

WSR 21-10-018
PROPOSED RULES
OFFICE OF
FINANCIAL MANAGEMENT
[Filed April 23, 2021, 1:32 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-16-028.

Title of Rule and Other Identifying Information: WAC 357-01-210 Nonpermanent appointment, 357-04-015 Who is not covered by civil service rules?, 357-04-020 May the director exempt other positions from civil service?, 357-04-025 What rights does a classified employee have when the position the employee holds is exempted from the civil service rules?, 357-04-030 What right does an employee have to return to the classified service from exempt service?, 357-04-035 Who defines exempt status for student employees, temporary employees, and part-time professional consultants for higher education employers?, 357-04-045 Which temporary employees of higher education employers are exempt from civil service rules?, 357-04-046 May a higher education employer make subsequent appointments for temporary employees who have exhausted their temporary appointment as identified in WAC 357-04-045?, 357-04-055 Who defines exempt status for student or temporary employees; part-time professional consultants; and inmates for general government employers and what types of positions are exempt?, 357-19-360 For what reasons may an employer make nonpermanent appointments?, 357-19-365 When is it inappropriate for an employer to fill a position with a nonpermanent appointment to address a short-term immediate workload peak or other short term needs?, 357-19-370 How long may a nonpermanent appointment last?, 357-19-373 What notification must an employer give a nonpermanent appointee?, 357-19-376 May an employee receive consecutive higher education nonpermanent appointments?, 357-19-377 What provisions apply to nonpermanent appointments?, 357-19-385 May a permanent employee accept a nonpermanent appointment?, 357-19-388 What notices must employees and their employers provide each other when an employee accepts a nonpermanent appointment?, 357-19-400 May an employer convert a nonpermanent appointment to a probationary or trial service appointment?, 357-19-420 What are the appeal rights of nonpermanent employees?, 357-19-425 How does a nonpermanent employee request remedial action?, 357-19-430 When may the director take remedial action for nonpermanent employees and what does remedial action include?, 357-19-435 For what reasons may a higher education employer appoint an individual to a temporary appointment?, 357-19-440 What provisions govern higher education temporary appointments?, and 357-19-450 When may the director take remedial action for individuals in higher education temporary appointments and what does remedial action include?

Hearing Location(s): On June 10, 2021, at 8:30 a.m., at the office of financial management (OFM), audio conference only, Dial-in (888) 285-8919, Enter pin 8101730, Code (if asked) 415.

Date of Intended Adoption: June 17, 2021.

Submit Written Comments to: Brandy Chinn, OFM, P.O. Box 47500, Olympia, WA 98501, email Brandy.Chinn@ofm.wa.gov, fax 360-586-4694, by June 3, 2021.

Assistance for Persons with Disabilities: OFM, TTY 711 or 1-800-833-6384, by June 3, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Aligns the civil service rules with

amendments to RCW 41.06.070 by removing part-time employees from being exempt from the civil service; only temporary employees as defined by OFM are now exempt from civil service laws. The proposed rules also redefine temporary higher education appointments and expand the current general government nonpermanent rules to institutions of higher education.

Reasons Supporting Proposal: To align Title 357 WAC with the requirements in RCW 41.06.070.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Statute Being Implemented: RCW 41.06.070.

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

Name of Proponent: [Not supplied by agency], governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Brandy Chinn, 128 10th Avenue, Olympia, WA 98501, 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.

April 23, 2021

Roselyn Marcus

Assistant Director of
Legal and Legislative Affairs

OTS-2094.1

AMENDATORY SECTION (Amending WSR 05-01-204, filed 12/21/04, effective 7/1/05)

WAC 357-01-210 Nonpermanent appointment. An appointment made by (~~a general government~~) an employer under the provisions of WAC 357-19-360.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-01-204, § 357-01-210, filed 12/21/04, effective 7/1/05.]

OTS-2095.5

AMENDATORY SECTION (Amending WSR 05-01-203, filed 12/21/04, effective 7/1/05)

WAC 357-04-015 Who is not covered by civil service rules? The civil service rules do not apply to positions specifically exempted in individual agency statutes, chapter 41.06 RCW, and to the following:

(1) Washington state patrol trooper cadets in training for commissioning as troopers in the Washington state patrol;

(2) The executive director, (~~his/her~~) the executive director's confidential secretary, assistant directors, and professional education employees of the state board for community and technical colleges; and

(3) Inmate, student, (~~part-time,~~) or temporary employees, and part-time professional consultants, as defined by the (~~Washington personnel resources board~~) director in WAC 357-04-040, 357-04-045, 357-04-050, and 357-04-055.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-01-203, § 357-04-015, filed 12/21/04, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 05-01-203, filed 12/21/04, effective 7/1/05)

WAC 357-04-020 May the director exempt other positions from civil service? The director may provide for further exemptions for general government positions involving substantial responsibility for formulating basic agency or executive policy or involving directing and controlling program operations of an agency or a major administrative division of an agency in accordance with the provisions and procedures of RCW 41.06.070(~~(+3)~~).

