

**WSR 23-24-020**  
**PERMANENT RULES**  
**OFFICE OF**  
**FINANCIAL MANAGEMENT**

[Filed November 28, 2023, 4:41 p.m., effective January 1, 2024]

Effective Date of Rule: January 1, 2024.

Purpose: Chapter 148, Laws of 2023 (ESHB 1361) passed during the 2023 legislative session with an effective date of July 23, 2023. Section 3 of this bill amends RCW 41.06.070 Exemptions to chapter—Right of reversion, to add subsection (6), which suspends a person's right to reversion during the pendency of a workplace investigation if the allegations being investigated could result in a finding of gross misconduct or malfeasance. The amendments align Title 357 WAC with the requirements of the new law. The amendments to WAC 357-04-030, 357-19-195, and 357-19-200 are to state that if a permanent employee exercises their right to return to classified service from exempt service, the right of return may not be exercised if the employee is terminated from the exempt position for gross misconduct or malfeasance, or during the pendency of an investigation if the employee has been given written notice that they are the subject of an active workplace investigation which may result in a finding of gross misconduct or malfeasance. The new section, WAC 357-19-197, is to address what information a receiving employer must verify when a permanent employee exercises their right to return to classified service from an exempt appointment. For purposes of these rules, "written notice" includes notice sent by email to the employee's work email address; and "pendency of an investigation" lasts until the employer has taken final appropriate action based on the finding of the investigation.

Citation of Rules Affected by this Order: New WAC 357-19-197; and amending WAC 357-04-030, 357-19-195, and 357-19-200.

Statutory Authority for Adoption: RCW 41.06.150.

Other Authority: RCW 41.06.070.

Adopted under notice filed as WSR 23-20-077 on September 29, 2023.

Changes Other than Editing from Proposed to Adopted Version: WAC 357-19-197 (1)(a) was amended to remove inadvertent duplicative language ("or was not terminated from the exempt position for gross misconduct or malfeasance") because that language is in WAC 357-19-197 (1)(b).

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 3, Repealed 0.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 1, Amended 3, 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 1, Amended 3, Repealed 0.

Date Adopted: November 28, 2023.

Nathan Sherrard  
Assistant Legal Affairs Counsel

## OTS-4860.1

AMENDATORY SECTION (Amending WSR 21-14-042 and 22-01-153, filed 6/30/21 and 12/15/21, effective 7/1/22)

**WAC 357-04-030 What right does an employee have to return to the classified service from exempt service?** As required by RCW 41.06.070, any employee having permanent status in a classified position who accepts an appointment in an exempt position has the right to return to classified service in accordance with WAC 357-19-195, 357-19-200, and 357-19-205. (~~As long as the employee was not terminated from the exempt position for gross misconduct or malfeasance,~~) The employee has the right to return to the highest class of position in which the employee previously held permanent status or to a position of similar nature and salary. The right of return may not be exercised if the employee is terminated from the exempt position for gross misconduct or malfeasance, or during the pendency of an investigation if the employee has been given written notice that they are the subject of an active workplace investigation which may result in a finding of gross misconduct or malfeasance.

For purposes of this section:

- (1) "Written notice" includes notice sent by email to the employee's work email address; and
- (2) "Pendency of an investigation" lasts until the employer has taken final appropriate action based on the finding of the investigation.

## OTS-4861.2

AMENDATORY SECTION (Amending WSR 05-01-206, filed 12/21/04, effective 7/1/05)

**WAC 357-19-195 If a permanent employee in a classified position accepts an appointment to an exempt position, what is the employee's right to return to a position in the classified service?** A permanent employee who accepts an appointment to an exempt position has the right to return to classified service at any time (~~as long as the employee was not~~). However, the right of return may not be exercised if the employee is terminated from an exempt position for gross misconduct or malfeasance, or during the pendency of an investigation if the employee has been given written notice that they are the subject of an active workplace investigation which may result in a finding of gross misconduct or malfeasance.

The employee's right is to a position in the highest class in which the employee previously held permanent status or to a position of similar nature and salary. The return right is to the most recent employer with which permanent status in the highest class was held. A position in the highest class does not necessarily mean return to the most recent employer.

If upon an employee being returned to a classified position there are fewer positions than there are employees entitled to such positions, the employer's layoff procedure applies.

For purposes of this section:

(1) "Written notice" includes notice sent by email to the employee's work email address; and

(2) "Pendency of an investigation" lasts until the employer has taken final appropriate action based on the finding of the investigation.

NEW SECTION

**WAC 357-19-197 What information must a receiving employer verify when a permanent employee exercises their right to return to classified service from an exempt appointment?** (1) When a permanent employee exercises their right to return to classified service from an exempt appointment in accordance with RCW 41.06.070, the receiving employer must verify:

(a) The employee is not the subject of an active pending workplace investigation of which the employee was given written notice, and which may result in a finding of gross misconduct or malfeasance; and

(b) The employee was not terminated from the exempt position for gross misconduct or malfeasance.

(2) For purposes of this section:

(a) "Written notice" includes notice sent by email to the employee's work email address; and

(b) "Pendency of an investigation" lasts until the employer has taken final appropriate action based on the finding of the investigation.

AMENDATORY SECTION (Amending WSR 05-01-206, filed 12/21/04, effective 7/1/05)

**WAC 357-19-200 When must an employee apply to return to classified service from exempt service?** Employees exercising return rights should provide as much advance notice as is practicable to the receiving employer. The employee must apply to return to classified service within (~~(thirty)~~) 30 calendar days of:

- Separation from employment in the exempt position, or
- Separation from employment in any subsequent exempt position if there is no break in state service of more than (~~(thirty)~~) 30 calendar days between initial and subsequent exempt appointments.

Employees who apply for return to classified service within (~~(thirty)~~) 30 calendar days must be returned to a position at the time of separation from the exempt appointment or the time of application, whichever is later.

The right of return may not be exercised if the employee is terminated from the exempt position for gross misconduct or malfeasance, or during the pendency of an investigation if the employee has been given written notice that they are the subject of an active workplace investigation which may result in a finding of gross misconduct or malfeasance.

For purposes of this section:

- (1) "Written notice" includes notice sent by email to the employee's work email address; and
- (2) "Pendency of an investigation" lasts until the employer has taken final appropriate action based on the finding of the investigation.