

WSR 24-18-067
PERMANENT RULES
OFFICE OF
FINANCIAL MANAGEMENT

[Filed August 29, 2024, 10:43 a.m., effective October 1, 2024]

Effective Date of Rule: October 1, 2024.

Purpose: During the COVID-19 response, some general government employers encountered shortages of employees in segments of their operations, while other agencies had employees with the capacity and skill sets that could have been redeployed to address the staffing shortages. These amendments to the civil service rules (Title 357 WAC) provide a mechanism for general government employers to redeploy an employee within or between general government employers in the same or different job class with the same or different salary range maximum for a limited duration to support staffing shortages during an emergency or a disaster for the preservation of public health, safety, or general welfare. The repeal of WAC 357-19-165 is to remove redundant language and the amendment to WAC 357-19-353 is to also reflect gender-neutral pronouns.

Citation of Rules Affected by this Order: New WAC 357-01-277, 357-04-124, 357-19-179, 357-28-148 and 357-58-128; repealing WAC 357-19-165; and amending WAC 357-19-073, 357-19-080, 357-19-085, 357-19-353, 357-19-360, 357-19-365, 357-19-370, 357-19-388, 357-19-395, 357-19-430, 357-58-065, 357-58-225, 357-58-226, 357-58-265, 357-58-270, and 357-58-275.

Statutory Authority for Adoption: RCW 41.06.150.

Adopted under notice filed as WSR 24-14-106 on July 1, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 5, Amended 16, Repealed 1.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 5, Amended 16, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 5, Amended 16, Repealed 1.

Date Adopted: August 29, 2024.

Nathan Sherrard
Legal Affairs Counsel

OTS-5112.1

NEW SECTION

WAC 357-01-277 Redeployment. A general government employer-initiated movement of an employee within or between general government employers in the same or different job class with the same or different salary range maximum for a limited duration to support staffing

shortages during an emergency or disaster in accordance with WAC 357-04-124.

OTS-5113.2

NEW SECTION

WAC 357-04-124 When may a general government employer request director approval to redeploy an employee during an emergency or disaster? During an emergency or a disaster, a general government employer may request director approval to redeploy an employee within or between general government employers for the preservation of public health, safety, or general welfare. The employee must have the necessary skills, abilities, and/or licensure in order to be redeployed. For purposes of this section, emergency or disaster has the same meaning as in RCW 38.52.010.

OTS-5114.5

AMENDATORY SECTION (Amending WSR 09-11-064, filed 5/14/09, effective 6/16/09)

WAC 357-19-073 What happens if an employee who is serving a probationary period accepts a nonpermanent appointment? (1) If an employee who is serving a probationary period accepts a nonpermanent appointment for reasons specified in WAC 357-19-360(1), the probationary period will end and the employee will not be granted permanent status unless the employer agrees to return the employee to a position at the conclusion of the nonpermanent appointment. Any return rights granted by the employer must be to a vacant position in the class in which the employee was serving a probationary period. If the employer chooses to grant the employee a return right, the employer must notify the employee in writing.

(2) If a general government employee who is serving a probationary period is redeployed into a nonpermanent appointment for reasons specified in WAC 357-19-360(2), the employer must return the employee to the same position held prior to the redeployment at the conclusion of the redeployment. Upon return to their previous position, the employee's base salary must be set at the step the employee would be at if they had not left the position.

(3) Upon return from a nonpermanent appointment the employee will resume their probationary period. If the employer determines the position the employee was serving a probationary period in and the position the employee was appointed to on a nonpermanent basis are allocated to classes which are closely related, the employer may count the time worked in the nonpermanent appointment towards the probationary period.

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

WAC 357-19-080 What happens if a permanent employee accepts a nonpermanent appointment during a trial service period? (1) If a permanent employee accepts a nonpermanent appointment for reasons specified in WAC 357-19-360(1) during a trial service period and the employer has agreed to return the employee to a position at the conclusion of the nonpermanent appointment, the employer may:

~~((1))~~ (a) Suspend the trial service period and allow the employee to resume the trial service period when the employee returns from the nonpermanent appointment;

~~((2))~~ (b) Require the trial service period to start over when the employee returns from the nonpermanent appointment; or

~~((3))~~ (c) Count the time worked in the nonpermanent appointment towards the trial service period.