[Statutory Authority: Chapter 41.06 RCW. WSR 05-01-203, § 357-04-020, filed 12/21/04, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 05-01-203, filed 12/21/04, effective 7/1/05)

WAC 357-04-025 What rights does a classified employee have when the position (~~he/she~~) the employee holds is exempted from the civil service rules? As required by RCW 41.06.070(~~(+3)~~) and 41.06.170, an employee holding a classified position has the following rights if the position is exempted from the application of the civil service rules:

(1) If the employee previously held permanent status in another classified position, the employee has the right to return to the highest class of position previously held, or to a position of similar nature and salary in accordance with WAC 357-19-220.

(2) The employee may appeal the exemption of the position in accordance with chapter 357-52 WAC.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-01-203, § 357-04-025, filed 12/21/04, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 06-15-067, filed 7/13/06, effective 8/14/06)

WAC 357-04-030 What right does an employee have to return to the classified service from exempt service? As required by RCW 41.06.070(~~((3))~~), any employee having permanent status in a classified position who accepts an appointment in an exempt position has the right to return to classified service in accordance with WAC 357-19-195, 357-19-200, and 357-19-205. As long as the employee was not terminated from the exempt position for gross misconduct or malfeasance, the employee has the right to return to the highest class of position in which ~~((he/she))~~ the employee previously held permanent status or to a position of similar nature and salary.

[Statutory Authority: Chapter 41.06 RCW. WSR 06-15-067, § 357-04-030, filed 7/13/06, effective 8/14/06; WSR 05-01-203, § 357-04-030, filed 12/21/04, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 04-15-016, filed 7/8/04, effective 7/1/05)

WAC 357-04-035 Who defines exempt status for student(~~(, part-time, or))~~ employees, temporary employees, and part-time professional consultants for higher education employers? In accordance with RCW 41.06.070, the ~~((board))~~ director defines exemptions for student(~~(, part-time or))~~ employees, temporary employees, and part-time professional consultants. Higher education employers must use the definitions in WAC 357-04-040, 357-04-045, and 357-04-050 as the criteria for identifying positions in these categories of employment that are exempt from civil service rules.

[Statutory Authority: Chapter 41.06 RCW. WSR 04-15-016, § 357-04-035, filed 7/8/04, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 10-11-021, filed 5/10/10, effective 6/10/10)

WAC 357-04-045 Which ~~((part-time or))~~ temporary employees of higher education employers are exempt from civil service rules? ~~((Persons employed to work one thousand fifty hours or less in a twelve consecutive month period from the original date of hire or October 1, 1989, whichever is later, are exempt from civil service rules.))~~ (1) Temporary higher education employees are exempt from civil service rules under the following circumstances:

- (a) The employee is employed twelve consecutive months or less;
- (b) The employee is employed for one thousand fifty hours or less in that same twelve consecutive month period which begins from the original date of hire or January 1, 2022, whichever is later; and
- (c) The employee is limited to one appointment only with the same higher education employer that meets the criteria in (a) and (b) of this subsection.

(2) Temporary appointments under the provisions of this section are subject to remedial action in accordance with WAC 357-19-450.

~~(3) Temporary employees who are ((either)) exempt under ((this)) subsection ((or exceptions authorized under WAC 357-19-440,)) (1) of this section and who work more than three hundred fifty hours in a twelve consecutive month period from the original date of hire or January 1, 2004, whichever is later, may be included in an appropriate bargaining unit for purposes of collective bargaining, as determined by the public employment relations commission. Overtime and time worked as a student employee under the provisions of WAC 357-04-040 are not counted in the three hundred fifty hours. For purposes of counting the three hundred fifty hours, the twelve-month period will begin on the employee's original date of hire or January 1, 2004, whichever is later. ((The next twelve-month period will repeat accordingly. For example:~~

