

**WSR 22-17-122**  
**PROPOSED RULES**  
**OFFICE OF**  
**FINANCIAL MANAGEMENT**  
[Filed August 23, 2022, 8:53 a.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 357-01-1745 Fully vaccinated, 357-04-125 Must an employee provide proof of being fully vaccinated as a condition of employment?, 357-16-197 Must an eligible candidate provide proof of being fully vaccinated?, 357-19-413 What are the requirements for a nonpermanent employee to be fully vaccinated or an eligible candidate to provide proof of being fully vaccinated?, 357-46-165 When may an employer separate an employee in accordance with WAC 357-46-160?, 357-46-195 May an employer separate an employee for nondisciplinary reasons?, and 357-58-190 What must be addressed in agency's WMS recruitment and selection policy and/or procedure?

Hearing Location(s): On September 27, 2022, at 8:30 a.m., Zoom meeting ID (with call-in option) 868 5754 9869, Call-in 253-215-8782, Passcode 862380. Zoom link <https://ofm-wa-gov.zoom.us/j/86857549869?pwd=eXA4ZzZMc0k5KzZGb01HWWWhNlpKUT09>, Passcode if needed 862380.

Date of Intended Adoption: October 4, 2022.

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 11:59 p.m., September 20, 2022.

Assistance for Persons with Disabilities: Contact OFM, TTY 711 or 1-800-833-6384, by 11:59 p.m., September 20, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To place new provisions in Title 357 WAC for nonrepresented state employees who are employed by general government executive and small cabinet agencies, or an eligible candidate for such a position, to continue the requirement to be fully vaccinated; or be granted an exemption and approved for an accommodation due to a disability and/or medical condition or sincerely held religious belief that prevents them from receiving the COVID-19 vaccine; and requiring employers to separate an employee for failure to comply with the COVID-19 vaccination requirements. These requirements are optional for higher education employers, independent agencies, boards, councils, commissions, and separately elected officials.

Reasons Supporting Proposal: On August 5, 2022, Governor Inslee issued a revised Directive #22-13.1, COVID[-19] Vaccination Standards for State Employees, which directs a permanent COVID-19 vaccination condition of employment requirement for state executive and small cabinet agencies. The worldwide outbreak of COVID-19 and the effects of its extreme risk of person-to-person transmission throughout the United States and Washington state significantly impacts the life and health of all Washingtonians, as well as the economy of Washington state, and is a public disaster that affects life, health, property, or the public peace. COVID-19 vaccines are effective in reducing infection and serious disease, and widespread vaccination is the primary means we have as a state to protect the health and safety of our workforce. As an employer, there is an obligation to maintain a safe and healthy work environment for all state employees. The vaccination requirements set forth in these proposed rules will help establish and

maintain a healthy and safe work environment to protect the welfare of all state employees.

Statutory Authority for Adoption: RCW 41.06.133 and 41.06.150.

Statute Being Implemented: RCW 41.06.133 and 41.06.150.

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.

August 23, 2022

Roselyn Marcus

Assistant Director of Legal  
and Legislative Affairs

### OTS-4048.1

#### NEW SECTION

**WAC 357-01-1745 Fully vaccinated.** A person is "fully vaccinated" against COVID-19 two weeks after they have received the second dose in a two-dose series of a COVID-19 vaccine or a single-dose COVID-19 vaccine authorized for emergency use, licensed or otherwise authorized or approved by the U.S. Food and Drug Administration or listed for emergency use or otherwise approved by the World Health Organization.

### OTS-3934.3

#### NEW SECTION

**WAC 357-04-125 Must an employee provide proof of being fully vaccinated as a condition of employment?** As a condition of employment, an employee must be fully vaccinated or request an exemption due to a disability and/or medical condition or if the requirement con-

flicts with an employee's sincerely held religious belief, practice, or observance. If a requested exemption is granted, an employer must determine whether or not the employee can be reasonably accommodated. If the employer determines an employee can be accommodated in accordance with state and federal laws, the employee may continue their employment. An employee who fails to meet this condition of employment will be subject to a separation in accordance with WAC 357-19-410, or a disability separation in accordance with WAC 357-46-160, or a non-disciplinary separation in accordance with WAC 357-46-195.

This section applies to executive and small cabinet agencies as defined in Directive 22-13, issued June 30, 2022, by the governor or any amendment thereto. Higher education employers, independent agencies, boards, councils, commissions, and separately elected officials may require an employee to meet the requirements of this section.

