

**Chapter 357-26 WAC
REASONABLE ACCOMMODATION**

Last Update: 11/20/20

WAC

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WAC 357-26-005 What is the purpose of this chapter? The purpose of chapter 357-26 WAC is to provide guidance to employers regarding reasonable accommodation for the following reasons:

- (1) Disability;
- (2) Pregnancy; and
- (3) Safety.

[Statutory Authority: Chapter 41.06 RCW, RCW 43.10.005 and 49.76.040. WSR 19-05-056, § 357-26-005, filed 2/15/19, effective 3/29/19. Statutory Authority: Chapter 41.06 RCW. WSR 05-01-196, § 357-26-005, filed 12/21/04, effective 7/1/05.]

WAC 357-26-010 When must an employer reasonably accommodate a disability? An employer must reasonably accommodate a known disability of a qualified candidate or employee as required by chapter 49.60 RCW and the federal Americans with Disabilities Act.

[Statutory Authority: Chapter 41.06 RCW, RCW 43.10.005 and 49.76.040. WSR 19-05-056, § 357-26-010, filed 2/15/19, effective 3/29/19. Statutory Authority: Chapter 41.06 RCW. WSR 05-01-196, § 357-26-010, filed 12/21/04, effective 7/1/05.]

WAC 357-26-015 What actions may an employer take to reasonably accommodate a disability? For persons with disabilities, as defined by state or federal law, reasonable accommodation may include, but is not limited to:

- (1) Accommodation in application procedures, testing, and the interview process; or
- (2) Modifications or adjustments to a job, work method, or work environment that make it possible for a qualified person with a disability to perform the essential functions of a position, or enjoy the benefits and privileges of employment equal to employees without disabilities.

[Statutory Authority: Chapter 41.06 RCW, RCW 43.10.005 and 49.76.040. WSR 19-05-056, § 357-26-015, filed 2/15/19, effective 3/29/19. Statu-

tory Authority: Chapter 41.06 RCW. WSR 05-01-196, § 357-26-015, filed 12/21/04, effective 7/1/05.]

WAC 357-26-020 What is the requirement for employers to have a policy and procedure covering disability accommodation? (1) In accordance with the policy statement requirements of WAC 357-25-025, employers must develop and maintain a policy statement on reasonable accommodation.

(2) In accordance with state and federal laws, employers must develop and make readily available a procedure regarding reasonable accommodation of employees with disabilities.

(a) Each employee who requests reasonable accommodation must be provided access to the employer's reasonable accommodation procedure in an accessible format.

(b) Employees who request reasonable accommodation must be notified in writing that in the event they cannot be accommodated in their current position, and placement in an alternative vacant position is not possible, the appointing authority may initiate a disability separation in accordance with WAC 357-46-160.

[Statutory Authority: Chapter 41.06 RCW, RCW 43.10.005 and 49.76.040. WSR 19-05-056, § 357-26-020, filed 2/15/19, effective 3/29/19. Statutory Authority: Chapter 41.06 RCW. WSR 05-01-196, § 357-26-020, filed 12/21/04, effective 7/1/05.]

WAC 357-26-025 May an employee who is unable to perform the essential functions of a position due to a disability request to be separated from employment? An employee who is unable to perform the essential functions of the employee's position due to mental, sensory, or physical incapacity may notify the employer that they do not wish to pursue accommodation and would like to be separated from employment. In this case, the appointing authority is not required to consider a reasonable accommodation and may initiate a disability separation in accordance with WAC 357-46-160.

[Statutory Authority: Chapter 41.06 RCW, RCW 43.10.005 and 49.76.040. WSR 19-05-056, § 357-26-025, filed 2/15/19, effective 3/29/19. Statutory Authority: Chapter 41.06 RCW. WSR 05-01-196, § 357-26-025, filed 12/21/04, effective 7/1/05.]

