

## WSR 24-20-131

## PROPOSED RULES

## OFFICE OF

## FINANCIAL MANAGEMENT

[Filed October 1, 2024, 4:01 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 357-01-072 Child, 357-01-172 Family members, and 357-31-130 When must an employer allow an employee to use their accrued sick leave?

Hearing Location(s): On November 14, 2024, at 8:30 a.m., via Zoom meeting (with call in option), <https://ofm-wa-gov.zoom.us/j/81889336350?pwd=TzYzY05oL3FrSW5UTnBEeEk5ODVvQT09>, ID 818 8933 6350; or call in 253-215-8782, Passcode 171240.

Date of Intended Adoption: November 21, 2024.

Submit Written Comments to: Brandy Chinn, Office of Financial Management (OFM), 1500 Jefferson Street S.E., P.O. Box 47500, Olympia, WA 98504, email [brandy.chinn@ofm.wa.gov](mailto:brandy.chinn@ofm.wa.gov), by 11:59 p.m., November 7, 2024.

Assistance for Persons with Disabilities: OFM, TTY 711 or 1-800-833-6384, by 11:59 p.m., November 7, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed amendment to WAC 357-01-072 expands the definition of child for the purpose of using accrued sick leave under WAC 357-31-130 to include a child's spouse or child's registered domestic partner. The proposed amendment to WAC 357-01-172 expands the definition of family member for the purpose of using accrued sick leave under WAC 357-31-130 to include any individual who regularly resides in the employee's home or where the relationship creates an expectation that the employee care for the person, and that individual depends on the employee for care. Family member does not include an individual who simply resides in the same home with no expectation that the employee care for the individual for the purposes of WAC 357-31-130. The proposed amendment to WAC 357-31-130(5) is to align with the changes made to RCW 49.46.210 (1)(b)(iii).

Reasons Supporting Proposal: To align the civil service rules (Title 357 WAC) with the requirements of the new law. ESSB 5793, chapter 356, Laws of 2024, passed during the 2024 legislative session, effective January 1, 2025. Section 1 of this bill amends RCW 49.46.210 (1)(b)(iii) to clarify an employee is authorized to use paid sick leave when the employee's place of business or an employee's child's school or place of care has been closed by order of a public official for any health-related reason or after the declaration of an emergency by a local or state government or agency, or federal government. Section 1 also amends RCW 49.46.210(2) to expand the definition of a family member to include any individual who regularly resides in the employee's home or where the relationship creates an expectation the employee cares for the person and that individual depends on the employee for care, except it does not include an individual who simply resides in the same home with no expectation the employee care for the individual. The definition of a child was also expanded to include a child's spouse and registered domestic partner. A policy decision was made to expand the definition of a family member for all sick leave reasons provided in WAC 357-31-130, not just limiting to ones included in RCW 49.46.210, and also apply these changes to both overtime-eligi-

ble and overtime-exempt employees to allow for equal treatment of all employees.

Statutory Authority for Adoption: RCW 41.06.133.

Statute Being Implemented: RCW 49.46.210.

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, 1500 Jefferson Street S.E., Olympia, WA 98504, 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.

October 1, 2024

Nathan Sherrard

Assistant Legal Affairs Counsel

## OTS-5862.2

AMENDATORY SECTION (Amending WSR 18-05-032, filed 2/10/18, effective 3/13/18)

**WAC 357-01-072 Child.** A biological, adopted, foster child, stepchild, legal ward, or a child of a person standing *in loco parentis*, a child of a legal guardian, or a child of a de facto parent, regardless of age or dependency status. For the purpose of using accrued sick leave under WAC 357-31-130, child also includes a child's spouse or child's registered domestic partner.

AMENDATORY SECTION (Amending WSR 23-24-023, filed 11/28/23, effective 1/1/24)

**WAC 357-01-172 Family members.** (1) Individuals considered to be members of the family are parent, sibling, parent-in-law, spouse, registered domestic partner, grandparent, grandchild, minor/dependent child, and child.