### OTS-3935.3

#### NEW SECTION

**WAC 357-16-197 Must an eligible candidate provide proof of being fully vaccinated?** After a conditional offer of employment is made, an eligible candidate must provide proof of being fully vaccinated or request an exemption due to a disability and/or medical condition or if the requirement conflicts with an eligible candidate's sincerely held religious belief, practice, or observance. If a requested exemption is granted, an employer must determine whether or not the eligible candidate can be reasonably accommodated. If the employer determines an eligible candidate can be accommodated in accordance with state and federal laws, the eligible candidate may be considered for employment.

This section applies to executive and small cabinet agencies as defined in Directive 22-13, issued June 30, 2022, by the governor or any amendment thereto. Higher education employers, independent agencies, boards, councils, commissions, and separately elected officials may require an eligible candidate to meet the requirements of this section.

### OTS-3936.2

#### NEW SECTION

**WAC 357-19-413 What are the requirements for a nonpermanent employee to be fully vaccinated or an eligible candidate to provide proof of being fully vaccinated?** (1) A nonpermanent employee must comply with the COVID-19 vaccination requirements set forth in WAC 357-04-125. A nonpermanent employee who fails to comply must be separated in accordance with WAC 357-19-410.

(2) After a conditional offer of employment for a nonpermanent appointment is made, an eligible candidate must provide proof of being fully vaccinated in accordance with WAC 357-16-197.

## OTS-3937.2

AMENDATORY SECTION (Amending WSR 04-18-114, filed 9/1/04, effective 7/1/05)

**WAC 357-46-165** **When may an employer separate an employee in accordance with WAC 357-46-160?** An employer may separate an employee due to disability when any of the following circumstances exist:

(1) The employer is unable to reasonably accommodate the employee.

(2) The employer has medical documentation of the employee's inability to work in any capacity.

(3) The employee requests separation due to disability and the employer has medical information which documents that the employee cannot perform the essential functions of the employee's position or class.

(4) The employer must separate an employee from employment for failure to comply with the COVID-19 vaccination requirements set forth in WAC 357-04-125 where an exemption was approved due to a disability and/or medical condition and the employer is unable to reasonably accommodate the employee.

[Statutory Authority: Chapter 41.06 RCW. WSR 04-18-114, § 357-46-165, filed 9/1/04, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 04-18-114, filed 9/1/04, effective 7/1/05)

**WAC 357-46-195 ((Can))** **May an employer separate an employee for nondisciplinary reasons?** An employer may separate a permanent employee from a position or from employment for nondisciplinary reasons such as failure to comply with the conditions of employment which may or may not have existed at the time of initial appointment or failure to authorize or to pass a background check required by the position.

The employer may consider other employment options such as transfer or voluntary demotion in lieu of separation.

The employer must separate an employee from employment for nondisciplinary reasons for failure to comply with the COVID-19 vaccination requirements set forth in WAC 357-04-125.

[Statutory Authority: Chapter 41.06 RCW. WSR 04-18-114, § 357-46-195, filed 9/1/04, effective 7/1/05.]

## OTS-3938.2

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

**WAC 357-58-190 What must be addressed in agency's WMS recruitment and selection policy and/or procedure?** An agency's WMS recruitment and selection policy and/or procedure must:

- (1) Provide for the ability to consider any or all qualified candidates for hire, promotion, or internal movement;
- (2) Ensure that hiring decisions are fair, objective, and based on the evaluation of leadership and other job related competencies and characteristics required for successful job performance and performance management;
- (3) Support workforce diversity and affirmative action goals;
- (4) Consider the career development of the agency's employees and other state employees;
- (5) Consider making appointments from a veterans placement program;
- (6) Ensure that hiring decisions are not based on patronage or political affiliation;
- (7) Ensure compliance with state and federal laws relating to employee selection and nondiscrimination;
- (8) Encourage decentralized and regional administration of the recruitment and selection processes when it is appropriate for the agency;
- (9) 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; and
- (10) Ensure compliance with the vaccination requirements in accordance with WAC 357-04-125 and 357-16-197.

[Statutory Authority: Chapter 41.06 RCW. WSR 22-12-074, § 357-58-190, filed 5/27/22, effective 7/1/22. Statutory Authority: Chapter 41.06 RCW, RCW 49.58.100 and 49.58.110. WSR 20-06-009, § 357-58-190, filed 2/20/20, effective 3/30/20. Statutory Authority: Chapter 41.06 RCW. WSR 05-12-069, § 357-58-190, filed 5/27/05, effective 7/1/05.]