

WSR 24-20-086
PERMANENT RULES
DEPARTMENT OF
RETIREMENT SYSTEMS

[Filed September 27, 2024, 3:31 p.m., effective September 30, 2024]

Effective Date of Rule: September 30, 2024.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: The law that this rule implements is already in effect, so the department of retirement systems is putting the rule into effect less than 31 days after filing.

Purpose: Implementing chapter 319, Laws of 2024, flexible and part-time work for general and limited authority Washington peace officers.

Citation of Rules Affected by this Order: Amending WAC 415-104-011, 415-104-225, 415-104-235, and 415-104-374.

Statutory Authority for Adoption: RCW 41.50.50 and chapter 319, Laws of 2024.

Adopted under notice filed as WSR 24-17-123 on August 19, 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Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 4, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 4, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: September 27, 2024.

Tracy Guerin
Director

OTS-5567.3

AMENDATORY SECTION (Amending WSR 17-10-035, filed 4/26/17, effective 5/27/17)

WAC 415-104-011 Definitions. All definitions in RCW 41.26.030 and WAC 415-02-030 apply to terms used in this chapter. Other terms relevant to the administration of chapter 41.26 RCW are defined in this chapter.

(1) **Commissioned** means that an employee is employed as an officer of a general authority Washington law enforcement agency and is empowered by that employer to enforce the criminal laws of the state of Washington.

(2) **Director of public safety** means a person who is employed on or after January 1, 1993, by a city or town on a full-time, fully compensated basis to administer the programs and personnel of a public safety department.

This definition applies only to cities or towns in which the population did not exceed (~~ten thousand~~) 10,000 at the time the person became employed as a director of public safety.

(3) **Elective employer** means the employer of the LEOFF Plan 1 elected official during the member's leave of absence from the LEOFF employer for the purpose of serving in elective office.

(4) **Full-time employee** means an employee who is normally expected to earn basic salary from an employer for a minimum of (~~one hundred sixty~~) 160 hours in a calendar month.

(5) **Fully compensated employee for firefighters** means an employee who is normally expected to earn a basic monthly salary no less than (~~one hundred sixty~~) 160 times the state minimum hourly wage. Nominal sums including, but not limited to, stipends or ancillary benefits such as insurance or leave accrual, provided to volunteer firefighters are not compensation for the purpose of determining whether a firefighter is fully compensated.

(6) **Fully compensated employee for law enforcement officers** means the employee earns basic salary from an employer at a rate of pay comparable to the rate of pay received by full-time employees.

(7) **Left the employ of an employer** as used in RCW 41.26.470, 41.26.510, and 41.26.520 means any break in employment, whether formally separated or not formally separated, due to service in the uniformed services, national guard, military reserves, federal emergency management agency, or national disaster medical system of the United States Department of Health and Human Services.

(~~(7)~~) (8) **LEOFF** means the law enforcement officers' and firefighters' retirement system established by chapter 41.26 RCW.

(~~(8)~~) (9) **LEOFF employer** means the employer, as defined in RCW 41.26.030, who employs the member as a law enforcement officer or firefighter.

(~~(9)~~) (10) **LEOFF Plan 1 elected official** means a LEOFF Plan 1 member who is a civil service employee on leave of absence because he or she has been elected or appointed to an elective public office and who chooses to preserve retirement rights as an active LEOFF member under the procedure described in this chapter.

(~~(10)~~) (11) **Performing service** as used in RCW 41.26.470, 41.26.510, and 41.26.520 means engaging in activities in response to a disaster, major emergency, special event, federal exercise, or official training after having left the employ of an employer as described in subsection (~~(6)~~) (7) of this section.

(~~(11)~~) (12) **Plan 1 and Plan 2.**

(a) "Plan 1" means the law enforcement officers' and firefighters' retirement system providing the benefits and funding provisions covering persons who first became members of the system prior to October 1, 1977.

(b) "Plan 2" means the law enforcement officers' and firefighters' retirement system providing the benefits and funding provisions covering persons who first became members of the system on and after October 1, 1977.

(~~(12)~~) (13) **Public safety officer** means a person who is employed on or after January 1, 1993, on a full-time, fully compensated basis by a city or town to perform both law enforcement and firefighter duties.

This definition applies only to cities or towns in which the population did not exceed (~~ten thousand~~) 10,000 at the time the person became employed as a public safety officer.

