

REASONS FOR ADOPTING THE RULE

AMENDATORY SECTION

WAC 192-500-185 Waiting period. (1) A "waiting period" is the first seven consecutive calendar days beginning with the Sunday of the first week an eligible employee starts taking paid family or medical leave.

(2) An employee will satisfy the waiting period requirement if the employee takes at least eight consecutive hours of leave during the first week of the employee's paid family or medical leave claim.

(3) An employee will not receive a benefit payment for hours claimed during the waiting period.

(4) A waiting period does not reduce the maximum duration of an employee's available paid family or medical leave.

(5) Subject to subsection ~~((6))~~ (7) of this section, an employee must only meet the requirement of one waiting period in a claim year.

~~((5))~~ (6) If an employee is denied eligibility for a period of time that satisfied the waiting period requirement, the waiting period requirement will not be deemed satisfied for a future claim for which the employee is deemed eligible.

~~((6))~~ (7) The waiting period does not apply to:

(a) Medical leave taken upon the birth of a child;

(b) Family leave taken for bonding after the child's birth or placement; or

~~((b))~~ (c) Family leave taken for reasons related to a qualified military exigency.

~~((7))~~ (8) An employee's use of paid time off for all of or any portion of the waiting period will not affect the satisfaction of the waiting period requirement.

Reason for rule: Amendments to this rule align with RCW 50A.15.020 and 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.

AMENDATORY SECTION (Amending WSR 21-18-082, filed 8/30/21, effective 9/30/21)

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 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) This section does not apply to a week that is claimed to satisfy an employee's waiting period.

(4) If an employee is approved for leave for part of a week under subsection (1)(c) of this section, proration for that week will 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))~~ 40 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))~~ \$800. The weekly benefit would then be prorated by the hours on paid medical leave (eight hours) relative to the typical workweek hours ~~((forty))~~ 40 hours. Eight hours is ~~((twenty))~~ 20 percent of ~~((forty))~~ 40 hours. The employee's weekly benefit would be prorated to ~~((twenty))~~ 20 percent for a total of ~~((one hundred sixty dollars))~~ \$160.

Example 2: An employee with typical workweek hours of ~~((forty))~~ 40 and a weekly benefit amount of ~~((one thousand dollars))~~ \$1,000 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))~~ 40 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))~~ 28.

(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))~~ 28.

(c) The number of hours claimed for that week ~~((twenty-eight))~~ 28 are then divided by the employee's normal typical workweek hours ~~((forty))~~ 40. This results in a percentage of ~~((seventy))~~ 70 percent.

(d) The percentage ~~((seventy))~~ 70 is then multiplied by the employee's weekly benefit amount ~~((one thousand))~~ 1,000. For that week, the employee will receive ~~((seven hundred dollars))~~ \$700.

Example 3: An employee with typical workweek hours of ~~((forty))~~ 40 and a weekly benefit amount of ~~((one thousand dollars))~~ \$1,000 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))~~ 40 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))~~ 28.

(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)~~) 16 hours of work and paid time. The resulting number of hours claimed for that week are (~~(twelve)~~) 12.

(c) The number of hours claimed for that week (~~((twelve))~~ 12) are then divided by the employee's normal typical workweek hours (~~((forty))~~ 40). This results in a percentage of (~~((thirty))~~) 30 percent.

(d) The percentage (~~((thirty))~~ 30) is then multiplied by the employee's weekly benefit amount (~~((one thousand dollars))~~) \$1,000). For that week, the employee will receive (~~((three hundred dollars))~~) \$300.

Reason for rule: Amendments to this rule provide clarification that proration of benefits does not apply to the waiting period. Additional amendments are technical.

AMENDATORY SECTION (Amending WSR 19-23-090, filed 11/19/19, effective 12/20/19)

WAC 192-620-040 How will the department determine the number of hours of paid family or medical leave an employee claims each week? (1) When the employee submits a weekly application for benefits as described in WAC 192-620-020, the department will determine the number of hours claimed by the employee for that week by determining the typical workweek hours as described in WAC 192-610-050, then deducting the number of hours:

(a) Physically worked by the employee; and

(b) Claimed by the employee as sick leave, vacation leave, or other paid time off that has not been offered as a supplemental benefit by the employer.

(2) The result of the calculation in subsection (1) of this section will be deducted from the employee's duration of paid family and medical leave for the current claim year and, if necessary, for the purposes of proration as described in WAC 192-620-035.

(3) This section does not apply to a week that is claimed to satisfy an employee's waiting period.

Reason for rule: Amendments to this rule provide clarification that the calculation of typical work week hours does not apply to the waiting period.

AMENDATORY SECTION (Amending WSR 21-04-067, filed 1/29/21, effective 3/1/21)

WAC 192-800-125 When is a petition for review considered delivered to the department? Delivery under RCW 34.05.542 is made when a copy of the petition for judicial review is received by:

(1) Delivery to the Commissioner's Office at 212 Maple Park Avenue S.E., Olympia, WA (~~(or received by))~~;

(2) Mail at the Commissioner's Review Office, Post Office Box 9555, Olympia, WA 98507-9555; or

(3) Email at the commissioner's review office at cro@esd.wa.gov.

