

Paid Family and Medical Leave Rules Related to: Implementation of Substitute House Bill 2614

October 2, 2020

Introduction

Title 50A RCW created a statewide Paid Family and Medical Leave insurance program that provides at least partial wage replacement when a qualified employee takes approved family or medical leave.

The law requires the Employment Security Department (department) to develop rules to administer the program. Substitute House Bill (SHB) 2614 passed during the 2020 legislative session and amended several sections of Title 50A RCW.

These rules were developed by the department to implement SHB 2614 and were filed in accordance with Chapter 34.05 RCW. The department offers this analysis of the determinations required by RCW 34.05.328(1).

Describe the proposed rules, including a brief history of the issue, and explain why the proposed rules are needed.

AMENDATORY SECTION

WAC 192-500-010 Employer. (1) An "employer" is:

(a) Any individual or type of organization, including any partnership, association, trust, estate, joint stock company, insurance company, limited liability company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee, or the legal representative of a deceased person, having any person in employment or, having become an employer, has not ceased to be an employer as provided in this chapter;

(b) The state, state institutions, and state agencies;

(c) Any unit of local government including, but not limited to, a county, city, town, municipal corporation, quasi-municipal corporation, or political subdivision; and

(d) A franchisee.

(2) "Employer" does not include the United States of America.

(3) For the purposes of paid family and medical leave, the term employer is used for both employer and employer agent.

(4) This section does not apply to:

(a) Any self-employed person or federally recognized tribe that has not elected coverage under Title 50A RCW; and

(b) Any person performing casual labor as defined in RCW 50A.05.010.

Explanation of proposed rule: The amendments to the rule implement changes made to RCW 50A.05.010 by the passage of SHB 2614.

AMENDATORY SECTION

WAC 192-500-035 Interested parties. (1) In all determinations, cases, and appeals adjudicated under Title 50A RCW the employment security department is an "interested party."

(2) Other interested parties in paid family or medical leave determinations related to the state plan, complaints under chapter 50A.40 RCW, and appeals include:

(a) The employee or former employee; and
(b) An employer or former employer of that employee that is required to provide information to the department related to the determination or appeal in question.

(3) Other interested parties in paid family or medical leave determinations related to an approved voluntary plan include:

(a) The employer or former employer; and
(b) An employee or former employee.

(4) The department may designate an employee or employer as an interested party in other determinations made by the department.

Explanation of proposed rule: The amendment to the rule clarifies the definition of "interested parties" regarding complaints made under chapter 50A.40 RCW.

AMENDATORY SECTION

WAC 192-500-185 Waiting period. (1) A "waiting period" is the first seven consecutive calendar days beginning with the Sunday of the first week an eligible employee starts taking paid family or medical leave.

(2) An employee will satisfy the waiting period requirement if the employee takes at least eight consecutive hours of leave during the first week of the employee's paid family or medical leave claim.

(3) An employee will not receive a benefit payment for hours claimed during the waiting period.

(4) Subject to subsection (6) of this section, an employee must only meet the requirement of one waiting period in a claim year.

(5) If an employee is denied eligibility for a period of time that satisfied the waiting period requirement, the waiting period requirement will not be deemed satisfied for a future claim for which the employee is deemed eligible.

(6) The waiting period does not apply to:

(a) Family leave taken for bonding after the child's birth or placement; or

(b) Family leave taken for reasons related to a qualified military exigency.

(7) An employee's use of paid time off for all of or any portion of the waiting period will not affect the satisfaction of the waiting period requirement.

Explanation of proposed rule: The amendments to the rule implement changes made to RCW 50A.15.020 by the passage of SHB 2614.

NEW SECTION

WAC 192-570-030 What is the process for an employee to file a complaint alleging that an employer committed unlawful acts? (1) Any employee as defined in RCW 50A.05.010 may file a complaint with the department alleging one or more violations of RCW 50A.40.010. A complaint must be submitted on a form provided by the department, or in another format approved by the department.

