

WSR 22-20-096
PROPOSED RULES
OFFICE OF
FINANCIAL MANAGEMENT
[Filed October 4, 2022, 12:45 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 357-01-304 Seniority date (higher education), 357-31-027 When must a higher education employer allow a part-time employee to use accrued holiday credit?, 357-31-070 When is an employer required to approve an employee's request to use a personal holiday?, 357-31-100 Must an employer have a policy for requesting and approving leave?, 357-31-130 When must an employer allow an employee to use their accrued sick leave?, 357-31-200 When must an employer grant the use of vacation leave?, 357-31-230 When must an employee be granted the use of accrued compensatory time?, 357-31-327 When must an employer grant leave without pay?, 357-31-374 When must an employer grant a temporary leave of absence for service in an elective office or for legislative service?, 357-31-3745 How does a temporary leave of absence for service in an elective office or for legislative service impact an employee's probationary, trial service or transition review period?, 357-31-567 When must an employer grant the use of recognition leave?, 357-46-053 How is a higher education employee's seniority date determined?, 357-46-055 How is a general government employee's seniority date determined?, 357-52-010 What actions may be appealed?, and 357-58-300 Does time spent on leave without pay, shared leave, or time spent on a temporary leave of absence for service in an elective office or legislative service count towards completion of an employee's review period?

Hearing Location(s): On November 10, 2022, at 8:30 a.m., Zoom meeting (with call-in option), ID 830 9875 7996, Call in 253-215-8782, Passcode 814462, Zoom link <https://ofm-wa-gov.zoom.us/j/83098757996?pwd=TkJkOGR5d2dFeDNZVHFHsk4rdHlDdz09>.

Date of Intended Adoption: November 17, 2022.

Submit Written Comments to: Brandy Chinn, Office of Financial Management (OFM), Raad Building, 128 10th Avenue S.W., P.O. Box 47500, Olympia, WA 98504, email brandy.chinn@ofm.wa.gov, by 11:59 p.m., November 3, 2022.

Assistance for Persons with Disabilities: OFM, TTY 711 or 1-800-833-6384, by 11:59 p.m., November 3, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To align Title 357 WAC with the requirements of new and existing laws specifically to: (1) Require an employer to grant an employee's request to use their accrued leave or leave without pay for legislative service leave in accordance with chapter 49.100 RCW; (2) require an employer to grant an employee's request to use leave without pay for service in an elective office in accordance with RCW 41.04.120; (3) allow an employee who is serving a probationary period, trial service period, transitional review period, or Washington management service review period to resume/complete their review period when the employee returns from the leave of absence due to legislative service and due to service in an elective office; (4) state employees who are on an approved leave of absence for legislative service must not have their seniority date adjusted for time spent during a leave of absence for legislative service and for

service in an elective office; and (5) exclude legislative service leave violations under chapter 49.100 RCW from rule violation appeals.

Reasons Supporting Proposal: Chapter 271, Laws of 2022 (HB 1927) passed during the 2022 legislative session with an effective date of June 9, 2022. HB 1927 adds a new chapter to Title 49 RCW, Labor regulations, encouraging citizens to serve in the legislature by creating leave provisions for legislative service. Section 3 requires an employer to grant a temporary leave of absence without loss of job status or seniority to an employee who is a member of the state legislature to perform any official duty during regular and special legislative sessions. The leave granted may be unpaid, or the employee may substitute any accrued paid leave. In addition, RCW 41.04.120 allows for leave of absence by reason of having been elected or appointed to an elective office (service in an elective office) while preserving an employee's civil service status and seniority. Unlike HB 1927, RCW 41.04.120 is not restricted to regular and special legislative sessions, and applies to any elective office. This rule making will align Title 357 WAC with the requirements of these new and existing laws.

Statutory Authority for Adoption: RCW 41.06.133.

Statute Being Implemented: RCW 41.04.120; and chapter 49.100 RCW.

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, 128 10th Avenue S.W., 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.

Scope of exemption for rule proposal:

Is fully exempt.