(2) For the purpose of domestic violence, sexual assault, or stalking provisions within Title 357 WAC, in addition to subsection (1) of this section, family member also includes a domestic partner as

defined in RCW 26.60.020 or a person with whom the employee has a dating relationship as defined in RCW 49.76.020.

(3) For the purpose of using accrued sick leave under WAC 357-31-130, in addition to subsection (1) of this section family member also includes any individual who regularly resides in the employee's home or where the relationship creates an expectation that the employee care for the person, and that individual depends on the employee for care. Family member does not include an individual who simply resides in the same home with no expectation that the employee cares for the individual.

### OTS-5863.1

AMENDATORY SECTION (Amending WSR 23-24-021, filed 11/28/23, effective 1/1/24)

**WAC 357-31-130 When must an employer allow an employee to use their accrued sick leave?** The employer may require medical verification or certification of the reason for sick leave use in accordance with the employer's leave policy and in compliance with chapter 296-128 WAC.

Employers **must** allow the use of accrued sick leave under the following conditions:

(1) An employee's mental or physical illness, disability, injury or health condition that has incapacitated the employee from performing required duties; to accommodate the employee's need for medical diagnosis, care or treatment of a mental or physical illness, injury or health condition; or an employee's need for preventive medical care.

(2) By reason of exposure of the employee to a contagious disease when the employee's presence at work would jeopardize the health of others.

(3) When a high-risk employee seeks an accommodation to protect themselves from the risk of exposure to an infectious or contagious disease and the employer determines no other accommodation is reasonable besides the use of leave.

(4) To allow an employee to provide care for a child who has been exposed to a contagious disease and is required to quarantine; or when a household or family member needs additional care, not covered by subsection (6) of this section, who has been exposed to a contagious disease and is required to quarantine.

(5) When the employee's place of business has been closed by order of a public official for any health-related reason, or when an employee's child's school or place of care has been closed for such health-related reason, or after the declaration of an emergency by a local or state government or agency, or by the federal government.

(6) To allow an employee to provide care for a family member with a mental or physical illness, injury or health condition; care of a family member who needs medical diagnosis, care or treatment of a mental or physical illness, injury or health condition; or care for a family member who needs preventive medical care.

(7) For family care emergencies per WAC 357-31-290, 357-31-295, 357-31-300 and 357-31-305.

(8) When an employee is required to be absent from work to care for members of the employee's household or relatives of the employee or relatives of the employee's spouse/registered domestic partner who experience an illness or injury, not including situations covered by subsection (6) of this section.

(a) The employer must approve up to five days of accumulated sick leave each occurrence. Employers may approve more than five days.

(b) For purposes of this subsection, "relatives" is limited to spouse, registered domestic partner, child, grandchild, grandparent or parent.

(9) When requested as a supplemental benefit while receiving a partial wage replacement for paid family and/or medical leave under Title 50A RCW as provided in WAC 357-31-248. Leave taken under this subsection may be subject to verification that the employee has been approved to receive benefits for paid family and/or medical leave under Title 50A RCW.

(10) If the employee or the employee's family member, as defined in chapter 357-01 WAC, is a victim of domestic violence, sexual assault or stalking as defined in RCW 49.76.020. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730.

(11) In accordance with WAC 357-31-373, for an employee to be with a spouse or registered domestic partner who is a member of the armed forces of the United States, National Guard, or reserves after the military spouse or registered domestic partner has been notified of an impending call or order to active duty, before deployment, or when the military spouse or registered domestic partner is on leave from deployment.

(12) When an employee requests to use sick leave for the purpose of parental leave to bond with a newborn, adoptive or foster child for a period up to 18 weeks. Sick leave for this purpose must be taken during the first year following the child's birth or placement.

(13) If the employee requests to use sick leave when granted a temporary leave of absence for legislative service in accordance with WAC 357-31-374(2).