

**Paid Family and Medical Leave
Amendments to Proration and Backdating
August 2021**

REASONS FOR ADOPTING THE RULE

WAC 192-610-040 Can an employee backdate an application or a 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 ~~such as~~. These factors include, but are not limited to, 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~~ 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 date that the factors that constitute good cause no longer exist.

Reason for rule: Amendments to this rule provide clarification by plain talking previous rule language and allow for greater operational flexibility when processing benefit claims.

WAC 192-620-035 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 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 occur 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 for 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) 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:

(a) 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.

(b) 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.

(c) 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.

(d) 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:

(a) 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.

(b) 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.

(c) 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.

(d) 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.

Reason for rule: Amendments to this rule make minor technical corrections for ease of readability and provide clearer examples related to the proration of weekly claims for the benefit of employers, employees, and department staff.

VARIANCE BETWEEN PROPOSED RULE AND FINAL RULE

No changes were made between the proposed rule and the final, adopted rule.

SUMMARY OF COMMENTS TO PROPOSED RULES AND AGENCY RESPONSE

Referenced rule	Commenter	Source of comment	Comment	Agency response
WAC 192-610-040	Marilyn Watkins, Casey Osborn-Hinman, Dani Scott, David Vickers, Ali Schaafsma	Hearing	The rule should say how long an employee can backdate an application or weekly claim for benefits without showing good cause (several suggested 30 days, while others suggested more than 30 days).	The timeframe in which an employee can backdate an application or weekly claim was not put into the text of the rule in order to allow for operational flexibility regarding that timeframe. The department has a working policy to allow for an application or claim to be backdated up to 30 days without the need to demonstrate good cause. Although not in the text of the rule, this information will be available to employers and employees through our website.
WAC 192-610-040	Casey Osborn-Hinman, Dani Scott, David Vickers, Marilyn Watkins	Hearing	Backdating policies need to be less complicated, clear, and easy to navigate; particularly for the benefit of people who do not have regular access to computers and high-speed internet and those who are not English language proficient.	The purpose of the rule amendments, specifically the addition of the statement “These factors include, but are not limited to” that precedes the examples of what constitutes good cause for backdating, are intended to allow for <i>more</i> applications and claims to be backdated than what is allowed under the previous rule language.
WAC 192-610-040	Ali Schaafsma	Hearing	The amendments will put an undue burden on several employers, particularly large employers.	It is unclear to the department how the amendments to the rule will place additional burden on employers. Amendments to (2)(a)(i) of the rule are intended to provide more flexibility for

				<p>department staff when determining whether good cause exists by stating that conditions which constitute good cause are not limited only to a serious health condition, period of incapacity or natural disaster. Amendments to (2)(a)(ii) of the rule are intended to be easier to understand than the previous rule language so that employees and employers know what is needed for the department to determine whether good cause for backdating exists.</p>
WAC 192-620-035	Daris Freeman	Email	Amendments to the proration formula are confusing and will deprive certain workers of their full benefits.	<p>The department recognizes that proration of benefits is a complicated concept. The intention of the amendments is to more clearly provide narrative and examples to lessen the confusion caused by the original rule. The updated examples are intended to further align with how our systems behave and to demonstrate how the department prorates certain claims by providing the step-by-step process used by staff. The department appreciates these comments and will attempt to further improve the readability of the rule in future rulemaking.</p>
	Marilyn Watkins, Casey Osborn-Hinman, Lindsay Brennan, Ali Schaafsma	Hearing		
WAC 192-620-035	Ali Schaafsma	Hearing	<p>Because the calculation is difficult to understand, employers will have challenges knowing which calculation is applying and which example is applying. Thus, employers will be</p>	<p>The department recognizes that proration of benefits is a complicated concept. The intention of the amendments is to more clearly provide narrative and examples to lessen the confusion</p>

			unable to accurately calculate the offsetting benefits the employee is entitled to from their employer, resulting in either too large or small of an offset.	caused by the original rule. The department appreciates these comments and will attempt to improve the readability of the rule in future rulemaking. Department staff is committed to working with employers who have questions about the application of the rule to their employees.
WAC 192-620-035	Marilyn Watkins, Lindsay Brennan	Hearing	Amendments to the rule violate RCW 50A.15.020 and legislative intent.	This appears to be a concern with the original rule. The amendments we are making with this rulemaking are intended to provide clearer examples and more accurately demonstrate how our system behaves than what is described in the previous rule language. In addition, the proration method prescribed by RCW 50A.15.020(2) refers to a period of approved leave. The proration method prescribed by this rule specifically refers to the portion of a week for which an employee is <u>not</u> approved for leave. Since PFML weekly claims operate solely on a Sunday through Saturday basis, the proration method described in the rule prevents payment for which leave was not approved.
WAC 192-620-035	Daris Freeman	Email	The rule does not clearly state to which scenarios WAC 192-620-035(1) apply. It is unclear how examples 2 and 3 differ yet the calculations are different. Under the rule, private plans may not	No substantive changes were made to (1) of the rule, except for providing clarification that it applies to an employee “who was not approved for”, rather than an employee who “did not claim” leave. This appears to be a concern with language adopted in

			<p>be clear on how to calculate comparable benefits.</p>	<p>a previous rulemaking. In example 2, the employee reports no hours of work or paid time off for the week. In example 3, the employee reports eight hours of work and eight hours of paid time off for the week. Department staff is committed to working with private plan employers who have questions about the application of the rule to their employees.</p>
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