

WSR 23-20-074

PROPOSED RULES

OFFICE OF

FINANCIAL MANAGEMENT

[Filed September 29, 2023, 1:41 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 357-28-082

Is step M on the salary schedule different than other salary steps?, 357-28-084 May an employee be appointed to step M upon demotion (voluntary or involuntary)?, 357-28-086 When may an employee progress to step M of the salary range?, 357-28-088 If an employee transfers or demotes will the time spent at step L count towards the six years to qualify for step M in the new position?, 357-28-120 What is the base salary of an employee occupying a position that is reallocated to a class with the same or lower salary range?, 357-28-135 How is an employee's salary determined when the employee is appointed to a position due to a layoff action?, 357-28-155 How is an employee's salary determined upon demotion?, 357-31-480 Is parental leave in addition to any leave for sickness or temporary disability because of pregnancy and/or child birth?, 357-31-500 When must disability leave due to pregnancy and/or childbirth be granted?, 357-31-687 Must employees use their own leave before receiving shared leave from the uniformed service shared leave pool?, 357-31-797 Must employees use their own leave before receiving shared leave from the veterans' in-state service shared leave pool?, and 357-58-141 When must a Washington management service (WMS) employee receive location based premium pay?

Hearing Location(s): On November 14, 2023, at 9:00 a.m., via Zoom meeting (with call-in option) ID 881 7165 8224, Call in 253-215-8782, Passcode 850872, Zoom link <https://ofm-wa-gov.zoom.us/j/88171658224?pwd=T1R1aUF4K3hEOEtCLzBHZnBaamVnZz09>.

Date of Intended Adoption: November 21, 2023.

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 November 7, 2023.

Assistance for Persons with Disabilities: Contact OFM, TTY 711 or 1-800-833-6384, by November 7, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amending WAC 357-28-082 to align with WAC 357-28-090 to allow an employee to be appointed to step M upon initial hire for recruitment, retention, or other business-related reasons. Amending WAC 357-28-084 to clarify an employee may be appointed to step M if the demotion is a result of a reasonable accommodation, or as a result of layoff in accordance with WAC 357-28-135, or for recruitment, retention, or other business-related reasons. Amending WAC 357-28-086(1) to state an employee may be appointed to step M as a result of a layoff option to align with WAC 357-28-088. Amending WAC 357-28-088 to clarify that if an employee was demoted as a result of a reasonable accommodation or due to a layoff action, the employee may be appointed to step M and correct the WAC reference. Amending WAC 357-28-120 to (1) clarify if an employee is reallocated to a class with the same or lower salary range the employee's base salary may be set higher than step M if allowed by the employer's salary determination policy until they vacate the position, or their salary falls within the new salary range; and (2) reflect gender-neutral pronouns. Amending WAC 357-28-135 to state an employee whose previous base sal-

ary was at step M of a salary range when accepting a layoff option to a position with a lower salary range maximum at the time of being appointed must be placed at step M of the new salary range; to state an employee whose previous base salary was at step L of a salary range when accepting a layoff option to a position with a lower salary range, any previous time spent at step L will count towards the requirement to progress to step M of the new salary range; and to reorganize the layout of the section for clarity. Amending WAC 357-28-155 to add subsection (2) to state if an employee is demoted as a result of a reasonable accommodation, the employee may be appointed to step M in accordance with WAC 357-28-084. Amending WAC 357-31-480 to update the correct RCW references. Amending WAC 357-31-500 to remove the term "permanent." Amending WAC 357-31-687 to remove the requirement for an employee to use all of their accrued vacation leave and paid military leave before receiving shared leave because an employee may maintain up to 40 hours of vacation leave and 40 hours of paid military leave. Amending WAC 357-31-797 to remove the requirement for an employee to use all of their accrued sick leave and vacation leave before receiving shared leave from the veterans' in-state service shared leave pool because an employee can maintain up to 40 hours of vacation leave and 40 hours of sick leave. Amending WAC 357-58-141 to clarify when an employee must receive location-based premium pay.

