



**Office of Financial Management  
State Human Resources**

# **Guide to Determine Return Rights for Exempt Employees**

**Version 3, January 2025**

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The Office of Financial Management, State Human Resources, is pleased to offer this resource guide for HR professionals. The purpose of the document is to guide state employers when assisting exempt employees in exercising their return right to classified service. This guide provides information about exempt employment and gives an overview of exempt return rights.

## Overview of Employment in Exempt Positions

Exempt employment in the State of Washington is addressed in RCW 41.06.070 which allows a limited number of exempt positions. The following applies to exempt employment:

- Exempt employment is considered “at will” and generally means that there are no contractual employment rights, and exempt employees serve at the pleasure of the appointing authority.<sup>1</sup> Institutions of Higher Education may have contracts for some exempt staff and those contract terms would apply. However, the appointing authority may decide not to renew a contract.
- Civil Service Law and Rules do not apply to positions specifically exempted in individual agency statutes and/or [RCW 41.06.070](#).
- Because exempt employees are not subject to the Title 357 WAC (Civil Service Rules), exempt employees do not have civil service appeal rights upon termination.

Laws (Revised Code of Washington or RCW) and Civil Service rules were adopted in the early 1970s to encourage classified employees to accept exempt appointments by providing an assurance of an ability to return to classified service after the termination of the exempt appointment. This means exempt employees who hold permanent status in the classified service (i.e. those positions under the jurisdiction of RCW 41.06) at the time of appointment to an exempt position have return rights to classified service. Classified service includes all positions in state service not exempted from the provisions of Chapter 41.06 RCW, including positions in both institutions of higher education and state agencies. Return rights shall be to the highest job classification held permanently, or to a position of similar nature and salary. Implementation rules for exempt return rights are set out in WAC 357. Those WACs are listed at the end of this guide.

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<sup>1</sup> An appointing authority is the agency or institution of higher education official with the power to appoint exempt employees and end exempt appointment of employees.

Exempt employees who did not hold permanent status in the classified service at the time of exempt appointment are not entitled to return to classified service. The organization's human resource director should be involved early when discussing return from exempt service with employees. OFM State HR rules team can be reached for assistance at (360) 407-4102 or email [Rules@ofm.wa.gov](mailto:Rules@ofm.wa.gov).

## Return from Exempt Appointment

The following provisions apply when returning to classified service from an exempt appointment:

- Employees who held permanent status in a classified position prior to their exempt appointment have statutory return rights to classified service as long as the employee's service is continuous (i.e. no break in service between classified and exempt appointments). The right of return may not be exercised if the employee is terminated from the exempt position for gross misconduct or malfeasance, or during the pendency of an investigation if the employee has been given written notice that they are the subject of an active workplace investigation which may result in a finding of gross misconduct or malfeasance. Written notice of an investigation may be given via email to the employee's work email address, and an investigation is considered pending until the employer has taken final appropriate action based on the findings of the investigation.
- Exempt return rights can be exercised when the employee chooses to end their exempt appointment or when the appointment is terminated by the appointing authority. Exempt employees exercising their exempt return rights should provide as much advance notice as practicable but no later than **thirty** calendar days of:
  - Separation from employment in the exempt position, or
  - Separation from employment in any subsequent exempt position if there is no break in state service of more than thirty calendar days between initial and subsequent exempt appointments.
- The return right is to the highest class of position in which the employee held permanent status or to a position of similar nature and salary. If a position in the highest job classification is not available, the employee may be returned to a position that is **similar** in nature and salary.
  - **Similar in nature** means work that is generally like the functions performed in the highest job classification previously held.

- **Similar in salary** means the same salary range or WMS band of the highest job classification. If an employee is returned to a similar position, the salary must be at the salary level of the highest job classification.

The ideal return is to a vacant position. If the employer does not have a funded vacant position, the employer must:

- Return the employee to a filled position (i.e. double fill a position) and the least senior incumbent (or the employee with the lowest retention rating) is laid off; or
- Establish a position to return the employee to and implement a layoff since the position is unfunded.
- Exempt employees who held permanent status in WMS at the time of appointment to an exempt position have return rights to a WMS position.
- Exempt employees who have never held permanent status in classified service or who had a break in service prior to their exempt appointment, do not have a statutory right of return. However, there are several other options for the employee to consider if there are no statutory return rights:
  - ✓ WMS has flexible hiring processes and includes management and policy positions that these employees may be well suited for.
  - ✓ Exempt openings in other agencies, higher education institutions, or the Legislature.
  - ✓ Job openings are posted frequently on the state careers website: [careers.wa.gov](https://careers.wa.gov).

