

WSR 21-08-057

PROPOSED RULES

OFFICE OF

FINANCIAL MANAGEMENT

[Filed April 5, 2021, 8:52 a.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 357-01-220 Overtime eligible employee, 357-01-225 Overtime-exempt employee, 357-19-260 While an employee is in an in-training appointment, what class is used to determine the employee's salary, overtime eligibility and performance evaluation?, 357-58-120 What is a disciplinary demotion and what changes may occur in salary?

Hearing Location(s): On May 13, 2021, at 8:30 a.m., at the Office of Financial Management (OFM), audio conference only, dial-in 888-285-8919, enter pin 8101730, code (if asked) 415.

Date of Intended Adoption: May 20, 2021.

Submit Written Comments to: Caroline Kirk, OFM, P.O. Box 47500, Olympia, WA 98501, email caroline.kirk@ofm.wa.gov, fax 360-586-4694, by May 6, 2021.

Assistance for Persons with Disabilities: Contact OFM, TTY 711 or 1-800-833-6384, by May 6, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 357-01-220 is amended to clarify an overtime eligible employee is an employee who is not exempt from the overtime provisions of either the Washington state Minimum Wage Act, chapter 49.46 RCW, or the federal Fair Labor Standards Act. WAC 357-01-225 is amended to clarify an overtime-exempt employee is an employee who is exempt from the overtime provisions of both chapter 49.46 RCW and the Fair Labor Standards Act. The amendments to chapter 357-01 WAC align with the recent rule making by the Washington department of labor and industries (L&I) modifying the state standards defining exempt employees. WAC 357-19-260 is amended to refer to "overtime eligibility" instead of "work period designation" to align with both federal and state law. The term "work period designation" is outdated terminology that is no longer relevant. WAC 357-58-120 is amended to clarify if a disciplinary demotion results in a salary decrease, the overtime status of the position may be impacted and must comply with the salary basis test of both the state and federal law. The amendment to WAC 357-58-120 clarifies the language and makes clear that the requirements of state law must also be followed.

Reasons Supporting Proposal: To align Title 357 WAC with the changes to the Washington Minimum Wage Act. L&I updated the minimum weekly standard salary level required to exempt executive, administrative or professional employees from Washington state's overtime pay requirements. The new state thresholds are more favorable than the current federal threshold, Washington employers must adhere to the state thresholds as of January 1, 2021.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Statute Being Implemented: Chapter 49.46 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Caroline Kirk, 128 10th Avenue, Olympia, WA 98501, 360-878-4827.

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.

April 5, 2021

Roselyn Marcus

Assistant Director of Legal and Legislative Affairs

OTS-2976.2

AMENDATORY SECTION (Amending WSR 05-01-204, filed 12/21/04, effective 7/1/05)

WAC 357-01-220 Overtime eligible employee. An employee who is ~~((covered by))~~ not exempt from the overtime provisions of either chapter 49.46 RCW or the Fair Labor Standards Act.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-01-204, § 357-01-220, filed 12/21/04, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 05-01-204, filed 12/21/04, effective 7/1/05)

WAC 357-01-225 Overtime-exempt employee. An employee who is ~~((not covered by))~~ exempt from the overtime provisions of both chapter 49.46 RCW and the Fair Labor Standards Act.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-01-204, § 357-01-225, filed 12/21/04, effective 7/1/05.]

OTS-2977.1

AMENDATORY SECTION (Amending WSR 05-01-206, filed 12/21/04, effective 7/1/05)

WAC 357-19-260 While an employee is in an in-training appointment, what class is used to determine the employee's salary, ~~((work period designation))~~ overtime eligibility, and performance evaluation? For each in-training step, the training plan must identify the job

class to which the employee's work is being allocated. The employee's salary, (~~work period designation~~) overtime eligibility, and performance evaluation must be based upon the allocated class of the in-training step.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-01-206, § 357-19-260, filed 12/21/04, effective 7/1/05.]

OTS-2978.1

AMENDATORY SECTION (Amending WSR 05-12-069, filed 5/27/05, effective 7/1/05)

WAC 357-58-120 What is a disciplinary demotion and what changes may occur in salary? Demotion for cause is a disciplinary demotion. A disciplinary demotion results in the:

(1) Assignment of responsibilities which results in a lower salary standard and/or lower evaluation points for the same position or results in the position being placed in the WGS with a lower base salary, or

(2) Movement to a different position that has a lower salary standard and/or lower evaluation points or to a WGS position with a lower base salary.

A disciplinary demotion may result in a salary decrease. (~~Any~~) If a disciplinary demotion results in a salary decrease, the overtime status of the position may be impacted and must comply with the salary basis test of both chapter 49.46 RCW and the Fair Labor Standards Act.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-12-069, § 357-58-120, filed 5/27/05, effective 7/1/05.]