~~The employee's original date of hire is June 1, 2009. The twelve-month period would be June 1, 2009, through May 31, 2010. The next twelve-month period would be June 1, 2010, through May 31, 2011. This pattern will continue.~~

~~Once the employee works at least three hundred fifty hours in a job classification in the collective bargaining unit the employee remains in that collective bargaining unit until the end of the first twelve-month period (as described in this section) in which the employee does not work at least three hundred fifty hours in a job classification that is in the collective bargaining unit. An employee who has not worked sufficient hours in a bargaining unit job classification to remain in the bargaining unit, is excluded from the bargaining unit until the employee again works at least three hundred fifty hours in a bargaining unit job classification in a twelve-month period (as described in this section).~~

~~Temporary appointment under the provisions of this section may be subject to remedial action in accordance with WAC 357-19-450, if the number of hours worked exceeds one thousand fifty hours in a twelve consecutive month period from the original date of hire or October 1, 1989, whichever is later. Overtime and time worked as a student employee under the provisions of WAC 357-04-040 are not counted in the one thousand fifty hours. For purposes of counting the one thousand fifty hours, the twelve-month period will begin on the employee's original date of hire or October 1, 1989, whichever is later. The next twelve-month period will repeat accordingly. For example:~~

~~The employee's original date of hire is June 1, 2009. The twelve-month period would be June 1, 2009, through May 31, 2010. The next twelve-month period would be June 1, 2010, through May 31, 2011. This pattern will continue.))~~

[Statutory Authority: RCW 41.06.150. WSR 10-11-021, § 357-04-045, filed 5/10/10, effective 6/10/10. Statutory Authority: Chapter 41.06 RCW. WSR 04-15-016, § 357-04-045, filed 7/8/04, effective 7/1/05.]

NEW SECTION

WAC 357-04-046 May a higher education employer make subsequent appointments for temporary employees who have exhausted their temporary appointment as identified in WAC 357-04-045? Higher education employers may hire employees who have exhausted their temporary appointment as identified in WAC 357-04-045 if the employee is appointed as a

nonpermanent or permanent employee in accordance with chapter 357-19 WAC.

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AMENDATORY SECTION (Amending WSR 04-15-016, filed 7/8/04, effective 7/1/05)

WAC 357-04-055 Who defines exempt status for student(~~(, part-time,)~~) or temporary employees; part-time professional consultants; and inmates for general government employers and what types of positions are exempt? In accordance with RCW 41.06.070, the (~~board~~) director defines exemptions for student(~~(, part-time)~~) or temporary employees; part-time professional consultants; and inmates. The following types of general government employees are exempt from civil service rules:

- (1) Part-time local health officers;
- (2) (~~Persons employed on a part-time, or temporary basis for medical, nursing or other professional service and who are not engaged in the performance of administrative duties;~~)
- (3) ~~Part-time or~~) Temporary employees who are enrolled as full-time students in recognized educational institutions and whose employment is largely to provide a training opportunity, and all temporary employees not in federal grant-in-aid programs;
- (~~4~~) (3) Patient and resident help in general government residential facilities;
- (~~5~~) (4) Inmate help in general government correctional facilities; and
- (~~6~~) (5) Skilled and unskilled labor employed temporarily on force account; construction and maintenance projects; or employed on temporary seasonal single phases of agricultural production or harvesting; or as determined by the director to be equivalent.

[Statutory Authority: Chapter 41.06 RCW. WSR 04-15-016, § 357-04-055, filed 7/8/04, effective 7/1/05.]

OTS-2096.3

AMENDATORY SECTION (Amending WSR 05-01-206, filed 12/21/04, effective 7/1/05)

WAC 357-19-360 For what reasons may (~~a general government~~) an employer make nonpermanent appointments? (~~A general government~~) An employer may fill a position with a nonpermanent appointment when any of the following conditions exist:

- (1) A permanent employee is absent from the position;
- (2) The (~~agency~~) employer is recruiting to fill a vacant position with a permanent appointment;
- (3) The (~~agency~~) employer needs to address a short-term immediate workload peak or other short-term needs;

(4) The ((agency)) employer is not filling a position with a permanent appointment due to the impending or actual layoff of a permanent employee(s); or

(5) The nature of the work is sporadic and does not fit a particular pattern.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-01-206, § 357-19-360, filed 12/21/04, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 05-01-206, filed 12/21/04, effective 7/1/05)