## Examples of Return from Exempt

### **Exempt employee who did not hold permanent status in the classified service at the time of appointment:**

When ending the appointment of an exempt employee who did not hold permanent status in the classified service at the time of appointment, keep the following in mind:

- The employer should give adequate notice. At least two weeks is preferable.
- Exempt employees are not covered by WAC 357.
- Exempt employees without permanent classified status have no return or layoff rights to classified jobs and no appeal rights.

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**Example 1:** Reduction of an exempt employee who did not hold permanent status in the classified service at the time of appointment into exempt service.

| Hire Date | Title             | Status       | Agency                | Agency Status |
|-----------|-------------------|--------------|-----------------------|---------------|
| 1/1/2014  | Special Assistant | Nonpermanent | Employment Department | Receiving     |
| 1/1/2015  | HR Director       | Exempt       | Bellevue College      | N/A           |
| 1/1/2016  | Deputy Director   | Exempt       | Ecology               | Losing        |

When Ecology determines that the Deputy Director exempt appointment should end, the employee is notified. There are no return rights for the employee since the employee did not hold permanent status in the classified service prior to their exempt appointment. The employee is separated and does not have the right to appeal under the civil service rules.

**Exempt employee who held permanent status in the classified service at the time of appointment to exempt service:**

*When ending the appointment of an exempt employee who held permanent status in the classified service at the time of appointment, keep the following in mind:*

- Give adequate notice to the employee. At least two weeks is preferable. The current employer should let the former employer know the employee may be returning. (Note: For higher education institutions with exempt employment contracts, follow any notice provisions of the employment contract.)
- The exempt employee’s return rights will be to the employer in which the highest job classification was held. If an employee’s highest permanent status was the same job classification in more than one prior agency, the employee’s most recent agency would be the return option. However, the right of return may not be exercised if the employee is terminated from the exempt position for gross misconduct or malfeasance, or during the pendency of an investigation if the employee has been given written notice that they are the subject of an active workplace investigation, which may result in a finding of gross misconduct or malfeasance. Written notice of an investigation may be given via email to the employee’s work email address, or employee’s home email address, if known, should the employee’s access to their work email be suspended. An investigation is considered pending until the employer has taken final appropriate action based on the findings of the investigation.

- Exempt employees are not covered by the civil service rules therefore, there are no specific rules or procedures when ending an exempt appointment. However, upon appointment to a position in the classified service, the civil service rules or the applicable collective bargaining agreement applies.

**Example 2:** Exempt employee resigns from their exempt position. Employee held permanent status in a WGS position at the time of exempt appointment, however, the highest job classification held is an abolished job class.

| Hire Date | Title               | Status        | Agency  |
|-----------|---------------------|---------------|---------|
| 1/1/2015  | Budget Specialist 3 | WGS Permanent | Revenue |
| 1/1/2016  | Budget Director     | Exempt        | Revenue |

The return right is to the highest job classification the employee held permanent status in, within the classified service. In this example, Budget Specialist 3 job class has been abolished. The employee must be returned to another job classification that is similar in nature and salary. OFM State HR staff can provide the agency with assistance in determining similar positions and classifications.

**Example 3:** Exempt employee resigns from their exempt position. Employee held permanent status in a WGS position at the time of exempt appointment, however, the employer where the highest job classification was held has been abolished.

| Hire Date | Title               | Status        | Agency                 | Agency Status |
|-----------|---------------------|---------------|------------------------|---------------|
| 6/1/2017  | Admin Assistant 5   | WGS Permanent | General Administration | Receiving     |
| 1/1/2019  | Executive Assistant | Exempt        | Transportation         | Losing        |

The return right is to the highest job classification the employee held permanent status in, within the classified service. In this example, it is an Administrative Assistant 5 within the Department of General Administration; however, at the time the exempt employee requested to utilize their right to return, DGA had been re-organized and no longer exists. The current employer, Department of Transportation, determined the work previously performed went to the newly created Department of Enterprise Services (DES). Therefore, the employee's right to return is to DES. OFM State HR staff can provide assistance in determining the appropriate employer.