(2) An employee may alternatively seek a private right of action under chapter 50A.40 RCW to recover damages described in RCW 50A.40.030. A private right of action is only available to an employee who has:

- (a) Not filed a complaint with the department;
- (b) Withdrawn a filed complaint under subsection (4) of this section; or
- (c) Resolved a complaint under subsection (5) of this section.

(3) All complaints alleging a violation of RCW 50A.40.010, whether filed with the department or through a private right of action, must be filed within three years of the date the violation is alleged to have occurred.

(4) An employee who has filed a complaint with the department may withdraw the complaint by providing written notice to the department within ten days from the date the department acknowledges receipt of the complaint. A withdrawal of a complaint terminates the department's administrative action, including investigation of the complaint.

(5) If a resolution is reached between the employee and the employer during the course of the investigation, a statement of resolution must be signed by the employee and the employer and provided to the department. Resolution between the employee and the employer terminates the department's administrative action related to the complaint.

Explanation of proposed rule: The new rule implements changes made to chapter 50A.40 RCW by the passage of SHB 2614.

NEW SECTION

WAC 192-570-040 What happens when the department receives a complaint alleging unlawful acts by an employer? (1) Upon receipt of a complaint, the department will investigate allegations of an employer committing unlawful acts as described in RCW 50A.40.010.

(2) The department may request additional information from other parties including, but not limited to, employees, employers, and potential witnesses.

(3) Under chapter 50A.05 RCW, the department may subpoena potential witnesses, compel their attendance for deposition, and require production for examination of any books, papers, correspondence, memoranda, and any other records deemed necessary as evidence in order to make a determination and assess all damages.

(4) If the department finds a violation did not occur, the complaint will be closed and a determination will be sent to all interested parties.

(5) If the department finds one or more violations occurred, the department will determine the monetary amount of all damages the employer owes to the employee as referenced in WAC 192-570-050, and a determination will be sent to all interested parties.

(6) Any aggrieved party may file an appeal of the department's determination under chapter 50A.50 RCW.

(7) The department may consider any information obtained in the investigation under this chapter as cause to initiate audits for employer files and records.

Explanation of proposed rule: The new rule implements changes made to chapter 50A.40 RCW by the passage of SHB 2614. Parts of this rule clarify the department's interpretation of chapter 50A.40 RCW and explain the department's intended process for handling complaints.

NEW SECTION

WAC 192-570-050 How are damages and liquidated damages assessed by the department, awarded, and paid? (1) If the department finds the employer has violated RCW 50A.40.010, the department will assess monetary damages referenced in RCW 50A.40.030 plus any interest accrued on the assessed damages.

(2) If the department finds that the employer has committed a violation of RCW 50A.40.010 that is willful as defined in RCW 50A.40.030(4), additional liquidated damages will be added equal to the sum of the assessed damages.

(3) Damages and liquidated damages must be paid by the employer directly to the employee.

(4) If liquidated damages are assessed, the employer must pay all damages owed directly to the employee within thirty calendar days from the day the determination is issued, unless the employer files an appeal under chapter 50A.50 RCW.

(5) The department is not responsible for collection action against an employer that defaults on the payment of all damages awarded. A collection action may be initiated by the employee against the employer by filing a warrant with the clerk of any county within the state.

Explanation of proposed rule: The new rule implements changes made to chapter 50A.40 RCW by the passage of SHB 2614.

Is a Significant Analysis required for these rules?

None of the proposed rules meet the definition of a significant legislative rule RCW 34.05.328 and do not require a significant analysis. Each rule and the reason for the exemption is listed below:

WAC Section	Section Title	Exempting reason	Exempting statute
192-500-010	Employer.	The rule incorporates statute and the content is explicitly	RCW 34.05.328(5)(b)(iii) and (v)

