

WSR 22-20-095

PROPOSED RULES

OFFICE OF

FINANCIAL MANAGEMENT

[Filed October 4, 2022, 12:45 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 357-13-090

How is an employee affected when their position is reallocated?,
357-28-190 When must an employee receive shift premium?, 357-28-203
When must an employee receive location based premium pay?, 357-28-215
When must an employee receive supervisory pay differential?,
357-31-133 When may an employer allow an employee to use their accrued
sick leave?, and 357-31-345 How does leave without pay affect a general
government employee's seniority date?

Hearing Location(s): On November 10, 2022, at 8:30 a.m., Zoom
meeting (with call-in option), ID 830 9875 7996, Call in 253-215-8782,
Passcode 814462, Zoom link [https://ofm-wa-gov.zoom.us/j/83098757996?](https://ofm-wa-gov.zoom.us/j/83098757996?pwd=TkJkOGR5d2dFeDNZVHFHsk4rdHlDdz09)
[pwd=TkJkOGR5d2dFeDNZVHFHsk4rdHlDdz09](https://ofm-wa-gov.zoom.us/j/83098757996?pwd=TkJkOGR5d2dFeDNZVHFHsk4rdHlDdz09).

Date of Intended Adoption: November 17, 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, by 11:59 p.m., No-
vember 3, 2022.

Assistance for Persons with Disabilities: Contact OFM, TTY 711 or
1-800-833-6384, by 11:59 p.m., November 3, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including
Any Changes in Existing Rules: Amend WAC 357-13-090 to state when an
employee is reallocated to a higher class, the employee must advance
to a step of the range for the new class that is nearest to five per-
cent above their previous salary, not to exceed step M of the range as
provided in WAC 357-28-115. Amend WAC 357-28-190 to add the word "reg-
ularly" to subsection [(1)](a) and add subsection [(1)](c) to clarify
that the compensation plan allows for dayshift employees, who are tem-
porarily assigned to work the majority of their hours between 6:00
p.m. and 6:00 a.m., to be eligible to receive a shift premium. Amend
WAC 357-28-203 to clarify when an employee must receive location-based
premium pay. Amend WAC 357-31-133 to make corrections to references to
an incorrect subsection. Repeal WAC 357-31-345 to remove redundant
language.

Reasons Supporting Proposal: Housekeeping in nature. The amend-
ment to WAC 357-13-090 is stemming from the new IT professional struc-
ture implementation that went into effect on July 1, 2019. The amend-
ment to WAC 357-28-190 is to provide clarity and to align with the
compensation plan. The amendment to WAC 357-28-203 is changing the
word "and" to "or." This will clarify that location-based premiums
must be paid when an employee is assigned to work on McNeil Island **or**
when an employee is assigned to a permanent duty station in King Coun-
ty. The amendment to WAC 357-28-215 is to correct the reference from
base pay to base salary. The amendment to WAC 357-31-133 is to fix an
oversight from renumeration of the section stemming from rule changes
in 2019. WAC 357-31-350 addresses how leave without pay affects a gen-
eral government employee's seniority date; therefore, WAC 357-31-345
is no longer needed. The retention of WAC 357-31-345 was an oversight
when rules were amended, effective July 1, 2022, as reflected on WSR
22-06-006.

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.

October 4, 2022

Nathan Sherrard

Assistant Legal Affairs Counsel

OTS-4085.2

AMENDATORY SECTION (Amending WSR 22-12-076, filed 5/27/22, effective 7/1/22)

WAC 357-31-133 When may an employer allow an employee to use their accrued sick leave? The employer may require verification or certification of the reason for sick leave use in accordance with the employer's leave policy.

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

(1) For condolence or bereavement;

(2) When an employee is unable to report to work due to inclement weather in accordance with the employer's policy on inclement weather as described in WAC 357-31-255;

(3) To bond with a newborn, adoptive or foster child for a period beyond 18 weeks as allowed in WAC 357-31-130 (~~((1)-(j))~~) (12). Sick leave for this purpose must be taken during the first year following the child's birth or placement. The total amount of sick leave allowed to be used, beyond WAC 357-31-130 (~~((1)-(i))~~) (12) must be addressed in the employer's leave policy in accordance with WAC 357-31-100; or

(4) When a child is a family member of an employee or member of an employee's household and:

(a) The child's school or place of care has been closed by order or recommendation of a public official for any health-related reason; or

(b) The child has been exposed to a contagious disease and is required to quarantine.