Reasons Supporting Proposal: The proposed amendments to WAC 357-28-082, 357-28-084, 357-28-086, 357-28-088, 357-28-120, 357-28-135, and 357-28-155 are to clarify certain scenarios based on questions received from stakeholders since inception. On July 1, 2013, new rules were adopted to implement a new step M that was provided in the 2013-2015 operating budget. Step M was originally implemented as a longevity step to allow employees who have been at the top step (step L) in the same salary range for six years to progress to step M. The proposed amendment to WAC 357-31-480 is to update the correct references from RCW 49.78.390 to 50A.15.110. RCW 49.78.390 was repealed in 2018 and therefore is no longer applicable. Parental leave is in addition to any leave for sickness or temporary disability as provided under the Federal Family and Medical Leave Act of 1993 and the Washington Paid Family and Medical Leave Act. The proposed amendment to WAC 357-31-500 is to align with the Washington state law against discrimination, chapter 49.60 RCW, and Title VII of the Civil Rights Act of 1964 or the Pregnancy Discrimination Act. An employee does not have to hold permanent status to qualify for a leave of absence for reasons of pregnancy, disability, and childbirth. The proposed amendments to WAC 357-31-687 and 357-31-797 are housekeeping in nature. The proposed amendment to WAC 357-58-141 is changing the word "and" to "or." This will clarify that location-based premium must be paid when a Washington management service employee is assigned to work on McNeil Island **or** when an employee is assigned to a permanent duty station in King County.

Statutory Authority for Adoption: RCW 41.06.133 and 41.06.150.

Statute Being Implemented: RCW 41.06.133 and 41.06.150.

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.

September 29, 2023

Nathan Sherrard

Assistant Legal Affairs Counsel

OTS-4482.5

AMENDATORY SECTION (Amending WSR 14-24-026, filed 11/21/14, effective 12/22/14)

WAC 357-28-082 Is step M on the salary schedule different than other salary steps? Step M is a longevity step. An employee cannot be appointed to step M upon initial hire unless for recruitment and retention or other business related reasons in accordance with WAC 357-28-090.

[Statutory Authority: Chapter 41.06 RCW. WSR 14-24-026, § 357-28-082, filed 11/21/14, effective 12/22/14; WSR 13-19-043, § 357-28-082, filed 9/13/13, effective 10/18/13.]

AMENDATORY SECTION (Amending WSR 13-19-043, filed 9/13/13, effective 10/18/13)

WAC 357-28-084 ((Can)) May an employee be appointed to step M upon demotion (voluntary or involuntary)? An employee cannot be appointed to step M upon demotion (voluntary or involuntary) unless:

- (1) The employee was at step M of the salary range from which the employee is demoting ((~~or~~));
- (2) The employee was previously at step M in the salary range of the class the employee is demoting to;
- (3) The demotion is a result of a reasonable accommodation;
- (4) The employee was appointed to a position due to layoff action in accordance with WAC 357-28-135; or
- (5) It is for recruitment and retention or other business related reasons in accordance with WAC 357-28-090.

[Statutory Authority: Chapter 41.06 RCW. WSR 13-19-043, § 357-28-084, filed 9/13/13, effective 10/18/13.]

AMENDATORY SECTION (Amending WSR 13-19-043, filed 9/13/13, effective 10/18/13)

WAC 357-28-086 When may an employee progress to step M of the salary range? (1) If an employee is currently at step L of a salary range, the employee will progress to step M of that same salary range six years from the date they were advanced or appointed to step L. The progression to step M is regardless of what has transpired in the six years since the employee was appointed to step L, provided that the employee is at step L in the same pay range as the pay range the employee was in at the beginning of the six-year period except in accordance with WAC 357-28-088.

(2) With director approval, higher education institutions may make all movements to step M effective:

(a) The first of the current month for actions occurring between the first and the (~~fifteenth~~) 15th of the month; or

(b) The first of the following month for actions occurring between the (~~sixteenth~~) 16th and the end of the month.

[Statutory Authority: Chapter 41.06 RCW. WSR 13-19-043, § 357-28-086, filed 9/13/13, effective 10/18/13.]

AMENDATORY SECTION (Amending WSR 14-24-026, filed 11/21/14, effective 12/22/14)

WAC 357-28-088 If an employee transfers or demotes will the time spent at step L count towards the six years to qualify for step M in the new position? If an employee transfers to a position the time at step L in the previous position will count towards the six years to qualify for step M in the new position.

