

REASONS FOR ADOPTING THE RULE

AMENDATORY SECTION

WAC 192-520-010 Parties to collective bargaining agreements.

(1) Parties to a collective bargaining agreement in existence on October 19, 2017, are not required to be subject to the rights and responsibilities under Title 50A RCW and related rules unless and until the existing agreement is reopened or renegotiated by the parties or expires.

(2) Employers must inform the department immediately upon the reopening, renegotiation, or expiration of a collective bargaining agreement that was in effect prior to October 19, 2017.

(3) To be eligible for benefits, an employee must have worked at least ~~((eight hundred twenty))~~ 820 hours during the qualifying period. If the employee's qualifying period includes any quarter prior to a collective bargaining agreement being reopened or renegotiated by the parties or expiring, the department will request the employee's qualifying period wages and hours from the employer. The employer must provide the wages and hours to the department within ~~((ten))~~ 10 calendar days.

(4) Employees not covered by a collective bargaining agreement are subject to the rights and responsibilities of Title 50A RCW and related rules. Employers are also subject to the rights and responsibilities of Title 50A RCW and related rules for employees not covered by a collective bargaining agreement, regardless of whether the employer is party to a collective bargaining agreement covering other employees.

(5) Employers party to multiple collective bargaining agreements among different bargaining units are subject to the rights and responsibilities of Title 50A RCW and related rules as they pertain to the bargaining units whose collective bargaining agreement is reopened or renegotiated by the parties or expires, on or after October 19, 2017.

(6) Parties to a collective bargaining agreement in existence on October 19, 2017, that has not been reopened or renegotiated by the parties or expired may elect to be subject to all applicable rights and responsibilities under Title 50A RCW and related rules prior to the expiration, reopening or renegotiation of the agreement. Parties seeking to do so must submit to the department a memorandum of understanding, letter of agreement, or a similar document signed by all parties.

(7) The provisions described in this section are effective until December 31, 2023.

Reason for rule: Amendments to this rule implement the statutory change made by Substitute Senate Bill (SSB) 5649 sunsetting the collective bargaining agreement from the Paid Family and Medical Leave (PFML) program. Additional changes are technical.

AMENDATORY SECTION

WAC 192-610-025 (~~(Documenting the)~~ Birth (~~(or)~~), placement, or death of a child (~~(for paid family leave)~~) and required documentation.

(1) When paid family or medical leave is taken for the postnatal period, to bond with the employee's child after birth, or for the death of a child as outlined in subsection (6) of this section, the employee must provide (~~(a copy of)~~):

- (a) A copy of the child's birth certificate; (~~(or)~~)
- (b) Certification of birth from a health care provider; or
- (c) Documentation sufficient to verify or substantiate the child's birth or death.

(2) When paid family leave is taken to bond with the employee's child after the child's placement as defined in WAC 192-500-195, the employee must provide a copy of a court order verifying placement. If a court order is not available, the department may accept alternate documentation sufficient to verify the placement.

(3) Additional documentation may be requested to substantiate the qualifying event.

(4) Only the employee giving birth is eligible for medical leave taken for the postnatal period related to recovery from childbirth.

(5)(a) Leave taken by the employee giving birth for the postnatal period is subject to maximum family or medical leave duration and will be medical leave except when:

- (i) Medical leave is fully or partially exhausted prior to the birth of the child; or
- (ii) An employee chooses to use family leave, if available, for the postnatal period.

(b) An employee who gives birth and is not or will not be eligible for family leave to bond with a child may only use medical leave for the postnatal period.

(6) Subject to the maximum and minimum weekly benefits, duration, and other conditions and limitations established in Title 50A RCW, an employee is eligible for up to seven calendar days of family leave in the event of the death of a child they would have been eligible to bond with or were bonding with. This leave is available for up to seven calendar days beginning the day after the date of the child's death or delivery of the deceased child.

Reason for rule: The adopted rule implements other changes made to law by SSB 5649 including providing clarification regarding the "postnatal period" and allowing up to seven days of calendar leave, if available, in the event of the death of a child an employee would have been eligible to bond with or were bonding with.

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 192-610-025	Michael Reed	Email	Suggested that at least 15 days should be allowed for the death of a child an employee was eligible to bond with or was bonding with.	The statutory change made by Substitute Senate Bill (SSB) 5649 allows for seven days. The department cannot adopt rules that conflict with statute.
WAC 192-610-025	Tonia Reed	Email	Expressed concerns about the abuse of privacy rules. Stated that having seven days of paid time off following the death of child is fair, but everyone handles the loss of a loved one different. The message also suggested that a position be created to offer guidance and resources for those grieving the loss of a child.	Paid Family and Medical Leave (PFML) privacy rules have not been amended by these adopted rules. The comment regarding the seven days following the loss of child appears supportive. We cannot create a new employment position through rulemaking.
WAC 192-520-010	Jacob Kierstead	Hearing	Appreciates clarity of the rule. The collective bargaining exemption complicated the original rollout of the program. Many had trouble understanding original statutory language.	No agency response necessary as this comment was supportive of the changes made.
WAC 192-610-025	Patricia Zuniga (Lincoln Financial Group)	Hearing	Regarding (1)(c), please consider adding a provision to clarify what documentation is sufficient. Also please add a statement similar to what is stated in FMLA under 29 CFR 825.122(k) which states that documentation may take the form of a statement from an employee to make it as easy as possible on employees applying for leave for this leave.	We will update our website and other materials to provide direction regarding what documentation the department will accept. It is yet to be determined whether or not a statement from the applicant will be sufficient for leave following the death of a child.

WAC 192-610-025	Jacob Kierstead	Hearing	Regarding birth or placement of a child, please consider adding that after the seven days following death of a child, that the employee may be eligible for more time, if available—seeking therapy for adjustment disorder, for example.	The maximum amount of PFML leave an employee is entitled to per claim year is clearly stated in other sections of rule (WAC 192-620-026), statute (RCW 50A.15.020), and in online and printable material.
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