

**WSR 23-24-021**  
**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: The amendment to WAC 357-28-265 is to align Washington state department of labor and industries guidance that if an employer requires employees to receive a COVID-19 vaccine, the time associated with receiving the vaccine must be considered hours worked and over-time must be paid under the Washington State Minimum Wage Act. The amendment to WAC 357-31-027 adds subsection (8) to require that a higher education employer must allow a part-time high-risk employee to utilize accrued holiday credit to protect themselves from risk of exposure to an infectious or contagious disease if the employer determines no other accommodation is reasonable besides the use of leave. This amendment was inadvertently missed during previous rule making in 2022. The amendments to WAC 357-31-070 (1)(f), 357-31-100(9), 357-31-130(3), 357-31-200 (1)(h), 357-31-230(8), and 357-31-567 (1)(d) is to align with a policy decision to allow for a high-risk employee outside of a declared public health emergency to utilize all accrued leave types when seeking an accommodation to protect themselves from risk of exposure to an infectious or contagious disease if no accommodation is reasonable. A high-risk employee is no longer limited to the definition of an employee who is high-risk as defined in RCW 49.17.062. The amendments to WAC 357-31-100(9) remove the requirement for an employer to grant leave without pay (LWOP) to a high-risk employee who is seeking an accommodation and adds new language to state the employer may require that the high-risk employee's request be supported by verification or documentation. The amendments to WAC 357-31-100 to add subsection (10) and WAC 357-31-327(6) are to clarify that an employer must grant LWOP to a high-risk employee during a declared public health emergency. The requirement for employers to approve LWOP for this reason is limited to the duration of a declared public health emergency as required in RCW 49.17.062. The amendments to WAC 357-31-100 to add subsection (13) and WAC 357-31-160 are to align with a longstanding rule interpretation that separation is from state service and to clarify former employees who are reemployed after being separated from state service for five years or longer may be restored unused sick leave credits in accordance with employer leave policy. The amendment to WAC 357-31-330(14) expands the reasons an employer may grant LWOP for an employee to protect themselves, or a relative or household member, from risks related specifically to coronavirus disease to the risk of exposure to any infectious or contagious disease.

Citation of Rules Affected by this Order: Amending WAC 357-28-265, 357-31-027, 357-31-070, 357-31-100, 357-31-130, 357-31-160, 357-31-200, 357-31-230, 357-31-327, 357-31-330, and 357-31-567.

Statutory Authority for Adoption: RCW 41.06.133.

Adopted under notice filed as WSR 23-20-075 on September 29, 2023.

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 11, 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 11, 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 11, Repealed 0.

Date Adopted: November 28, 2023.

Nathan Sherrard  
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### OTS-4483.1

AMENDATORY SECTION (Amending WSR 05-01-205, filed 12/21/04, effective 7/1/05)

**WAC 357-28-265 For the purpose of computing eligibility for overtime compensation, are holidays and leave with pay considered time worked?** For purposes of computing eligibility for overtime compensation, paid holidays during the employee's regular work schedule **are** considered time worked. Leave with pay during the employee's regular work schedule is **not** considered time worked except for:

(1) When leave is taken to travel and receive each dose or booster of COVID-19 vaccine in accordance with WAC 357-31-325; or

(2) When leave is taken to receive each dose or booster of COVID-19 vaccine in accordance with WAC 357-31-326.

### OTS-4610.5

AMENDATORY SECTION (Amending WSR 22-24-027, filed 11/30/22, effective 1/1/23)

**WAC 357-31-027 When must a higher education employer allow a part-time employee to use accrued holiday credit?** Higher education employers must allow a part-time employee as defined in WAC 357-01-2290(2) to use accrued holiday credit for the following reasons:

(1) Employees must request to use accrued holiday credit in accordance with the employer's leave policy. When considering employees' requests to use accrued holiday credit, employers must consider their business needs and the wishes of the employee.