		and specifically dictated by statute.	
192-500-035	Ineterested parties.	The rule relates to internal governmental operations that are not subject to violation by a nongovernment party. The rule is also a procedural rule that adopts a policy pertaining to the internal operations of the department.	RCW 34.05.328(5)(b)(ii) and (c)(i)
192-500-185	Waiting period.	The rule incorporates statute and the content is explicitly and specifically dictated by statute.	RCW 34.05.328(5)(b)(v)
192-570-030	What is the process for an employee to file a complaint alleging that an employer committed unlawful acts?	The rule incorporates statute and the content is explicitly and specifically dictated by statute.	RCW 34.05.328(5)(b)(iii) and (v)
192-570-040	What happens when the department receives a complaint alleging unlawful acts by an employer?	The rule incorporates statute and the content is explicitly and specifically dictated by statute.	RCW 34.05.328(5)(b)(iii) and (v)
192-570-050	How are damages and liquidated damages assessed by the department, awarded, and paid?	The rule incorporates statute and the content is explicitly and specifically dictated by statute.	RCW 34.05.328(5)(b)(iii) and (v)

Clearly state in detail the general goals and specific objectives of the statute that the rules implement.

The Paid Family and Medical Leave insurance program provides at least partial wage replacement when a qualified employee takes approved family or medical leave.

The goals and objectives of the Paid Family and Medical Leave Act, Title 50A RCW, are outlined in RCW 50A.05.005 and state in part:

“The demands of the workplace and of families need to be balanced to promote family stability and economic security. Access to paid leave is associated with many important health benefits. Research confirms that paid leave results in decreased infant mortality and more well-baby visits and reductions in maternal postpartum depression and stress. Paid leave increases the duration of breastfeeding, which supports bonding, stimulates positive neurological and psychological development, strengthens a child's

immune system, and reduces the risks of serious or costly health problems such as asthma, acute ear infections, obesity, Type 2 diabetes, leukemia, and sudden infant death syndrome. When fathers have access to paid leave they are more directly engaged during the child's first few months, thereby increasing father infant bonding and reducing overall stress on the family.”

Title 50A RCW requires the department to create rules to administer the program.

Explain how the department determined that the rules are needed to achieve these general goals and specific objectives. Analyze alternatives to rulemaking and the consequences of not adopting the rules.

The rules are needed to implement provisions of SHB 2614. If the rules are not adopted, there will not be clear direction to the public regarding definitions and the process involved in submitting complaints, investigation of complaints, and assessment, awards, and payments of damages and liquidated damage. Adopting the rules will provide enhanced direction to the public.

Explain how the department determined that the probable benefits of the rules are greater than the probable costs, taking into account both the qualitative and quantitative benefits and costs and the specific directives of the statute being implemented.

The proposed rules will benefit the public by providing clarity and transparency in program administration. The rules may impose additional costs on employers who are found to be in violation of RCW 50A.40.010 and owe damages and/or liquidated damages to an employee under chapter 50A.40 RCW. The exact amount of damages and liquidated damages cannot be assessed until the department investigates and awards monetary amounts per chapter 50A.40 RCW. In addition, employers may have the added cost of producing records for inspection during the department’s investigation. The rules may impose additional costs on employers, employees, and potential witnesses who have been subpoenaed. There will be a cost to the department for investigations, recordkeeping, and potential appeals. The costs outlined are costs that are the result of implementing SHB 2614 and are not additional costs the department is imposing by adopting these rules.

Because the implementing statute protects employees or former employees from unlawful acts committed by employers or former employers, the probable benefits of the rules are greater than the probable costs.

Identify alternative versions of the rule that were considered and explain how the department determined that the rule being adopted is the least burdensome alternative for those required to comply with it that will achieve the general goals and specific objectives stated previously.

The rules were drafted as the least burdensome alternative to those required to comply with them. The rules implement provisions of SHB 2614. Adoption of the rules will achieve the general goals and objectives of administering Title 50A RCW and will provide clarification to the public.

Conflicts with Federal or State law

None of the rules conflict with Federal or State law.

Performance impositions on private vs. public sectors

Since all employers and employees, regardless of public or private sector employment status, are required to participate in Paid Family and Medical Leave, there is no evidence to suggest that any proposed rule will have a measurably different impact between the two sectors.

Conflicts with Federal or State regulatory bodies

None of the rules conflict with any applicable Federal or State regulatory requirements.

Coordination with Federal, State, or local laws

There are no other Federal, State, or local laws applicable to the rules.