**ITEM #1 – Director’s Review and Personnel Resources Board filings**

**Staff note:** The purpose of the proposed amendment to WAC 357-49-023 and WAC 357-52-225 is to allow documents for Director’s Review requests and documents for Personnel Resources Board appeals to be filed online. Filing by fax, by mail or in person are still acceptable avenues for filing.

We are proposing to amend WAC 357-49-023(2) and WAC 357-52-225(2) to update the fax filing requirements. We are also proposing to amend WAC 357-49-023(3) and WAC 357-52-225(3) because of online filing capabilities. The new subsection (3) in both rules states that documents are considered filed when a legible copy is received.

Lead: Caroline Kirk

AMENDATORY SECTION

**WAC 357-49-023 For purposes of this chapter, how must documents be filed with the director?** (1) For the purposes of this chapter, documents must be filed with the director by ~~F~~filing online through the director’s website, by fax or by mail.~~:~~ Director's review requests are considered filed when received in the director's review office in Olympia, Washington during the office hours of 8:00 a.m. to 5:00 p.m. Monday through Friday. Documents received in the director’s review office in Olympia, Washington outside of office hours or on a legal holiday will be deemed filed on the next business day. .

(2)Documents by fax must have a cover page identifying the addressee; the person making the transmission, including the address, telephone and fax number; the review to which the documents are related.

(3)Documents are considered filed when a legible copy of the documents is received.

~~(2)~~ **~~Filing by fax:~~**

~~(a) Documents by fax are considered filed when a legible copy of the documents is received. If transmission begins after office hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding legal holidays, the document will be deemed filed on the next business day.~~

~~(b) Documents by fax must have a cover page identifying the addressee; the person making the transmission, including the address, telephone and fax number; the review to which the document relates; the date of transmission; and the total number of pages included in the transmission.~~

~~(c) The person attempting to file by fax bears the risk that the papers may not be timely received or legibly printed, regardless of the cause. If the fax is not legible, it will not be considered sent.~~

~~(3)~~ **~~Filing by electronic mail (email)~~**~~: If the document is sent after office hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding legal holidays, the document will be deemed filed on the next business day.~~

AMENDATORY SECTION

**WAC 357-52-225 For purposes of this chapter how~~How~~ must ~~written~~ documents be filed with the board?** (1) For the purposes of this chapter ~~F~~filing online through the board’s website, by fax or by mail.~~:generally. Papers that must be filed with the board~~Appeal requests are considered ~~to be~~ filed ~~only~~ when ~~the papers are actually~~ received in the board's office in Olympia, Washington during the office hours of 8:00 a.m. to 5:00 p.m. Monday through Friday. Documents received in the board’s office in Olympia, Washington outside of office hours or on a legal holiday will be deemed filed on the next business day.

(2)Documents by fax must have a cover page identifying the addressee; the person making the transmission, including the address, telephone and fax number; the appeal to which the documents are related.

(3)Documents are considered filed when a legible copy of the documents is received.

**~~(2) Filing by telephone facsimile.~~**

~~(a) Written documents filed with the board by telephone facsimile~~Documents are considered filed~~received~~ when a legible copy of the documents ~~is reproduced on the board's telephone facsimile equipment in the board's office~~ is received. ~~If transmission begins after customary office hours, which are 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding legal holidays, the document will be deemed filed on the next business day.~~

~~(b) Any document filed with the board by telephone facsimile should be preceded by~~ Documents by fax must have a cover page identifying the addressee; the person~~party~~ making the transmission, including the address, telephone and fax~~telephone facsimile~~ number ~~of such party~~; the appeal to which the documents are related ~~relates; the date of transmission; and the total number of pages included in the transmission~~.