October 4, 2022

Nathan Sherrard

Assistant Legal Affairs Counsel

OTS-4087.1

AMENDATORY SECTION (Amending WSR 14-06-007, filed 2/20/14, effective 3/24/14)

WAC 357-01-304 Seniority date (higher education). For higher education employees, the seniority date is determined in accordance with the employer's layoff procedure. The employer's layoff procedure must specify a uniform method for determining the seniority date for

employees of the higher education institution or related board who are covered by the civil service rules. (~~Employees on military leave as provided in WAC 357-31-370 must not have their seniority date adjusted for the time spent on military leave without pay.~~) Seniority dates will not be adjusted for any time period an employee is on approved leave without pay for reasons defined in WAC 357-46-053.

[Statutory Authority: Chapter 41.06 RCW. WSR 14-06-007, § 357-01-304, filed 2/20/14, effective 3/24/14.]

OTS-4088.3

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

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).

[Statutory Authority: Chapter 41.06 RCW. WSR 22-01-022, § 357-31-027, filed 12/3/21, effective 7/1/22.]

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

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; ((e))

(f) When a high-risk employee, as defined in RCW 49.17.062, seeks a reasonable 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).

[Statutory Authority: Chapter 41.06 RCW. WSR 22-12-076, § 357-31-070, filed 5/27/22, effective 7/1/22. Statutory Authority: Chapter 41.06 RCW and RCW 50A.15.060. WSR 20-06-008, § 357-31-070, filed 2/20/20, effective 5/1/20. Statutory Authority: Chapter 41.06 RCW. WSR 09-17-057 and 09-18-112, § 357-31-070, filed 8/13/09 and 9/2/09, effective 12/3/09; WSR 09-03-013, § 357-31-070, filed 1/9/09, effective 2/13/09; WSR 08-15-043, § 357-31-070, filed 7/11/08, effective 10/1/08; WSR 07-03-054, § 357-31-070, filed 1/12/07, effective 2/15/07; WSR 05-08-136, § 357-31-070, filed 4/6/05, effective 7/1/05.]

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

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;
- ((and))
- (9) Allow a high-risk employee, as defined in RCW 49.17.062, seeking a reasonable 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;

(10) 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) 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.

[Statutory Authority: Chapter 41.06 RCW. WSR 22-12-076, § 357-31-100, filed 5/27/22, effective 7/1/22; WSR 20-24-019, § 357-31-100, filed 11/20/20, effective 12/28/20. Statutory Authority: Chapter 41.06 RCW and RCW 50A.15.060. WSR 20-06-008, § 357-31-100, filed 2/20/20, effective 5/1/20. Statutory Authority: Chapter 41.06 RCW and RCW 41.06.133. WSR 19-11-135, § 357-31-100, filed 5/22/19, effective 7/1/19. Statutory Authority: Chapter 41.06 RCW. WSR 18-05-032, § 357-31-100, filed 2/10/18, effective 3/13/18; WSR 14-11-035, § 357-31-100, filed 5/14/14, effective 6/16/14; WSR 10-11-071, § 357-31-100, filed 5/14/10, effective 6/15/10; WSR 09-03-013, § 357-31-100, filed 1/9/09, effective 2/13/09; WSR 08-15-043, § 357-31-100, filed 7/11/08, effective 10/1/08; WSR 05-08-136, § 357-31-100, filed 4/6/05, effective 7/1/05.]

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

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 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 em-

ployee'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).

[Statutory Authority: Chapter 41.06 RCW. WSR 22-12-076, § 357-31-130, filed 5/27/22, effective 7/1/22; WSR 20-24-025, § 357-31-130, filed 11/20/20, effective 12/28/20. Statutory Authority: Chapter 41.06 RCW and RCW 50A.15.060. WSR 20-06-008, § 357-31-130, filed 2/20/20, effective 5/1/20. Statutory Authority: Chapter 41.06 RCW and RCW 41.06.133. WSR 19-11-135, § 357-31-130, filed 5/22/19, effective 7/1/19. Statutory Authority: Chapter 41.06 RCW. WSR 18-05-032, § 357-31-130, filed 2/10/18, effective 3/13/18; WSR 14-11-035, § 357-31-130, filed 5/14/14, effective 6/16/14; WSR 09-17-057 and 09-18-112, § 357-31-130, filed 8/13/09 and 9/2/09, effective 12/3/09; WSR 09-03-013, § 357-31-130, filed 1/9/09, effective 2/13/09; WSR 08-15-043, §

357-31-130, filed 7/11/08, effective 10/1/08; WSR 05-08-136, § 357-31-130, filed 4/6/05, effective 7/1/05.]

