



Paid Family and Medical Leave - Proposed amended rules related to waiting period, proration and weekly claim hours, and petitions for review

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Introduction

The statewide Paid Family and Medical Leave (Paid Leave) insurance program under Title 50A RCW 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 clarification regarding the waiting period, proration and weekly claim hours, and filing petitions for review.

These proposed rules were developed by the department and were filed in accordance with Chapter 34.05 RCW. The department completed 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

WAC192-500-185 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.

[Statutory Authority: RCW 50A.05.060 and 2020 c 125. WSR 20-20-074, § 192-500-185, filed 10/2/20, effective 11/2/20. Statutory Authority: RCW 50A.05.60 [50A.05.060] and 50A.25.030. WSR 20-01-087, § 192-500-185, filed 12/12/19, effective 1/12/20.]

Explanation of proposed rule: 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 align with RCW 50A.15.020.

AMENDATORY SECTION

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~~.

Explanation of proposed rule: Proposed amendments to the rule clarify that proration of benefits does not apply to the waiting period. Additional amendments are technical.

AMENDATORY SECTION

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.

Explanation of proposed rule: Proposed amendments to the rule clarify that the calculation of typical work week hours does not apply to the waiting period.

AMENDATORY SECTION

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.

Explanation of proposed rule: Proposed amendments to the rule add the ability for individuals to email petitions for review.

Is a Significant Analysis required for these rules?

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

PROPOSED AMENDED SECTIONS			
WAC Section	Section Title	Exempting reason	Exempting statute
WAC 192-500-185	Waiting period.	The proposed 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 it administers. Interpretive rules are not significant legislative rules under RCW 34.05.328(5)(c)(iii).	RCW 34.05.328(5)(c)(ii)

WAC 192-620-035	When will a weekly benefit amount be prorated?	The proposed rule relates to internal governmental operations that are not subject to violation by a nongovernment party. The rule is also an interpretive rule that does not subject a person to a penalty or sanction and sets forth the agency's interpretation of statutory provisions it administers. Interpretive rules are not significant legislative rules under RCW 34.05.328(5)(c)(iii).	RCW 34.05.328(5)(b)(ii) and (c)(ii)
WAC 192-620-040	How will the department determine the number of hours of paid family or medical leave an employee claims each week?	The proposed rule relates to internal governmental operations that are not subject to violation by a nongovernment party. The rule is also an interpretive rule that does not subject a person to a penalty or sanction and sets forth the agency's interpretation of statutory provisions it administers. Interpretive rules are not significant legislative rules under RCW 34.05.328(5)(c)(iii).	RCW 34.05.328(5)(b)(ii) and (c)(ii)
WAC 192-800-125	When is a petition for review considered delivered to the department?	The proposed rule is a procedural rule that amends a procedure, practice, or requirement related to agency hearings and pertains to the consistent internal operations of the agency. Procedural rules are not significant legislative rules under RCW 34.05.328(5)(c)(iii).	RCW 34.05.328(5)(c)(i)(A) and (C)

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 there will be less clarity for the public regarding the duration of paid family or medical leave and the required waiting period, and whether the waiting period applies to medical leave taken upon the birth of a child. The rules provide additional clarification that the benefit proration and the calculation of typical work week hours do not apply to the waiting period. In addition, the rules achieve greater access to the public by clarifying that the department will accept a petition for review by email.

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.

The proposed amended rules listed in the table above are not deemed significant under RCW 34.05.328. The rules will benefit the public by providing clarity and transparency in program administration. There

are no costs to comply with the proposed amended rules. The rules align with and provide additional clarity to statutory provisions of Title 50A RCW.

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.

No alternate versions of the rules were considered. The rules were revised as the least burdensome alternative to those required to comply with them. The rules align with and further implement provisions of Title 50A RCW. Adoption of the rules will achieve the general goals and objectives of administering Title 50A RCW and will provide clarification to the public.

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 as defined in RCW 50A.05.010, 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

WAC 192-500-185, WAC 192-620-035, and WAC 192-620-040 align with requirements of RCW 50A.15.020 and do not conflict with any federal, state, or local laws. WAC 192-800-125 allows greater access to the public and does not conflict with any federal, state, or local laws.