



Paid Family and Medical Leave Proposed Amended Rules Related to Benefit Claim Proration and Backdating

July 2021

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 in amendments to two sections of rule under 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. The department is completing this analysis in accordance with 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 192-610-040 Can an employee backdate an initial application or weekly claim for benefits?

(1) Generally, paid family or medical leave benefits are payable on or after the date the employee applies for benefits. An application or weekly claim may be backdated for good cause or for the convenience of the department.

(2) For the purpose of this section:

(a)(i) "Good cause" means factors beyond the employee's control that reasonably prevented an employee from applying for benefits ~~prior to or~~ at the time of need for paid leave. These factors include, but are not limited to, such as a serious health condition, a period of incapacity, or a natural disaster.

(ii) ~~The burden of proof is on the employee to provide all pertinent facts and evidence to the department to determine good cause. The evidence must show that the factors prevented the employee from applying for or claiming benefits when the qualifying event occurred and any subsequent duration in which the employee did not apply for or claim benefits. This evidence may include, but is not limited to, medical certification from a health care provider, evidence of a natural disaster, or other information required by the department. The burden is on the employee to establish that good cause exists. The employee must provide all pertinent information and documentation which demonstrates that the factors prevented the employee from applying for benefits when the qualifying~~

event occurred. This may include, but is not limited to, certification from a health care provider, evidence of a natural disaster, or other information required by the department.

(b) "For the convenience of the department" means for the purpose of program administration or situations when accepting timely applications or weekly claims was difficult or impossible. These include, but are not limited to, equipment breakdown or lack of available staff.

(3) An employee who wants to backdate an application or weekly claim must file for benefits during the first ~~week in which~~ seven days after the factors that constitute good cause no longer exist.

Explanation of proposed rule: Proposed amendments to the rule provide clarification by plain talking current language and allowing for some operational flexibility when processing benefit claims.

AMENDATORY SECTION

WAC192-620-035 When will a weekly benefit amount be prorated?

(1) For an employee on paid family or medical leave, a weekly benefit amount is prorated when:

(a) The employee reports hours worked for wages;

(b) The employee reports hours for paid sick leave, paid vacation leave, or other paid time off that is not considered a supplemental benefit payment as defined in WAC 192-500-180; or

(c) The employee files a weekly application for benefits that contains a day or days for which the employee ~~did not claim~~ was not approved for paid family or medical leave.

(2) If an employee reports hours under subsection (1)(a) or (b) of this section, proration will be calculated as specified by RCW 50A.15.020(2).

(3) If an employee ~~claims part is approved for leave for part of a week under subsection (1)(c) of this section, proration for that week will be calculated occur by dividing the employee's typical workweek hours and weekly benefit amount for that week by sevenths, then multiplying by the number of days for which the employee claimed paid family or medical leave for that week. The remainder of the week will be calculated as specified by RCW 50A.15.020(2) and subsection (1)(a) and (b) of this section.~~ as follows:

(a) The employee's typical workweek hours are multiplied by the number of days approved for leave, then divided by seven. The result is rounded down to the nearest whole hour. This amount is the employee's adjusted typical workweek hours.

(b) Any hours worked or taken as paid time off as reported by the employee are then subtracted from the employee's adjusted typical workweek hours. This amount will be the number of hours of paid family or medical leave claimed for that week.

(c) The number of hours claimed for that week are then divided by the employee's typical workweek hours to produce a percentage.

(d) The resulting percentage is then multiplied by the employee's normal weekly benefit amount. The resulting amount, rounded down to the nearest whole dollar, is the employee's benefit payment for that week.

Example 1: An employee has already served a waiting period in the claim year and files a claim for a week of paid medical leave. The employee typically works forty hours a week at eight hours per day. In the week for which the employee is claiming, the employee claimed one day of paid medical

leave and worked the other four days. This employee's weekly benefit is usually eight hundred dollars. The weekly benefit would then be prorated by the hours on paid medical leave (eight hours) relative to the typical workweek hours (forty hours). Eight hours is twenty percent of forty hours. The employee's weekly benefit would be prorated to twenty percent for a total of one hundred sixty dollars.