(2) An employee must be granted the use of accrued holiday credit to care for a spouse, registered domestic partner, parent, parent-in-law, or grandparent of the employee who has a serious health condition or an emergency health condition, or to care for a minor/dependent child with a health condition that requires treatment or supervision.

In accordance with the employer's leave policy, approval of the employee's request to use accrued holiday credit may be subject to verification that the condition exists.

(3) An employee must be granted the use of accrued holiday credit if the employee or the employee's family member, as defined in chapter 357-01 WAC, is a victim of domestic violence, sexual assault, or stalking as defined in RCW 49.76.020. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730.

(4) In accordance with WAC 357-31-373, an employee must be granted the use of accrued holiday credit to be with a spouse or registered domestic partner who is a member of the armed forces of the United States, National Guard, or reserves after the military spouse or registered domestic partner has been notified of an impending call or order to active duty, before deployment, or when the military spouse or registered domestic partner is on leave from deployment.

(5) An employee must be granted the use of accrued holiday credit when requested as a supplemental benefit while receiving a partial wage replacement for paid family and/or medical leave under Title 50A RCW as provided in WAC 357-31-248. Leave taken under this subsection may be subject to verification that the employee has been approved to receive benefits for approved paid family and/or medical leave under Title 50A RCW.

(6) Employers may require that accumulated holiday credit be used before vacation leave is approved, except in those instances where this requirement would result in loss of accumulated vacation leave.

(7) If the employee requests to use their accrued holiday credit when granted a temporary leave of absence for legislative service in accordance with WAC 357-31-374(2).

(8) When a high-risk employee seeks an accommodation to protect themselves from the risk of exposure to an infectious or contagious disease and the employer determines no other accommodation is reasonable besides the use of leave.

AMENDATORY SECTION (Amending WSR 22-24-027, filed 11/30/22, effective 1/1/23)

**WAC 357-31-070 When is an employer required to approve an employee's request to use a personal holiday?** (1) An employer must approve the use of a personal holiday as long as:

(a) The employee is entitled to a personal holiday in accordance with RCW 1.16.050 and WAC 357-31-055;

(b) The employee has requested the personal holiday in accordance with the employer's leave procedures; and

(c) The employee's absence does not interfere with the operational needs of the employer.

(2) At any time, an employer must allow an employee to use part or all of the personal holiday for any of the following reasons:

(a) To care for a minor/dependent child with a health condition that requires treatment or supervision;

(b) To care for a spouse, registered domestic partner, parent, parent-in-law or grandparent of the employee who has a serious health condition or an emergency health condition;

(c) If the employee or the employee's family member is a victim of domestic violence, sexual assault, or stalking as defined in RCW

49.76.020. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730;

(d) In accordance with WAC 357-31-373, for an employee to be with a spouse or registered domestic partner who is a member of the armed forces of the United States, National Guard, or reserves after the military spouse or registered domestic partner has been notified of an impending call or order to active duty, before deployment, or when the military spouse or registered domestic partner is on leave from deployment;

(e) If the employee requests to use their personal holiday as a supplemental benefit while receiving a partial wage replacement for paid family and/or medical leave under Title 50A RCW. Leave taken under this subsection may be subject to verification that the employee has been approved to receive benefits for paid family and/or medical leave under Title 50A RCW;

(f) When a high-risk employee (~~(, as defined in RCW 49.17.062,)~~) seeks (~~(a reasonable)~~) an accommodation to protect themselves from the risk of exposure to an infectious or contagious disease and the employer determines no other accommodation is reasonable besides the use of leave; or

(g) If the employee requests to use their personal holiday when granted a temporary leave of absence for legislative service in accordance with WAC 357-31-374(2).