~~((13))~~ (14) **Uniformed firefighter position** means a position which may only be filled by uniformed personnel as that term is defined in RCW 41.56.030 (7)(e) as in effect on July 1, 1995. A position only qualifies as a uniformed firefighter position if the employer has identified it as such for all purposes. An employer may designate a position as uniformed regardless of whether the employer is covered by public employees' collective bargaining under chapter 41.56 RCW.

AMENDATORY SECTION (Amending WSR 20-06-039, filed 2/27/20, effective 3/29/20)

WAC 415-104-225 Am I a LEOFF member? If you are employed by an employer as a ~~((full-time, fully compensated))~~ law enforcement officer or firefighter, you are required to be a LEOFF member.

(1) **Law enforcement officers.**

(a) You are a law enforcement officer ~~((only))~~ if you are commissioned and employed on a ~~((full-time,))~~ fully compensated basis as a:

- (i) City police officer;
- (ii) Town marshal or deputy marshal;
- (iii) County sheriff;

(iv) Deputy sheriff, if you passed a civil service exam for deputy sheriff and you possess all of the powers, and may perform any of the duties, prescribed by law to be performed by the sheriff;

(b) Beginning July 1, 2024, the term "law enforcement officer" also includes any person who is commissioned and employed by an employer on a fully compensated basis to enforce the criminal laws of the state of Washington generally, on a less than full-time basis.

(c) Effective January 1, 1994, "law enforcement officer" also includes commissioned persons employed on a full-time, fully compensated basis as a:

(i) General authority Washington peace officer under RCW 10.93.020(3);

(ii) Port district general authority law enforcement officer and you are commissioned and employed by a port district general authority law enforcement agency;

(iii) State university or college general authority law enforcement officer; or

~~((e))~~ (d) Effective January 1, 1993, "law enforcement officer" also includes commissioned persons employed on a full-time, fully compensated basis as a public safety officer or director of public safety of a city or town if, at the time you first became employed in this position, the population of the city or town did not exceed ~~((ten thousand))~~ 10,000. See RCW 41.26.030(3).

~~((d))~~ (e) If you meet the requirements of (a), (b), (c) or ~~((e))~~ (d) of this subsection, you qualify as a law enforcement officer regardless of your rank or status as a probationary or permanent employee.

~~((e))~~ (f) You are not a law enforcement officer if you are employed in either:

(i) A position that is clerical or secretarial in nature and you are not commissioned; or

(ii) A corrections officer position and the only training required by the Washington criminal justice training commission for your position is basic corrections training under WAC 139-10-210.

(2) **Firefighters.**

(a) You are a firefighter if you are employed in a uniformed firefighter position by a fire department of an employer on a full-time, fully compensated basis, and as a consequence of your employment, you have the legal authority and responsibility to direct or perform fire protection activities that are required for and directly concerned with preventing, controlling and extinguishing fires. The primary duty of a position is defined by what is expected of the full-time position, not by the number of hours or percentage of hours that the duty is performed.

Example A: A full-time position in a fire department of an employer is responsible for preventing, controlling, and extinguishing fires. The employer rarely has fires. The position spends the majority of its time performing other fire protection activities. The position is a firefighter.

Example B: A fire department of an employer has a full-time fire marshal position or firefighter trainer position. The position requires the legal authority and responsibility to perform fire protection activities. The position is a firefighter.

Example C: An employer's community development department has a fire marshal position. The community development department is not a fire department and its purpose is not fire protection activities. The position is not a firefighter.

(i) "Fire protection activities" may include incidental functions such as housekeeping, equipment maintenance, grounds maintenance, fire safety inspections, lecturing, performing community fire drills and inspecting homes and schools for fire hazards. These activities qualify as fire protection activities only if the primary duty of your position is preventing, controlling and extinguishing fires.

(ii) You are a firefighter if you qualify as supervisory firefighter personnel.

(A) To qualify as "supervisory firefighter personnel" you must:

(I) Supervise firefighters or other supervisory firefighter personnel;

(II) Be in a position located within a firefighting department or organization whose primary or sole purpose is fire protection activities; and

(III) Direct fire protection activities.

(B) This includes first line supervisors of firefighters, who typically direct from the scene of a fire, up to and including positions that are administrative in nature when the primary duty is to provide executive leadership for fire protection activities, such as setting strategic priorities for the organization.