WAC 357-26-030 When must an employer provide reasonable pregnancy accommodations? An employer must provide reasonable pregnancy accommodations to employees who are pregnant or have a pregnancy-related health condition as required in RCW 43.10.005.

[Statutory Authority: Chapter 41.06 RCW, RCW 43.10.005 and 49.76.040. WSR 19-05-056, § 357-26-030, filed 2/15/19, effective 3/29/19.]

WAC 357-26-035 What actions must an employer take to provide reasonable pregnancy accommodations? (1) An employer must provide employees who are pregnant or have a pregnancy-related health condition a reasonable pregnancy accommodation, which includes the following:

(a) Providing more frequent, longer, or flexible restroom breaks;

- (b) Modifying a no food or drink policy;
- (c) Providing seating or allowing an employee to sit more frequently if the job requires standing;
- (d) Providing reasonable break time for an employee to express breast milk for two years after the child's birth each time the employee has need to express the milk and providing a private location, other than a bathroom, if such a location exists at the place of business or worksite, which may be used by the employee to express breast milk. If the business location does not have a space for the employee to express breast milk, the employer shall work with the employee to identify a convenient location and work schedule to accommodate their needs;
- (e) Job restructuring, part-time or modified work schedules, re-assignment to a vacant position, or acquiring or modifying equipment, devices, or an employee's work station;
- (f) Providing a temporary transfer to a less strenuous or less hazardous position;
- (g) Providing assistance with manual labor and limits on lifting;
- (h) Scheduling flexibility for prenatal visits; and
- (i) Any further pregnancy accommodation an employee may request and to which an employer must give reasonable consideration in consultation with information provided on pregnancy accommodation by the department of labor and industries or the employee's attending health care provider.

(2) An employer cannot require an employee who is pregnant or has a pregnancy-related health condition to take leave if another reasonable pregnancy accommodation can be provided.

(3) The employer is not required to create additional employment that the employer would not otherwise have created, unless the employer does so or would do so for other classes of employees who need accommodation.

[Statutory Authority: Chapter 43.01 RCW and RCW 43.10.005. WSR 20-24-022, § 357-26-035, filed 11/20/20, effective 12/28/20; WSR 19-17-041, § 357-26-035, filed 8/15/19, effective 9/23/19. Statutory Authority: Chapter 41.06 RCW, RCW 43.10.005 and 49.76.040. WSR 19-05-056, § 357-26-035, filed 2/15/19, effective 3/29/19.]

WAC 357-26-040 When may an employer deny a reasonable pregnancy-related accommodation? The employer may deny a reasonable pregnancy-related accommodation based on undue hardship, which means an action requiring significant difficulty or expense, to the employer's program, enterprise or business for pregnancy accommodations listed in WAC 357-26-035 (1)(d) through (i). The employer may not claim undue hardship for the pregnancy accommodations listed in WAC 357-26-035 (1)(a) through (c) or for limits on lifting over seventeen pounds.

[Statutory Authority: Chapter 43.01 RCW and RCW 43.10.005. WSR 20-24-022, § 357-26-040, filed 11/20/20, effective 12/28/20. Statutory Authority: Chapter 41.06 RCW, RCW 43.10.005 and 49.76.040. WSR 19-05-056, § 357-26-040, filed 2/15/19, effective 3/29/19.]

WAC 357-26-045 When an employee is pregnant or has a pregnancy-related health condition and requests a reasonable pregnancy accommodation what documentation may the employee be required to submit?

When an employee is pregnant or has a pregnancy-related health condition and requests a reasonable pregnancy accommodation, the employee may be required to submit written certification from their licensed physician or health care professional for those pregnancy accommodations listed in WAC 357-26-035 (1)(e) through (i). An employee is not required to submit written certification for pregnancy accommodations listed in WAC 357-26-035 (1)(a) through (d) or for limits lifting over seventeen pounds.