(2) If a permanent general government employee is redeployed into a nonpermanent appointment for reasons specified in WAC 357-19-360(2) during a trial service period, the employer must return the employee to the same position held prior to the redeployment at the conclusion of the redeployment and the employer must count time worked in the nonpermanent appointment towards the trial service period for the permanent position. Upon return to their previous position, the employee's base salary must be set at the step the employee would be at if they had not left the position.

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

WAC 357-19-085 Does time worked in a nonpermanent appointment count towards the probationary or trial service period for a permanent position? (1) If an employee in a nonpermanent appointment for reasons specified in WAC 357-19-360(1) is subsequently appointed permanently to the same or a similar position, the employer may count time worked in the nonpermanent appointment towards the probationary or trial service period for the permanent position.

(2) If a general government employee in a nonpermanent appointment for reasons specified in WAC 357-19-360(2) is subsequently appointed permanently to the same or similar position, the employer may count time worked in the nonpermanent appointment towards the probationary period and must count time worked in the nonpermanent appointment towards the trial service period for the permanent position.

NEW SECTION

WAC 357-19-179 What provisions apply when a general government employee in classified service is redeployed to a different geographic area? When a general government employee in classified service is redeployed to a position in a different geographic area, the following applies:

(1) If the redeployment is within a reasonable commute of the employee's domicile, they may be redeployed without the employee's agreement.

(2) If the redeployment is outside of a reasonable commute of the employee's domicile, they may only be redeployed with the employee's consent.

For purposes of this section, the general government employer initiating the redeployment defines what is within a reasonable commute.

AMENDATORY SECTION (Amending WSR 05-12-094, filed 5/27/05, effective 7/1/05)

WAC 357-19-353 What return rights must an employer provide to a ((permanent)) WGS employee who accepts an acting WMS appointment? (1) At a minimum, the employer must provide the permanent employee who is leaving a WGS position with the employer to accept a WMS acting appointment for reasons specified in WAC 357-58-265 (1)(a) access to the employer's internal layoff list at the conclusion of the acting appointment. If the employer agrees to return the employee to a position, the employee must notify the employer of ((his/her)) their intent to return to a permanent position at least ((fourteen-(14))) 14 calendar days in advance of return unless the employee and employer agree otherwise. Failure of the employee to provide proper written notice to the employer may result in forfeiture of any return rights. Upon return to a permanent position, the employee's salary must be determined by the employer's salary determination policy.

(2) A general government employer must return an employee who was redeployed for reasons specified in WAC 357-58-265 (1)(b) to the same WGS position held prior to the redeployment at the conclusion of the redeployment. Upon return to their previous position, the employee's base salary is set at the step the employee would be at if they had not left the position.

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

WAC 357-19-360 For what reasons may an employer make nonpermanent appointments? (1) An employer may fill a position with a nonpermanent appointment when any of the following conditions exist:

- ((+1)) (a) A permanent employee is absent from the position;
- ((+2)) (b) The employer is recruiting to fill a vacant position with a permanent appointment;
- ((+3)) (c) The employer needs to address a short-term immediate workload peak or other short-term needs;
- ((+4)) (d) The employer is not filling a position with a permanent appointment due to the impending or actual layoff of a permanent employee(s); or
- ((+5)) (e) The nature of the work is sporadic and does not fit a particular pattern.

(2) A general government employer may fill a position with a non-permanent appointment when the director has given approval to redeploy an employee in accordance with WAC 357-04-124.

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

WAC 357-19-365 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? Employers must not fill a position with a nonpermanent appointment under the provisions of WAC 357-19-360(~~(+3)~~) (1)(c) 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.

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

WAC 357-19-370 How long may a nonpermanent appointment last?

(1) Employers are encouraged to limit the duration of ~~((a))~~ nonpermanent appointments for reasons specified in WAC 357-19-360(1) to ~~((twelve))~~ 12 months from the appointment date.

(2) A nonpermanent appointment for a reason specified in WAC 357-19-360 (1) ~~((through(4)))~~ (a) through (d) must not exceed ~~((twenty-four))~~ 24 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))~~ 24-month limit. On-the-job training is not considered a formal training program for purposes of this rule.