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

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 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.

[Statutory Authority: Chapter 41.06 RCW. WSR 22-12-076, § 357-31-200, filed 5/27/22, effective 7/1/22. Statutory Authority: Chapter 41.06 RCW and RCW 50A.15.060. WSR 20-06-008, § 357-31-200, filed 2/20/20, effective 5/1/20. Statutory Authority: Chapter 41.06 RCW. WSR 09-17-057 and 09-18-112, § 357-31-200, filed 8/13/09 and 9/2/09, effective 12/3/09; WSR 09-03-013, § 357-31-200, filed 1/9/09, effective 2/13/09; WSR 08-15-043, § 357-31-200, filed 7/11/08, effective 10/1/08; WSR 05-08-137, § 357-31-200, filed 4/6/05, effective 7/1/05.]

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

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 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).

[Statutory Authority: Chapter 41.06 RCW. WSR 22-12-076, § 357-31-230, filed 5/27/22, effective 7/1/22. Statutory Authority: Chapter 41.06 RCW and RCW 50A.15.060. WSR 20-06-008, § 357-31-230, filed 2/20/20, effective 5/1/20. Statutory Authority: Chapter 41.06 RCW. WSR 11-23-054, § 357-31-230, filed 11/10/11, effective 12/13/11; WSR 10-23-120, § 357-31-230, filed 11/17/10, effective 12/18/10; WSR 09-17-056 and 09-18-113, § 357-31-230, filed 8/13/09 and 9/2/09, ef-

fective 12/3/09; WSR 09-03-013, § 357-31-230, filed 1/9/09, effective 2/13/09; WSR 08-15-043, § 357-31-230, filed 7/11/08, effective 10/1/08; WSR 05-08-137, § 357-31-230, filed 4/6/05, effective 7/1/05.]

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

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 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.
- (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.

[Statutory Authority: Chapter 41.06 RCW. WSR 22-12-076, § 357-31-327, filed 5/27/22, effective 7/1/22. Statutory Authority: Chapter 41.06 RCW and RCW 50A.15.060. WSR 20-06-008, § 357-31-327, filed 2/20/20, effective 5/1/20. Statutory Authority: Chapter 41.06 RCW. WSR 14-24-024, § 357-31-327, filed 11/21/14, effective 12/22/14; WSR 09-17-057 and 09-18-112, § 357-31-327, filed 8/13/09 and 9/2/09, effective 12/3/09; WSR 09-03-014, § 357-31-327, filed 1/9/09, effective 2/13/09; WSR 08-15-043, § 357-31-327, filed 7/11/08, effective 10/1/08; WSR 07-17-129, § 357-31-327, filed 8/20/07, effective 9/20/07.]

NEW SECTION

WAC 357-31-374 When must an employer grant a temporary leave of absence for service in an elective office or for legislative service? An employer must grant a temporary leave of absence for:

(1) Service in an elective office without loss of job status or seniority to an employee by reason of having been elected or appointed to an elective office in accordance with RCW 41.04.120.

(2) Legislative service without loss of job status or seniority to an employee who is a member of the state legislature in order for the employee to perform any special duty as a member of the legislature during regular and special legislative sessions in accordance with chapter 49.100 RCW.

(a) The leave of absence may be unpaid or the employee may substitute any combination of accrued paid leave.

(b) An employee seeking a temporary leave of absence must provide notice to the employer:

(i) At least 30 days in advance for a regular legislative session; or

(ii) As soon as the session is proclaimed for a special session.

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NEW SECTION

WAC 357-31-3745 How does a temporary leave of absence for service in an elective office or for legislative service impact an employee's probationary period, trial service period, or transition review period? When an employee is granted a temporary leave of absence for service in an elective office or for legislative service during a probationary period, trial service period, or transition review period, the employer must suspend the employee's probationary period, trial service period, or transition review period and allow the employee to resume when they return from their leave of absence.

