing authority or employing official at least fifteen calendar days before the effective date of the resignation.

[Statutory Authority: Chapter 41.06 RCW. 04-18-114, § 357-46-150, filed 9/1/04, effective 7/1/05.]

WAC 357-46-155 Can an employee withdraw a resignation? An appointing authority or employing official may permit withdrawal of a resignation at any time prior to the effective date.

[Statutory Authority: Chapter 41.06 RCW. 04-18-114, § 357-46-155, filed 9/1/04, effective 7/1/05.]

WAC 357-46-160 What is a disability separation? A disability separation is an action taken to separate an employee from service when the employer determines that the employee is unable to perform the essential functions of the employee's position or class with or without reasonable accommodation due to mental, sensory, or physical incapacity. Disability separation is not a disciplinary action.

[Statutory Authority: Chapter 41.06 RCW. 04-18-114, § 357-46-160, filed 9/1/04, effective 7/1/05.]

WAC 357-46-165 When may an employer separate an employee in accordance with WAC 357-46-160? An employer may separate an employee due to disability when any of the following circumstances exist:

- (1) The employer is unable to reasonably accommodate the employee.
- (2) The employer has medical documentation of the employee's inability to work in any capacity.
- (3) The employee requests separation due to disability and the employer has medical information which documents that the employee cannot perform the essential functions of the employee's position or class.

[Statutory Authority: Chapter 41.06 RCW. 04-18-114, § 357-46-165, filed 9/1/04, effective 7/1/05.]

WAC 357-46-170 What is the notice requirement before separating an employee due to disability under the provisions of WAC 357-46-160? Before separating an employee from employment under the provisions of WAC 357-46-160, the employer must provide at least seven calendar days' written notice to the employee. For permanent employees, the notice must include information on how to apply for reemployment as provided in WAC 357-19-475.

(11/10/11)

[Statutory Authority: Chapter 41.06 RCW. 05-19-008, § 357-46-170, filed 9/8/05, effective 10/10/05; 04-18-114, § 357-46-170, filed 9/1/04, effective 7/1/05.]

WAC 357-46-175 Can an employee appeal a disability separation? A permanent employee who has been separated due to disability may appeal the separation as provided in chapter 357-52 WAC unless separation is at the employee's request.

[Statutory Authority: Chapter 41.06 RCW. 04-18-114, § 357-46-175, filed 9/1/04, effective 7/1/05.]

WAC 357-46-180 Can an employee be separated during the probationary period? An appointing authority may separate a probationary employee who has not completed his/her probationary period.

[Statutory Authority: Chapter 41.06 RCW. 04-18-114, § 357-46-180, filed 9/1/04, effective 7/1/05.]

WAC 357-46-185 What are the notice requirements before separating a probationary employee? A probationary employee must receive a minimum of one calendar day's written notice before being separated.

[Statutory Authority: Chapter 41.06 RCW. 04-18-114, § 357-46-185, filed 9/1/04, effective 7/1/05.]

WAC 357-46-190 Can an individual appeal being separated during the probationary period? An individual separated during a probationary period does not have the right to appeal the separation.

[Statutory Authority: Chapter 41.06 RCW. 04-18-114, § 357-46-190, filed 9/1/04, effective 7/1/05.]

WAC 357-46-195 Can an employer separate an employee for nondisciplinary reasons? An employer may separate a permanent employee from a position or from employment for nondisciplinary reasons such as failure to comply with the conditions of employment which may or may not have existed at the time of initial appointment or failure to authorize or to pass a background check required by the position.

The employer may consider other employment options such as transfer or voluntary demotion in lieu of separation.

[Statutory Authority: Chapter 41.06 RCW. 04-18-114, § 357-46-195, filed 9/1/04, effective 7/1/05.]

WAC 357-46-200 What is the notice requirement before separating an employee for nondisciplinary reasons under the provisions of WAC 357-46-195? (1) Before separating an employee from employment under the provisions of WAC 357-46-195, the employer must provide at least fifteen calendar days' written notice to the employee and state the reason for separation. If, within the notice period, the employee satisfactorily demonstrates why the separation should not occur, the appointing authority may rescind the separation notice.

(2) The employer should consider reassignment during the notice period if continued employment in the position represents a liability.

(3) This section does not apply to separations due to disability. WAC 357-46-170 specifies the notice requirement when separating an employee due to disability.

[Statutory Authority: Chapter 41.06 RCW. 05-19-008, § 357-46-200, filed 9/8/05, effective 10/10/05; 04-18-114, § 357-46-200, filed 9/1/04, effective 7/1/05.]

WAC 357-46-205 Can an employee appeal being separated for nondisciplinary reasons in accordance with WAC 357-46-195 and 357-46-200? A permanent employee separated under WAC 357-46-195 may appeal as provided in chapter 357-52 WAC.

[Statutory Authority: Chapter 41.06 RCW. 04-18-114, § 357-46-205, filed 9/1/04, effective 7/1/05.]

WAC 357-46-210 When can an employer separate a permanent employee for unauthorized absence? An employer may separate a permanent employee who has been absent without authorized leave for a period of three consecutive working days.

[Statutory Authority: Chapter 41.06 RCW. 04-18-114, § 357-46-210, filed 9/1/04, effective 7/1/05.]

WAC 357-46-215 How is an employee who is being separated for unauthorized absence notified? Following an unauthorized absence of at least three consecutive working days, the employer may separate an employee by sending a separation notice to the employee by personal service or by United States mail to the last known address of the employee. For a permanent employee, the separation notice must inform the employee of the ability to petition the employer for reinstatement and the right to appeal the separation to the board as provided in chapter 357-52 WAC.

[Statutory Authority: Chapter 41.06 RCW. 05-19-007, § 357-46-215, filed 9/8/05, effective 10/10/05; 04-18-114, § 357-46-215, filed 9/1/04, effective 7/1/05.]

WAC 357-46-220 How can a permanent employee separated for unauthorized absence petition for reinstatement? A permanent employee separated for unauthorized absence may petition the appointing authority in writing to consider reinstatement. The employee must provide proof that the absence was involuntary or unavoidable. The employer must receive the employee's petition within seven calendar days of personal service or deposit in the United States mail of the separation notice.

[Statutory Authority: Chapter 41.06 RCW. 05-19-007, § 357-46-220, filed 9/8/05, effective 10/10/05; 04-18-114, § 357-46-220, filed 9/1/04, effective 7/1/05.]

WAC 357-46-222 Must the employer respond to an employee's petition for reinstatement within a specific time frame? The employer must respond in writing to an employee's petition for reinstatement as provided in WAC 357-46-220 within seven calendar days of receipt of the employee's petition.

[Statutory Authority: Chapter 41.06 RCW. 05-19-007, § 357-46-222, filed 9/8/05, effective 10/10/05.]

WAC 357-46-225 Can a permanent employee appeal if the employer does not reinstate the employee under

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WAC 357-46-220? Within thirty calendar days of the effective date of the separation, a permanent employee may appeal the separation to the board. Petitioning the employer for reinstatement does not lengthen the thirty calendar days within which the employee may appeal to the board. Appeals may not be based on information other than that shared with the employer at the time of the request for reinstatement.

[Statutory Authority: Chapter 41.06 RCW. 05-19-007, § 357-46-225, filed 9/8/05, effective 10/10/05; 04-18-114, § 357-46-225, filed 9/1/04, effective 7/1/05.]