



STATE OF WASHINGTON

OFFICE OF FINANCIAL MANAGEMENT

Insurance Building, PO Box 43113 • Olympia, Washington 98504-3113 • (360) 902-0555

SUBJECT: Concise Explanatory Statement as required by [RCW 34.05.325](#)

Pursuant to RCW 34.05.325(6)(a):

(6)(a) Before it files an adopted rule with the code reviser, an agency shall prepare a concise explanatory statement of the rule:

(i) Identifying the agency's reasons for adopting the rule;

(ii) Describing differences between the text of the proposed rule as published in the register and the text of the rule as adopted, other than editing changes, stating the reasons for differences; and

(iii) Summarizing all comments received regarding the proposed rule, and responding to the comments by category or subject matter, indicating how the final rule reflects agency consideration of the comments, or why it fails to do so.

In accordance with the statutory requirement, the Office of Financial Management (OFM) has prepared this concise explanatory statement regarding the civil service rulemaking for the permanent vaccination condition of employment requirement for state executive and small cabinet agencies.

New Rules:

WAC 357-01-1745 Fully vaccinated.

WAC 357-04-125 Must an employee provide proof of being fully vaccinated as a condition of employment?

WAC 357-16-197 Must an employer require an eligible candidate to provide proof of being fully vaccinated?

WAC 357-19-413 What are the requirements for a nonpermanent employee to be fully vaccinated or for an employer to require an eligible candidate to provide proof of being fully vaccinated?

Amended Rules:

WAC 357-46-165 When may an employer separate an employee in accordance with WAC 357-46-160?

WAC 357-46-195 May an employer separate an employee for nondisciplinary reasons?

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

Hearing:

A hearing was conducted at 8:30 AM on September 27, 2022, via Zoom with a call-in option.

Reasons for adopting the rule:

On August 5, 2022, Governor Inslee issued Directive 22-13.1, COVID-19 Vaccination Standards for State Employees, which directs a COVID-19 vaccination condition of employment requirement for state executive and small cabinet agencies. Although the emergency proclamation is expiring, COVID-19 and the effects of its risk of person-to-person transmission continue to impact the life and health of all

Washingtonians and the economy of Washington State. COVID-19 vaccines are effective in reducing infection and serious disease, and widespread vaccination is the primary means we have as a state to protect the health and safety of our workforce. As an employer, there is an obligation to maintain a safe and healthy work environment for all state employees. The vaccination requirements set forth in these proposed rules will help establish and maintain a healthy and safe work environment to protect the welfare of all state employees.

Summary of Comments Received (written comments and oral testimony) and OFM’s Response and Reflection in Final Rule

Public Comment

During the public hearing, state organizations and members of the public were provided the opportunity to make comments on the proposed rules.

In total, 153 written comments including supporting data were received. During the meeting, 10 individuals provided oral testimony. Seven of the 10 individuals who provided oral testimony also provided written comments. The written comments and oral testimonies were categorized into five areas of concern. The five categories and the description of each category is listed below.

Category	Description of Category	OFMs response (indicating how the final rule reflects consideration of the comments, or why it fails to do so)
Legal Authority	Issue should be addressed via the legislature, not agency rulemaking - OFM lacks statutory authority to make rules, did not follow proper rulemaking procedure - Believe rulemaking violates medical freedom and Nuremberg Code.	Comments were considered but mostly not incorporated in final rule. OFM has rulemaking authority under RCW 41.06.133 and RCW 41.06.150. Multiple courts have held vaccine mandates in themselves do not violate the constitution or other laws. OFM did make a non-substantive change to clarify that the rule is directed at governmental entities, in response to a comment that the correct process was not followed for rules regulating non-governmental entities.
Vaccine Safety	Concerns relating to the safety of the vaccines and often reference VAERS data or individual experiences with adverse vaccine reactions.	Comments were considered but not incorporated in final rule. Both the federal Centers for Disease Control (CDC) and Prevention and the Washington Department of Health (DOH) have stated that vaccines are “safe and effective.” As noted by DOH, the vaccines have been shown to be safe in clinical trials, and were developed, tested, and authorized using the same rigorous process used for other successful vaccines. And according to the CDC, “Millions of people in the United States have received COVID-19 vaccines

		<p>under the most intense safety monitoring in US history.” The CDC, therefore, recommends COVID-19 vaccines for everyone 6 months and older.</p> <p>See the following links:</p> <p>https://doh.wa.gov/emergencies/covid-19/vaccine-information/safety-and-effectiveness</p> <p>https://www.cdc.gov/coronavirus/2019-ncov/vaccines/safety/safety-of-vaccines.html</p>
Vaccine Efficacy	Concerns relating to the effectiveness of the vaccines and that many vaccinated individuals continue to catch COVID-19.	<p>Comments were considered but not incorporated in final rule. Both the federal Centers for Disease Control and Prevention (CDC) and the Washington Department of Health (DOH) have stated that vaccines are “safe and effective.”</p> <p>As noted by DOH, vaccination reduces the chances of hospitalization and lowers the risk of dying from COVID-19, and is highly effective at preventing COVID-19. Similarly, the CDC states that “vaccination helps protect adults and children ages 6 months and older from getting severely ill with COVID-19 and helps protect those around them.”</p> <p>See the following links:</p> <p>https://doh.wa.gov/emergencies/covid-19/vaccine-information/safety-and-effectiveness</p> <p>https://www.cdc.gov/coronavirus/2019-ncov/vaccines/effectiveness/index.html</p>
Service/Employee Impacts	Concerns regarding impacts to public services and individual employees if employees are separated or unable to seek employment, many comments specifically address the Ferry system impacts.	<p>Comments were considered but not incorporated in final rule. The risk of impacts to services and individual employees from a vaccination requirement is outweighed by the risk of serious illness or death of unvaccinated employees who contract COVID-19. The state of Washington has a duty to our employees to provide a safe work</p>

		environment and to reduce risk to the public we serve, and COVID-19 vaccination is the single most effective resource to prevent serious illness and death.
General	General disagreement with the Governor’s Directive to mandate employee vaccinations or comments that did not fit in any of the other categories.	Comments were considered but not incorporated in final rule. The rules are in accordance with the policy decision set forth in Governor Jay Inslee’s Revised Directive, #22-13.1, which directs a permanent COVID-19 vaccination requirement as a condition of employment for state executive and small cabinet agencies.

Differences between the text of the proposed rule as published and the text of the rule as adopted.

OFM made several non-substantial, non-substantive edits for the purpose of clarification, as follows:

- Changed reference from “Directive 22-13” to “Directive 22-13.1” in WAC 357-04-125 and WAC 357-16-197 to clarify that these rules apply to executive and small cabinet agencies as defined in Directive 22-13.1 issued August 5, 2022, by the governor.
- Modified title and language in WAC 357-16-197 and WAC 357-19-413(2) to clarify that these rules establish requirements directed at state employers, not eligible candidates.
- Changed reference from “vaccination” in WAC 357-58-190 (10) to “COVID-19 vaccination” for clarity.