(3) A nonpermanent appointment specified in WAC 357-19-360(2) must not exceed three months unless a longer duration is mutually agreed upon between the employee and general government employer(s) and conditions continue to exist in accordance with WAC 357-04-124. Appointments must not exceed 24 months unless the director has approved an extension of the appointment.

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

WAC 357-19-388 What notices must employees and their employers provide each other when an employee accepts a nonpermanent appointment? Employees who accept a nonpermanent appointment for reasons specified in WAC 357-19-360(1) must give their current employers at least ~~((fourteen))~~ 14 calendar days' notice before moving to a nonpermanent appointment. The current 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 employer must notify the employee in writing of 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.

AMENDATORY SECTION (Amending WSR 05-12-095, filed 5/27/05, effective 7/1/05)

WAC 357-19-395 What return rights must an employer provide to ((a permanent)) an employee who accepts a nonpermanent appointment?

(1) For nonpermanent appointments made for reasons specified in WAC 357-19-360(1) at a minimum, the employer must provide the permanent employee who is leaving ((his/her)) their position with the employer to accept a nonpermanent appointment access to the employer's internal layoff list at the conclusion of the nonpermanent appointment. If the employer agrees to return the employee to a position, the employee must notify the employer of ((his/her)) their intent to return to a permanent position at least ((fourteen)) 14 calendar days in advance of return unless the employee and employer agree otherwise. Failure of the employee to provide proper written notice to the employer may result in forfeiture of any return rights. Upon return to a permanent position, the employee's salary must be determined by the employer's salary determination policy.

(2) For nonpermanent appointments made for reasons specified in WAC 357-19-360(2), the general government employee must be returned to the same position held prior to the redeployment at the conclusion of the redeployment. Upon return to their previous position, the employee's base salary must be set at the step the employee would be at if they had not left the position.

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

WAC 357-19-430 When may the director take remedial action for 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) (a) through ((4)) (d) and 357-19-360(2) has exceeded ((twenty-four)) 24 months without director approval.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 357-19-165 What is the difference between reassignment and transfer?

OTS-5115.1

NEW SECTION

WAC 357-28-148 How is a general government employee's salary determined when the employee is redeployed for reasons specified in WAC 357-19-360(2)? The base salary of a general government employee appointed to a position for reasons specified in WAC 357-19-360(2) must be determined as follows:

(1) An employee who is redeployed to a position with the same salary range keeps the same base salary.

(2) An employee who is redeployed to a position with a lower salary range maximum must be placed within the new range at a salary equal to the employee's previous base salary. If the employee's previous base salary exceeds the new salary range, the employee's base salary may be set higher than step M but not exceeding their prior base salary.

(3) An employee who is redeployed to a position with a higher salary range must have their salary set in accordance with WAC 357-28-110.

OTS-5116.4

AMENDATORY SECTION (Amending WSR 22-12-074, filed 5/27/22, effective 7/1/22)

WAC 357-58-065 Definitions for WMS. The following definitions apply to chapter 357-58 WAC:

(1) **Break in service.** An employee has a break in 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 357-58-550 is not considered a break in continuous state service.

(2) **Choice performance confirmation.** Approval granted by the director to an employer allowing the employer to factor in individual employee performance when granting recognition leave.

(3) **Competencies.** Those measurable or observable knowledge, skills, abilities and behaviors critical to success in a key job role or function.

(4) **Director.** State human resources director within the office of financial management.

(5) **Dismissal.** The termination of an individual's employment for disciplinary reasons.

(6) **Employee.** An individual working in the classified service. Employee business unit members are defined in WAC 357-43-001.

(7) **Evaluation points.** The points resulting from an evaluation of a position using the managerial job value assessment chart.

(8) **Layoff unit.** A clearly identified structure within an employer's organization within which layoff options are determined in accordance with the employer's layoff procedure. Layoff units may be a series of progressively larger units within an employer's organization.

(9) **Management bands.** A series of management levels included in the WMS. Placement in a band reflects the nature of management, deci-

sion-making environment and policy impact and scope of management accountability and control assigned to the position.

