

WSR 23-11-037

PROPOSED RULES

OFFICE OF

FINANCIAL MANAGEMENT

[Filed May 11, 2023, 9:34 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 employer require an eligible candidate to provide proof of being fully vaccinated?, 357-19-413 What are the requirements for a nonpermanent employee to be fully vaccinated or for an employer to require 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 July 24, 2023, at 10:00 a.m., Zoom meeting (with call-in option), ID 852 5838 8489, Call in 253-215-8782, Passcode 537604, Zoom link <https://ofm-wa-gov.zoom.us/j/85258388489?pwd=UUovdENzQXorVnhFNzdUUUV3SHNLdz09>.

Date of Intended Adoption: August 3, 2023.

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 July 17, 2023.

Assistance for Persons with Disabilities: Contact OFM, TTY 711 or 1-800-833-6384, by July 17, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Effective May 11, 2023, Governor Jay Inslee rescinded Directive 22-13.1, COVID-19 Vaccination Standards for State Employees, which directed a COVID-19 vaccination requirement as a condition of employment for state executive and small cabinet agencies. This rule making will remove provisions in Title 357 WAC which were filed in WSR 22-20-091, specifically removing the following provisions:

1. The requirement for nonrepresented state employees who are employed by general government executive and small cabinet agencies, or an eligible candidate for such position, to be fully vaccinated against COVID-19 as a condition of employment, or 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;
2. The requirement for employers to separate an employee, or not hire an eligible candidate, if they cannot provide proof that they are fully vaccinated and the employer cannot provide an accommodation; and
3. Language that made the above requirements optional for higher education employers, independent agencies, boards, councils, commissions, and separately elected officials.

Reasons Supporting Proposal: The World Health Organization ended the global emergency status for COVID-19 on May 5, 2023. The Biden Administration is ending the national COVID-19 public health emergency on May 11, 2023. To align Washington state policy with the ending of the national public health emergency, Governor Jay Inslee is rescind-

ing Directive 22-13.1, effective May 11, 2023, which directed a requirement that employees of executive and small cabinet state agencies be fully vaccinated against COVID-19 as a condition of employment. Repeal of the rules implementing Directive 22-13.1 is necessary to ensure that the civil service rules also align with the current public health policies of the World Health Organization, the federal government, and state of Washington.

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: Office of financial management, 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.

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.

May 11, 2023

Nathan Sherrard

Assistant Legal Affairs Counsel

OTS-4587.1

AMENDATORY SECTION (Amending WSR 22-20-091, filed 10/4/22, effective 11/4/22)

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: RCW 41.06.133 and 41.06.150. WSR 22-20-091, § 357-46-165, filed 10/4/22, effective 11/4/22. 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 22-20-091, filed 10/4/22, effective 11/4/22)

WAC 357-46-195 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: RCW 41.06.133 and 41.06.150. WSR 22-20-091, § 357-46-195, filed 10/4/22, effective 11/4/22. Statutory Authority: Chapter 41.06 RCW. WSR 04-18-114, § 357-46-195, filed 9/1/04, effective 7/1/05.]

OTS-4588.1

AMENDATORY SECTION (Amending WSR 22-20-091, filed 10/4/22, effective 11/4/22)

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; and

(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 COVID-19 vaccination requirements in accordance with WAC 357-04-125 and 357-16-197).~~

[Statutory Authority: RCW 41.06.133 and 41.06.150. WSR 22-20-091, § 357-58-190, filed 10/4/22, effective 11/4/22. 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.]

OTS-4583.1

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 357-01-1745 Fully vaccinated.

OTS-4584.1

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 357-04-125 Must an employee provide proof of being fully vaccinated as a condition of employment?

OTS-4585.1

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 357-16-197

Must an employer require an eligible candidate to provide proof of being fully vaccinated?

OTS-4586.1

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 357-19-413

What are the requirements for a nonpermanent employee to be fully vaccinated or for an employer to require an eligible candidate to provide proof of being fully vaccinated?