

**WSR 22-20-091  
PERMANENT RULES  
OFFICE OF  
FINANCIAL MANAGEMENT**

[Filed October 4, 2022, 9:41 a.m., effective November 4, 2022]

Effective Date of Rule: Thirty-one days after filing.

Purpose: On August 5, 2022, Governor Inslee issued Directive #22-13.1, COVID-19 Vaccination Standards for State Employees, which directs a COVID-19 vaccination requirement as a condition of employment for state executive and small cabinet agencies. Although the emergency proclamation is expiring, COVID-19 and the risk of person-to-person transmission continues to impact the life and health of all Washingtonians, as well as the economy of Washington state. COVID-19 vaccines are effective in reducing infection and serious disease, and widespread vaccination is the primary means we have as a state to protect the health and safety of our workforce. As an employer, there is an obligation to maintain a safe and healthy work environment for all state employees. The vaccination requirements set forth in these proposed rules will help establish and maintain a healthy and safe work environment to protect the welfare of all state employees.

This rule making will place new provisions in Title 357 WAC requiring employers to ensure that nonrepresented state employees who are employed by general government executive and small cabinet agencies, or an eligible candidate for such a position, are fully vaccinated; or are granted an exemption and approved for an accommodation due to a disability and/or medical condition or sincerely held religious belief that prevents them from receiving the COVID-19 vaccine; and requiring employers to separate an employee, or not hire an eligible candidate, if they cannot provide proof they are fully vaccinated and the employer cannot provide an accommodation. These requirements are optional for higher education employers, independent agencies, boards, councils, commissions, and separately elected officials.

Citation of Rules Affected by this Order: New WAC 357-01-1745, 357-04-125, 357-16-197 and 357-19-413; and amending WAC 357-46-165, 357-46-195, and 357-58-190.

Statutory Authority for Adoption: RCW 41.06.133 and 41.06.150.

Adopted under notice filed as WSR 22-17-122 on August 23, 2022.

Changes Other than Editing from Proposed to Adopted Version: The office of financial management made several nonsubstantial, nonsubstantive edits for the purpose of clarification, as follows:

Changed reference from "Directive 22-13" to "Directive 22-13.1" in WAC 357-04-125 and 357-16-197 to clarify that these rules apply to executive and small cabinet agencies as defined in Directive 22-13.1, issued August 5, 2022, by the governor.

Modified title and language in WAC 357-16-197 and 357-19-413(2) to clarify that these rules establish requirements directed at state employers, not eligible candidates.

Changed reference from "vaccination" in WAC 357-58-190(10) to "COVID-19 vaccination" for clarity.

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 4, 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 4, 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 4, Amended 3, Repealed 0.

Date Adopted: October 4, 2022.

Nathan Sherrard  
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#### OTS-4048.1

##### NEW SECTION

**WAC 357-01-1745 Fully vaccinated.** A person is "fully vaccinated" against COVID-19 two weeks after they have received the second dose in a two-dose series of a COVID-19 vaccine or a single-dose COVID-19 vaccine authorized for emergency use, licensed or otherwise authorized or approved by the U.S. Food and Drug Administration or listed for emergency use or otherwise approved by the World Health Organization.

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#### OTS-3934.4

##### NEW SECTION

**WAC 357-04-125 Must an employee provide proof of being fully vaccinated as a condition of employment?** As a condition of employment, an employee must be fully vaccinated or request an exemption due to a disability and/or medical condition or if the requirement conflicts with an employee's sincerely held religious belief, practice, or observance. If a requested exemption is granted, an employer must determine whether or not the employee can be reasonably accommodated. If the employer determines an employee can be accommodated in accordance with state and federal laws, the employee may continue their employment. An employee who fails to meet this condition of employment will be subject to a separation in accordance with WAC 357-19-410, or a disability separation in accordance with WAC 357-46-160, or a non-disciplinary separation in accordance with WAC 357-46-195.

This section applies to executive and small cabinet agencies as defined in Directive 22-13.1, issued August 5, 2022, by the governor. Higher education employers, independent agencies, boards, councils, commissions, and separately elected officials may require an employee to meet the requirements of this section.

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**OTS-3935.5**NEW SECTION

**WAC 357-16-197 Must an employer require an eligible candidate to provide proof of being fully vaccinated?** After a conditional offer of employment is made, an employer must require an eligible candidate to provide proof of being fully vaccinated or to request an exemption due to a disability and/or medical condition or if the requirement conflicts with an eligible candidate's sincerely held religious belief, practice, or observance. If a requested exemption is granted, an employer must determine whether or not the eligible candidate can be reasonably accommodated. If the employer determines an eligible candidate can be accommodated in accordance with state and federal laws, the eligible candidate may be considered for employment. If the employer cannot provide an accommodation and the eligible candidate does not provide proof of being fully vaccinated, the employer may not consider the eligible candidate for employment.

