

WSR 24-14-104
PROPOSED RULES
OFFICE OF
FINANCIAL MANAGEMENT
[Filed July 1, 2024, 11:38 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 357-31-165

At what rate do general government employees accrue vacation leave?, 357-31-166 At what rate do higher education employees accrue vacation leave?, 357-46-067 What is an employee's status during temporary lay-off?, 357-58-175 May an employer authorize lump sum vacation leave and/or accelerate vacation leave accrual rates to support the recruitment and/or retention of an employee or candidate for a WMS position?, 357-58-180 Must an agency have a policy regarding authorization of additional vacation leave to support the recruitment and/or retention of an employee or a candidate for a WMS position?, 357-58-210 When may a WMS employee transfer to a WGS position and vice versa?, 357-58-470 How does an employer determine an employee's employment retention rating?, and 357-58-554 What is a WMS employee's status during temporary layoff?

Hearing Location(s): On August 8, 2024, at 8:30 a.m., Zoom meeting (with call in option) <https://ofm-wa-gov.zoom.us/j/81889336350?pwd=TzYzY05oL3FrSW5UTnBEeEk5ODVvQT09>, ID 818 8933 6350, Call in 253-215-8782, Passcode 171240.

Date of Intended Adoption: August 15, 2024.

Submit Written Comments to: Brandy Chinn, Office of Financial Management (OFM), 1500 Jefferson Street S.E., P.O. Box 47500, Olympia, WA 98504, email brandy.chinn@ofm.wa.gov, by 11:59 p.m., August 1, 2024.

Assistance for Persons with Disabilities: Contact OFM, TTY 711 or 1-800-833-6384, by 11:59 p.m., August 1, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed amendments to WAC 357-31-165(1) and 357-31-166(1) are to align with the WAC style guide. The proposed amendment to WAC 357-31-165(2) is to replace "or" with "and/or" to align with WAC 357-58-175. The proposed amendment to WAC 357-31-165 (3)(b) is to mirror the language in WAC 357-31-166 (3)(b) to provide clarity that employment exempt by the provisions of WAC 357-04-040, 357-04-045, 357-04-050 and 357-04-055 is not credited for the purposes of computing the rate of vacation leave accrual. The proposed amendment to WAC 357-31-165 (3)(c) is to clarify exempt employment with an employer (not just limited to a general government employer as previously stated) is credited when computing a general government employee's rate of vacation leave accrual. The proposed amendment to WAC 357-31-166 (3)(a) is to replace language from "full-time faculty and/or administrative exempt" to "exempt academic and professional personnel." The proposed amendments to WAC 357-31-166 (3)(c) and (d) are to mirror the language in WAC 357-31-165(3). The proposed amendments to WAC 357-46-067 and 357-58-554 are to remove obsolete language. The proposed amendments to WAC 357-58-175 are to replace "can" with "may" and "or" with "and/or" in the WAC title for consistency with the body of the WAC and to meet the original intent of the rule. The proposed amendments to WAC 357-58-180 are to align the title of the WAC with the body of the WAC to meet the original intent of the rule. The proposed amendment to WAC 357-58-210 is to correct the ref-

erence from "management band" to "same salary standard and/or same evaluation points," and to match the body of the WAC with the title of the WAC. The proposed amendment to WAC 357-58-470 removes obsolete language.

Reasons Supporting Proposal: The proposed amendments to WAC 357-31-165(1), 357-31-165(3), 357-31-166(1), 357-31-166(3)(c), 357-31-166(3)(d), 357-46-067, 357-58-210, and 357-58-554 are house-keeping in nature. The proposed amendment to WAC 357-31-165(2) is to align with the intent of the original rule making to allow employers to have flexibility to authorize a lump-sum accrual of vacation leave and/or accelerate the vacation leave accrual rate. This was an oversight when WAC 357-31-165 was originally adopted. The proposed amendments to WAC 357-31-166(3)(a) are to provide clarity for consistency to align with higher education institution practice. The proposed amendments to WAC 357-58-175 and 357-58-180 are to provide clarification to allow for consistency with the body of the WAC and meet the original intent of the rule. The amendment to WAC 357-58-470 is to remove obsolete language.

Statutory Authority for Adoption: RCW 41.06.133.

Statute Being Implemented: RCW 41.06.133.

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, 1500 Jefferson Street S.E., Olympia, WA 98504, 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.