If an employee is demoted (voluntary or involuntary), the time at step L in the previous position will not count towards the six years to qualify for step M except if the demotion is a result of a reasonable accommodation or due to layoff action in accordance with WAC 357-28-135(~~(+2)~~) (4).

[Statutory Authority: Chapter 41.06 RCW. WSR 14-24-026, § 357-28-088, filed 11/21/14, effective 12/22/14; WSR 13-19-043, § 357-28-088, filed 9/13/13, effective 10/18/13.]

AMENDATORY SECTION (Amending WSR 14-24-026, filed 11/21/14, effective 12/22/14)

WAC 357-28-120 What is the base salary of an employee occupying a position that is reallocated to a class with the same or lower salary range? An employee occupying a position that is reallocated to a class with the same or lower salary range must be placed within the new salary range at an amount equal to (~~(his/her)~~) their previous base salary. If the previous base salary exceeds the new salary range, the employee's base salary must be set equal to step M of the salary range for the reallocated position. The employee's base salary may be set higher than step M if allowed by the employer's salary determination policy, but not exceeding the previous base salary, (~~if allowed by~~

~~the employer's salary determination policy)) until such time as the employee vacates the position or their salary falls within the new salary range.~~

[Statutory Authority: Chapter 41.06 RCW. WSR 14-24-026, § 357-28-120, filed 11/21/14, effective 12/22/14; WSR 13-19-043, § 357-28-120, filed 9/13/13, effective 10/18/13; WSR 05-01-205, § 357-28-120, filed 12/21/04, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 14-24-026, filed 11/21/14, effective 12/22/14)

WAC 357-28-135 How is an employee's salary determined when the employee is appointed to a position due to a layoff action? (1) The base salary of an employee ((appointed to a position due to a layoff action must be)) who accepts a layoff option must have their salary determined as follows:

~~((1))~~ (a) An employee who accepts a layoff option to a different position with the same salary range keeps the same base salary.

~~((2))~~ (b) An employee who ((accepts a demotion in lieu of layoff or)) accepts a layoff option to a position with a lower salary range maximum must be placed within the new range at a salary equal to the employee's previous base salary. If the previous base salary exceeds the new range, the employee's base salary must be set equal to step M of the new salary range((. If the employee's previous base salary was at step M of the salary range the employee must be placed at step M of the new salary range)).

~~((3))~~ (2) The base salary of an employee who is appointed from an internal or statewide layoff list must have their salary determined as follows:

(a) An employee who is appointed to a position with the same range as the position from which the employee was laid off must be placed within the range at a salary equal to the employee's previous base salary.

~~((4))~~ (b) An employee who is appointed ((from an internal or statewide layoff list)) to a position with a lower range maximum than the position from which the employee was laid off must have the salary determined by the employer's salary determination policy.

(3) An employee whose previous base salary was at step M of a salary range when accepting a layoff option to a position with a lower salary range maximum at the time of being appointed must be placed at step M of the new salary range.

(4) An employee whose previous base salary was at step L of a salary range when accepting a layoff option to a position with a lower salary range, any previous time spent at step L will count towards the requirement to get to step M of the new salary range.

[Statutory Authority: Chapter 41.06 RCW. WSR 14-24-026, § 357-28-135, filed 11/21/14, effective 12/22/14; WSR 13-19-043, § 357-28-135, filed 9/13/13, effective 10/18/13; WSR 05-01-205, § 357-28-135, filed 12/21/04, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 05-01-205, filed 12/21/04, effective 7/1/05)

WAC 357-28-155 How is an employee's salary determined upon demotion? (1) The base salary of an employee who accepts a demotion in lieu of layoff must be set in accordance with WAC 357-28-135.

(2) If the demotion is a result of a reasonable accommodation, they may be appointed to step M in accordance with WAC 357-28-084.

(3) An employee demoted for any other reason must be paid within the salary range of the class to which the position is allocated. The employee's base salary must be determined in accordance with the employer's salary determination policy.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-01-205, § 357-28-155, filed 12/21/04, effective 7/1/05.]

