

**WSR 24-17-030**  
**PROPOSED RULES**  
**SUPERINTENDENT OF**  
**PUBLIC INSTRUCTION**

[Filed August 12, 2024, 1:01 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-24-098.

Title of Rule and Other Identifying Information: Chapter 392-136 WAC, Finance—Conversion of accumulated sick leave; and chapter 392-136A WAC, Finance—Shared leave.

Hearing Location(s): On October 9, 2024, at 11:00 a.m., virtual public hearing via Zoom (call-in option also available). Participation link available on the office of superintendent of public instruction (OSPI) rules web page [Ospi.k12.wa.us/policy-funding/ospi-rulemaking-activity](https://ospi.k12.wa.us/policy-funding/ospi-rulemaking-activity). For participation questions, please email [sirena.wu@k12.wa.us](mailto:sirena.wu@k12.wa.us).

Date of Intended Adoption: October 11, 2024.

Submit Written Comments to: T.J. Kelly, OSPI, P.O. Box 47200, Olympia, WA 98504, email [Thomas.kelly@k12.wa.us](mailto:Thomas.kelly@k12.wa.us), beginning September 18, 2024, 8:00 a.m., by October 9, 2024, 5:00 p.m.

Assistance for Persons with Disabilities: Contact Sirena Wu, OSPI rules coordinator, phone 360-480-9317, TTY 360-664-3631, email [sirena.wu@k12.wa.us](mailto:sirena.wu@k12.wa.us), by October 2, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: OSPI is proposing rule making to reflect changes under HB 2739 (2020) in order to align shared leave provisions for school district and educational service district employees with those for state employees. Additionally, potential rule changes to the employee attendance incentive program for school district and educational service district employees will be reviewed to ensure consistency with those for state employees.

Reasons Supporting Proposal: Under section 2 (1)(f) of HB 2739 (2020), the legislature removed the requirement for employees to be found ineligible for benefits under chapter 51.32 RCW in order for school district and educational service district employees to receive shared leave. The proposed rule amendments to the shared leave provisions include updates to reflect this change. In addition, proposed updates regarding the employee attendance incentive program clarify existing rule language that the formula for calculating sick leave cashout for eligible school district and educational service district employees who work part-time at the time of departure would be the same as that for full-time employees. The updated rules would ensure that the conversion rate in determining monetary compensation for accrued sick leave is applied uniformly for both state employees and school district and educational service district employees, regardless of full-time equivalent status at time of separation from employment.

Statutory Authority for Adoption: RCW 28A.310.490, 28A.400.210, 28A.400.380.

Rule is not necessitated by federal law, federal or state court decision.

Name of Agency Personnel Responsible for Drafting and Implementation: T.J. Kelly, OSPI, 600 South Washington Street, Olympia, WA; Enforcement: OSPI, 600 South Washington Street, Olympia, WA.

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(4).

Is exempt under RCW 19.85.030.

Explanation of exemptions: No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendment does not have an impact on small business and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

Scope of exemption for rule proposal:

Is fully exempt.

August 12, 2024

Chris P. S. Reykdal

State Superintendent of Public Instruction

## OTS-5761.1

AMENDATORY SECTION (Amending WSR 84-04-034, filed 1/26/84)

### **WAC 392-136-015 Annual conversion of accumulated sick leave.**

(1) Commencing in January 1981, and each January thereafter, each eligible, current employee of a school district and educational service district may elect to convert excess sick leave to monetary compensation as provided in this section.

(2) Eligible employees, excess sick leave and the conversion of excess sick leave to monetary compensation shall be determined as follows:

(a) Eligible employees: In order to be eligible to convert excess sick leave days to monetary compensation, an employee:

(i) Shall be an employee of an educational service district or an employee of a school district that has adopted an attendance incentive program covering such employee pursuant to WAC 392-136-065;

(ii) Shall have accumulated in excess of (~~sixty~~) 60 full days of unused sick leave at a rate of accumulation no greater than one full day per month (a maximum of (~~twelve~~) 12 days per year) as of the end of the previous calendar year; and

(iii) Shall provide written notice to his or her employer during the month of January of his or her intent to convert excess sick leave days to monetary compensation.

(b) Excess sick leave: The number of sick leave days which an eligible employee may convert shall be determined by:

(i) Taking the number of sick leave days in excess of (~~sixty~~) 60 full days that were accumulated by the employee during the previous calendar year at a rate of accumulation no greater than one full day per month of employment as provided by the leave policies of the district(s) of employment (a maximum of (~~twelve~~) 12 days per year); and

(ii) Subtracting therefrom the number of sick leave days used by the employee during the previous calendar year.

The remainder, if positive, shall constitute the number of sick leave days which may be converted to monetary compensation.

(c) Rate of conversion: Sick leave days that are eligible for conversion shall be converted to monetary compensation at the rate of ~~((twenty-five))~~ 25 percent of ~~((an employee's current, full-time daily rate of compensation for each full day of eligible sick leave))~~ a daily rate of pay at the employee's current hourly rate of compensation based on a 1.0 full-time equivalent staff schedule. Partial days of eligible sick leave shall be converted on a pro rata basis.

