



RULE-MAKING ORDER

CR-103P (May 2009)
(Implements RCW 34.05.360)

Agency: Department of Retirement Systems

Permanent Rule Only

Effective date of rule:

Permanent Rules

31 days after filing.

Other (specify) _____ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

Yes No If Yes, explain:

Purpose: Clarifies how the department determines whether a member has separated from service or employment, as required by state laws and Internal Revenue Service interpretations.

Citation of existing rules affected by this order:

Repealed:
Amended:
Suspended:

Statutory authority for adoption: 41.50.050 (5)

Other authority :

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 16-09-053 on April 15, 2016 (date).

Describe any changes other than editing from proposed to adopted version: No changes from the proposed version.

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name: _____ phone () _____
Address: _____ fax () _____
e-mail _____

Date adopted:

May 25, 2016

NAME (TYPE OR PRINT)

Marcie Frost

SIGNATURE

TITLE

Director

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: May 25, 2016

TIME: 4:43 PM

WSR 16-12-052

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Federal rules or standards:	New	<u>1</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Recently enacted state statutes:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>

The number of sections adopted at the request of a nongovernmental entity:

	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
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The number of sections adopted in the agency's own initiative:

	New	<u>1</u>	Amended	<u>0</u>	Repealed	<u>0</u>
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

	New	<u>1</u>	Amended	<u>0</u>	Repealed	<u>0</u>
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The number of sections adopted using:

Negotiated rule making:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Pilot rule making:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Other alternative rule making:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>

NEW SECTION

WAC 415-02-115 How is separation determined for retirement eligibility? (1) **Have I separated from service?** All retirement plans administered by the department of retirement systems require a separation from service before you are eligible to begin receiving retirement benefits. This is consistent with Internal Revenue Service (IRS) requirements for distributions from qualified retirement plans. In accordance with the IRS interpretation, you have separated from service only when you have ended the employment relationship without any reasonable expectation between you and your employer that you will return to work for the same employer in any capacity (including in an eligible or ineligible position or as an independent contractor).

(2) **How will the department determine if separation from service occurred?** The department will examine the facts and circumstances on a case-by-case basis to determine whether separation occurred. No single factor is determinative. Factors to be considered may include, without limitation, the following:

(a) Was there a prior agreement between you and your employer that you would return to work for that employer? If there was an understanding between you and your employer that you would perform services for that employer at a later date, you have not separated from service. Such understanding may be written or unwritten; it may be contractual or noncontractual in nature.

(b) How long was your absence? If your absence from work was less than thirty days, the department will presume that separation did not occur unless the employer provides enough information to disprove the presumption. An absence from work longer than thirty days is not sufficient proof that separation did occur if other factors indicate that an agreement existed for you to return to work for the same employer.

(c) Did your employer conduct a competitive hiring process to fill your vacated position?

(d) Were your actions and your employer's actions consistent with the expectation that your absence from work was total and permanent? For example: Was access to the employer's facilities, computer systems, and your personal e-mail and voice mail accounts terminated? Were your leave accruals cashed out? Did you remove all of your personal belongings from the employer's premises?

(3) **If I terminate from my position with an understanding that I will return to service with the same employer in an ineligible position or as an independent contractor, will I have separated from service?** No. If, at the time of your termination, there was an understanding between you and your employer that you would return to work for that employer in any capacity, including in an ineligible position or as an independent contractor, you have not separated from service and are not eligible to retire.

(4) **What happens if I begin to receive retirement benefits and then it is determined that separation from service did not occur?** If you begin to receive retirement benefits without a valid separation from service, you have received a benefit overpayment that must be repaid to the department pursuant to RCW 41.50.130 and/or 41.50.139.

(5) **May I contest the department's decision?** If the department determines, based on a review of the circumstances, that you did not separate from service, you may petition for review under chapter 415-04 WAC.

(6) **Examples:**

(a) **Example 1.** Mary has met the age and service requirements for retirement eligibility. Aaron is hired to fill the position she will be leaving. Mary submits her retirement application and leaves her job. Shortly thereafter, Aaron resigns and leaves abruptly, causing a vacancy at a critical time. After a separation of only three weeks, Mary returns to perform the work until the position can be filled again. Has a separation occurred?

Yes, if there are no other facts to the contrary, Mary separated from service and is eligible to retire. At the time of her termination, neither Mary nor her employer expected that she would return to employment. However, if Mary returns to work before thirty days have passed, this may cause her monthly retirement benefit to be reduced based on the requirements of her plan.

(b) **Example 2.** Robert is leaving his position as a police officer. Before leaving, he agrees to return to work for the same employer in a capacity that is not eligible for membership in the law enforcement officers' and firefighters' retirement system (LEOFF). He will begin his new position following a six week absence. Has a separation occurred?

No, Robert did not separate from service because there was an agreement that he would return to work for the same employer. Without a valid separation from service, Robert is not eligible to begin receiving LEOFF retirement benefits.

(7) **Is there a difference between "separation from service" and "separation from employment"?** Some of the retirement plans require "separation from service" in order to receive a monthly benefit. Others require "separation from employment." The department interprets these two statutory terms identically for purposes of eligibility for retirement. In this rule the term "separation from service" refers both to:

(a) The requirements for "separation from service" in RCW 41.40.193, 41.32.480, 41.26.090, and 41.26.490; and

(b) The requirements for "separation from employment" in RCW 41.40.680, 41.40.801; 41.32.795, 41.32.855; 41.35.450, 41.35.640; and 41.37.240.