Title: Determining eligibility for seasonal employees and maintenance of employer contribution through the off-season

Policy #: 15-1

Contact:	PEBB Rules Manager	**Effective:**	January 1, 2015
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Associated RCW:		**Supersedes:**	
Associated WAC:	182-12-109 182-12-114(1) 182-12-114(2)(a) 182-12-131(2)(a) 182-12-131(2)(b) WAC 182-12-131(7)		
Assoc. Fed law/reg:			
Associated Procedures:		**Owner:**	Rules & Policy Manager, PEB Division
Associated Forms & Communications		**Approved by:**	
		Position:	**Deputy Director, PEB Division**
		Date approved:	12-12-14

Purpose: To clarify seasonal employee eligibility.

> WAC 182-12-109: "Seasonal employee" means an employee hired to work during a recurring, annual season with a duration of three months or more, and anticipated to return each season to perform similar work.
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> WAC 182-12-114(2): "A seasonal employee is eligible if he or she *works* an average of at least eighty hours per month and *works* for at least eight hours in each month of the season."

Policy:

1. In establishing eligibility and maintaining the employer contribution, an employee is said to be employed for a "season" if he or she works in each of 3 consecutive calendar months.

   For example, an employee who works during a recurring, annual period that spans from January 15 to March 15 is considered to be working a three-month season.

   An employee who works during a recurring, annual period that spans from January 15 to February 15 would not be considered to be working a "season" since the employee is working in each of two consecutive calendar months. If this is the employee's only employment, then the employee would not be eligible for the employer contribution during those two months.

2. <u>Establishing eligibility</u>.

   a. Unless required under federal law, employers cannot use leave hours in calculating how many hours an employee "works" when establishing eligibility for a seasonal employee.

      For example, an employer cannot use annual leave or sick leave when calculating how many hours are anticipated to be worked.

   b. Employers must provide benefits upon hire for the employee's first season when:

i. The employee is expected to work an average of at least 80 hours per month and work for at least eight hours in each month of the season (WAC 182-12-114(2)(a)); AND

ii. Based on the employer's reasonable knowledge, the employee will likely return the next season.

c. If an employee is anticipated to work for more than six consecutive months, employers must provide benefits upon hire when the employer anticipates the employee will work an average of at least 80 hours per month (WAC 182-12-114(1)). This is true whether or not the employer anticipates the employee will return each season.

d. An employee who returns for a second consecutive season at the same agency is *presumed to return* each season: Any employee who returns for a second season of three months or more establishes eligibility for benefits upon hire at the beginning of the second season when the employer anticipates the employee will work an average of at least 80 hours per month and work for at least eight hours in each month of the season

3. Maintaining the employer contribution season to season: A benefits eligible seasonal employee (eligible under WAC 182-12-114(2)) who works a season of less than nine months is eligible for the employer contribution in any month of his or her season in which he or she is in pay status eight or more hours during that month (WAC 182-12-131(2)(a)). As indicated in subsection (1) above, the employee must have pay status in each of at least three consecutive calendar months in order to be considered a seasonal employee.

4. Maintaining the employer contribution over the off-season:: A benefits-eligible seasonal employee (eligible under WAC 182-12-114(2)) who works a season of nine months or more is eligible for the employer contribution in any month of his or her season in which he or she is in pay status eight or more hours during that month and through the off season following each season worked. (WAC 182-12-131(2)(b)).

a. Any hours in pay status during the season, including leave, are used when calculating whether an employee is eligible for maintaining the employer contribution over the off-season.

b. A seasonal employee must have at least eight hours pay status, or have protected leave under federal law, in each month of a season of nine months or more in order to remain eligible for the employer contribution during the off-season.

c. The employer contribution for the off season continues a maximum of three calendar months.

d. If the employment relationship is terminated after a season of nine months or more, the employer contribution toward benefits ceases. The employment relationship is terminated if the employee is terminated or resigns and is not anticipated to return the following season. The employer contribution ends the end of the month of the date specified in the resignation letter or the date of the termination (WAC 182-12-131(7)).