July 1, 2024

Nathan Sherrard

Assistant Legal Affairs Counsel

OTS-5432.1

AMENDATORY SECTION (Amending WSR 19-11-136, filed 5/22/19, effective 7/1/19)

WAC 357-31-165 At what rate do general government employees accrue vacation leave? (1) Full-time general government employees accrue vacation leave at the following rates:

- (a) During the first and second years of current continuous state employment - Nine hours, ~~((twenty))~~ 20 minutes per month;
- (b) During the third year of current continuous state employment - ~~((Ten))~~ 10 hours per month;
- (c) During the fourth year of current continuous state employment - ~~((Ten))~~ 10 hours, ~~((forty))~~ 40 minutes per month;
- (d) During the fifth and sixth years of total state employment - ~~((Eleven))~~ 11 hours, ~~((twenty))~~ 20 minutes per month;
- (e) During the seventh, eighth, and ninth years of total state employment - ~~((Twelve))~~ 12 hours per month;
- (f) During the ~~((tenth, eleventh, twelfth, thirteenth and fourteenth))~~ 10th, 11th, 12th, 13th, and 14th years of total state employment - ~~((Thirteen))~~ 13 hours, ~~((twenty))~~ 20 minutes per month;
- (g) During the ~~((fifteenth, sixteenth, seventeenth, eighteenth and nineteenth))~~ 15th, 16th, 17th, 18th, and 19th years of total state employment - ~~((Fourteen))~~ 14 hours, ~~((forty))~~ 40 minutes per month;
- (h) During the ~~((twentieth, twenty-first, twenty-second, twenty-third and twenty-fourth))~~ 20th, 21st, 22nd, 23rd, and 24th years of total state employment - ~~((Sixteen))~~ 16 hours per month; and
- (i) During the ~~((twenty-fifth))~~ 25th and succeeding years of total state employment - ~~((Sixteen))~~ 16 hours, ~~((forty))~~ 40 minutes per month.

(2) As provided in WAC 357-58-175, an employer may authorize a lump-sum accrual of vacation leave and/or accelerate the vacation leave accrual rate to support the recruitment and/or retention of a candidate or employee for a WMS position. Vacation leave accrual rates may only be accelerated using the rates established in subsection (1) of this section and must not exceed the maximum listed in subsection (1)(i) of this section.

(3) The following applies for purposes of computing the rate of vacation leave accrual:

(a) Employment in the legislative and/or the judicial branch except for time spent as an elected official or in a judicial appointment is credited.

(b) Employment exempt by the provisions of WAC 357-04-040, 357-04-045, 357-04-050, 357-04-055 is not credited for the purposes of computing the rate of vacation leave accrual.

(c) Exempt employment with ~~((a general government))~~ an employer is credited, other than that specified in WAC 357-04-055 which is excluded.

AMENDATORY SECTION (Amending WSR 22-01-022, filed 12/3/21, effective 7/1/22)

WAC 357-31-166 At what rate do higher education employees accrue vacation leave? (1) Full-time higher education employees accrue vacation leave at the following rates:

(a) During the first year of continuous state employment - 12 days (eight hours per month);

(b) During the second year of continuous state employment - 13 days (eight hours, 40 minutes per month);

(c) During the third and fourth years of continuous state employment - 14 days (nine hours, 20 minutes per month);

(d) During the fifth, sixth, and seventh years of total state employment - 15 days (10 hours per month);

- (e) During the eighth, ninth, and (~~tenth~~) 10th years of total state employment - 16 days (10 hours, 40 minutes per month);
- (f) During the (~~eleventh~~) 11th year of total state employment - 17 days (11 hours, 20 minutes per month);
- (g) During the (~~twelfth~~) 12th year of total state employment - 18 days (12 hours per month);
- (h) During the (~~thirteenth~~) 13th year of total state employment - 19 days (12 hours, 40 minutes per month);
- (i) During the (~~fourteenth~~) 14th year of total state employment - 20 days (13 hours, 20 minutes per month);
- (j) During the (~~fifteenth~~) 15th year of total state employment - 21 days (14 hours per month);
- (k) During the (~~sixteenth~~) 16th and succeeding years of total state employment - 22 days (14 hours, 40 minutes per month).
- (2) Higher education employers may establish accrual rates that exceed the rates listed in subsection (1) of this section. This does not apply to individual positions.
- (3) The following applies for purposes of computing the rate of vacation leave accrual:
- (a) Each contract year, or equivalent, of (~~full-time faculty and/or administrative~~) exempt academic and professional personnel employment with a higher education employer is credited as one year of qualifying service.
- ~~((4))~~ (b) Employment exempt by the provisions of WAC 357-04-040, 357-04-045, 357-04-050, and 357-04-055 is not credited for the purposes of computing the rate of vacation leave accrual.
- (c) Employment in the legislative and/or judicial branch except for time spent as an elected official or in a judicial appointment is credited.
- (d) Exempt employment with a general government employer is credited, other than that specified in WAC 357-04-055 which is excluded.

