

REASONS FOR ADOPTING THE RULE

WAC 192-500-200 Pandemic leave assistance.

(1) "Pandemic leave assistance" is a temporary grant authorized by the legislature that is only available for employees who:

(a) Do not meet the eight hundred twenty hours threshold in the qualifying period defined in RCW 50A.05.010; and

(b) Are unable to do so due to the impacts of the COVID-19 pandemic.

(2) A pandemic leave assistance qualifying period is either:

(a) The first through fourth completed calendar quarters of 2019; or

(b) If eligibility is not established, the second through fourth completed calendar quarters of 2019 and first completed calendar quarter of 2020.

(3) Pandemic leave assistance is only available for claim years beginning between January 1, 2021, and March 31, 2022.

(4) Employees who receive pandemic leave assistance are subject to all rights and responsibilities of family or medical leave taken under Title 50A RCW.

(5) Employers with employees who receive pandemic leave assistance are subject to all rights and responsibilities associated with an employee's family or medical leave under Title 50A RCW.

Reason for rule: This rule serves as a general definition of the grant established by the passage of HB 1073 and acts as a reference point to establish the scope of all related rules.

WAC 192-510-095 How will certain moneys owed to the trust be considered when calculating the premium rate?

For the purposes of premium rate calculation under RCW 50A.10.030(6), any benefit moneys that have been paid to employees, but have not yet been reimbursed pursuant to section 4, chapter 232, Laws of 2021 (SB 5097), will be included in the balance of the family and medical leave insurance account.

Reason for rule: Due to the nature of the pandemic leave assistance grant, a scenario may arise where funds that have been paid out of the trust may not have been reimbursed by the state pursuant to section 4, chapter 232, Laws of 2021 (SB 5097). This could inadvertently trigger a premium increase depending on the amount of funds in question. This rule prevents that from occurring.

WAC 192-530-100 Are voluntary plans required to pay pandemic leave assistance benefits?

(1) Voluntary plans are not required to pay pandemic leave assistance benefits to employees.

(2) Employees eligible for pandemic leave assistance who work for an employer with an approved voluntary plan may apply to the state for benefits.

Reason for rule: This rule clarifies legislative intent that voluntary plans are not required to adhere to the requirements of the pandemic leave assistance grant based on the fact that voluntary plan employers are not eligible for federal reimbursement. It also clarifies that an employee subject to a voluntary plan who qualifies under the new pandemic assistance grant requirement is eligible to apply to the state for those benefits.

WAC 192-560-011 What small business grants are available under pandemic leave assistance?

(1) An employer may apply for one small business assistance grant based on an employee taking leave under pandemic leave assistance.

(2) An application for a small business grant for an employee taking leave under pandemic leave assistance does not count toward an employer's maximum number of applications for small business grants permitted under RCW 50A.24.010(4).

(3) An employer may not use additional grant applications permitted under RCW 50A.24.010(4) to receive more than one grant for an employee taking leave under pandemic leave assistance.

(4) The application process for a small business grant for an employee taking leave under pandemic leave assistance must follow the same process as described in WAC 192-560-020.

Reason for rule: This rule establishes the process by which eligible employers may apply for a small business grant for an employee who receives a pandemic leave assistance grant. Certain legislative requirements are implemented by this rule, specifically with regard to the number of grants an employer may receive.

WAC 192-610-100 What is the attestation required for an employee claiming pandemic leave assistance?

(1) Employees applying for pandemic leave assistance will be required to attest in a manner approved by the department that they did not meet the hours worked threshold for eligibility under RCW 50A.15.010 or 50A.30.020(1) due to reasons related to the COVID-19 pandemic.

(2) Employees must attest that they were not:

(a) Separated from employment due to misconduct; or

(b) Voluntarily separated from employment for reasons not related to the COVID-19 pandemic.

Reason for rule: This rule establishes an additional criteria required by statute before the grant may be approved.

WAC 192-610-035 Documenting a family relationship.

The department may request documentation or information from the employee that ((is sufficient to establish the familial relationship)) sufficiently demonstrates that the individual for whom leave is being taken is a "family member" as defined by RCW 50A.05.010 for the purposes of benefit eligibility and program integrity.