WAC 357-19-365 When is it inappropriate for ((a general government)) an employer to fill a position with a nonpermanent appointment to address a short-term immediate workload peak or other short-term needs? ((General government)) Employers must not fill a position with a nonpermanent appointment under the provisions of WAC 357-19-360(3) when the work of the position is scheduled, ongoing and permanent in nature. If at any time during a nonpermanent appointment, a short-term workload peak or other short term need becomes ongoing and permanent in nature, the employer must take action to fill the position on a permanent basis.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-01-206, § 357-19-365, filed 12/21/04, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 05-01-206, filed 12/21/04, effective 7/1/05)

WAC 357-19-370 How long ((can a general government)) may a non-permanent appointment last? (1) ((Agencies)) Employers are encouraged to limit the duration of a nonpermanent appointment to twelve months from the appointment date.

(2) A nonpermanent appointment for a reason specified in WAC 357-19-360 (1) through (4) **must not** exceed twenty-four months unless the director has approved an extension of the appointment due to the continued absence of a permanent employee. An employer may choose to not count time spent in formal training programs towards the twenty-four month limit. On-the-job training is not considered a formal training program for purposes of this rule.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-01-206, § 357-19-370, filed 12/21/04, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 05-01-206, filed 12/21/04, effective 7/1/05)

WAC 357-19-373 What notification must ((a general government)) an employer give a nonpermanent appointee? (1) Upon appointment, all nonpermanent appointees must be notified in writing of the conditions

of their appointment and/or upon any subsequent change to the conditions of their appointment.

(2) The written notification must at a minimum contain the following information:

(a) The reason for the nonpermanent appointment in accordance with WAC 357-19-360;

(b) The hours of work and the base salary;

(c) The anticipated short-term duration or sporadic nature of the appointment;

(d) A statement regarding the receipt or nonreceipt of benefits. If the employee is to receive benefits, the statement shall include which benefits are to be received; and

(e) The right to request remedial action as provided in WAC 357-19-425.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-01-206, § 357-19-373, filed 12/21/04, effective 7/1/05.]

NEW SECTION

WAC 357-19-376 May an employee receive consecutive higher education nonpermanent appointments? Individuals may receive consecutive nonpermanent appointments as long as any subsequent appointment is to a different position.

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AMENDATORY SECTION (Amending WSR 05-01-206, filed 12/21/04, effective 7/1/05)

WAC 357-19-377 What provisions apply to ((general government)) nonpermanent appointments? ((General government)) Nonpermanent appointments are subject to the following provisions:

(1) Nonpermanent appointees must meet the competencies and other requirements of the position to which they are appointed.

(2) Nonpermanent appointments may be filled on a noncompetitive basis which means the employer is not required to comply with the rules on recruitment, assessment((7)) and certification as provided in chapter 357-16 WAC.

(3) Nonpermanent appointments may be filled using the competitive process specified in chapter 357-16 WAC as long as the eligible applicant indicates a willingness to accept a nonpermanent appointment.

(4) ((Agencies)) Employers may underfill a position with a nonpermanent appointment.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-01-206, § 357-19-377, filed 12/21/04, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 05-01-206, filed 12/21/04, effective 7/1/05)

WAC 357-19-385 ((Can)) May a permanent employee accept a nonpermanent appointment? A permanent employee may accept a ((general government)) nonpermanent appointment.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-01-206, § 357-19-385, filed 12/21/04, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 05-12-077, filed 5/27/05, effective 7/1/05)

WAC 357-19-388 What notices must employees and their employers provide each other when an employee accepts a nonpermanent appointment? Employees who accept a nonpermanent appointment must give their current employers at least fourteen calendar days' notice before moving to a nonpermanent appointment. The current ((agency)) employer and employee may agree to waive or shorten the notice period.

When the current employer receives the employee's notice, the employee's permanent ((agency)) employer must notify the employee in writing of ((his/her)) the employee's return right at the conclusion of the nonpermanent appointment.

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

[Statutory Authority: Chapter 41.06 RCW. WSR 05-12-077, § 357-19-388, filed 5/27/05, effective 7/1/05; WSR 05-01-206, § 357-19-388, filed 12/21/04, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 06-15-066, filed 7/13/06, effective 8/14/06)

WAC 357-19-400 ((Can the agency)) May an employer convert a ((general government)) nonpermanent appointment to a probationary or trial service appointment? (1) When an ((agency)) employer uses a competitive process to make a nonpermanent appointment to fill a position in the absence of a permanent employee or fill a position nonpermanently due to the impending or actual layoff of a permanent employee(s), the ((agency)) employer may change the status of the appointment to probationary or if the employee held permanent status prior to the nonpermanent appointment to trial service if:

(a) The permanent employee does not return to the position or the layoff action has been implemented; and

(b) The ((agency)) employer needs to fill the position permanently.