OTS-4543.4

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

WAC 357-31-480 Is parental leave in addition to any leave for sickness or temporary disability because of pregnancy and/or childbirth? ((Under RCW 49.78.390,)) Consistent with RCW 50A.15.110, parental leave under Title 50A RCW and the family leave required by the Federal Family and Medical Leave Act of 1993 (Act Feb. 5, 1993, P.L. 103-3, 107 Stat. 6) must be in addition to any leave for sickness or temporary disability because of pregnancy or childbirth as provided in WAC 357-31-500.

[Statutory Authority: Chapter 41.06 RCW. WSR 08-07-062, § 357-31-480, filed 3/17/08, effective 4/18/08; WSR 07-17-124, § 357-31-480, filed 8/20/07, effective 9/20/07; WSR 07-11-094, § 357-31-480, filed 5/16/07, effective 7/1/07; WSR 05-08-140, § 357-31-480, filed 4/6/05, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 05-08-140, filed 4/6/05, effective 7/1/05)

WAC 357-31-500 When must disability leave due to pregnancy and/or childbirth be granted? Leave of absence must be granted for the period of time that ((a permanent)) an employee is sick or temporarily disabled because of pregnancy and/or childbirth.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-08-140, § 357-31-500, filed 4/6/05, effective 7/1/05.]

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

WAC 357-31-687 Must employees use their own leave before receiving shared leave from the uniformed service shared leave pool? Employees who are eligible to receive shared leave from the uniformed service shared leave pool must first use all accrued compensatory time, accrued holiday credit, recognition leave as described in WAC 357-31-565, and personal holiday(~~(, vacation leave, and paid military leave allowed under RCW 38.40.060)~~) before receiving shared leave from the uniformed service shared leave pool. The employee is not required to deplete all of their accrued vacation leave and paid military leave allowed under RCW 38.40.060 and can maintain up to 40 hours of vacation leave and 40 hours of paid military leave.

[Statutory Authority: Chapter 41.06 RCW. WSR 22-01-022, § 357-31-687, filed 12/3/21, effective 7/1/22. Statutory Authority: Chapter 41.06 RCW and RCW 41.04.655. WSR 20-24-017, § 357-31-687, filed 11/20/20, effective 12/28/20. Statutory Authority: Chapter 41.06 RCW. WSR 18-03-080, § 357-31-687, filed 1/15/18, effective 2/16/18.]

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

WAC 357-31-797 Must employees use their own leave before receiving shared leave from the veterans' in-state service shared leave pool? Employees who are eligible to receive shared leave from the veterans' in-state service shared leave pool must first use all accrued compensatory time, accrued holiday credit, recognition leave as described in WAC 357-31-565, and personal holiday(~~(, sick leave, and vacation leave)~~) before receiving shared leave from the veterans' in-state service shared leave pool. The employee is not required to deplete all of their accrued vacation leave and sick leave and can maintain up to 40 hours of vacation leave and 40 hours of sick leave.

[Statutory Authority: Chapter 41.06 RCW. WSR 22-01-022, § 357-31-797, filed 12/3/21, effective 7/1/22. Statutory Authority: Chapter 41.06 RCW and RCW 41.04.655. WSR 20-24-017, § 357-31-797, filed 11/20/20, effective 12/28/20. Statutory Authority: Chapter 41.06 RCW. WSR 18-03-080, § 357-31-797, filed 1/15/18, effective 2/16/18.]

OTS-4225.3

AMENDATORY SECTION (Amending WSR 19-17-040, filed 8/15/19, effective 9/23/19)

WAC 357-58-141 When must a Washington management service (WMS) employee receive location based premium pay? Location based premium pay at the rate specified in the compensation plan must be paid when a WMS employee is:

(1) Assigned to work on McNeil Island at the special commitment center and for each day the employee is physically working on the island. Days in paid status not working on the island will not qualify for premium pay; (~~and~~) or

(2) Assigned to a permanent duty station in King County. When an employee is no longer permanently assigned to a King County duty station they will not be eligible for location based premium pay.

[Statutory Authority: Chapter 41.06 RCW and RCW 41.06.133. WSR 19-17-040, § 357-58-141, filed 8/15/19, effective 9/23/19.]