AMENDATORY SECTION (Amending WSR 22-24-027, filed 11/30/22, effective 1/1/23)

**WAC 357-31-100 Must an employer have a policy for requesting and approving leave?** Each employer must develop a leave policy which specifies the procedure for requesting and approving all leave, as provided in the civil service rules. The employer's policy must:

(1) Allow an employee to use vacation leave without advance approval when the employee is requesting to use vacation leave to respond to family care emergencies or for an emergency health condition as provided in WAC 357-31-200 (1)(b);

(2) Allow an employee to use a reasonable amount of accrued leave or unpaid leave when the employee is a victim or has a family member, as defined in chapter 357-01 WAC, who is a victim of domestic violence, sexual assault or stalking as defined in RCW 49.76.020;

(3) Allow an employee to use accrued leave as a supplemental benefit as provided in WAC 357-31-248;

(4) Address advance notice from the employee when the employee is seeking leave under subsections (2) and (3) of this section. When advance notice cannot be given because of an emergency or unforeseen circumstances due to domestic violence, sexual assault or stalking, the employee or the employee's designee must give notice to the employer no later than the end of the first day that the employee takes such leave;

(5) Allow an employee to use sick leave for the purpose of parental leave to bond with a newborn, adoptive or foster child. The policy must state the total amount of sick leave allowed to be used beyond 18 weeks in accordance with WAC 357-31-133;

(6) Address overtime eligible employees that are required to provide medical certification or verification to their employer for the use of paid sick leave under chapter 296-128 WAC;

(7) Address overtime eligible employees that are required to provide reasonable notice to their employer for an absence from work for the use of paid sick leave under chapter 296-128 WAC;

(8) Address whether a general government employee may take additional accrued leave beyond 30 days in a two-year period to participate in life-giving procedures in accordance with RCW 41.06.570;

(9) Allow a high-risk employee (~~(, as defined in RCW 49.17.062,)~~) seeking ~~((a reasonable))~~ an accommodation to protect themselves from the risk of exposure to an infectious or contagious disease to use their accrued leave ~~((and leave without pay))~~ if the employer determines no other accommodation is reasonable besides the use of leave. The employer may require that the employees request be supported by verification or documentation;

(10) Allow a high-risk employee seeking an accommodation to protect themselves from the risk of exposure to an infectious or contagious disease during a public health emergency to use leave without pay if the employer determines no other accommodation is reasonable besides the use of leave in accordance with RCW 49.17.062;

(11) Allow an employee to use unpaid leave when the employee is granted a temporary leave of absence for service in an elective office in accordance with WAC 357-31-374(1); ~~((and~~

~~(11))~~ (12) Allow an employee to use unpaid and/or accrued paid leave when the employee is granted a temporary leave of absence for legislative service in accordance with WAC 357-31-374(2). The policy must state employees who request a leave of absence for legislative service must provide notice to the employer at least 30 days in advance for a regular legislative session or as soon as the session is proclaimed for a special session; and

(13) Address whether former employees who are reemployed after five years of separation from state service may be restored unused sick leave credits in accordance with WAC 357-31-160.

AMENDATORY SECTION (Amending WSR 22-24-027, filed 11/30/22, effective 1/1/23)

**WAC 357-31-130 When must an employer allow an employee to use their accrued sick leave?** The employer may require medical verification or certification of the reason for sick leave use in accordance with the employer's leave policy and in compliance with chapter 296-128 WAC.

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

(1) An employee's mental or physical illness, disability, injury or health condition that has incapacitated the employee from performing required duties; to accommodate the employee's need for medical diagnosis, care or treatment of a mental or physical illness, injury or health condition; or an employee's need for preventive medical care.

(2) By reason of exposure of the employee to a contagious disease when the employee's presence at work would jeopardize the health of others.

(3) When a high-risk employee (~~(, as defined in RCW 49.17.062,)~~) seeks (~~(a reasonable)~~) an accommodation to protect themselves from the risk of exposure to an infectious or contagious disease and the employer determines no other accommodation is reasonable besides the use of leave.

