

WSR 22-21-038
EMERGENCY RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed October 7, 2022, 3:56 p.m., effective October 7, 2022, 3:56 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule-making order is to add language to existing WAC 392-136A-030 that clearly articulates the changes made to the shared leave program eligibility for school district staff to include the permitted use of shared leave as a result of the 2019 novel coronavirus.

Citation of Rules Affected by this Order: Amending WAC 392-136A-030.

Statutory Authority for Adoption: RCW 28A.400.380.

Other Authority: RCW 41.04.665.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Due to the global pandemic caused by COVID-19, RCW and WAC related to shared leave were amended by the legislature and the office of financial management. This emergency rule change includes language regarding the permitted use of shared leave for this purpose which was not previously amended to current WAC 392-136A-030 and is necessary for the preservation of public health, safety, and general welfare. The office of the superintendent of public instruction initiated regular rule making on June 21, 2022 (WSR 22-13-161).

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 7, 2022.

Chris P. S. Reykdal
State Superintendent of Public Instruction

OTS-3887.1

AMENDATORY SECTION (Amending WSR 19-12-013, filed 5/24/19, effective 6/24/19)

WAC 392-136A-030 Eligibility. In the event a district implements a shared leave program, an employee shall be eligible to receive shared leave if the district has determined the employee meets the following conditions:

- (1) The employee:
 - (a) Suffers from, or has a relative or household member suffering from, an illness, injury, impairment, or physical or mental condition which is of an extraordinary or severe nature;
 - (b) Has been called to service in the uniformed services;
 - (c) A state of emergency has been declared anywhere within the United States by the federal or any state government and the employee has the needed skills to assist in responding to the emergency or its aftermath and volunteers his or her services to either a governmental agency or to a nonprofit organization engaged in humanitarian relief in the devastated area, and the governmental agency or nonprofit organization accepts the employee's offer of volunteer services;
 - (d) Is a victim of domestic violence, sexual assault, or stalking;
 - (e) Is a current member of the uniformed services or is a veteran as defined under RCW 41.04.005, and is attending medical appointments or treatments for a service connected injury or disability;
 - (f) Is a spouse of a current member of the uniformed services or a veteran as defined under RCW 41.04.005, who is attending medical appointments or treatments for a service connected injury or disability and requires assistance while attending appointment or treatment;
 - (g) Needs the time for parental leave; or
 - (h) Is sick or temporarily disabled because of pregnancy disability.
- (2) The condition(s) listed in subsection (1) of this section has caused, or is likely to cause, the employee to go on leave without pay or terminate district employment.
- (3) The employee's absence and the use of shared leave are justified.
- (4) The employee has exhausted or will shortly exhaust leave in accordance with WAC 392-136A-040. If the employee qualifies under subsection (1)(g) or (h) of this section, the employee is not required to deplete all of his or her annual leave or sick leave in accordance with WAC 392-136A-040.
- (5) The employee has abided by district policies regarding:
 - (a) Sick leave use if the employee qualifies under subsection (1)(a), (d), (g), or (h) of this section; or
 - (b) Military leave use if the employee qualifies under subsection (1)(b) of this section.
- (6) If the illness or injury is work-related, the employee has diligently pursued and been found to be ineligible for benefits under chapter 51.32 RCW.
- (7) The employee's job is one in which annual leave, sick leave, military leave, or personal holiday can be used and accrued.
- (8) In accordance with RCW 41.04.665 (1)(f), and until the expiration of proclamation 20-05, issued February 29, 2020, by the governor and declaring a state of emergency in the state of Washington, or any amendment thereto, whichever is later, an employee may receive shared leave as a result of the 2019 novel coronavirus (COVID-19). The use of shared leave may be permitted if the employee, or a relative,

or household member is isolated or quarantined as recommended, requested, or ordered by a public health official or health care provider as a result of suspected or confirmed infection with or exposure to the 2019 novel coronavirus (COVID-19).

A school district may permit use of shared leave under this subsection without considering the requirements of subsections (1) through (5) of this section.

[Statutory Authority: RCW 28A.400.380. WSR 19-12-013, § 392-136A-030, filed 5/24/19, effective 6/24/19.]