(3) All sick leave days converted pursuant to this section shall be deducted from an employee's accumulated sick leave balance.

(4) Compensation received pursuant to this section shall not be included for the purpose of computing a retirement allowance under any public retirement system in this state.

AMENDATORY SECTION (Amending WSR 05-17-175, filed 8/23/05, effective 9/23/05)

**WAC 392-136-020 Conversion of sick leave upon separation from district employment.** (1) Eligible employees: Upon separation from district employment the following employees may personally, or through their estate in the event of death, elect to convert all eligible, accumulated, unused sick leave up to a maximum of one hundred eighty days to monetary compensation as provided in this section:

(a) Eligible educational service district employees are those who terminate employment with the educational service district due to either retirement or death.

(b) Eligible school district employees are those who qualify under an attendance incentive program established by the school district board of directors pursuant to WAC 392-136-065 and who:

(i) Separate from employment with the school district due to death or retirement; or

(ii) After June 7, 2000, separate from employment with the school district and are at least age ~~((fifty-five))~~ 55 and:

(A) Have at least ~~((ten))~~ 10 years of service under teachers' retirement plan 3 as defined in RCW 41.32.010(40), or under the Washington school employees' retirement system plan 3 as defined in RCW 41.35.010(31); or

(B) Have at least ~~((fifteen))~~ 15 years of service under teachers' retirement system plan 2 as defined in RCW 41.32.010(39), under Washington school employees' retirement system plan 2 as defined in RCW 41.35.010(30), or under public employees' retirement system plan 2 as defined in RCW 41.40.010(34).

(c) In order to receive reimbursement for unused sick leave, by virtue of retirement pursuant to subsection (1)(a) or (1)(b)(i) of this section the employee must have separated from such employment and have been granted a retirement allowance under the laws governing the teachers' retirement system, the public employees' retirement system, or the school employees' retirement system whichever applies; however, it is not necessary that the employee actually file for retirement prior to the date of his or her separation so long as the application is thereafter filed within a reasonable period of time and without the occurrence of any intervening covered employment.

(d) Eligible school district employees who qualify under an attendance incentive program established by the school district board of

directors pursuant to WAC 392-136-065 and who have previously separated from a school district due to retirement may cash out subsequent earned sick leave under the following exceptions:

(i) The employee ceases receipt of retirement benefits and reestablishes membership in the retirement system, including resuming payments into the system; or

(ii) The employee establishes, and makes payment into, a second retirement system from which they may subsequently retire.

(2) Eligible sick leave days include all unused sick leave days that have been accumulated from year to year up to a maximum of the number of contracted days agreed to in a given contract, but not greater than one year, by an eligible employee, less sick leave days previously converted pursuant to WAC 392-136-015 and those credited as service rendered for retirement purposes.

(3) Rate of conversion: Sick leave days that are eligible for conversion shall be converted to monetary compensation at the rate of (~~twenty-five~~) 25 percent of an employee's (~~full-time daily rate of compensation at the time of termination of employment for each full day of eligible sick leave~~) daily rate of pay at the employee's current hourly rate of compensation based on a 1.0 full-time equivalent staff schedule. Partial days of eligible sick leave shall be converted on a pro rata basis.

(4) Deduction of converted days: All sick leave days converted pursuant to this section shall be deducted from an employee's accumulated sick leave balance.

(5) Exclusion from retirement allowance: Compensation received pursuant to this section shall not be included for the purpose of computing a retirement allowance under any public retirement system in this state.

#### OTS-5762.1

AMENDATORY SECTION (Amending WSR 23-05-082, filed 2/14/23, effective 3/17/23)

**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 depleted or will shortly deplete 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.

AMENDATORY SECTION (Amending WSR 23-05-082, filed 2/14/23, effective 3/17/23)

**WAC 392-136A-045 Maximum amount.** (1) The district determines the amount of shared leave, if any, which a leave recipient may receive. However, a leave recipient must not receive more than 522 days of shared leave during total district employment. The district may authorize shared leave in excess of 522 days in extraordinary circumstances for a leave recipient qualifying for shared leave because they are suffering from an illness, injury, impairment, or physical or mental condition which is of an extraordinary or severe nature.

Districts are encouraged to consider other methods of accommodating the employee's needs such as modified duty, modified hours, flextime, or special assignments in place of shared leave.

(2) The district may not prevent an employee from using shared leave intermittently or on nonconsecutive days so long as the leave has not been returned under WAC 392-136A-070.

(3) An employee receiving shared leave for parental leave in accordance with WAC 392-136A-020 may receive up to 16 weeks of parental leave immediately after the birth or placement, unless the birth parent suffers from a pregnancy disability. When a birth parent suffers from a pregnancy disability, the period of 16 weeks for parental leave begins immediately after the pregnancy disability has ended provided the parental leave is used within the first year of the child's life.

(4) An employee receiving industrial insurance wage replacement benefits may receive up to 25 percent of their base salary from the receipt of shared leave.