**Example 4:** Reduction of an exempt employee who held permanent status in classified service at the time of appointment. Prior position has been abolished but the job classification still exists.

| Hire Date | Title            | Status         | Agency  | Agency Status |
|-----------|------------------|----------------|---------|---------------|
| 1/1/2015  | Budget Analyst 5 | WGS Classified | Revenue | Receiving     |
| 1/1/2016  | Budget Director  | Exempt         | Revenue | Losing        |

The return right is to the highest job classification the employee held in classified service. In this example, Budget Analyst 5 is still a current classification; however, the position the employee was in has been abolished. The employee must be returned to a different Budget Analyst 5 position or to a job classification that is similar in nature and salary. OFM State HR staff can provide assistance in determining similar positions and classifications. If the employer has no positions which are similar in nature or salary, the employer is still obligated to return the employee to classified service. In this situation, the employer must establish a position to return the employee to and then may eliminate the position through a layoff action and provide the employee with layoff rights.

**Example 5:** Reduction of an exempt employee who held permanent status in classified service at the time of appointment. Prior position was reallocated downward after the employee took the exempt appointment.

| Hire Date | Title            | Status        | Agency         | Agency Status |
|-----------|------------------|---------------|----------------|---------------|
| 5/1/2015  | HR Consultant 3  | WGS Permanent | Transportation | Receiving     |
| 5/1/2017  | Program Director | Exempt        | Revenue        | Losing        |

The employee's prior Human Resource Consultant 3 position was reallocated to a Human Resource Consultant 2 after the employee took the exempt appointment. The return right for the employee is to the highest job classification the employee held in classified service. In this example, it is Human Resource Consultant 3. The employee must be returned to a Human Resource Consultant 3 position or to a job classification that is similar in nature and salary.

**Example 6:** Reduction of an exempt employee who held permanent status in classified service (WMS position) at the time of appointment.



| Hire Date | Title                   | Status        | Agency                | Agency Status |
|-----------|-------------------------|---------------|-----------------------|---------------|
| 1/1/2014  | Mediator                | WGS Permanent | PERC                  | N/A           |
| 1/1/2015  | Labor Relations Manager | WMS Band 3    | Security              | Receiving     |
| 1/1/2016  | Deputy Director         | Exempt        | Health Care Authority | Losing        |

The return right for the employee is to a WMS Band 3 position at Security – the Labor Relations Manager or a position that is similar in nature and salary to the Labor Relations Manager position. Because WMS does not have job “classifications,” it is recommended the agency track what has occurred to the Labor Relations Manager since the employee’s appointment to exempt service. This will assist in determining what positions are currently similar in nature and where to set the salary. If the employee is returned to a filled position, the employee with the lowest retention rating or the least seniority is laid off. Layoff options within WMS would be considered at Security.

**Example 7:** Reduction of an exempt employee who held permanent status in classified service at the time of appointment and has had multiple exempt appointments without a break in service.

| Hire Date | Title                              | Status        | Agency                   | Agency Status |
|-----------|------------------------------------|---------------|--------------------------|---------------|
| 2/1/2014  | Computer Information Consultant 3  | WGS Permanent | DSHS                     | Receiving     |
| 2/1/2015  | Assistant Director Data Processing | Exempt        | Ecology                  | N/A           |
| 2/1/2016  | Information Services               | Exempt        | House of Representatives | Losing        |

When the employee is notified by the House of Representatives that their exempt appointment is ending, the employee should initiate contact with DSHS (receiving agency.) Since there was no break in service between any appointments, the employee has a return right to DSHS, a position similar in nature and salary as a Computer Information Consultant 3. See [WAC 357-19-200](#)

**Example 8:** Reduction of an exempt employee who held permanent status in classified service at the time of appointment and has had multiple exempt appointments with a break in service.

| Hire Date            | Title               | Status        | Agency |
|----------------------|---------------------|---------------|--------|
| 04/1/2011            | Accountant 2        | WGS Permanent | DSHS   |
| 4/1/2012             | Accountant Manager  | Exempt        | DSHS   |
| 4/1/2013             | Assistant Director  | Exempt        | DSHS   |
| 4/1/2014             | Resigned from State |               |        |
| 4/1/2016<br>(rehire) | Deputy Director     | Exempt        | DSHS   |

The employee lost any return right to return to classified service with the resignation and break in service on 4/1/2014.