~~(c) The party attempting to file papers by telephone facsimile bears the risk that the papers will not be timely received or legibly printed, regardless of the cause. If the telephone facsimile is not legible, it will be considered as if it had never been sent.~~

~~(d) The original of any document filed by telephone facsimile should be mailed to the board within twenty-four hours of the time that the telephone facsimile was sent.~~

~~(e) The filing of papers by electronic mail ("email") is not authorized without the express prior approval of the board, and only under such circumstances as the board allows.~~

**ITEM #2 – Wage and Salary History Information**

**Staff note:** Engrossed Substitute House Bill (ESHB) 1696 passed during the 2019 legislative session with an effective date of July 28, 2019. This bill amends RCW 49.58.005 and adds new sections to chapter 49.58 RCW which prohibits an employer from seeking the wage or salary history of an applicant for employment or from a current or former employer. The bill also prohibits the employer from requiring that the applicant’s prior wage or salary history meet certain criteria. This bill also requires employers, upon request of an applicant for employment, to provide the wage or salary range for the position for which the applicant is applying. We are proposing the following rules to align with these new requirements.

Lead: Caroline Kirk

NEW SECTION

**WAC 357-16-017 When must the employer provide the salary range or management band for a position?** In accordance with RCW 49.58.110, the employer must provide the salary range or management band in the following circumstances: (1) Upon request of an individual for employment after the employer has initially offered the individual the position; and (2) Upon request of a current employee who is offered an appointment to another position.

If no salary range or management band exists, the employer must provide the minimum wage set by the employer prior to posting the position or appointing an employee to another position.

For the purposes of this section “employer” includes those employers with 15 or less employees.

NEW SECTION

**WAC 357-16-215 May an employer seek the wage or salary history of an individual for employment?** In accordance with RCW 49.58.100, an employer may not: (1) Seek the wage or salary history of an individual, including current employees, who are applying for employment from the individual’s current or former employer; or (2) Require that an individual’s prior wage or salary history meet certain criteria, except as provided in WAC 357-16-220.

For the purposes of this section “employer” includes those employers with 15 or less employees.

NEW SECTION

**WAC 357-16-220 May an employer confirm an individual’s wage or salary history?** In accordance with RCW 49.58.100, an employer may confirm an individual’s wage or salary history if: (1) The individual has voluntarily disclosed their wage or salary history; or (2) After the employer has negotiated and made an offer of employment including compensation to the individual.

For the purposes of this section “employer” includes those employers with 15 or less employees.

AMENDATORY SECTION

**357-58-190 What must be addressed in agency's WMS recruitment and selection policy and/or procedure?** An agency's WMS recruitment and selection policy must:

(1) Provide for the ability to consider any or all qualified candidates for hire, promotion, or internal movement;

(2) Ensure that hiring decisions are fair, objective, and based on the evaluation of leadership and other job related competencies and characteristics required for successful job performance and performance management;

(3) Support workforce diversity and affirmative action goals;

(4) Consider the career development of the agency's employees and other state employees;

(5) Ensure that hiring decisions are not based on patronage or political affiliation;

(6) Ensure compliance with state and federal laws relating to employee selection and nondiscrimination;

(7) Encourage decentralized and regional administration of the recruitment and selection processes when it is appropriate for the agency.

(8) Ensure compliance with WACs 357-16-117, 357-16-118 and 357-16-017 in regards to wage and salary information.

**ITEM #3 – Promotion and Reallocation Compensation**

**Staff note:** We are proposing to amend WAC 357-28-110 and WAC 357-28-115 to state that an employee who is promoted or is reallocated to a class with a higher salary range must advance to a step of the range for the new class that is nearest to five percent above their pre-promotional salary. This change is stemming from the new Information Technology Professional Structure implementation that we into effect on July 1, 2019. The ITPS salary schedules for ranges 1-11 are not square which mean that the current two step promotional language does not work for those employees who move in and out of the ITPS. In addition, the purpose of the proposed amendment to WAC 357-28-110(2) is to clarify that if an employer grants a higher increase for internal alignment, retention or other business needs it is done so in accordance with WAC 357-28-090.

Lead: Brandy Chinn

Reference Only

**WAC 357-28-090 Can an employer adjust an employee's base salary within the employee's current salary range for recruitment, retention, or other business related reasons?** The employer may adjust an employee's base salary up to step M within the salary range to address issues that are related to recruitment, retention or other business related reason, such as equity, alignment, or competitive market conditions.

