

WSR 22-08-025

PROPOSED RULES

OFFICE OF

FINANCIAL MANAGEMENT

[Filed March 25, 2022, 4:18 p.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 357-04-045 Which temporary employees of higher education employers are exempt from civil service rules?, 357-19-435 For what reasons may a higher education employer appoint an individual to a temporary appointment?, and 357-19-450 When may the director take remedial action for individuals in higher education temporary appointments and what does remedial action include?

Hearing Location(s): On May 12, 2022, at 8:30 a.m., at Office of Financial Management (OFM), audio conference only, Dial-in 888-285-8919, Pin 8101730, Code (if asked) 415.

Date of Intended Adoption: May 19, 2022.

Submit Written Comments to: Brandy Chinn, OFM, P.O. Box 47500, Olympia, WA 98501, email brandy.chinn@ofm.wa.gov, fax 360-586-4694, by May 5, 2022.

Assistance for Persons with Disabilities: Contact OFM, TTY 711 or 1-800-833-6384, by May 5, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To amend WAC 357-04-045, 357-19-435, and 357-19-450 to align with the July 1, 2022, part-time/temporary/nonpermanent implementation effective date.

Reasons Supporting Proposal: RCW 41.06.070 previously exempted both part-time and temporary employees, as defined by OFM, from state civil service rules (Title 357 WAC). In 2018, the legislature amended RCW 41.06.070 by removing part-time employees from the exemption; only temporary employees, as defined by OFM, are now exempt from civil service rules. Title 357 WAC does not distinguish between part-time and temporary employees for higher education employers; therefore, OFM worked with both higher education employers and union organizations to amend Title 357 WAC to align with the new law. The rule amendments redefine temporary higher education appointments and expand the current general government nonpermanent rules to include higher education employers. These rules were proposed for permanent adoption at the June 10 special director's meeting. David Schumacher, OFM director, adopted these rules on a permanent basis effective on January 1, 2022.

On December 15, 2021, an extension was filed with the code reviser's office to extend the implementation rule effective date for the part-time/temporary/nonpermanent rules from January 1 to July 1, 2022. The purpose of this extension was to allow an appropriate amount of time for (1) the Washington state public employment relations commission to finalize rule making and to clarify bargaining unit descriptions; (2) higher education employers and unions to bargain changes for represented employees; and (3) higher education employers to configure their payroll systems. This rule making aligns certain timelines in the adopted rules with the current effective date of the rules.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Statute Being Implemented: RCW 41.06.070.

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

Name of Proponent: Governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Brandy Chinn, 128 10th Avenue, 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. 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.

March 25, 2022

Roselyn Marcus

Assistant Director

of Legal and Legislative Affairs

OTS-3639.1

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

WAC 357-04-045 Which temporary employees of higher education employers are exempt from civil service rules? (1) Temporary higher education employees are exempt from civil service rules under the following circumstances:

(a) The employee is employed (~~((twelve))~~) 12 consecutive months or less;

(b) The employee is employed for (~~((one thousand fifty))~~) 1,050 hours or less in that same (~~((twelve))~~) 12 consecutive month period which begins from the original date of hire or (~~((January))~~) July 1, 2022, whichever is later; and

(c) The employee is limited to one appointment only with the same higher education employer that meets the criteria in (a) and (b) of this subsection.

(2) Temporary appointments under the provisions of this section are subject to remedial action in accordance with WAC 357-19-450.

(3) Temporary employees who are exempt under subsection (1) of this section and who work more than (~~((three hundred fifty))~~) 350 hours in a (~~((twelve))~~) 12 consecutive month period from the original date of hire or January 1, 2004, whichever is later, may be included in an appropriate bargaining unit for purposes of collective bargaining, as determined by the public employment relations commission. Overtime and time worked as a student employee under the provisions of WAC 357-04-040 are not counted in the (~~((three hundred fifty))~~) 350 hours. For purposes of counting the (~~((three hundred fifty))~~) 350 hours, the (~~((twelve-month))~~) 12-month period will begin on the employee's original date of hire or January 1, 2004, whichever is later.

[Statutory Authority: Chapter 41.06 RCW and RCW 41.06.070. WSR 21-14-042 and 22-01-153, § 357-04-045, filed 6/30/21 and 12/15/21, effective 7/1/22. Statutory Authority: RCW 41.06.150. WSR 10-11-021, § 357-04-045, filed 5/10/10, effective 6/10/10. Statutory Authority: Chapter 41.06 RCW. WSR 04-15-016, § 357-04-045, filed 7/8/04, effective 7/1/05.]

OTS-3640.1

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

WAC 357-19-435 For what reasons may a higher education employer appoint an individual to a temporary appointment? A higher education employer may appoint an individual to a temporary appointment for the following reasons:

- (1) The number of hours to be worked by the individual will not exceed (~~one thousand fifty~~) 1,050 hours in a (~~twelve~~) 12 consecutive month period from the original date of hire or (~~January~~) July 1, 2022, whichever is later, in accordance with WAC 357-04-045; or
- (2) The employing official formally assigns a classified employee the duties and responsibilities of a higher-level class for a period of less than six consecutive months. In accordance with WAC 357-19-441(2), temporary appointments under this subsection are not exempt from civil service rules.

[Statutory Authority: Chapter 41.06 RCW and RCW 41.06.070. WSR 21-14-042 and 22-01-153, § 357-19-435, filed 6/30/21 and 12/15/21, effective 7/1/22. Statutory Authority: Chapter 41.06 RCW. WSR 05-01-192, § 357-19-435, filed 12/21/04, effective 7/1/05.]

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

WAC 357-19-450 When may the director take remedial action for individuals in higher education temporary appointments and what does remedial action include? For individuals in higher education temporary appointments under the provisions of WAC 357-19-435(1), the director may take remedial action to confer permanent status, set base salary and establish seniority when it is determined that the following conditions exist:

- (1) The individual has worked in one or more temporary positions as identified in WAC 357-04-045 for more than (~~one thousand fifty~~) 1,050 hours in any (~~twelve~~) 12 consecutive month period since the original hire date or (~~January~~) July 1, 2022, whichever is later. (Overtime and time worked as a student employee under the provisions of WAC 357-04-040 are not counted in the (~~one thousand fifty~~) 1,050 hours.)
- (2) The position or positions are subject to civil service.

(3) The employee has not taken part in any willful failure to comply with these rules.

[Statutory Authority: Chapter 41.06 RCW and RCW 41.06.070. WSR 21-14-042 and 22-01-153, § 357-19-450, filed 6/30/21 and 12/15/21, effective 7/1/22. Statutory Authority: Chapter 41.06 RCW. WSR 05-01-192, § 357-19-450, filed 12/21/04, effective 7/1/05.]