

## WSR 23-20-078

## PROPOSED RULES

## OFFICE OF

## FINANCIAL MANAGEMENT

[Filed September 29, 2023, 1:43 p.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 357-16-017

When must an employer disclose the salary range or management band, other compensation and a description of benefits for a position?, 357-16-220 May an employer confirm an individual's wage or salary history?, 357-19-377 What provisions apply to nonpermanent appointments?, and 357-19-380 What provisions of the civil service rules apply to nonpermanent employees?

Hearing Location(s): On November 14, 2023, at 9:00 a.m., via Zoom meeting (with call-in option), ID 881 7165 8224, Call in 253-215-8782, Passcode 850872, Zoom link <https://ofm-wa-gov.zoom.us/j/88171658224?pwd=T1R1aUF4K3hEOEtCLzBHZnBaamVnZz09>.

Date of Intended Adoption: November 21, 2023.

Submit Written Comments to: Brandy Chinn, Office of Financial Management (OFM), Raad Building, 128 10th Avenue S.W., P.O. Box 47500, Olympia, WA 98504, email [brandy.chinn@ofm.wa.gov](mailto:brandy.chinn@ofm.wa.gov), by November 7, 2023.

Assistance for Persons with Disabilities: Contact OFM, TTY 711 or 1-800-833-6384, by November 7, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To align Title 357 WAC with the requirements of the new law. The proposed amendment to WAC 357-16-017 is to repeal the requirement for an employer to provide the salary range or management band upon request of an individual for employment after an employer has initially offered the individual the position; add language to require an employer to disclose the salary range or management band in each job posting which includes a general description of all the benefits and other compensation; and to define the terms "salary range" and "management band" for the section. The proposed amendment to WAC 357-16-220 is to define "negotiation" to include an offer of employment with compensation by the employer and acceptance of the offer by the applicant. This change aligns with Washington state department of labor and industries' interpretation that an offer of employment with compensation by the employer and acceptance of the offer by the applicant would constitute the element of "negotiation." The proposed amendments to WAC 357-19-377 is to add subsection (5) to require nonpermanent appointments to be in compliance with the requirements governing wage and salary information. The proposed amendment to WAC 357-19-380 is to state other chapters of the civil service rules may apply to nonpermanent employees where specifically stated.

Reasons Supporting Proposal: ESSB 5761 passed during the 2022 legislative session, chapter 242, Laws 2022, with an effective date of January 1, 2023. The bill amends RCW 49.58.110 to state an employer must disclose the wage scale and salary range and provide a general description of all the benefits or other compensation in each posting for a job opening. ESSB 5761 also states upon request of an employee who is offered an internal transfer to a new position or promotion that the employer must provide the employee with the wage scale or the salary range of the position they would be transferring into. Amendments to WAC 357-19-377 and 357-19-380 were inadvertently missed in 2019 on WSR 20-06-009, effective March 30, 2020.

Statutory Authority for Adoption: RCW 41.06.133 and 41.06.150.

Statute Being Implemented: RCW 49.58.100 and 49.58.110.

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, 128 10th Avenue S.W., 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.

Scope of exemption for rule proposal:

Is fully exempt.

September 29, 2023

Nathan Sherrard

Assistant Legal Affairs Counsel

## OTS-4591.1

AMENDATORY SECTION (Amending WSR 20-06-009, filed 2/20/20, effective 3/30/20)

**WAC 357-16-017 When must an employer ((provide)) disclose the salary range or management band, other compensation and a description of benefits for a position?** In accordance with RCW 49.58.110, an employer must ((provide)) disclose the salary range or management band in the following circumstances:

(1) ~~((Upon request of an individual for employment after an employer has initially offered the individual the position))~~ In each job posting which includes a general description of all the benefits and other compensation; and

(2) Upon request of a current employee who is offered an appointment to another position.

~~((If no salary range or management band exists, an employer must provide the minimum wage set by the employer prior to posting the position or appointing an employee to another position.))~~

(3) For the purposes of this section:

(a) "Employer" also includes those employers with fewer than ((fifteen)) 15 employees;

(b) "Salary range" includes Step M; and

(c) "Management band" is the most reasonable and genuinely expected range that an agency has identified within their salary administration policy for Washington management services.

[Statutory Authority: Chapter 41.06 RCW, RCW 49.58.100 and 49.58.110. WSR 20-06-009, § 357-16-017, filed 2/20/20, effective 3/30/20.]

AMENDATORY SECTION (Amending WSR 20-06-009, filed 2/20/20, effective 3/30/20)

**WAC 357-16-220 May an employer confirm an individual's wage or salary history?** In accordance with RCW 49.58.100, an employer may confirm an individual's wage or salary history if:

(1) The individual has voluntarily disclosed their wage or salary history; or

(2) After the employer has negotiated an offer and made an offer of employment including compensation to the individual. Negotiation includes an offer of employment with compensation by the employer and acceptance of the offer by the applicant.

For the purposes of this section "employer" also includes those employers with fewer than (~~fifteen~~) 15 employees.

[Statutory Authority: Chapter 41.06 RCW, RCW 49.58.100 and 49.58.110. WSR 20-06-009, § 357-16-220, filed 2/20/20, effective 3/30/20.]

#### OTS-4592.1

AMENDATORY SECTION (Amending WSR 21-14-042 and 22-01-153, filed 6/30/21 and 12/15/21, effective 7/1/22)

**WAC 357-19-377 What provisions apply to nonpermanent appointments?** 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 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) Employers may underfill a position with a nonpermanent appointment.

(5) 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.

[Statutory Authority: Chapter 41.06 RCW and RCW 41.06.070. WSR 21-14-042 and 22-01-153, § 357-19-377, filed 6/30/21 and 12/15/21, effective 7/1/22. 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 357-19-380 What provisions of the civil service rules apply to nonpermanent employees?** The leave and holiday provisions of chapter 357-31 WAC and compensation provisions of chapter 357-28 WAC apply to employees in nonpermanent appointments. Other chapters of civil service rules may apply where specifically stated.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-01-206, § 357-19-380, filed 12/21/04, effective 7/1/05.]