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

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 reg-

istered 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; (~~and~~)

(d) When a high-risk employee, as defined in RCW 49.17.062, seeks a reasonable 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.

[Statutory Authority: Chapter 41.06 RCW. WSR 22-12-076, § 357-31-567, filed 5/27/22, effective 7/1/22. Statutory Authority: Chapter 41.06 RCW and RCW 50A.15.060. WSR 20-06-008, § 357-31-567, filed 2/20/20, effective 5/1/20. Statutory Authority: Chapter 41.06 RCW. WSR 10-23-120, § 357-31-567, filed 11/17/10, effective 12/18/10; WSR 09-17-056 and 09-18-113, § 357-31-567, filed 8/13/09 and 9/2/09, effective 12/3/09; WSR 09-03-013, § 357-31-567, filed 1/9/09, effective 2/13/09; WSR 08-15-043, § 357-31-567, filed 7/11/08, effective 10/1/08.]

OTS-4089.3

AMENDATORY SECTION (Amending WSR 21-18-038, filed 8/24/21, effective 9/24/21)

WAC 357-46-053 How is a higher education employee's seniority date determined? For higher education employees, the seniority date is determined as follows:

(1) In accordance with the employer's layoff procedure. The employer's layoff procedure must specify a uniform method for determining the seniority date for employees of the higher education institution or related board who are covered by the civil service rules.

(2) Employees on military leave as provided in WAC 357-31-370 must not have their seniority date adjusted for the time spent on military leave without pay.

(3) Employees on leave without pay as authorized by a proclamation issued by the governor directly related to health and safety must not have their seniority date adjusted for the time spent on leave without pay.

(4) Employees on an approved leave of absence in accordance with WAC 357-31-374 must not have their seniority date adjusted for time spent on the leave of absence.

[Statutory Authority: Chapter 41.06 RCW. WSR 21-18-038, § 357-46-053, filed 8/24/21, effective 9/24/21; WSR 05-12-075, § 357-46-053, filed 5/27/05, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 21-18-038, filed 8/24/21, effective 9/24/21)

WAC 357-46-055 How is a general government employee's seniority date determined? (1) For a full-time general government employee, the seniority date is the employee's most recent date of hire into state service (including exempt service) as adjusted for any period of leave without pay which exceeds (~~fifteen~~) 15 consecutive calendar days except when the leave without pay is taken for:

- (a) Military leave as provided in WAC 357-31-370;
- (b) Compensable work-related injury or illness leave;
- (c) Government service leave not to exceed two years and one month;
- (d) Educational leave, contingent upon successful completion of the coursework;
- (e) Reducing the effects of layoff; (~~and/or~~)
- (f) Leave without pay as authorized by a proclamation issued by the governor directly related to health and safety; and/or
- (g) Leave for service in an elective office or legislative service as provided in WAC 357-31-374.

(2) When an employee is on leave without pay for more than (~~fifteen~~) 15 consecutive calendar days and the absence is not due to one of the reasons listed above, the employee's seniority date must be moved forward in an amount equal to the number of calendar days on leave without pay.

(3) For a part-time general government employee, the seniority date is calculated by determining the number of actual hours worked and/or in paid status, excluding compensatory time off. Actual hours worked includes overtime hours regardless of whether or not the employee receives monetary payment or compensatory time for the hours worked. Time spent in leave without pay status is not credited unless the leave without pay is taken for:

- (a) Military leave as provided in WAC 357-31-370;
- (b) Compensable work-related injury or illness leave;
- (c) Government service leave not to exceed two years and one month;
- (d) Educational leave, contingent upon successful completion of the coursework;
- (e) Reducing the effects of layoff; (~~and/or~~)
- (f) Leave without pay as authorized by a proclamation issued by the governor directly related to health and safety; and/or
- (g) Leave for service in an elective office or legislative service as provided in WAC 357-31-374.