AMENDATORY SECTION

**WAC 357-28-110** **Must an employee who is promoted receive a salary increase?** An employee who is promoted must ((~~receive a minimum increase of two steps~~)) advance to a step of the range for the new class that is nearest to five percent above their prepromotional salary, not to exceed step M of the salary range. The employer may grant ((~~more than an increase of two steps not to exceed step L~~)) higher increases if:

(1) Significant increases in duties and responsibilities, as documented by the employer, warrant greater compensation;

(2) The increase is necessary for internal salary alignment, retention of the employee((~~,~~)) or other documented business needs in accordance with WAC 357-28-090; or

(3) The increase is necessary to bring the employee to the minimum of the salary range for the position.

AMENDATORY SECTION

**WAC 357-28-115** **Must an employee occupying a position that is reallocated to a class with a higher salary range receive a salary increase?** An employee occupying a position that is reallocated to a class with a higher salary range must ((~~receive a minimum increase of at least two steps~~)) advance to a step of the range for the new class that is nearest to five percent above their prepromotional salary, not to exceed step M of the salary range in accordance with WAC 357-28-110.

**ITEM #4 – ITPS Layoff**

**Staff note:** We are proposing to break up the subsections in WAC 357-46-035 and assign them to separate WAC numbers (WAC 357-46-036, WAC 357-46-037 and WAC 357-46-038) to address the different stages of determining layoff options when a permanent employee is scheduled for layoff.

The proposed amendment to WAC 357-46-035 is to include what options a permanent employee has when they are scheduled for layoff and restructures the WAC for simplicity. In addition, we are proposing adding language to address when an employee has held permanent status in any abolished IT classes, for layoff purposes, they are considered to have held permanent status in any class at the same or lower salary range maximum within the ITPS.

The proposed new section WAC 357-46-036 is to address what happens if the employee does not have an option under WAC 357-46-035. This language was taken and removed from WAC 357-46-035(2).

The proposed new section WAC 357-46-037 is to address what happens when a class in which the employee previously held permanent status has been revised or abolished. This language was taken and removed from WAC 357-46-035(3).

The proposed new section WAC 357-46-038 is to address if an employee has layoff option rights to classes they held permanent status in prior to any breaks in state service. This language was taken and removed from WAC 357-46-035(4).

Lead: Brandy Chinn

AMENDATORY SECTION

**WAC 357-46-035** ((**~~Layoff option.~~**)) **What option does a permanent employee have to take a position when the employee is scheduled for layoff?** ((~~(1)~~ **~~What option does a permanent employee have to take a position when the employee is scheduled for layoff?~~**))

(1) The employer will identify positions, if available, within the layoff unit((~~,~~)) for a permanent employee who is scheduled for layoff ((~~must be offered the option to take a position, if available,~~)) that meets the following criteria:

(a) The position is comparable to the employee's current position as defined by the employer's layoff procedure;

(b) The employee satisfies the competencies and other position requirements; and

(c) The position is funded and vacant, or if no vacant funded position is available, the position is occupied by the employee with the lowest employment retention rating.

(2) The employer will identify positions in the following order:

(a) The position is allocated to the class in which the employee holds permanent status at the time of the layoff. If no option to a position in the current class is available, the employee's option is to a position in a class in which the employee has held permanent status that has the same salary range maximum. If an employee has held permanent status in any abolished information technology (IT) class, for layoff purposes they are considered to have held permanent status in any classes within the information technology professional structure (ITPS) with the same salary range maximum in accordance with subsection (1) of this section.

(b) If the employee ((~~has no~~)) does not have an option to take a position that has the same salary range maximum, the employee must be given an opportunity to take a position in a lower class in a class series in which the employee has held permanent status, in descending salary order. The employee does not have to have held permanent status in the lower class in order to be offered the option to take a position in the class. If an employee has held permanent status in any abolished IT class, for layoff purposes they are considered to have held permanent status in any class at the same or lower salary range maximum within the ITPS in accordance with subsection (1) of this section.

