

ADVISORY OPINION

APPROVAL DATE: September 8, 2023

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REVIEWED ON: September 8, 2023

NEXT REVIEW: September 2028

REFERENCES: RCW 42.52.070, RCW 42.52.160,
WAC 292-110-010

SUMMARY OF CHANGES: None.

Paid Time to Exercise

QUESTIONS

1. Can a state employee be paid to exercise on state time?

ANSWERS

1. No, it would be a misuse of state resources for a state employee to be paid to exercise.

ANALYSIS

Board staff regularly receive questions about providing allowances for time or use of state provided exercise equipment for state employees to use during paid time. Often the question is posed when the state agency is interested in including such time in an agency policy.

Recently, the Board approved a policy that allowed up to five hours of paid time per week for a particular classification of DNR employees to exercise. The Board's basis for the approval was the job classification, the requirements and testing from external agencies (including federal) which necessitated a level of fitness for the classification, the fact that if these external requirements were not met the state employee would not be given the required certifications to perform their duties, and that the level of fitness was part of the job description and requirements. This narrow approval should be distinguished from general wellness and is not intended to allow for approval of wellness related exercise or any allowance for exercise under a general policy.

The Board has consistently stated in Advisory Opinions that any use for wellness purposes must meet de minimis use in WAC 292-110-010(3)(a). *See* AO 96-03: De Minimis Use of State Resources; AO 08-01: Authorizing Wellness Organizations to Sell Products; AO 10-01: Use of Resources for Wellness Program and also WAC 292-110-010(3)(b).

The Health Care Authority (HCA), which manages the state's Wellness Programs under chapter 41.04 RCW, also emphasizes that any wellness programs and the wellness coordinators be mindful of state ethics laws and rules, including di minimis use.

Based on the use not being considered de minimis, the Board declined to approve a wellness policy because the policy allowed for state employees to use up to two hours of paid time each week for wellness activities. The Board also issued reasonable cause in a case where the central issue was whether it was a violation of RCW 42.52.160 (Use of State Resources) and the corresponding WAC 292-110-010 (Use of State Resources) for a manager or administrator to allow every state employee within an agency 30 minutes of paid time each day to engage in wellness activities. For example, exercise, a walk, or yoga. The Board found reasonable cause to believe allowing this amount of paid time each day would violate those provisions of the ethics act and rule.

Similarly, a general policy that allows for paid time to exercise would also implicate RCW 42.52.160 (Use of State Resources) and the corresponding WAC 292-110-010 (Use of State Resources) as it is use of time for personal benefit or gain.

Agencies may emphasize wellness and encourage employees to engage in physical activity on breaks and during lunch or allow for a flex schedule so employees may go to the gym or engage in wellness activities but not during times in which the employee is being paid to perform their official duties. Additionally, allowing state employees to use the state resources (i.e. equipment) after hours could be seen as a misuse of state resources for personal use.

It should be noted that RCW 41.04.362 provides that "No wellness program or activity that involves or requires organized or systematic physical exercise may be implemented or conducted during normal working hours."

Under the Ethics Act, if there is a joint activity that is being organized as part of an agency or college wellness program it may be permissible to use some state time for it. For example, an afternoon stretch break. However, RCW 41.04.362(3) has been interpreted by Board staff to prohibit exercise classes such as jazzercise or yoga during state time. If state employees wanted to participate in those they would need to do so on their own time.