(2) At the discretion of the appointing authority, time spent in the nonpermanent appointment may count towards the probationary or trial service period for the permanent position.

[Statutory Authority: Chapter 41.06 RCW. WSR 06-15-066, § 357-19-400, filed 7/13/06, effective 8/14/06; WSR 05-01-206, § 357-19-400, filed 12/21/04, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 05-01-206, filed 12/21/04, effective 7/1/05)

WAC 357-19-420 What are the appeal rights of ((general government)) nonpermanent employees? Employees without permanent status appointed to ((general government)) nonpermanent appointments have no appeal rights with the exception of remedial action as provided in WAC 357-19-430.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-01-206, § 357-19-420, filed 12/21/04, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 05-01-206, filed 12/21/04, effective 7/1/05)

WAC 357-19-425 How does a ((general government)) nonpermanent employee request remedial action? Requests for remedial action by nonpermanent employees must be received in writing within thirty days as provided in chapter 357-49 WAC. Following a director's review of the remedial action request, an employee may file exceptions to the director's decision in accordance with chapter 357-52 WAC.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-01-206, § 357-19-425, filed 12/21/04, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 05-01-206, filed 12/21/04, effective 7/1/05)

WAC 357-19-430 When may the director take remedial action for ((general government)) nonpermanent employees and what does remedial action include? The director may take remedial action to confer permanent status, set base salary, and establish seniority when it is determined that the following conditions exist:

- (1) The employer has made an appointment that does not comply with rules on nonpermanent appointment; or
- (2) The duration of a nonpermanent appointment as defined in WAC 357-19-360 (1) through (4) has exceeded twenty-four months without director approval.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-01-206, § 357-19-430, filed 12/21/04, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 05-01-192, filed 12/21/04, effective 7/1/05)

WAC 357-19-435 For what reasons may a higher education employer ((make)) appoint an individual to a temporary appointment? A higher education employer may ((make)) appoint an individual to a temporary appointment for the following reasons:

(1) The number of hours to be worked by the individual will not exceed one thousand fifty hours in ((any)) a twelve consecutive month period from the original date of hire or ((October 1, 1989)) January 1, 2022, whichever is later, in accordance with WAC 357-04-045; or

(2) The employing official formally assigns a classified employee the duties and responsibilities of a higher-level class for a period of less than six consecutive months. In accordance with WAC 357-19-441(2), temporary appointments under this subsection are not exempt from civil service rules.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-01-192, § 357-19-435, filed 12/21/04, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 05-01-192, filed 12/21/04, effective 7/1/05)

WAC 357-19-440 What provisions govern higher education temporary appointments? (1) Temporary appointments may be made without regard to rules on recruitment, assessment((r)) and certification as provided in chapter 357-16 WAC.

(2) Each higher education employer must develop for director approval a procedure which indicates the employer's system for controlling and monitoring ((exempt part-time and)) temporary positions as identified in WAC 357-04-045. The procedure must include a mechanism to access and report hours worked by an individual temporary employee.

(3) ((A higher education employer may petition the director in writing for approval of exceptions to the one thousand fifty hours threshold as specified in WAC 357-19-435(1)).

((4)) No temporary appointment shall take the place of employees laid off under the provisions of WAC 357-46-010.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-01-192, § 357-19-440, filed 12/21/04, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 05-01-192, filed 12/21/04, effective 7/1/05)

WAC 357-19-450 When may the director take remedial action for individuals in higher education temporary appointments and what does remedial action include? For individuals in higher education temporary appointments under the provisions of WAC 357-19-435(1), the director may take remedial action to confer permanent status, set base salary((r)) and establish seniority when it is determined that the following conditions exist:

(1) The ((employee)) individual has worked in one or more temporary positions as identified in WAC 357-04-045 for more than one thou-

sand fifty hours in any twelve consecutive month period since the original hire date or (~~October 1, 1989~~) January 1, 2022, whichever is later. (Overtime and time worked as a student employee under the provisions of WAC 357-04-040 are not counted in the one thousand fifty hours.)

(2) The position or positions are subject to civil service.

(3) The employee has not taken part in any willful failure to comply with these rules.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-01-192, § 357-19-450, filed 12/21/04, effective 7/1/05.]