



# PROPOSED RULE MAKING

## CR-102 (December 2017) (Implements RCW 34.05.320)

Do NOT use for expedited rule making

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STATE OF WASHINGTON  
FILED

DATE: January 06, 2021  
TIME: 10:07 AM

WSR 21-02-088

**Agency:** Employment Security Department

**Original Notice**

**Supplemental Notice to WSR** \_\_\_\_\_

**Continuance of WSR** \_\_\_\_\_

**Preproposal Statement of Inquiry was filed as WSR 20-16-151 ; or**

**Expedited Rule Making--Proposed notice was filed as WSR \_\_\_\_\_; or**

**Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or**

**Proposal is exempt under RCW \_\_\_\_\_.**

**Title of rule and other identifying information:** (describe subject)

Amending WAC 192-510-050 How will the department assess the size of new employers?

Amending WAC 192-560-010 Which businesses are eligible for small business assistance grants?

Adding WAC 192-610-090 What is an "illegal act" for the purposes of benefit disqualification?

Amending WAC 192-620-020 What information will the department request from an employee when filing for weekly benefits? (amended section title)

Amending WAC 192-620-035 When will a weekly benefit amount be prorated?

Adding WAC 192-700-006 What hours are considered "worked" for the purposes of employment restoration?

Adding WAC 192-700-007 Employment restoration requirements for predecessor and successor employers.

Amending WAC 192-800-045 Can an appeal be withdrawn? (amended section title)

Adding WAC 192-800-155 What information from a proceeding before the appeal tribunal or commissioner is publicly disclosable?

**Hearing location(s):**

Date:	Time:	Location: (be specific)	Comment:
February 9, 2021	9:00 AM	Conference call number 360-407-3780 Pin: 802059#	Hearing will be held remotely due to COVID-19.

**Date of intended adoption:** On or after February 16, 2021 (Note: This is **NOT** the **effective** date)

**Submit written comments to:**

Name: April Amundson

Address: Employment Security Department, PO Box 9046 Olympia, WA 98507-9046

Email: rules@esd.wa.gov

Fax:

Other:

By (date) February 9, 2021

**Assistance for persons with disabilities:**

Contact Teresa Eckstein, State EO Officer

Phone: 360-480-5708

Fax:

TTY: 711

Email: Teckstein@esd.wa.gov

Other:

By (date) February 2, 2021

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** The proposed amendments and new rules implement a number of changes which include: technical changes to ensure the rules are consistent with Title 50A RCW and other paid leave rules under Title 192 WAC; technical and grammatical changes for clarification; adding a definition of "illegal act" for the purposes of benefit disqualification under RCW 50A.15.060; clarifying employment restoration requirements for successor and predecessor employers to align with federal requirements; clarifying what hours are considered "worked" for the purposes of employment restoration to align with federal requirements; adding language for withdrawal of an appeal when a redetermination has been made in the appellant's favor; and adding a requirement that hearings be closed to the public unless an open hearing is agreed upon by all parties.

**Reasons supporting proposal:** The proposed rules are necessary to clarify requirements, make technical corrections, streamline the hearing process, and align language with statute and other Paid Family and Medical Leave rules. The proposed rules will provide clear and usable guidance to the public regarding program operations.

**Statutory authority for adoption:** RCW 50A.05.060, RCW 50A.25.030

**Statute being implemented:** RCW 50A.05.010, RCW 50A.10.030, RCW 50A.15.060, RCW 50A.24.010, chapter 50A.25 RCW; RCW 50A.50.010, RCW 50A.50.030, RCW 50A.50.050, RCW 50A.50.070.

**Is rule necessary because of a:**

Federal Law?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Federal Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
State Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

If yes, CITATION:

**Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:**

**Name of proponent:** (person or organization) Employment Security Department, Paid Family and Medical Leave Division

<input type="checkbox"/> Private
<input type="checkbox"/> Public
<input checked="" type="checkbox"/> Governmental

**Name of agency personnel responsible for:**

	Name	Office Location	Phone
Drafting:	April Amundson	Lacey, WA	360-485-2816
Implementation:	April Amundson	Lacey, WA	360-485-2816
Enforcement:	April Amundson	Lacey, WA	360-485-2816

**Is a school district fiscal impact statement required under RCW 28A.305.135?**  Yes  No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

Name:  
Address:  
Phone:  
Fax:  
TTY:  
Email:  
Other:

**Is a cost-benefit analysis required under RCW 34.05.328?**

Yes: A preliminary cost-benefit analysis may be obtained by contacting:  
Name: April Amundson  
Address: Employment Security Department, PO Box 9046 Olympia, WA 98507-9046  
Phone: 360-485-2816

Fax:  
TTY:  
Email: rules@esd.wa.gov  
Other:

No: Please explain:

A cost-benefit analysis is required for WAC 192-610-090.