(10) **Premium.** Pay added to an employee's base salary on a contingent basis in recognition of special requirements, conditions or circumstances associated with the job.

(11) **Reassignment.** An employer-initiated movement of:

(a) A WMS employee from one position to a different position within WMS with the same salary standard and/or evaluation points; or

(b) A WMS position and the employee in that position from one section, department or geographical location to another section, department or geographical location.

(12) **Redeployment.** An employer-initiated movement of a WMS employee within or between general government employers to a position in the same or different salary standard and/or evaluation points for a limited duration to support staffing shortages during an emergency or disaster in accordance with WAC 357-04-124.

(13) **Review period.** A period of time that allows the employer an opportunity to ensure the WMS employee meets the requirements and performance standards of the position.

~~((13))~~ (14) **Salary standard.** Within a management band a salary standard is the maximum dollar amount assigned to a position in those agencies that use a salary standard in addition to, or in place of, evaluation points.

~~((14))~~ (15) **Separation.** Separation from state employment for nondisciplinary reasons.

~~((15))~~ (16) **Suspension.** An absence without pay for disciplinary reasons.

~~((16))~~ (17) **Transfer.** An employee-initiated movement from one position to a different position with the same salary standard and/or same evaluation points.

~~((17))~~ (18) **Veterans placement program.** A program that is designated to grant transitioning service members and veterans additional support to attain state employment.

~~((18))~~ (19) **Washington general service (WGS).** The system of personnel administration that applies to classified employees or positions under the jurisdiction of chapter 41.06 RCW which do not meet the definition of manager found in RCW 41.06.022.

~~((19))~~ (20) **Washington management service (WMS).** The system of personnel administration that applies to classified managerial employees or positions under the jurisdiction of RCW 41.06.022 and 41.06.500.

NEW SECTION

WAC 357-58-128 How is a WMS employee's salary determined when the employee is redeployed for reasons specified in WAC 357-58-265(2)? The base salary of a WMS employee appointed to a position for reasons specified in WAC 357-58-265(2) must be determined as follows:

(1) A WMS employee who is redeployed to a position with the same salary standard keeps the same base salary.

(2) A WMS employee who is redeployed to a position with a lower salary standard maximum must be placed within the new salary standard at a salary equal to the employee's previous base salary. If the previous base salary exceeds the new salary standard, the employee's base

salary may be set higher than associated salary standard but not exceeding their prior base salary.

(3) A WMS employee who is redeployed to a position with a higher salary standard must receive a salary increase nearest to five percent or up to the minimum of the new salary standard, whichever is greatest, not to exceed the new management band maximum.

AMENDATORY SECTION (Amending WSR 19-11-136, filed 5/22/19, effective 7/1/19)

WAC 357-58-225 What return rights must an employer provide to a ~~((permanent))~~ WMS employee who accepts a nonpermanent appointment to a WGS position? (1) For nonpermanent appointments made for reasons specified in WAC 357-19-360(1) the following applies:

(a) When a permanent WMS employee has accepted a nonpermanent appointment to a WGS position within the **same** agency and the nonpermanent appointment ends, the agency must at a minimum provide the employee the layoff rights of the employee's permanent WMS position. If returning to a permanent WMS position the employee's salary must not be less than the salary of the previously held permanent WMS position.

~~((2))~~ (b) When a permanent WMS employee has accepted a nonpermanent appointment to a WGS position within a **different** agency, the original agency must provide layoff rights as specified in ~~((subsection (1)))~~ (a) of this ~~((section))~~ subsection for six months from the time the employee is appointed. Any return right after six months is negotiable between the employee and agency and must be agreed to prior to the employee accepting the nonpermanent appointment. If the employee does not return on the agreed upon date, the employee can request placement in the general government transition pool per WAC 357-46-095.

~~((3))~~ (c) In lieu of the rights provided in ~~((subsection (1) or (2)))~~ (a) or (b) of this ~~((section))~~ subsection, the agency and the employee may agree to other terms.

(2) For nonpermanent appointments made for reasons listed in WAC 357-19-360(2), the employee must be returned to the same position held prior to the redeployment at the conclusion of the nonpermanent appointment. Upon return to their previous position, the employee's base salary is set as if the employee had not left the position.

