

**WSR 23-11-036
EMERGENCY RULES
OFFICE OF
FINANCIAL MANAGEMENT**

[Filed May 11, 2023, 9:34 a.m., effective May 11, 2023, 9:34 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Effective May 11, 2023, Governor Jay Inslee rescinded Directive #22-13.1, COVID-19 Vaccination Standards for State Employees, which directed a COVID-19 vaccination requirement as a condition of employment for state executive and small cabinet agencies. This rule making will remove provisions in Title 357 WAC which were filed in WSR 22-20-091, specifically removing the following provisions:

1. The requirement for nonrepresented state employees who are employed by general government executive and small cabinet agencies, or an eligible candidate for such position, to be fully vaccinated against COVID-19 as a condition of employment, or granted an exemption and approved for an accommodation due to a disability and/or medical condition or sincerely held religious belief that prevents them from receiving the COVID-19 vaccine;
2. The requirement for employers to separate an employee, or not hire an eligible candidate, if they cannot provide proof they are fully vaccinated and the employer cannot provide an accommodation; and
3. Language that made the above requirements optional for higher education employers, independent agencies, boards, councils, commissions, and separately elected officials.

Citation of Rules Affected by this Order: Repealing WAC 357-01-1745, 357-04-125, 357-16-197 and 357-19-413; and amending WAC 357-46-165, 357-46-195, and 357-58-190.

Statutory Authority for Adoption: RCW 41.06.133 and 41.06.150.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The World Health Organization ended the global emergency status for COVID-19 on May 5, 2023. The Biden Administration is ending the national COVID-19 public health emergency on May 11, 2023. To align Washington state policy with the ending of the national public health emergency, Governor Jay Inslee is rescinding Directive 22-13.1, effective May 11, 2023, which directed a requirement that employees of executive and small cabinet state agencies be fully vaccinated against COVID-19 as a condition of employment. Immediate repeal of the rules implementing Directive 22-13.1 is necessary to ensure that the civil service rules also align with the current public health policies of the World Health Organization, federal government, and state of Washington.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 3, Repealed 4.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 4.

Date Adopted: May 11, 2023.

Nathan Sherrard
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OTS-4587.1

AMENDATORY SECTION (Amending WSR 22-20-091, filed 10/4/22, effective 11/4/22)

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.

~~((4) The employer must separate an employee from employment for failure to comply with the COVID-19 vaccination requirements set forth in WAC 357-04-125 where an exemption was approved due to a disability and/or medical condition and the employer is unable to reasonably accommodate the employee.))~~

[Statutory Authority: RCW 41.06.133 and 41.06.150. WSR 22-20-091, § 357-46-165, filed 10/4/22, effective 11/4/22. Statutory Authority: Chapter 41.06 RCW. WSR 04-18-114, § 357-46-165, filed 9/1/04, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 22-20-091, filed 10/4/22, effective 11/4/22)

WAC 357-46-195 May 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.

~~((The employer must separate an employee from employment for non-disciplinary reasons for failure to comply with the COVID-19 vaccination requirements set forth in WAC 357-04-125.))~~

[Statutory Authority: RCW 41.06.133 and 41.06.150. WSR 22-20-091, § 357-46-195, filed 10/4/22, effective 11/4/22. Statutory Authority: Chapter 41.06 RCW. WSR 04-18-114, § 357-46-195, filed 9/1/04, effective 7/1/05.]

OTS-4588.1

AMENDATORY SECTION (Amending WSR 22-20-091, filed 10/4/22, effective 11/4/22)

WAC 357-58-190 What must be addressed in agency's WMS recruitment and selection policy and/or procedure? An agency's WMS recruitment and selection policy and/or procedure must:

- (1) Provide for the ability to consider any or all qualified candidates for hire, promotion, or internal movement;
- (2) Ensure that hiring decisions are fair, objective, and based on the evaluation of leadership and other job related competencies and characteristics required for successful job performance and performance management;
- (3) Support workforce diversity and affirmative action goals;
- (4) Consider the career development of the agency's employees and other state employees;
- (5) Consider making appointments from a veterans placement program;
- (6) Ensure that hiring decisions are not based on patronage or political affiliation;
- (7) Ensure compliance with state and federal laws relating to employee selection and nondiscrimination;
- (8) Encourage decentralized and regional administration of the recruitment and selection processes when it is appropriate for the agency; and
- (9) Ensure compliance with requirements governing wage and salary information in accordance with RCW 49.58.100, 49.58.110, WAC 357-16-017, 357-16-215, and 357-16-220 (~~and~~
- ~~(10) Ensure compliance with the COVID-19 vaccination requirements in accordance with WAC 357-04-125 and 357-16-197)).~~

[Statutory Authority: RCW 41.06.133 and 41.06.150. WSR 22-20-091, § 357-58-190, filed 10/4/22, effective 11/4/22. Statutory Authority: Chapter 41.06 RCW. WSR 22-12-074, § 357-58-190, filed 5/27/22, effective 7/1/22. Statutory Authority: Chapter 41.06 RCW, RCW 49.58.100 and 49.58.110. WSR 20-06-009, § 357-58-190, filed 2/20/20, effective 3/30/20. Statutory Authority: Chapter 41.06 RCW. WSR 05-12-069, § 357-58-190, filed 5/27/05, effective 7/1/05.]

OTS-4583.1

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 357-01-1745 Fully vaccinated.

OTS-4584.1REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 357-04-125 Must an employee provide proof of being fully vaccinated as a condition of employment?

OTS-4585.1REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 357-16-197 Must an employer require an eligible candidate to provide proof of being fully vaccinated?

OTS-4586.1REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 357-19-413 What are the requirements for a nonpermanent employee to be fully vaccinated or for an employer to require an eligible candidate to provide proof of being fully vaccinated?