

WSR 25-08-079

PROPOSED RULES

OFFICE OF

FINANCIAL MANAGEMENT

[Filed April 1, 2025, 5:05 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 357-28-255

What constitutes overtime for an overtime eligible employee?, 357-28-265 For the purpose of computing eligibility for overtime compensation, are holidays and leave with pay considered time worked?, and 357-31-326 When may an employer grant leave with pay?

Hearing Location(s): On May 8, 2025, at 8:30 a.m., via Zoom (with call-in option) at <https://ofm-wa-gov.zoom.us/j/81811350765?pwd=UjHOAyLqQ0dmF2sp7x5aG0KCG0ggY3.1>, Meeting ID 818 1135 0765, Call in 253-215-8782, Passcode 903984.

Date of Intended Adoption: May 15, 2025.

Submit Written Comments to: Brandy Chinn, Office of Financial Management (OFM), 1500 Jefferson Street S.E., P.O. Box 47500, Olympia, WA 98504, email brandy.chinn@ofm.wa.gov, by 11:59 p.m., May 1, 2025.

Assistance for Persons with Disabilities: Contact OFM, TTY 711 or 1-800-833-6384, by 11:59 p.m., May 1, 2025.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed amendment to WAC 357-28-255(2) is to clarify the exceptions provided in WAC 357-28-265. The proposed amendment to WAC 357-28-265 is to add subsection (3) to state leave with pay during the employees regular work schedule is not considered time worked except for when leave is taken on the employee's regularly scheduled workday for the purpose of rest and recuperation in accordance with WAC 357-31-326 and to clarify that if leave falls on the employee's regularly scheduled day off it is not considered hours worked for the calculation of the overtime rate. The proposed amendment to WAC 357-31-326(3) is to state the department of natural resources (DNR) may grant two additional days of leave with pay for rest and recuperation after 14 consecutive calendar days performing emergency work. Additional days may only be granted if they fall on the employee's regularly scheduled workday and are taken consecutively. Leave with pay under this subsection is subject to the overtime provisions in WAC 357-28-265.

Reasons Supporting Proposal: To align the civil service rules with the changes stemming from the 2025-2027 tentative collective bargaining agreements for represented employees. A policy decision was made to extend the rest and recuperation leave to nonrepresented employees employed with DNR provided this leave is funded in the 2025 enacted budget.

Statutory Authority for Adoption: RCW 41.06.133.

Statute Being Implemented: RCW 41.06.133.

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, 1500 Jefferson Street S.E., Olympia, WA 98504, 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.

April 1, 2025
Nathan Sherrard
Legal Affairs Counsel

RDS-6241.2

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

WAC 357-28-255 What constitutes overtime for an overtime eligible employee? (1) The following conditions constitute overtime for overtime eligible employees:

(a) Work in excess of 40 hours in one workweek, except for law enforcement positions or hospital personnel assigned to a 14-day schedule.

(i) For hospital personnel assigned to a 14-day schedule, work in excess of eight hours in any workday or 80 hours in a 14-day period constitutes overtime.

(ii) For law enforcement positions, work in excess of the 160-hour, 28-day work period constitutes overtime.

(b) Work on a holiday per WAC 357-28-200.

(c) For full-time employees, work on a scheduled day off when assigned by the employer.

(2) All paid holidays including the use of holiday credit during the employee's regular work schedule **are** considered time worked. Leave with pay during the employee's regular work schedule is **not** considered time worked for purposes of determining overtime eligibility, except as provided in WAC 357-28-265.

(3) When an overtime eligible employee experiences a schedule change which causes an overlap in workweeks and requires work in excess of 40 hours in either the previous or current workweek, the employee must receive overtime compensation.

(4) Compensation under the provisions of this section must be in accordance with the employer's policy, as approved by the director, for the following individuals:

(a) Employees dispatched to emergency response duty under an incident command system as defined in RCW 38.52.010; and

(b) Employees of the department of corrections and department of social and health services who are in charge of offenders assigned to assist in forest fire suppression and other emergency incidents.

AMENDATORY SECTION (Amending WSR 23-24-021, filed 11/28/23, effective 1/1/24)

WAC 357-28-265 For the purpose of computing eligibility for overtime compensation, are holidays and leave with pay considered time worked? For purposes of computing eligibility for overtime compensation, paid holidays during the employee's regular work schedule **are** considered time worked. Leave with pay during the employee's regular work schedule is **not** considered time worked except for:

(1) When leave is taken to travel and receive each dose or booster of COVID-19 vaccine in accordance with WAC 357-31-325; ~~((or))~~

(2) When leave is taken to receive each dose or booster of COVID-19 vaccine in accordance with WAC 357-31-326; or

(3) When leave is taken on the employee's regularly scheduled workday for the purpose of rest and recuperation in accordance with WAC 357-31-326. However, if leave falls on the employee's regularly scheduled day off, it is **not** considered hours worked for the calculation of the overtime rate.

RDS-6242.1

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

WAC 357-31-326 When may an employer grant leave with pay? (1) A general government employer **may** grant leave with pay for an employee to perform civil duties as a volunteer including, but not limited to, firefighting, search and rescue efforts, or donating blood. Leave granted to participate in blood and plasma donations must not exceed five days in a two-year period.

(2) A higher education employer may grant leave with pay for an employee to perform civil duties as a volunteer including, but not limited to, firefighting, search and rescue efforts, participating in life-giving procedures, or donating blood. Leave granted to participate in life-giving procedures must not exceed five days in a two-year period.

(3) In the department of natural resources, leave with pay equivalent to one regular workshift **may** be allowed for the purpose of rest and recuperation after 10 consecutive calendar days performing emergency work under an incident command system, defined in RCW 38.52.010. The employer may grant ~~((one))~~ two additional days of leave with pay for rest and recuperation after ~~((21))~~ 14 consecutive calendar days performing emergency work under an incident command system. Additional days may only be granted if they fall on the employee's regularly scheduled workday and are taken consecutively. Leave with pay under this subsection is subject to the overtime provisions in WAC 357-28-265.

(4) A general government employer may grant a reasonable amount of leave with pay for an employee to receive each dose or booster of COVID-19 vaccine if the vaccine is offered at the workplace. An employer may authorize leave in excess of one day for receipt of the vaccine in extraordinary circumstances, such as to accommodate travel where the vaccine is unavailable locally. The employer may require

that the request for leave be supported by documentation, which may include proof of the vaccination. This subsection no longer applies if state or federal law otherwise provides paid leave specifically for employees to receive the COVID-19 vaccine.

(5) A higher education employer may grant a reasonable amount of leave with pay for an employee to receive each dose or booster of COVID-19 vaccine if the vaccine is not offered at the workplace. An employer may authorize leave in excess of one day for receipt of the vaccine in extraordinary circumstances, such as to accommodate travel where the vaccine is unavailable locally. The employer may require that the request for leave be supported by documentation, which may include proof of the vaccination. This subsection no longer applies if state or federal law otherwise provides paid leave specifically for employees to receive the COVID-19 vaccine.