[Statutory Authority: Chapter 41.06 RCW. WSR 22-12-076, § 357-31-133, filed 5/27/22, effective 7/1/22.]

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 357-31-345 How does leave without pay affect a general government employee's seniority date?

OTS-4040.1

AMENDATORY SECTION (Amending WSR 20-24-025, filed 11/20/20, effective 12/28/20)

WAC 357-28-190 When must an employee receive shift premium? (1)

Shift premium at the rate specified in the compensation plan must be paid when:

(a) An employee is regularly scheduled to work a shift in which the majority of hours worked daily or weekly are between 6:00 p.m. and 6:00 a.m.; (~~(or)~~)

(b) An employee is scheduled to work a shift which is split with a minimum of four intervening hours not worked; or

(c) An employee is regularly scheduled to work a day shift but is assigned to work a night or evening shift in which the majority of hours worked are between 6:00 p.m. and 6:00 a.m.

(2) Shift premium must be paid for the entire daily or weekly shift that qualifies under subsection (1) of this section. Additionally, these employees are entitled to shift premium for all hours that the employees work adjoining that evening or night shift.

(3) Shift premium may be paid at a monthly rate as specified in the compensation plan for full time employees regularly assigned to a qualifying shift.

(4) An employee assigned to a shift that qualifies for shift premium pay must receive the same shift premium for authorized periods of paid leave and holidays and for up to five days of a temporary assignment to a shift that does not qualify. Continued payment of shift premium for a temporary assignment exceeding five days is at the discretion of the employer.

(5) Compensation under the provisions of this section must be in accordance with the employer's policy, as approved by the director, for the following individuals:

(a) Employees dispatched to emergency response duty under an incident command system as defined in RCW 38.52.010; and

(b) Employees of the department of corrections who are in charge of offenders assigned to assist in forest fire suppression and other emergency incidents.

(6) Exceptions to shift premium provisions may be approved by the director.

(7) For higher education employers, shift premium must not apply to police and fire officers where special pay salaries are correlated with a rotating shift in accordance with local practice.

(8) Employees may waive shift premium.

(9) Employees who voluntarily request to work a shift as described in subsection (1) (a) (~~and~~), (b), and (c) of this section will not be eligible for shift premium.

[Statutory Authority: Chapter 41.06 RCW. WSR 20-24-025, § 357-28-190, filed 11/20/20, effective 12/28/20; WSR 05-01-205, § 357-28-190, filed 12/21/04, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 19-17-040, filed 8/15/19, effective 9/23/19)

WAC 357-28-203 When must an employee receive location based premium pay? Location based premium pay at the rate specified in the compensation plan must be paid when an employee is:

(1) Assigned to work on McNeil Island at the special commitment center and for each day the employee is physically working on the island. Days in paid status not working on the island will not qualify for premium pay; (~~and~~) or

(2) Assigned to a permanent duty station in King County.

(a) This subsection does not apply to employees who are employed by the University of Washington.

(b) When an employee is no longer permanently assigned to a King County duty station they will not be eligible for location based premium pay.

[Statutory Authority: Chapter 41.06 RCW and RCW 41.06.133. WSR 19-17-040, § 357-28-203, filed 8/15/19, effective 9/23/19.]

AMENDATORY SECTION (Amending WSR 19-11-134, filed 5/22/19, effective 7/1/19)

WAC 357-28-215 When must an employee receive supervisory pay differential? Employees within the information technology professional structure who are in the entry, journey and senior/specialist levels designated as and performing all the duties of a supervisor, in accordance with WAC 357-01-317, must receive a five percent supervisory pay differential in addition to their base (~~pay~~) salary as long as they meet the definition of supervisor.

[Statutory Authority: Chapter 41.06 RCW and RCW 41.06.150. WSR 19-11-134, § 357-28-215, filed 5/22/19, effective 7/1/19.]

