

INTRODUCTION

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

The law gives the Employment Security Department (department) general rulemaking authority under RCW 50A.05.060 to administer the program. These proposed rules include technical and grammatical changes and a number of amendments to Title 192 WAC to further align the administrative rules with the Paid Leave statute.

These proposed rules were developed by the department and were filed in accordance with Chapter 34.05 RCW. One of the proposed rules, that explains what is an “illegal act” for the purposes of benefit disqualification, requires a cost-benefit analysis. Other rules in the proposal implement a number of changes which do not require such an analysis. These 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; clarifying job protection 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; clarifying requirements for small business assistance grants; 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.

COSTS

Proposed WAC 192-610-090 (What is an “illegal act” for the purposes of benefit disqualification?) establishes what constitutes an “illegal act”. The rule requires cost/benefit discussion. Enforcement of the rule will impose a cost to individuals who commit disqualifying acts because they will become ineligible to receive benefits under the Paid Family and Medical Leave program.

BENEFITS

The proposed rule further clarifies language under RCW 50A.15.060. The statute explicitly states that benefits must be denied to an employee who is absent from work due to injury or sickness resulting from the commission of an illegal act, but does not clarify what constitutes such an illegal act.

The proposed rule establishes that an employee is not entitled to PFML benefits from any injury or illness sustained in the commission of any illegal act. An illegal act includes any unlawful action punishable as a felony or gross misdemeanor of which the individual has been convicted, or has admitted committing to a competent authority. The proposal is beneficial because it provides clear direction to the public regarding which acts would disqualify an individual from receiving benefits.

CONCLUSION

The probable costs of the proposed rule outweigh the probable benefits by providing guidance to Washington employers and employees by removing ambiguity under the statute. The public will clearly understand what acts will constitute disqualification of benefits under the proposed rule.