**Novel Coronavirus Disease (COVID-19) Emergency Rules**

**Staff note:** Governor Jay Inslee’s issued proclamation 20-05 which declares State of Emergency in all counties in the state of Washington as a result of the outbreak of COVID-19. Our Governor further declared that State agencies and departments are directed to use state resources and to do everything reasonably possible to assist affected political subdivisions in an effort to respond to and recover from the outbreak. The worldwide outbreak of COVID-19 and the effects of its extreme risk of person-to-person transmission throughout the United States and Washington State significantly impacts the life and health of our people, as well as the economy of Washington State, and is a public disaster that affects life, health, property or the public peace.

The following rules were filed with the Office of the Code Reviser and are effective March 11, 2020, WSR 20-07-051.

AMENDATORY SECTION

**WAC 357-31-265** **What is the effect of suspended operations on employees who are not required to work during the closure?**

At a minimum, employees not required to work during suspended operations must be allowed to use their personal holiday, or accrued vacation leave. Overtime eligible employees must also be allowed to use accrued compensatory time to account for the time lost due to the closure. Overtime eligible employees may be allowed to use leave without pay and given an opportunity to make up work time lost (as a result of suspended operations) within the work week. For overtime eligible employees, compensation for making up lost work time must be in accordance with WAC 357-28-255, 357-28-260, and 357-28-265 if it causes the employee to work in excess of forty hours in the workweek, and must be part of the employer's suspended operations procedures. The amount of compensation earned under this section must not exceed the amount of salary lost by the employee due to suspended operation.

If the employer's suspended operations procedure allows, employees may be released without a loss in pay.

Employees not required to work during suspended operations due to coronavirus disease 2019 (COVID-19) will not receive any loss of pay. This is effective until the expiration of proclamation 20-05, issued February 29, 2020, by the governor and declaring an emergency in the state of Washington, or any amendment thereto, whichever is later.

AMENDATORY SECTION

**WAC 357-31-325** **Must an employer grant leave with pay for other miscellaneous reasons such as to take a state examination?** Leave with pay **must** be granted to an employee:

(1) To allow an employee to receive assessment from the employee assistance program.

(2) When an employee is scheduled to take an examination or participate in an interview for a position with a state employer during scheduled work hours.

(a) Employers may limit the number of occurrences or the total amount of paid leave that will be granted to an employee to participate in an interview or take an examination during scheduled work hours.

(b) Employers may deny an employee's request to participate in an interview or take an examination during scheduled work hours based upon operational necessity.

(3) When an employee is required to appear during working hours for a physical examination to determine physical fitness for military service.

(4) When a general government employee is required by Centers for Disease Control and Prevention guidelines to self-quarantine due to novel coronavirus disease 2019 (COVID-19), but is otherwise healthy and has not tested positive for COVID-19, and the employer has determined the employee does not have the option to telework. An employer may subsequently determine that a telework option exists for the employee and direct the employee to telework. If the employee is directed to telework under this subsection and declines to do so, the employee must use other available leave options. The employee may receive up to fourteen days of leave with pay under this subsection. This subsection is effective until the expiration of proclamation 20-05, issued February 29, 2020, by the governor and declaring an emergency in the state of Washington, or any amendment thereto, whichever is later. An employer may require written verification, including verification submitted electronically, confirming the circumstances warranting the self-quarantine or inability to telework, which may include a signed affidavit from the employee or any other information requested by the employer.

AMENDATORY SECTION

**WAC 357-31-326** **When may an employer grant leave with pay?**

((~~(1)~~)) An employer **may** grant leave with pay:

(1) 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 life-giving procedures must not exceed five days in a two-year period.

(2) 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 ten consecutive calendar days performing emergency work under an incident command system, defined in RCW 38.52.010. The employer may grant one additional day of leave with pay for rest and recuperation after twenty-one consecutive calendar days performing emergency work under an incident command system.

(3) When a higher education employee is required by Centers for Disease Control and Prevention guidelines to self-quarantine due to novel coronavirus disease 2019 (COVID-19), but is otherwise healthy and has not tested positive for COVID-19, and the employer has determined the employee does not have the option to telework. An employer may subsequently determine that a telework option exists for the employee and direct the employee to telework. If the employee is directed to telework under this subsection and declines to do so, the employee must use other available leave options. The employee may receive up to fourteen days of leave with pay under this subsection. This subsection is effective until the expiration of proclamation 20-05, issued February 29, 2020, by the governor and declaring an emergency in the state of Washington, or any amendment thereto, whichever is later. An employer may require written verification, including verification submitted electronically, confirming the circumstances warranting the self-quarantine or inability to telework, which may include a signed affidavit from the employee or any other information requested by the employer.

AMENDATORY SECTION

**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 requests to be on leave without pay due to the novel coronavirus disease 2019 (COVID-19) to protect themselves, a family member or a household member. An employer may require written verification, including verification submitted electronically, before or during the period of leave without pay confirming the circumstances warranting the leave. Written verification may include a signed affidavit from the employee or any other information requested by the employer. This subsection is effective until the expiration of proclamation 20-05, issued February 29, 2020, by the governor and declaring an emergency in the state of Washington, or any amendment thereto, whichever is later.

AMENDATORY SECTION

**WAC 357-31-345** **How does leave without pay affect a general government employee's anniversary date, unbroken service date, periodic increment date, and seniority date?**

(1) For a general government employee, the anniversary date, unbroken service date, and periodic increment date is adjusted for any period of leave without pay which exceeds fifteen consecutive calendar days except when the leave without pay is taken for:

(a) Military leave of absence without pay 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; ((~~and/or~~))

(e) Voluntarily reducing the effect of an employer's layoff; and/or

(f) Novel coronavirus disease 2019 (COVID-19) in accordance with WAC 357-31-327.

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

(3) For a general government employee the seniority date is adjusted for leave without pay in accordance with WAC 357-46-055.

AMENDATORY SECTION

**WAC 357-31-346** **Does leave without pay affect a higher education employee's periodic increment date?**

For a higher education employee, the periodic increment date will be moved forward by one month when any period of leave without pay which exceeds ten working days in a month except when the leave without pay is taken for:

(1) Military leave of absence without pay as provided in WAC 357-31-370;

(2) Compensable work-related injury or illness leave; ((~~and/or~~))

(3) Scheduled periods of leave without pay for cyclic appointments in accordance with WAC 357-19-295; and/or

(4) Novel coronavirus disease 2019 (COVID-19) in accordance with WAC 357-31-327.

AMENDATORY SECTION

**WAC 357-31-347** **Does leave without pay affect a higher education employee's seniority date?**

(1) In accordance with WAC 357-46-053, each higher education employer's layoff procedure defines how seniority is determined including any adjustments made for periods of leave without pay. As provided by WAC 357-19-297, scheduled cyclic leave without pay for an employee in cyclic year positions does not affect the employee's seniority date; or

(2) When leave without pay is taken due to the novel coronavirus 2019 (COVID-19) in accordance with WAC 357-31-327 the seniority date will not be adjusted for the period of leave without pay.

AMENDATORY SECTION

**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 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; and/or

(e) Reducing the effects of layoff.

(f) When an employee is on leave without pay for more than fifteen 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.

(g) Novel coronavirus disease 2019 (COVID-19) in accordance with WAC 357-31-327.

(2) 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; ((~~and/or~~))

(e) Reducing the effects of layoff; and/or

(f) Novel coronavirus disease 2019 (COVID-19) in accordance with WAC 357-31-327.