Example A: A City Administrator supervises various city departments including a fire department. The City Administrator supervises the Fire Chief, who is a firefighter, as well as other department heads. The City Administrator would not be considered supervisory firefighter personnel because, while the duties of the position include oversight of the fire department, it is not the primary duty of the position. Furthermore, the position is not located within a firefighting department or organization whose primary or sole purpose is fire protection activities.

Example B: A Fire Chief of a large fire department does not respond to fires, but instead works in an office setting providing direction and leadership, such as setting strategic priorities and approving hiring and firing, for the Fire Department. The Fire Chief supervises three battalion chiefs, a Human Resources Director, and a Chief Financial Officer. The Fire Chief is supervisory firefighter

personnel because the position supervises firefighters, is located within an organization whose sole purpose is fire protection activities, and the primary purpose of the position is to provide executive leadership to fire protection activities.

Example C: An Administrator of an organization whose primary purpose is fire protection activities does not respond to fires, but instead works in an office setting providing direction and leadership, such as setting strategic priorities and approving hiring and firing, for the organization. The Administrator supervises two Battalion Chiefs, a Human Resources Director, and a Chief Financial Officer. The Administrator is supervisory firefighter personnel because the position supervises firefighters, is located within an organization whose primary purpose is fire protection activities, and the primary purpose of the position is to provide executive leadership to fire protection activities.

(iii) If your employer requires firefighters to pass a civil service examination, you must be actively employed in a position that requires passing such an examination in order to qualify as a firefighter unless you qualify as supervisory firefighter personnel.

(iv) You are a firefighter if you meet the requirements of this section regardless of your rank or status as a probationary or permanent employee or your particular specialty or job title.

(v) You do not qualify for membership as a firefighter if you are a volunteer firefighter or resident volunteer firefighter.

(b) You are a firefighter if you are employed on a full-time, fully compensated basis by an employer as an emergency medical technician (EMT). To be an "emergency medical technician" you must:

(i) Be certified by the department of health to perform emergency medical services at the level of care of an EMT; and

(ii) Complete the requirements of your employer, if any, to perform the job duties of an EMT.

(3) **Defined terms used.** Definitions for the following terms used in this section may be found in the sections listed.

(a) "Commissioned" - WAC 415-104-011.

(b) "Director of public safety" - WAC 415-104-011.

(c) "Employer" - RCW 41.26.030.

(d) "Firefighter" - RCW 41.26.030.

(e) "Full time" - WAC 415-104-011.

(f) "Fully compensated" - WAC 415-104-011.

(g) "Law enforcement officer" - RCW 41.26.030.

(h) "Member" - RCW 41.26.030.

(i) "Public safety officer" - WAC 415-104-011.

(j) "Uniformed firefighter position" - WAC 415-104-011.

AMENDATORY SECTION (Amending WSR 02-18-046, filed 8/28/02, effective 9/30/02)

WAC 415-104-235 Can I terminate my status as a LEOFF member?

(1) Your membership in the retirement system is terminated if you:

(a) Die;

(b) Separate from service; or

(c) Cease to be employed (~~(full-time)~~) as a law enforcement officer or full-time firefighter.

(2) **Defined terms used.** Definitions for the following terms used in this section may be found in the sections listed.

- (a) "Firefighter" - RCW 41.26.030 and WAC 415-104-225(2).
- (b) "Full-time employee" - WAC 415-104-011.
- (c) "Law enforcement officer" - RCW 41.26.030 and WAC 415-104-225(1).
- (d) "Member" - RCW 41.26.030.
- (e) "Service" - RCW 41.26.030.

AMENDATORY SECTION (Amending WSR 04-20-005, filed 9/23/04, effective 10/24/04)

WAC 415-104-374 LEOFF Plan 2 part-time leave of absence. (1)
What are the LEOFF Plan 2 part-time leave rules for full-time law enforcement officers?

- (a) You must be a current LEOFF Plan 2 **law enforcement** member;
- (b) Your employer must authorize you to work part time and go on an unpaid part-time leave of absence;
- (c) While in part-time work/part-time leave status, you cannot do any other work for pay for your employer; and
- (d) When you return to full-time employment, the employment must be with the same employer who granted you the part-time leave.

(2) **May I purchase service credit for periods of part-time leave?**
See WAC 415-02-175 for information about purchasing service credit for an unpaid authorized leave of absence.