Reason for rule: Amendments to this rule add the ability for individuals to email petitions for review to the Commissioner's Review Office. Allowing petitions for review to be emailed allows greater public access.

VARIANCE BETWEEN PROPOSED RULE AND FINAL RULE

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

SUMMARY OF COMMENTS TO PROPOSED RULES AND AGENCY RESPONSE

Referenced rule	Commenter	Source of comment	Comment	Agency response
WAC 192-500-185	Abigail O'Connell	Hearing	Hopes that consideration was given to the solvency of the fund and the overall program with eliminating the waiting period for medical leave due to birth.	The rule was amended to align with RCW 50A.15.020. Fund solvency and usage projections do not include consideration of the waiting period. The duration of leave entitlement for solvency projections includes the average duration of paid leave taken by individuals. In addition, elimination of the waiting period for medical leave taken upon the birth of a child does not increase the maximum duration of paid leave.
WAC 192-500-185	Marilyn Watkins	Hearing	Offering support for the amendments as fully keeping with the legislative intent both of the original legislation and of the legislation passed during this most recent legislative session.	The rule aligns with RCW 50A.15.020 and 2SSB 5649 (Chapter 233, Laws of 2022).
WAC 192-500-185	Carolyn Calderon	Hearing	Would like consideration given or a phrase added regarding the impact of the waiting period on intermittent leave so everything	Consideration for intermittent leave is already included in this rule under (2) which states that the waiting period requirement is satisfied if the employee takes at

			is in one place regarding the waiting period.	least eight consecutive hours of leave during the first week of the employee’s paid family or medical leave.
WAC 192-620-035	Marilyn Watkins	Hearing	Offering support for the amendment in (3), that the section doesn’t apply to the waiting period. Also reiterating concerns with the potential proration of the final week of leave as inconsistent with the plain language of the statute and not fairly representing people’s actual amount of leave and benefits to which they’re entitled.	Amendments to the benefit proration method were not considered as part of this rulemaking. The department recognizes there were objections to the language in this rule when amendments were adopted by rulemaking under WSR # 21-18-082. The department’s response to the comments received were included in the Concise Explanatory statement for that rulemaking.
	Gina Rutledge	Hearing and written comment	Requesting scenarios and examples to help employers and birthing parents know how to balance sick leave and/or paid time off during the first week of medical leave. Many company policies state to use sick leave during the first week of medical leave. Examples are needed to clarify if medical leave taken before birth is subject to the waiting period, or if the waiting period is only waived the first week the employee is absent after birth.	The department will ensure that communications give detailed information about the waiting period and related changes to the rules. In addition, our website and help center information will be updated to reflect the changes. The adopted rules align with RCW 50A.15.020 which states that no waiting period is required for leave for the birth or placement of a child.

	Jean Linghor-Pittsenbarger	Written comment	Requesting that rules need to increase to combine family and medical leave into 12 weeks total for all types of leave. Requesting that employees should be obligated to return to work after leave is over or be required to pay back the benefits they received. Also requesting the number of hours of work to qualify someone to receive benefits be increased.	The maximum entitlement to paid family and medical leave benefits and the hours of work that qualify individuals to receive benefits are set in statute (Title 50A RCW). In addition, there is no requirement in Title 50A RCW that individuals must pay back benefits if they don't return to work. Any changes to Title 50A RCW would need to be done by the legislature. The department does not have the authority to adopt rules that conflict with statute.
	Karen Laurvick	Written comment	Requesting rules changes address shorter leave times and more financial compensation to small business employers when employees are on leave.	The maximum entitlement to paid family and medical leave benefits and requirements for small business assistance grants are set in statute (Title 50A RCW). Any changes to Title 50A RCW would need to be done by the legislature. The department does not have the authority to adopt rules that conflict with statute.
	Karen Laurvick	Written comment	Requesting that rules be amended so that a business is allowed to use an employment agency to find a replacement employee for an employee who is on PFML.	There is nothing in WAC or RCW that prohibits a business from using an employment agency to find a replacement employee for an employee who is on PFML.
WAC 192-500-185	Lisa M. Bandelli-Virgona	Written comment	Removing the waiting period upon the birth of a child may violate the Civil Rights Act and similar state and local anti-discrimination laws. Only women incapacitated from work	RCW 50A.15.020 (1)(a) outlines waiting period requirements and specifies that no waiting period is required for leave for the birth or placement of a child, or for leave because of any qualifying

			<p>related to pregnancy/childbirth serious health condition are not subject to the waiting period when all other employees who have a serious health condition not related to pregnancy/childbirth are subject to a waiting period.</p>	<p>exigency as defined under RCW 50A.05.010(10)(c). The department must administer the program under Title 50A RCW and does not have the authority to adopt rules that conflict with statute.</p>
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