[Statutory Authority: Chapter 43.01 RCW and RCW 43.10.005. WSR 20-24-022, § 357-26-045, filed 11/20/20, effective 12/28/20. Statutory Authority: Chapter 41.06 RCW, RCW 43.10.005 and 49.76.040. WSR 19-05-056, § 357-26-045, filed 2/15/19, effective 3/29/19.]

WAC 357-26-050 When must an employer provide reasonable safety accommodations? An employer must provide reasonable safety accommodations to an applicant or employee who is a victim of domestic violence or an employee whose family member, as defined in chapter 357-01 WAC, is a victim of domestic violence, sexual assault or stalking as required in chapter 49.76 RCW.

[Statutory Authority: Chapter 41.06 RCW, RCW 43.10.005 and 49.76.040. WSR 19-05-056, § 357-26-050, filed 2/15/19, effective 3/29/19.]

WAC 357-26-055 What actions must an employer take to provide safety accommodations? (1) An employer must provide an applicant, or employee who is a victim of domestic violence or an employee whose family member, as defined in chapter 357-01 WAC, is a victim of domestic violence, sexual assault or stalking, a reasonable safety accommodation, which includes, but is not limited to the following:

- (a) A transfer or reassignment;
 - (b) Modified schedule;
 - (c) Changed work telephone number, work email address and/or workstation;
 - (d) Installed lock;
 - (e) Implemented safety procedure; or
 - (f) Any other adjustment to a job structure, workplace facility, or work requirement in response to actual or threatened domestic violence, sexual assault or stalking.
- (2) Leave taken in accordance with chapter 357-31 WAC may be considered a reasonable safety accommodation.
- (3) The employer may deny a reasonable safety accommodation based on an undue hardship, which means an action requiring significant difficulty or expense.

[Statutory Authority: Chapter 41.06 RCW, RCW 43.10.005 and 49.76.040. WSR 19-05-056, § 357-26-055, filed 2/15/19, effective 3/29/19.]

WAC 357-26-060 When an applicant or employee who is a victim of domestic violence, sexual assault or stalking or when an employee has a family member who is a victim of domestic violence, sexual assault or stalking and seeks a reasonable safety accommodation, what documentation may the applicant or employee be required to submit? (1) When an applicant or employee who is a victim of domestic violence, sexual

assault or stalking or when an employee has a family member, as defined in chapter 357-01 WAC, who is a victim of domestic violence, sexual assault or stalking and seeks a reasonable safety accommodation, the employer may require that the request be supported by verification. An applicant or employee may satisfy the verification requirement by providing the employer with one or more of the following:

(a) A police report indicating that the applicant, employee or employee's family member was a victim of domestic violence, sexual assault or stalking;

(b) A court order protecting or separating the applicant, employee or the employee's family member from the perpetrator of the act of domestic violence, sexual assault or stalking;

(c) Evidence from the court or prosecuting attorney that the applicant, employee or the employee's family member appeared, or is scheduled to appear, in court in connection with an incident of domestic violence, sexual assault or stalking;

(d) An applicant or employee's written statement that the employee or the employee's family member is a victim of domestic violence, sexual assault or stalking and the safety accommodation requested is to protect the employee from domestic violence, sexual assault or stalking; or

(e) Documentation that the applicant, employee or the employee's family member is a victim of domestic violence, sexual assault or stalking, from any of the following persons from whom the employee or employee's family member sought assistance in addressing the domestic violence, sexual assault or stalking: An advocate for victims of domestic violence, sexual assault or stalking; an attorney; a member of the clergy; or a medical or other professional.

(2) If the victim of domestic violence, sexual assault or stalking is the employee's family member, as defined in chapter 357-01 WAC, verification of the familial relationship between the employee and the victim may include, but is not limited to: A statement from the employee; a birth certificate; a court document; or other similar documentation.

[Statutory Authority: Chapter 41.06 RCW, RCW 43.10.005 and 49.76.040. WSR 19-05-056, § 357-26-060, filed 2/15/19, effective 3/29/19.]