(4) To allow an employee to provide care for a child who has been exposed to a contagious disease and is required to quarantine; or when a household or family member needs additional care, not covered by subsection (6) of this section, who has been exposed to a contagious disease and is required to quarantine.

(5) When the employee's place of business has been closed by order of a public official for any health-related reason, or when an employee's child's school or place of care has been closed for such reason.

(6) To allow an employee to provide care for a family member with a mental or physical illness, injury or health condition; care of a family member who needs medical diagnosis, care or treatment of a mental or physical illness, injury or health condition; or care for a family member who needs preventive medical care.

(7) For family care emergencies per WAC 357-31-290, 357-31-295, 357-31-300 and 357-31-305.

(8) When an employee is required to be absent from work to care for members of the employee's household or relatives of the employee or relatives of the employee's spouse/registered domestic partner who experience an illness or injury, not including situations covered by subsection (6) of this section.

(a) The employer must approve up to five days of accumulated sick leave each occurrence. Employers may approve more than five days.

(b) For purposes of this subsection, "relatives" is limited to spouse, registered domestic partner, child, grandchild, grandparent or parent.

(9) When requested as a supplemental benefit while receiving a partial wage replacement for paid family and/or medical leave under Title 50A RCW as provided in WAC 357-31-248. Leave taken under this subsection may be subject to verification that the employee has been approved to receive benefits for paid family and/or medical leave under Title 50A RCW.

(10) If the employee or the employee's family member, as defined in chapter 357-01 WAC, is a victim of domestic violence, sexual assault or stalking as defined in RCW 49.76.020. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730.

(11) In accordance with WAC 357-31-373, for an employee to be with a spouse or registered domestic partner who is a member of the armed forces of the United States, National Guard, or reserves after the military spouse or registered domestic partner has been notified of an impending call or order to active duty, before deployment, or when the military spouse or registered domestic partner is on leave from deployment.

(12) When an employee requests to use sick leave for the purpose of parental leave to bond with a newborn, adoptive or foster child for a period up to 18 weeks. Sick leave for this purpose must be taken during the first year following the child's birth or placement.

(13) If the employee requests to use sick leave when granted a temporary leave of absence for legislative service in accordance with WAC 357-31-374(2).

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

**WAC 357-31-160 When a former employee is (~~(re-employed)~~) reemployed, is sick leave restored?** Former employees who are (~~(re-employed)~~) reemployed within five years of their separation from state service must be restored unused sick leave credits, if any, to which they were entitled at the time of separation. Former employees who are reemployed after five years of their separation from state service may be restored unused sick leave credits in accordance with the employer's leave policy. The employee may use the restored balance in accordance with WAC 357-31-130 and 357-31-133.

If the employee was retired from government service before being (~~(re-employed)~~) reemployed, when the employee subsequently retires again or dies, only that unused sick leave accrued since the date of reemployment minus that taken within the same period may be compensated per the conversion provisions of WAC 357-31-150.

AMENDATORY SECTION (Amending WSR 22-24-027, filed 11/30/22, effective 1/1/23)

**WAC 357-31-200 When must an employer grant the use of vacation leave?** (1) An employee's request to use vacation leave must be approved under the following conditions:

- (a) As a result of the employee's serious health condition.
- (b) To care for a spouse, registered domestic partner, parent, parent-in-law, or grandparent of the employee who has a serious health condition or an emergency health condition.
- (c) To care for a minor/dependent child with a health condition that requires treatment or supervision.
- (d) For parental leave as provided in WAC 357-31-460.
- (e) If the employee or the employee's family member, as defined in chapter 357-01 WAC, is a victim of domestic violence, sexual assault, or stalking as defined in RCW 49.76.020. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730.
- (f) In accordance with WAC 357-31-373, for an employee to be with a spouse or registered domestic partner who is a member of the armed forces of the United States, National Guard, or reserves after the military spouse or registered domestic partner has been notified of an impending call or order to active duty, before deployment, or when the military spouse or registered domestic partner is on leave from deployment.
- (g) When requested as a supplemental benefit while receiving a partial wage replacement for paid family and/or medical leave under Title 50A RCW as provided in WAC 357-31-248.
- (h) When a high-risk employee (~~(, as defined in RCW 49.17.062,)~~) seeks (~~(a reasonable)~~) an accommodation to protect themselves from the risk of exposure to an infectious or contagious disease and the employer determines no other accommodation is reasonable besides the use of leave.
- (i) When the employee requests to use their vacation leave when granted a temporary leave of absence for legislative service in accordance with WAC 357-31-374(2).