((~~(b) The position is comparable to the employee's current position as defined by the employer's layoff procedure.~~

~~(c) The employee satisfies the competencies and other position requirements.~~

~~(d) The position is funded and vacant, or if no vacant funded position is available, the position is occupied by the employee with the lowest employment retention rating.~~

~~(2)~~ **~~What if the employee has no option under subsection (1) of this section?~~**

~~(a) If a permanent employee has no option available under subsection (1) of this section, the employer must determine if there is an available position in the layoff unit to offer the employee in lieu of separation that meets the following criteria:~~

~~(i) The position is at the same or lower salary range maximum as the position from which the employee is being laid off;~~

~~(ii) The position is vacant or held by a probationary employee or an employee in a nonpermanent appointment;~~

~~(iii) The position is comparable or less than comparable; and~~

~~(iv) The position is one for which the employee meets the competencies and other position requirements.~~

~~(b) If more than one qualifying position is available, the position with the highest salary range maximum is the one that must be offered.~~

~~(3)~~ **~~What happens when a class in which the employee previously held permanent status has been revised or abolished?~~**

~~(a) If a class in which an employee has previously held permanent status has been revised or abolished, the employer shall determine the closest matching class to offer as a layoff option. The closest matching class must be at the same or lower salary range maximum as the class from which the employee is being laid off.~~

~~(b) For employees who held permanent status in abolished information technology (IT) classes, an employer may use the IT Assessment form along with any other documentation to determine the closest matching class to offer as a layoff option.~~

~~(4)~~ **~~Does an employee have layoff option rights as provided in subsection (1) of this section to classifications the employee held permanent status in prior to any breaks in state service?~~**

~~General government employees have layoff option rights as provided in subsection (1) of this section to classifications the employee has held permanent status in regardless of any breaks in state service.~~

~~Higher education employers must address in their layoff procedure whether or not employees will be given layoff options to classes they held permanent status in prior to any breaks in state service.~~))

NEW SECTION

**WAC 357-46-036** **What if the employee does not have an option under WAC 357-46-035?** (1) If a permanent employee does not have an option available under WAC 357-46-035, the employer must determine if there is an available position in the layoff unit to offer the employee in lieu of separation that meets the following criteria:

(a) The position is at the same or lower salary range maximum as the position from which the employee is being laid off;

(b) The position is vacant or held by a probationary employee or an employee in a nonpermanent appointment;

(c) The position is comparable or less than comparable; and

(d) The position is one for which the employee meets the competencies and other position requirements.

(2) If more than one qualifying position is available, the position with the highest salary range maximum is the one that must be offered.

NEW SECTION

**WAC 357-46-037** **When identifying layoff options, what happens when a class in which the employee previously held permanent status has been revised or abolished?** If a class in which an employee has previously held permanent status has been revised or abolished, the employer shall determine the closest matching class to offer as a layoff option. The closest matching class must be at the same or lower salary range maximum as the class from which the employee is being laid off.

For employees who held permanent status in abolished information technology (IT) classes, an employer may use the IT assessment form along with any other documentation to determine the closest matching class to offer as a layoff option.

NEW SECTION

**WAC 357-46-038** **Does an employee have layoff option rights as provided in WAC 357-46-035 to classes the employee held permanent status in prior to any breaks in state service?** General government employees have layoff option rights as provided in WAC 357-46-035 to classes the employee has held permanent status in regardless of any breaks in state service.

Higher education employers must address in their layoff procedure whether or not employees will be given layoff options to classes they held permanent status in prior to any breaks in state service.

**ITEM #5 – ITPS Cleanup**

**Staff note:** The proposed amendment to WAC 357-58-040 is to clarify that that manager positions or managerial employees that are in included in professional structures are excluded from WMS and are not covered by chapter 357-58 WAC. This was an oversight when we reviewed and amended the WACs for the ITPS implementation which became effective on July 1, 2019.

Lead: Brandy Chinn

AMENDATORY SECTION

**WAC 357-58-040** ((**~~Are there any~~**)) **Which manager positions or managerial employees** ((**~~that are not included in the~~**)) **are excluded from WMS or not covered by chapter 357-58 WAC?** The following manager positions or managerial employees are excluded from WMS or covered by chapter 357-58 WAC:

(1) Manager positions or managerial employees that are exempt from civil service ((~~and~~));

(2) Manager positions or managerial employees that are included in professional structures; and

(3) Manager positions or managerial employees of institutions of higher education and related boards ((~~are not included in WMS or covered by chapter 357-58 WAC~~)).