This section applies to executive and small cabinet agencies as defined in Directive 22-13.1, issued August 5, 2022, by the governor. Higher education employers, independent agencies, boards, councils, commissions, and separately elected officials may require an eligible candidate to meet the requirements of this section.

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**OTS-3936.4**NEW SECTION

**WAC 357-19-413 What are the requirements for a nonpermanent employee to be fully vaccinated or for an employer to require an eligible candidate to provide proof of being fully vaccinated?** (1) A nonpermanent employee must comply with the COVID-19 vaccination requirements set forth in WAC 357-04-125. A nonpermanent employee who fails to comply must be separated in accordance with WAC 357-19-410.

(2) After a conditional offer of employment for a nonpermanent appointment is made, an employer must require an eligible candidate to provide proof of being fully vaccinated in accordance with WAC 357-16-197.

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## OTS-3937.2

AMENDATORY SECTION (Amending WSR 04-18-114, filed 9/1/04, effective 7/1/05)

**WAC 357-46-165 When may an employer separate an employee in accordance with WAC 357-46-160?** An employer may separate an employee due to disability when any of the following circumstances exist:

(1) The employer is unable to reasonably accommodate the employee.

(2) The employer has medical documentation of the employee's inability to work in any capacity.

(3) The employee requests separation due to disability and the employer has medical information which documents that the employee cannot perform the essential functions of the employee's position or class.

(4) The employer must separate an employee from employment for failure to comply with the COVID-19 vaccination requirements set forth in WAC 357-04-125 where an exemption was approved due to a disability and/or medical condition and the employer is unable to reasonably accommodate the employee.

[Statutory Authority: Chapter 41.06 RCW. WSR 04-18-114, § 357-46-165, filed 9/1/04, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 04-18-114, filed 9/1/04, effective 7/1/05)

**WAC 357-46-195 ((Can)) May an employer separate an employee for nondisciplinary reasons?** An employer may separate a permanent employee from a position or from employment for nondisciplinary reasons such as failure to comply with the conditions of employment which may or may not have existed at the time of initial appointment or failure to authorize or to pass a background check required by the position.

The employer may consider other employment options such as transfer or voluntary demotion in lieu of separation.

The employer must separate an employee from employment for nondisciplinary reasons for failure to comply with the COVID-19 vaccination requirements set forth in WAC 357-04-125.

[Statutory Authority: Chapter 41.06 RCW. WSR 04-18-114, § 357-46-195, filed 9/1/04, effective 7/1/05.]

## OTS-3938.3

AMENDATORY SECTION (Amending WSR 22-12-074, filed 5/27/22, effective 7/1/22)

**WAC 357-58-190 What must be addressed in agency's WMS recruitment and selection policy and/or procedure?** An agency's WMS recruitment and selection policy and/or procedure must:

- (1) Provide for the ability to consider any or all qualified candidates for hire, promotion, or internal movement;
- (2) Ensure that hiring decisions are fair, objective, and based on the evaluation of leadership and other job related competencies and characteristics required for successful job performance and performance management;
- (3) Support workforce diversity and affirmative action goals;
- (4) Consider the career development of the agency's employees and other state employees;
- (5) Consider making appointments from a veterans placement program;
- (6) Ensure that hiring decisions are not based on patronage or political affiliation;
- (7) Ensure compliance with state and federal laws relating to employee selection and nondiscrimination;
- (8) Encourage decentralized and regional administration of the recruitment and selection processes when it is appropriate for the agency;
- (9) Ensure compliance with requirements governing wage and salary information in accordance with RCW 49.58.100, 49.58.110, WAC 357-16-017, 357-16-215, and 357-16-220; and
- (10) Ensure compliance with the COVID-19 vaccination requirements in accordance with WAC 357-04-125 and 357-16-197.

[Statutory Authority: Chapter 41.06 RCW. WSR 22-12-074, § 357-58-190, filed 5/27/22, effective 7/1/22. Statutory Authority: Chapter 41.06 RCW, RCW 49.58.100 and 49.58.110. WSR 20-06-009, § 357-58-190, filed 2/20/20, effective 3/30/20. Statutory Authority: Chapter 41.06 RCW. WSR 05-12-069, § 357-58-190, filed 5/27/05, effective 7/1/05.]