



Paid Family and Medical Leave Rules Related to the Implementation of HB 1073 and SB 5097

July 2021

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.

These rules were developed by the department and were filed in accordance with Chapter 34.05 RCW. Pursuant to RCW 34.05.328, 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.

NEW SECTION

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.

AMENDATORY SECTION

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.

NEW SECTION

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.

NEW SECTION

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.

NEW SECTION

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 apply to the state for those benefits.

NEW SECTION

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.

Is a Significant Analysis required for these rules?

None of the proposed rules meet the definition of legislatively significant in 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(s)	Exempting statute(s)
WAC 192-500-200	Pandemic leave assistance	The rule is interpretive and sets forth the agency's interpretation of statutory provisions.	RCW 34.05.328(5)(c)(ii)
WAC 192-510-095	How will certain moneys owed to the trust be considered when calculating the premium rate?	The rule relates only to internal governmental operations that are not subject to violation by a nongovernment party.	RCW 34.05.328(5)(b)(ii)
WAC 192-530-100	Are voluntary plans required to pay pandemic leave assistance benefits?	The rule is interpretive and sets forth the agency's interpretation of statutory provisions.	RCW 34.05.328(5)(c)(ii)
WAC 192-560-011	What small business grants are available under pandemic leave assistance?	The rule adopts or incorporates by reference without material change Washington state statutes; and is a rule the content of which is explicitly and specifically dictated by statute.	RCW 34.05.328(5)(b)(iii) ; RCW 34.05.328(5)(b)(v)
WAC 192-610-035	Documenting a family relationship.	The rule corrects references and clarifies language without changing the effect of the rule.	RCW 34.05.328(5)(b)(iv)
WAC 192-610-100	What is the attestation required for an employee claiming pandemic leave assistance?	The rule adopts or incorporates by reference without material change Washington state statutes; and is a rule the content of which is explicitly and specifically dictated by statute.	RCW 34.05.328(5)(b)(iii) ; RCW 34.05.328(5)(b)(v)

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

The rules are necessary to align the Paid Family and Medical Leave program with new requirements created by the state legislature in the 2021 legislative session, specifically regarding the passage of HB 1073 and SB 5097.

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 rule are needed to adhere to new legislative requirements.

Adopting the rules will provide enhanced direction to the public. Failing to do so will create confusion on changes to the program's operation in light of the new requirements.

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.

There are no costs to PFML program participants to comply with these proposed amended and new rules.

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.

Due to the fact that these rules are necessary to implement legislative requirements, it was not possible to engage in the standard discussion of possible alternatives. The exception to this revolved around voluntary plan requirements. Discussion on alternatives to this rule did occur, with voluntary plan liability being the proposed alternative. While the final version of HB 1073 did not specifically exempt voluntary plans from liability, the intent section clearly specifies the intent to use federal funds to pay grant recipients. Since this is not an option for voluntary plan employers, it is reasonable to assume that either the state was intended to reimburse voluntary plan employers, or that employees of such

employers would be expected to apply to the state directly. The latter proposal was adopted to minimize the burden on employees, employers, and the state.

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

The rules are related to the passage of Chapters 109 (HB 1073) and 232 (SB 5097) of the 2021 Session Laws of the State of Washington.