~~**Example 2:** An employee files a claim for eight hours of paid family or medical leave and takes sick leave from the employer for the same day. The employer does not offer the sick leave as a supplemental benefit payment. The sick leave is considered hours worked by the employee. The employee is being paid for the same hours claimed on paid family or medical leave. This employee is not eligible for benefits this week.~~

~~**Example 3:** The employee's typical workweek hours are forty hours per week, and the weekly benefit amount is one thousand dollars. The employee files a claim for leave that starts on a Tuesday. Because the employee's claim did not include Sunday or Monday of that week, the employee's typical workweek hours and weekly benefit amount for that week will be prorated by two-sevenths, or two days of the seven days in the week. For that week only, the employee's typical workweek hours will be twenty-eight (five-sevenths of forty, rounded down to the nearest hour) and the weekly benefit amount will be seven hundred fourteen dollars (five-sevenths of one thousand dollars, rounded down to the nearest dollar).~~

Example 2: An employee with typical workweek hours of forty and a weekly benefit amount of one thousand dollars is approved for leave through Thursday. The employee is not approved for leave Friday or Saturday. For this week only, the following proration will occur:

- 1) The employee's typical workweek hours (forty) are multiplied by the number of approved days of leave for that week (five) and then divided by seven and rounded down. The result is an adjusted typical workweek hours of twenty-eight.
- 2) The employee reports no hours of work or paid time off for that week. The resulting number of hours claimed for that week are twenty-eight.
- 3) The number of hours claimed for that week (twenty-eight) are then divided by the employee's normal typical workweek hours (forty). This results in a percentage of seventy percent.
- 4) The percentage (seventy) is then multiplied by the employee's weekly benefit amount (one thousand). For that week, the employee will receive seven hundred dollars.

Example 3: An employee with typical workweek hours of forty and a weekly benefit amount of one thousand dollars is approved for leave through Thursday. The employee is not approved for leave Friday or Saturday. For this week only, the following proration will occur:

- 1) The employee's typical workweek hours (forty) are multiplied by the number of approved days of leave for that week (five) and then divided by seven and rounded down. The result is an adjusted typical workweek hours of twenty-eight.
- 2) The employee reports eight hours of work and eight hours of paid time for that week. The adjusted workweek hours are reduced to reflect sixteen hours of work and paid time. The resulting number of hours claimed for that week are twelve.
- 3) The number of hours claimed for that week (twelve) are then divided by the employee's normal typical workweek hours (forty). This results in a percentage of thirty percent.
- 4) The percentage (thirty) is then multiplied by the employee's weekly benefit amount (one thousand dollars). For that week, the employee will receive three hundred dollars.

Explanation of proposed rule: The proposed amendments to the rule make minor technical correction for ease of readability and provide clearer examples related to the proration of weekly claims for the benefit of employers, employees, and department staff.

Is a Significant Analysis required for these rules?

A significant analysis is required for:

WAC 192-610-040 Can an employee backdate an application or weekly claim for benefits?

The proposed section of rule in the table below does not meet the definition of significant legislative rules under RCW 34.05.328 and does not require a significant analysis. The rule and the reason for the exemption is listed below:

PROPOSED AMENDED SECTIONS			
WAC Section	Section Title	Exempting reason	Exempting statute
WAC 192-610-035	When will a weekly benefit amount be prorated?	The proposed amendments are related to internal government operations and do not subject a nongovernmental party to a violation.	RCW 34.05.328(5)(b)(ii)

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 further implement and clarify provisions of Title 50A RCW. If the rules are not adopted, ambiguity will remain regarding processes the department uses when calculating proration and determining whether to backdate benefit claims. 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.

Proposed amendments to WAC 192-620-035 When will a weekly benefit amount be prorated? are not deemed significant under RCW 34.05.328(5)(b)(ii) and will benefit the public by providing clarity and transparency in program administration. There are no costs to PFML program participants to comply with those proposed amended rules.

Proposed WAC 192-610-040 Can an employee backdate an application or weekly claim for benefits? amends the rule by using plain language and allows the department to consider all information provided when processing benefit claims to determine whether a claim may be backdated. The rule requires cost/benefit discussion. Proposed amendments to the rule add that the list of factors that may be considered as good cause to backdate a benefit claim is not exclusive and may include other factors beyond a serious health condition, a period of incapacity, or a natural disaster. These proposed amendments are intended to expand the circumstances upon which to consider backdating a benefit claim.

The probable costs of the proposed rule outweigh the probable benefits by providing clearer, easier to read narrative and allowing the department to consider all information provided for an employee to receive benefits under the program by clarifying that the examples that would constitute good cause for backdating a benefit claim are not exclusive.

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.

WAC 192-610-040 – A version of the rule was considered that did not amend language under (3) to replace “week” with “seven days”. This version of the rule is the least burdensome alternative because it removes any ambiguity regarding what constitutes a week.

WAC 192-620-035 – Versions of the rule were considered that used different examples to demonstrate how a weekly benefit claim would be prorated. The examples in the proposed rules is the least burdensome alternative because it provides clearer examples and provides step-by-step instruction regarding how proration will occur.

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

Sections of the proposed rules align with federal Family and Medical Leave laws where applicable.