OTS-5087.1

AMENDATORY SECTION (Amending WSR 12-04-016, filed 1/24/12, effective 2/24/12)

- WAC 357-46-067 What is an employee's status during temporary layoff?** (1) The following applies during a temporary layoff:
- (a) An employee's anniversary, seniority, and unbroken service dates are not adjusted for periods of time spent on temporary layoff;
- (b) An employee's vacation and sick leave accruals will not be impacted by periods of time spent on temporary layoff;
- (c) An employee's holiday compensation will not be impacted by periods of time spent on temporary layoff; and
- (d) The duration of an employee's probationary period or trial service period shall not be extended for periods of time spent on temporary layoff.
- (2) An employee who is temporarily laid off is not entitled to:
- (a) Layoff rights, including the ability to bump any other position or be placed on the employer's internal or statewide layoff list;
- (b) Payment for their vacation leave balance; and

(c) Use of their accrued vacation leave for hours the employee is not scheduled to work if the temporary layoff was due to lack of funds. ~~((The only exception is that during the 2009-2011 fiscal biennium if an employee's monthly full-time equivalent base salary is two thousand five hundred dollars or less and the employee's office or institution enacts a temporary layoff as described in chapter 32, Laws of 2010, the employee can use accrued vacation leave during the period of temporary layoff.))~~

(3) If the temporary layoff was not due to lack of funds, an employer may allow an employee to use accrued vacation leave in lieu of temporary layoff.

OTS-5126.3

AMENDATORY SECTION (Amending WSR 19-11-136, filed 5/22/19, effective 7/1/19)

WAC 357-58-175 ((Can)) May an employer authorize lump sum vacation leave and/or accelerate vacation leave accrual rates to support the recruitment and/or retention of an employee or candidate for a WMS position? In addition to the vacation leave accruals as provided in WAC 357-31-165, an employer may authorize ~~((additional))~~ lump sum vacation leave and/or accelerate vacation leave accrual rates as follows to support the recruitment and/or retention of an employee or candidate for a specific WMS position:

(1) Employers may authorize an accelerated accrual rate for an employee or candidate. The WMS employee would remain at the accelerated accrual rate until the WMS employee's anniversary date caught up to the accrual rate amount in accordance with WAC 357-31-165; and/or

(2) Employers may authorize a lump sum accrual of up to ~~((eighty))~~ 80 hours of vacation leave for the employee or candidate. Vacation leave accrued under this section must be used in accordance with the leave provisions of chapter 357-31 WAC.

AMENDATORY SECTION (Amending WSR 19-11-136, filed 5/22/19, effective 7/1/19)

WAC 357-58-180 Must an agency have a policy regarding authorization of additional vacation leave to support the recruitment ((of a)) and/or retention of an employee or candidate ((or the retention of an employee)) for a WMS position? In order to authorize additional vacation leave for the recruitment and/or retention of ~~((a candidate or))~~ an employee or a candidate for a WMS position, an agency must have a written policy that:

(1) Identifies the reasons for which the employer may authorize additional vacation leave; and

(2) Requires that lump sum vacation leave accruals only be granted after services have been rendered in accordance with express conditions established by the employer.

AMENDATORY SECTION (Amending WSR 19-11-136, filed 5/22/19, effective 7/1/19)

WAC 357-58-210 When may a WMS employee transfer to a WGS position and vice versa? A permanent employee may transfer from a WMS position to a WGS position if the employee's salary is within the salary range of the WGS position.

A permanent employee may transfer from a WGS position to a WMS position if the employee's salary is within the ~~((management band))~~ same salary standard and/or same evaluation points assigned to the WMS position.

AMENDATORY SECTION (Amending WSR 05-12-071, filed 5/27/05, effective 7/1/05)

WAC 357-58-470 How does an employer determine an employee's employment retention rating? The employer determines an employee's employment retention rating using seniority as calculated in WAC 357-46-055. ~~((Employers with performance management confirmation may consider properly documented performance in addition to seniority. If performance is not considered, an employee's employment retention rating is equal to the employee's seniority.))~~

AMENDATORY SECTION (Amending WSR 12-04-016, filed 1/24/12, effective 2/24/12)

WAC 357-58-554 What is a WMS employee's status during temporary layoff? (1) The following applies during a temporary layoff:

(a) An employee's anniversary date, seniority, or unbroken service date is not adjusted for periods of time spent on temporary layoff;

(b) An employee's vacation and sick leave accruals will not be impacted by periods of time spent on temporary layoff;

(c) An employee's holiday compensation will not be impacted by periods of time spent on temporary layoff; and

(d) The duration of an employee's review period shall not be extended for periods of time spent on temporary layoff.

(2) A WMS employee who is temporarily laid off is not entitled to:

(a) Layoff rights, including the ability to bump any other position or be placed on the employer's internal or statewide layoff list;

(b) Payment for their vacation leave balance; and

(c) Use of their accrued vacation leave for hours the employee is not scheduled to work if the temporary layoff was due to lack of funds. ~~((The only exception is that during the 2009-2011 fiscal biennium if an employee's monthly full-time equivalent base salary is two thousand five hundred dollars or less and the employee's agency enacts a temporary layoff as described in chapter 32, Laws of 2010, the employee can use accrued vacation leave during the period of temporary layoff.))~~

(3) If the temporary layoff was not due to lack of funds, an employer may allow a WMS employee to use accrued vacation leave in lieu of temporary layoff.