[Statutory Authority: Chapter 41.06 RCW. WSR 21-18-038, § 357-46-055, filed 8/24/21, effective 9/24/21; WSR 14-06-007, § 357-46-055, filed 2/20/14, effective 3/24/14; WSR 09-11-063, § 357-46-055, filed 5/14/09, effective 6/16/09; WSR 05-08-135, § 357-46-055, filed 4/6/05, effective 7/1/05.]

OTS-4091.1

AMENDATORY SECTION (Amending WSR 14-24-023, filed 11/21/14, effective 12/22/14)

WAC 357-52-010 What actions may be appealed? (1) Within WGS, the following actions may be appealed:

(a) Any permanent WGS employee subject to the statutory jurisdiction of the board who is dismissed, suspended, demoted, or separated or whose base salary is reduced may appeal to the board.

(b) Any employee, subject to the statutory jurisdiction of the board who adversely is affected by a violation of the state civil service law (chapter 41.06 RCW) or the rules contained in Title 357 WAC, may appeal to the board as follows:

(i) For a violation of state civil service law or rules relating to a layoff action, excluding removal from a layoff list, the employee may appeal directly to the board.

(ii) For a violation of state civil service law or rules relating to any other subject, including removal from a layoff list, the employee may appeal directly to the board, except as provided in WAC 357-49-010(1) and chapter 49.100 RCW.

(c) An employee in a position at the time of its allocation or reallocation or the employer may appeal to the personnel resources board by filing written exceptions to the director's review determination.

(d) An employee whose position has been exempted from chapter 41.06 RCW or the exclusive bargaining unit representative for a vacant position that has been exempted from chapter 41.06 RCW may appeal the exemption to the board.

(e) An individual or the employer may appeal remedial action to the board by filing written exceptions to the director's review determination.

(2) Within WMS, the following actions may be appealed:

(a) Any permanent Washington management service employee who is dismissed, suspended, demoted, laid off, or separated, or whose base salary is reduced may appeal to the board. A determination of which Washington management service positions will be eliminated in a layoff action is not subject to appeal.

(b) For a violation of state civil service law or rules pertaining to WMS employees, a WMS employee who is adversely affected by a violation of the state civil service law (chapter 41.06 RCW) or the rules pertaining to WMS employees (chapter 357-58 WAC) may appeal directly to the board, except violations under chapter 49.100 RCW.

(c) An employee whose position has been exempted from chapter 41.06 RCW may appeal the exemption to the board.

[Statutory Authority: Chapter 41.06 RCW. WSR 14-24-023, § 357-52-010, filed 11/21/14, effective 12/22/14; WSR 09-17-065, § 357-52-010, filed 8/13/09, effective 9/16/09; WSR 06-03-072, § 357-52-010, filed 1/12/06, effective 2/13/06; WSR 05-19-011, § 357-52-010, filed 9/8/05, effective 10/10/05; WSR 05-01-190, § 357-52-010, filed 12/21/04, effective 7/1/05.]

OTS-4090.3

AMENDATORY SECTION (Amending WSR 08-07-062, filed 3/17/08, effective 4/18/08)

WAC 357-58-300 Does time spent on leave without pay (~~(or)~~), shared leave, or time spent on a temporary leave of absence for service in an elective office or legislative service count towards completion of an employee's review period? (1) Time spent on leave without pay or shared leave counts towards completion of the employee's review period if the total time does not exceed (~~(one hundred seventy-four)~~) 174 hours. If the total time on leave without pay or shared leave exceeds (~~(one hundred seventy-four)~~) 174, the employer determines whether or not the time in excess of (~~(one hundred seventy-four)~~) 174 hours will count towards completion of the review period. The granting of leave shall be in compliance with chapter 357-31 WAC and the Fair Labor Standards Act.

(2) Time spent on a temporary leave of absence for service in an elective office or legislative service does not count towards the completion of the employee's review period. Employees who are granted a temporary leave of absence for service in an elective office or legislative service while serving a review period must have their review period suspended and be allowed to resume when they return from their leave of absence.

[Statutory Authority: Chapter 41.06 RCW. WSR 08-07-062, § 357-58-300, filed 3/17/08, effective 4/18/08; WSR 05-12-070, § 357-58-300, filed 5/27/05, effective 7/1/05.]