AMENDATORY SECTION (Amending WSR 14-06-007, filed 2/20/14, effective 3/24/14)

WAC 357-58-226 What happens when a WMS employee who was serving a review period and was appointed to a WGS nonpermanent position returns to ~~((the same or different))~~ a WMS position? (1) If a WMS employee was serving a review period ~~((and accepted))~~ accepts a nonpermanent appointment for reasons specified in WAC 357-19-360(1) to a WGS position and ~~((returned))~~ returns to the same or different WMS position, the employer may allow the prior time served in the WMS review period to count towards the completion of the review period.

(2) If a WMS employee who was serving a review period is redeployed into a WGS nonpermanent appointment in accordance with WAC 357-19-360(2), the employer must return the employee to the same posi-

tion held prior to the redeployment at the conclusion of the redeployment. The employer must count time worked in the nonpermanent appointment towards the completion of the review period for the permanent position.

AMENDATORY SECTION (Amending WSR 05-12-070, filed 5/27/05, effective 7/1/05)

WAC 357-58-265 When may an agency make an acting WMS appointment and what actions are required? ~~((When necessary to meet organizational needs,))~~ (1) An agency may make nonpermanent appointments in WMS ~~((These appointments))~~ which are called acting appointments. Acting WMS appointments can be made when any of the following conditions exist:

(a) When necessary to meet organization needs; or

(b) When approval has been granted by the director to redeploy an employee in accordance with WAC 357-04-124.

(2) Prior to the acting appointment, the appointing authority must communicate in writing to the employee the anticipated length, intent, salary, and other conditions of the appointment.

AMENDATORY SECTION (Amending WSR 05-12-070, filed 5/27/05, effective 7/1/05)

WAC 357-58-270 Does time in an acting appointment count as time in the review period? (1) When an individual who is in an acting WMS appointment for reasons specified in WAC 357-58-265 (1)(a) is subsequently appointed to a permanent WMS position, time spent in the acting appointment may count towards the review period for the permanent WMS position at the discretion of the appointing authority.

(2) When an individual who is in an acting WMS appointment for reasons specified in WAC 357-58-265 (1)(b) is subsequently appointed to the same or similar permanent WMS position, time spent in the acting appointment must count towards the review period for the permanent WMS position.

AMENDATORY SECTION (Amending WSR 19-11-136, filed 5/22/19, effective 7/1/19)

WAC 357-58-275 May a ((permanent)) WMS employee accept an acting WMS appointment and what are the employee's return rights at the conclusion of the acting appointment? (1) Permanent WMS employees may accept acting appointments to WMS positions for reasons specified in WAC 357-58-265 (1)(a).

~~((1))~~ (a) When a permanent WMS employee has accepted an acting appointment within the **same** agency and the acting appointment ends the following applies:

~~((a))~~ (i) The agency may agree to return the employee to a permanent WMS position. If returning to a permanent WMS position, the employee's salary must not be less than the salary of the previously held permanent WMS position.

~~((b))~~ (ii) The agency at a minimum must provide the employee the layoff rights of the employee's permanent WMS position in accordance with WAC 357-58-465.

~~((2))~~ (b) When a permanent WMS employee has accepted an acting appointment within a **different** agency, the original agency must provide layoff rights as specified in ~~((subsection (1)))~~ (a) of this ~~((section))~~ subsection for six months from the time the employee is appointed. Any return right after six months is negotiable between the employee and agency and must be agreed to prior to the employee accepting the nonpermanent appointment. If the employee does not return on the agreed upon date, the employee can request placement in the general government transition pool per WAC 357-46-095.

~~((3))~~ (c) In lieu of the rights provided in ~~((subsections (1) and (2)))~~ (a) and (b) of this ~~((section))~~ subsection, the agency and the employee may agree to other terms.

(2) When a WMS employee has been redeployed into an acting WMS position for reasons specified in WAC 357-58-265 (1)(b), the employee must be returned to the same position held prior to the redeployment at the conclusion of the acting appointment. Upon return to their previous position, the employee's base salary is set as if the employee had not left the position.