Reason for rule: The passage of SB 5097 expanded the definition of "family member." This change is cosmetic in nature to better reflect the new definition.

VARIANCE BETWEEN PROPOSED RULE AND FINAL RULE

A minor typo was corrected in Example 2 of 192-610-100.

SUMMARY OF COMMENTS TO PROPOSED RULES AND AGENCY RESPONSE

Referenced rule	Commenter	Source of comment	Comment	Agency response
192-610-100	Marilyn Watkins, Maggie Humphries	Email	In example 2, the first sentence should read: An employee had a part time job in the second, third, and fourth quarters of 2019 and the first quarter of 2020 resulting in 800 820 hours reported to the department for those four quarters.	This change has been made. The department appreciates the note.
192-560-011	Edsonya Charles	Hearing	Clarify that an employer is eligible for receipt of, rather than application for, a small business grant under a pandemic leave assistance grant.	The department is implementing small business grants for pandemic leave assistance grants in a manner consistent with small business grants for standard PFML. RCW 50A.24.010(4) specifically states that employers are guaranteed ten applications for said grants. Applying for a grant does not guarantee receipt of a grant, but the department is committed to providing reasonable assistance and flexibility to employers who

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				initially submit incomplete or incorrect applications.
WAC 192-610-035	Multiple	Hearing	Clarify requirements around documentation needed to sufficiently demonstrates that the individual for whom leave is being taken is a "family member" as defined by RCW 50A.05.010.	Specific requirements will be communicated through the website to ensure employee awareness of needed documentation.
192-500-200	Patricia Zuniga	Hearing	Clarify the duration of time for which pandemic leave assistance grants are available to employees.	An employee's initial application for benefits initiates their claim year, during which time the employee is entitled to all available benefits. The same is true for pandemic leave assistance grants. An employee is entitled to all available benefits throughout their claim year, even if the claim year extends beyond March 31, 2022. This is consistent with legislative intent, as indicated by HB 1073's expiration date of June 30, 2023.
General	Patricia Zuniga	Email	See Appendix 1	In addition to the proposed rules, the department is issuing substantial guidance in the form of website and email communications, updates to the Employer, Employee, and Voluntary Plan Guides, and presentations in various forums.

Appendix 1: Email from Patricia Zuniga

Dear Ms. Amundson,

Thank you for the opportunity to submit comments to the Employment Security Department (Department) on the rulemaking for HB 1073 and SB 5097.

Lincoln Financial Group provides absence management services, including administration of the federal Family and Medical Leave Act (FMLA), statutory disability and paid family and medical leave (PFML) programs in addition to hundreds of state and local leave laws for millions of American workers. Employers, especially those with employee populations across multiple states, rely on our experience, expertise, and knowledge of federal, state, and municipal leave laws to understand where the laws overlap and where they have different (and sometimes competing) eligibility rules, leave entitlements, and administrative requirements.

After reviewing the proposed regulations, there are several important questions that are not addressed, including:

- Whether the pandemic leave assistance will count against the employee’s existing PFML entitlement, or if it will establish a new bank of entitlement
 - If the pandemic leave assistance will be a shared entitlement with PFML benefits: how to coordinate WA PFML benefits under a voluntary plan and pandemic leave assistance benefits under the state plan
- What pandemic leave assistance correspondence and documentation will be provided by the state to the employer, especially a voluntary plan employer
- Whether there will be any safeguards to prevent duplication of benefits if a voluntary plan employer has already voluntarily waived PFML eligibility requirements and/or chosen to provide pandemic leave assistance
- Whether the Department will provide advance notification to the public, including voluntary plan employers and administrators, that the state reasonably anticipates federal funding will no longer be available for the pandemic leave assistance program.

We respectfully request that these outstanding issues be addressed in the final regulations to clarify how the proposed rules will impact standard WA PFML claim administration by voluntary plan employers and administrators. In addition, we would like to suggest that these questions be addressed by amending public-facing stakeholder documents, especially the Voluntary Plan Employer Guide, before the pandemic leave assistance program is available to employee claimants on August 1st. Lastly, we would like to ask that the Department include voluntary plan employers and administrators in any planned direct communication outreach regarding the pandemic leave assistance program.

Thank you for your consideration of our comments.

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