The following rules do not require a cost-benefit analysis:

WAC 192-510-050 is exempt under RCW 34.05.328(5)(b)(iv) and (v) because the rule clarifies language without changing its effect, and is explicitly and specifically dictated by statute.

WAC 192-560-010 is exempt under RCW 34.05.328(5)(b)(ii), (iv), and (v) because it is a procedural rule that adopts a policy pertaining to the internal operations of the department. Procedural rules are not significant legislative rules under RCW 34.05.328(5)(c)(iii) and (5)(a)(i). The rule also clarifies language without changing its effect, and is explicitly and specifically dictated by statute.

WAC 192-620-020 and 035 are exempt under RCW 34.05.328(5)(b)(iv) because the rules clarify language without changing their effect.

WAC 192-700-006 and 007 are exempt under RCW 34.05.328(5)(b)(iii) because the rules adopt or incorporate by reference federal regulations without material change.

WAC 192-800-045 and 155 are exempt under RCW 34.05.328(5)(c)(i)(A) because they are procedural rules related to agency hearings. Procedural rules are not significant legislative rules under RCW 34.05.328(5)(c)(iii) and (5)(a)(i).

**Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:**

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by RCW 34.05.313 before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of RCW 15.65.570(2) because it was adopted by a referendum.

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(3). Check all that apply:

- |  |   |
|--|---|
| <input checked="" type="checkbox"/> RCW 34.05.310 (4)(b)<br>(Internal government operations) | <input checked="" type="checkbox"/> RCW 34.05.310 (4)(e)<br>(Dictated by statute)   |
| <input checked="" type="checkbox"/> RCW 34.05.310 (4)(c)<br>(Incorporation by reference)     | <input type="checkbox"/> RCW 34.05.310 (4)(f)<br>(Set or adjust fees)   |
| <input checked="" type="checkbox"/> RCW 34.05.310 (4)(d)<br>(Correct or clarify language)    | <input checked="" type="checkbox"/> RCW 34.05.310 (4)(g)<br>((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit) |

This rule proposal, or portions of the proposal, is exempt under RCW \_\_\_\_.

Explanation of exemptions, if necessary:

WAC 192-510-050 How will the department assess the size of new employers? | The rule is exempt under RCW 34.05.310(4)(d) and (e) because the rule clarifies language without changing its effect, and the rule is explicitly and specifically dictated by statute.

WAC 192-560-010 Which businesses are eligible for small business assistance grants? | The rule is exempt under RCW 34.05.310 (4)(b), (d), and (e) because the rule is related to the internal operations of the department, clarifies language without changing its effect, and is explicitly and specifically dictated by statute.

WAC 192-620-020 What information will the department request from an employee when filing for weekly benefits? | The rule is exempt under RCW 34.05.310(4)(d) because the rule clarifies language without changing its effect.

WAC 192-620-035 When will a weekly benefit amount be prorated? | The rule is exempt under RCW 34.05.310(4)(d) because the rule clarifies language without changing its effect.

WAC 192-700-006 What hours are considered “worked” for the purposes of employment restoration? | The rule is exempt under RCW 34.05.310(4)(c) because the rule adopts or incorporates by reference federal regulations without material change.

WAC 192-700-007 Employment restoration requirements for predecessor and successor employers. | The rule is exempt under RCW 34.05.310(4)(c) because the rule adopts or incorporates by reference federal regulations without material change.

WAC 192-800-045 Can an appeal be withdrawn? | The rule is exempt under RCW 34.05.310(4)(g)(i) because the amendment outlines a procedure, practice, or requirement relating to agency hearings.

WAC 192-800-155 What information from a proceeding before the appeal tribunal or commissioner is publicly disclosable? | The rule is exempt under RCW 34.05.310(4)(g)(i) because the amendment outlines a procedure, practice, or requirement relating to agency hearings.

**COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES**

If the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

No Briefly summarize the agency’s analysis showing how costs were calculated.

The following rule does not impact businesses because it pertains to individuals applying for paid family or medical leave benefits:

WAC 192-610-090 What is an “illegal act” for the purposes of benefit disqualification?

Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

- Name:
- Address:
- Phone:
- Fax:
- TTY:
- Email:
- Other:

**Date:** January 6, 2021

**Name:** April Amundson

**Title:** Policy and Rules Manager for Paid Family and Medical Leave

**Signature:**