OTS-4039.3

AMENDATORY SECTION (Amending WSR 16-17-089, filed 8/18/16, effective 9/20/16)

WAC 357-13-090 How is an employee affected when ((his/her)) their position is reallocated?

This table is used to determine how an employee whose position is reallocated is affected.			
	Employee's position reallocated to:		
	Class with a higher salary range maximum	Class with an equal salary range maximum	Class with a lower salary range maximum
Reallocation results from:			
A position review requested by the employee or initiated by the employer	<p><i>If the employee has performed the higher level duties for at least six months and meets the competencies and other position requirements:</i></p> <p>→ The employee remains in the position and is appointed with permanent status provided the probationary or trial service period for the class to which the position is reallocated is six months in duration. If the probationary period or trial service period is longer than six months and the employee has not performed higher level duties for the length of the probationary period or trial service period, the employer may require the employee serve the remainder of the probationary or trial service period before gaining permanent status in the reallocated position.</p> <p><i>If the reallocation is the result of a change in the duties of the position and the employee has not performed the higher level duties for six months or more:</i></p> <p>→ The employer must give the employee the opportunity to compete for the position. The employer may choose to promote the employee without competition as long as the employee meets the competencies and any other position requirements.</p> <p>If the employee is not selected for the position, the employer's layoff procedure applies. If the employee is appointed and ((he/she)) has already gained permanent status, the employee must serve a trial service period. If the employee has not completed the probationary period, then the new trial service period will overlap provided the higher and lower classes are in the same or a closely related field. If the classes are not in the same or closely related field, then the employee will start their probationary period over in the new class.</p>	<p><i>If the employee meets the competencies and other position requirements:</i></p> <p>→ The employee remains in the position and retains existing appointment status.</p> <p>→ The employee retains the previous base salary in accordance with WAC 357-28-120.</p> <p><i>If the employee does not meet the competencies and other position requirements:</i></p>	<p><i>If the employee meets the competencies and other position requirements and chooses to remain in the reallocated position:</i></p> <p>→ The employee retains appointment status; has the right to be placed on the employer's internal layoff list and in the general government transition pool; and has ((his/her)) <u>their</u> salary set in accordance with WAC 357-28-120.</p> <p><i>If the employee chooses to vacate the position or does not meet the competencies and other position requirements:</i></p> <p>→ The employer's layoff procedure applies.</p>

This table is used to determine how an employee whose position is reallocated is affected.			
	Employee's position reallocated to:		
	Class with a higher salary range maximum	Class with an equal salary range maximum	Class with a lower salary range maximum
Reallocation results from:			
A position review requested by the employee or initiated by the employer	<p><i>If the employee has performed the higher level duties for at least six months and meets the competencies and other position requirements:</i></p> <p>Upon appointment to the higher class, the ((employee's base salary must be increased a minimum of a two step increase)) <u>employee must advance to a step of the range for the new class that is nearest to five percent above their previous salary</u>, not to exceed step M of the range as provided in WAC 357-28-115.</p>	<p><i>If the employee meets the competencies and other position requirements:</i></p> <p>→ The employer's layoff procedure applies.</p>	<p><i>If the employee meets the competencies and other position requirements and chooses to remain in the reallocated position:</i></p>
The director revising the classification plan.	The employee remains in the position and keeps existing appointment status. See WAC 357-28-130 for determining the employee's salary.		

[Statutory Authority: Chapter 41.06 RCW. WSR 16-17-089, § 357-13-090, filed 8/18/16, effective 9/20/16; WSR 14-24-026, § 357-13-090, filed 11/21/14, effective 12/22/14; WSR 13-19-043, § 357-13-090, filed 9/13/13, effective 10/18/13; WSR 11-23-054, § 357-13-090, filed 11/10/11, effective 12/13/11; WSR 06-23-090, § 357-13-090, filed 11/14/06, effective 12/18/06; WSR 05-12-088, § 357-13-090, filed 5/27/05, effective 7/1/05; WSR 05-01-201, § 357-13-090, filed 12/21/04, effective 7/1/05.]