**Example 9:** Reduction of an exempt employee who held permanent status in classified service at the time of appointment and has had multiple appointments without exercising return rights.

| Hire Date | Title              | Status           | Agency         |
|-----------|--------------------|------------------|----------------|
| 10/1/2011 | Accountant 2       | WGS Permanent    | DSHS           |
| 10/1/2012 | Accounting Manager | Exempt           | Transportation |
| 10/1/2013 | Accountant 4       | WGS Nonpermanent | Ecology        |

The employee should have exercised their return right to DSHS prior to accepting the nonpermanent appointment with Ecology. The employee will have no return right at the conclusion of the nonpermanent appointment since the civil service laws and rules only provide a right to return to classified service from an exempt appointment.

# Sample Letter from Employee Notifying Agency/Institution of Higher Education of Intent to Exercise Return Rights

January 28, 2025

Jane Smith, HR Director  
Department of Widgets  
P.O. Box 1111  
Olympia, WA 98504

Re: Return from Exempt Appointment

Dear HR Director Smith:

I left the Department of Widgets on January 1, 2021, to accept an exempt appointment as Assistant Director in the Department of Telephone Services (DTS). I received a letter from (Appointing Authority) of DTS dated December 20, 2024, notifying me that my exempt appointment as Assistant Director in the DTS will end at the close of business on January 31, 2025.

This is to inform you that as an employee who has held permanent status in Washington General Service (or Washington Management Service), I wish to exercise my right to return to classified service with the Department of Widgets. Please consider this letter as my application per [WAC 357-19-195](#) and [WAC 357-19-200](#).

I can be reached at 360-123-4567 if you have questions and I look forward to talking to you more about my return rights.

Sincerely,

Caroline Johnson

cc: John Doe, HR Director, DTS

# State Civil Service Law (RCW) and Civil Service Rules (WAC) References

Website: [State Civil Service Law \(RCW\)](#)

RCW 41.06.070

Website: [Title 357 WAC \(Civil Service Rules\)](#)

- [WAC 357-04-025](#)
- [WAC 357-04-030](#)
- [WAC 357-19-195](#)
- [WAC 357-19-197](#)
- [WAC 357-19-200](#)
- [WAC 357-19-205](#)
- [WAC 357-19-215](#)
- [WAC 357-19-220](#)
- [WAC 357-19-225](#)
- [WAC 357-58-450](#)

## Transition Assistance for Employers

Exempt transition actions are highly technical in nature and should be addressed on a case-by-case basis. The employer's Human Resource Director should be involved early in each specific action. OFM State HR Rules staff can be reached for assistance at (360) 407-4102 or send an email to: [Rules@ofm.wa.gov](mailto:Rules@ofm.wa.gov).

## Job Seeker Support Center

Numerous jobs are posted at [careers.wa.gov](http://careers.wa.gov). Department of Enterprise Services (DES) staff will be happy to assist you with the online job search and application process, or with general questions about state employment.

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## Layoff and General Government Transition Pool

If you held permanent status in classified service at the time of your exempt appointment, in addition, to exercising your return option, you may also be eligible for placement on layoff lists or the General Government Transition Pool. For more information, visit the [DES website](#).

## Other Employment Information

For more resources to assist job seekers, visit the [ESD website](#).

## Employee Assistance Program (EAP)

Department of Enterprise Services (DES) Employee Assistance Program provides:

- One-on-one confidential, professional assistance to all state employees and their family members experiencing personal problems relating to a variety of concerns.
- Consultation with management regarding employees facing difficult changes.

Job transition can be both difficult and emotional for employees and their families. EAP professionals have experience in assisting individuals working through transition by:

- Initial one-to-one assistance considering the personal, professional and emotional impact of career transition.
- Referral to specialized additional assistance (coaching, counseling) in the community.
- Assistance with developing a plan for the whole family in transition.

EAP is effectively used in conjunction with other services offered by the Department of Enterprise Services. In stressful times, talking with an EAP professional can help in the transition of moving forward in a career.

*EAP Contacts:*

Olympia (360) 753-3260 or (877) 313-4455

For more information on the Employee Assistance Program, please visit the [EAP website](#).