



# PROPOSED RULE MAKING

## CR-102 (December 2017) (Implements RCW 34.05.320)

Do NOT use for expedited rule making

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FILED

DATE: March 02, 2022

TIME: 8:17 AM

WSR 22-06-093

**Agency:** Employment Security Department

**Original Notice**

**Supplemental Notice to WSR** \_\_\_\_\_

**Continuance of WSR** \_\_\_\_\_

**Preproposal Statement of Inquiry was filed as WSR 21-22-106 ; or**

**Expedited Rule Making--Proposed notice was filed as WSR \_\_\_\_\_; or**

**Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or**

**Proposal is exempt under RCW \_\_\_\_\_.**

**Title of rule and other identifying information:** (describe subject)

Amending:

WAC 192-500-185 Waiting period.

WAC 192-620-035 When will a weekly benefit amount be prorated?

WAC 192-620-040 How will the department determine the number of hours of paid family or medical leave an employee claims each week?

WAC 192-800-125 When is a petition for review considered delivered to the department?

**Hearing location(s):**

Date:	Time:	Location: (be specific)	Comment:
April 5, 2022	9:00 AM	Microsoft TEAMS.  Join online: link available at <a href="https://paidleave.wa.gov/rulemaking">paidleave.wa.gov/rulemaking</a> under "Upcoming Meetings."  Join by phone: (564) 999-2000 PIN: 631874858#	Hearing will be held remotely due to COVID-19.

**Date of intended adoption:** On or after April 12, 2022 (Note: This is **NOT** the **effective** date)

**Submit written comments to:**

Name: Janette Benham

Address: Employment Security Department, PO Box 9046 Olympia, WA 98507-9046

Email: [rules@esd.wa.gov](mailto:rules@esd.wa.gov)

Fax:

Other:

By (date) April 5, 2022

**Assistance for persons with disabilities:**

Contact [Teresa Eckstein, State EO Officer](#)

Phone: 360-480-5708

Fax:

TTY: 711

Email: [Teckstein@esd.wa.gov](mailto:Teckstein@esd.wa.gov)

Other:

By (date) March 29, 2022

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** The Paid Family and Medical Leave (PFML) program (Title 50A RCW) is proposing amendments to existing rules to provide clarity and make necessary changes based on program and customer needs. Proposed amendments to WAC 192-500-185 provide clarification regarding the required waiting period. The amendments clarify that a waiting period does not reduce the maximum duration of an employee's available paid family or medical leave and that the waiting period does not apply to medical leave taken upon the birth of a child. Proposed amendments to WAC 192-620-035 and WAC 192-620-040 provide clarification that proration of benefits and the calculation of typical work week hours do not apply to the waiting period. Additional changes are technical. Proposed amendments to WAC 192-800-125 allow petitions for review to be submitted by email.

**Reasons supporting proposal:** The proposed amendments to the rules are necessary to provide clear and usable guidance to the public regarding program operations.

**Statutory authority for adoption:** RCW 50A.05.060, RCW 50A.15.020

**Statute being implemented:** RCW 50A.15.020)

**Is rule necessary because of a:**

Federal Law?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Federal Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
State Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

If yes, CITATION:

**Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:**

**Name of proponent:** (person or organization) Employment Security Department, Leave and Care Division  Private  Public  Governmental

**Name of agency personnel responsible for:**

	Name	Office Location	Phone
Drafting:	April Amundson	Lacey, WA	360-485-2816
Implementation:	April Amundson	Lacey, WA	360-485-2816
Enforcement:	April Amundson	Lacey, WA	360-485-2816

**Is a school district fiscal impact statement required under RCW 28A.305.135?**  Yes  No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

Name:  
Address:  
Phone:  
Fax:  
TTY:  
Email:  
Other:

**Is a cost-benefit analysis required under RCW 34.05.328?**

Yes: A preliminary cost-benefit analysis may be obtained by contacting:  
Name: Janette Benham  
Address: Employment Security Department, PO Box 9046 Olympia, WA 98507-9046

Phone: (360) 790-6583  
Fax:  
TTY: 771  
Email: rules@esd.wa.gov  
Other:

No: Please explain:

WAC 192-500-185 is exempt under RCW 34.05.328 (5)(c)(ii). The rule is an interpretive rule that does not subject a person to a penalty or sanction and sets forth the agency's interpretation of statutory provisions of RCW 50A.15.020. Interpretive rules are not significant legislative rules under RCW 34.05.328 (5)(c)(iii).

WAC 192-620-035 and WAC 192-620-040 are exempt under RCW 34.05.328 (5)(b)(ii) and (c)(ii) because the rules relate to internal governmental operations that are not subject to violation by a nongovernment party and they are interpretive rules that do not subject a person to a penalty or sanction and set forth the agency's interpretation of statutory provisions of RCW 50A.15.020. Interpretive rules are not significant legislative rules under RCW 34.05.328 (5)(c)(iii).

WAC 192-800-125 is exempt under RCW 34.05.328 (5)(c)(i)(A) and (C) because it is a procedural rule that amends a procedure, practice, or requirement related to agency hearings and amends a policy statement pertaining to the consistent internal operations of the agency. Procedural rules are not significant legislative rules under RCW 34.05.328 (5)(c)(iii).

### Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by RCW 34.05.313 before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of RCW 15.65.570(2) because it was adopted by a referendum.

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(3). Check all that apply:

- |  |   |
|--|---|
| <input checked="" type="checkbox"/> RCW 34.05.310 (4)(b)<br>(Internal government operations) | <input type="checkbox"/> RCW 34.05.310 (4)(e)<br>(Dictated by statute)  |
| <input type="checkbox"/> RCW 34.05.310 (4)(c)<br>(Incorporation by reference)                | <input type="checkbox"/> RCW 34.05.310 (4)(f)<br>(Set or adjust fees)   |
| <input type="checkbox"/> RCW 34.05.310 (4)(d)<br>(Correct or clarify language)               | <input checked="" type="checkbox"/> RCW 34.05.310 (4)(g)<br>((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit) |

This rule proposal, or portions of the proposal, is exempt under RCW \_\_\_\_\_.

Explanation of exemptions, if necessary:

WAC 192-620-035 and WAC 192-620-040 are exempt under RCW 34.05.310 (4)(b) because the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

WAC 192-800-125 is exempt under RCW 34.05.310 (4)(g)(i) because the rule relates to a procedure, practice, or requirement relating to agency hearings.

### COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES

If the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

- No Briefly summarize the agency's analysis showing how costs were calculated. WAC 192-500-185 does not impact or create a cost of compliance for businesses because the benefit is administered and paid by the department to individuals who are approved to receive partial wage replacement for qualifying paid family or medical leave. The rule provides clarity regarding the duration of paid family or medical leave individuals may receive under RCW 50A.15.020.
- Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

Name:

Address:

Phone:

Fax:

TTY:

Email:

Other:

**Date:** March 2, 2022

**Name:** April Amundson

**Title:** Policy and Rules Manager, Leave and Care Division

**Signature:**