(2) In accordance with the employer's leave policy, approval for the reasons listed in (1)(a) through (g) above may be subject to verification that the condition or circumstance exists or that paid family and/or medical leave under Title 50A RCW has been approved.

AMENDATORY SECTION (Amending WSR 22-24-027, filed 11/30/22, effective 1/1/23)

**WAC 357-31-230 When must an employee be granted the use of accrued compensatory time?** (1) Employees must request to use accrued compensatory time in accordance with the employer's leave policy. When considering employees' requests, employers must consider their business needs and the wishes of the employee.

(2) An employee must be granted the use of accrued compensatory time to care for a spouse, registered domestic partner, parent, parent-in-law, or grandparent of the employee who has a serious health condition or an emergency health condition, or to care for a minor/dependent child with a health condition that requires treatment or supervision. In accordance with the employer's leave policy, approval of the employee's request to use accrued compensatory time may be subject to verification that the condition exists.

(3) An employee must be granted the use of accrued compensatory time if the employee or the employee's family member, as defined in chapter 357-01 WAC, is a victim of domestic violence, sexual assault, or stalking as defined in RCW 49.76.020. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730.

(4) In accordance with WAC 357-31-373, an employee must be granted the use of accrued compensatory time to be with a spouse or registered domestic partner who is a member of the armed forces of the United States, National Guard, or reserves after the military spouse or registered domestic partner has been notified of an impending call or order to active duty, before deployment, or when the military spouse or registered domestic partner is on leave from deployment.

(5) When requested as a supplemental benefit while receiving a partial wage replacement for paid family and/or medical leave under Title 50A RCW as provided in WAC 357-31-248. Leave taken under this subsection may be subject to verification that the employee has been approved to receive benefits for approved paid family and/or medical leave under Title 50A RCW.

(6) Compensatory time off may be scheduled by the employer during the final 60 days of a biennium.

(7) Employers may require that accumulated compensatory time be used before vacation leave is approved, except in those instances where this requirement would result in loss of accumulated vacation leave.

(8) A high-risk employee (~~(, as defined in RCW 49.17.062,)~~) seeking ~~((a reasonable))~~ an accommodation to protect themselves from the risk of exposure to an infectious or contagious disease must be granted the use of accrued compensatory time if the employer determines no other accommodation is reasonable besides the use of leave.

(9) An employee must be granted the use of compensatory time when granted a temporary leave of absence for legislative service in accordance with WAC 357-31-374(2).

AMENDATORY SECTION (Amending WSR 22-24-027, filed 11/30/22, effective 1/1/23)

**WAC 357-31-327 When must an employer grant leave without pay?**

An employer must grant leave without pay under the following conditions:

- (1) When an employee who is a volunteer firefighter is called to duty to respond to a fire, natural disaster, or medical emergency;
- (2) If the employee or the employee's family member, as defined in chapter 357-01 WAC, is a victim of domestic violence, sexual assault, or stalking as defined in RCW 49.76.020. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730; or
- (3) In accordance with WAC 357-31-373, for an employee to be with a spouse or registered domestic partner who is a member of the armed forces of the United States, National Guard, or reserves after the military spouse or registered domestic partner has been notified of an impending call or order to active duty, before deployment, or when the military spouse or registered domestic partner is on leave from deployment.
- (4) When an employee requests a day off for a reason of faith or conscience or an organized activity conducted under the auspices of a religious denomination, church, or religious organization in accordance with WAC 357-31-052.
- (5) When an employee is on approved paid family and/or medical leave under Title 50A RCW. Leave taken under this subsection may be subject to verification that the employee has been approved to receive benefits for paid family and/or medical leave under Title 50A RCW and qualifies for employment protection in accordance with RCW 50A.35.010.
- (6) When a high-risk employee (~~(, as defined in RCW 49.17.062,)~~) seeks (~~(a reasonable)~~) an accommodation to protect themselves from the risk of exposure to an infectious or contagious disease during a public health emergency and the employer determines no other accommodation is reasonable besides the use of leave in accordance with RCW 49.17.062.
- (7) When an employee is granted a temporary leave of absence for service in an elective office or for legislative service in accordance with WAC 357-31-374.

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

**WAC 357-31-330 For what reasons may an employer grant leave without pay?** Leave without pay may be allowed for any of the following reasons in accordance with the employer's leave policy:

- (1) For any reason leave with pay may be granted, as long as the conditions for leave with pay are met;
- (2) Educational leave;
- (3) Leave for government service in the public interest;
- (4) Military leave of absence as required by WAC 357-31-370;
- (5) Parental leave as required by WAC 357-31-460;
- (6) Family care emergencies as required by WAC 357-31-295;
- (7) Bereavement or condolence;
- (8) Absence due to inclement weather as provided in WAC 357-31-255;

(9) To accommodate annual work schedules of employees occupying cyclic year positions as specified in WAC 357-19-295;

(10) Serious health condition of an eligible employee's child, spouse, registered domestic partner, or parent as required by WAC 357-31-525;

(11) Leave taken voluntarily to reduce the effect of an employer's layoff;

(12) Leave that is authorized in advance by the appointing authority as part of a plan to reasonably accommodate a person of disability;

(13) Employees receiving time loss compensation; or

(14) For an employee to protect themselves, or a relative or household member, from ~~((risks related to coronavirus disease 2019 (COVID-19))~~ risk of exposure to an infectious or contagious disease. In determining whether to grant leave, an employer may consider current workload demands and business needs that require employees to perform their duties.

AMENDATORY SECTION (Amending WSR 22-24-027, filed 11/30/22, effective 1/1/23)

**WAC 357-31-567 When must an employer grant the use of recognition leave?** (1) An employee's request to use recognition leave must be approved under the following conditions:

(a) An employee must be granted the use of recognition leave if the employee or the employee's family member, as defined in chapter 357-01 WAC, is a victim of domestic violence, sexual assault, or stalking as defined in RCW 49.76.020. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730;

(b) In accordance with WAC 357-31-373, an employee must be granted the use of recognition leave to be with a spouse or registered domestic partner who is a member of the Armed Forces of the United States, National Guard, or Reserves after the military spouse or registered domestic partner has been notified of an impending call or order to active duty, before deployment, or when the military spouse or registered domestic partner is on leave from deployment;

(c) When requested as a supplemental benefit while receiving a partial wage replacement for paid family and/or medical leave under Title 50A RCW as provided in WAC 357-31-248. Leave taken under this subsection may be subject to verification that the employee has been approved to receive benefits for approved paid family and/or medical leave under Title 50A RCW;

(d) When a high-risk employee (~~(, as defined in RCW 49.17.062,)~~) seeks ~~((a reasonable))~~ an accommodation to protect themselves from the risk of exposure to an infectious or contagious disease and the employer determines no other accommodation is reasonable besides the use of leave; and

(e) When an employee requests to use recognition leave when granted a temporary leave of absence for legislative service in accordance with WAC 357-31-374(2).

(2) In accordance with the employer's leave policy, approval for the reasons listed in (1)(a) and (b) above may be subject to verification that the condition or circumstance exists.