



Paid Family and Medical Leave - Proposed amended rules related to implementation of Second Substitute Senate Bill 5649

June 2022

Introduction

The statewide Paid Family and Medical 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. In addition, Second Substitute Senate Bill (2SSB) 5649 (Chapter 233, Laws of 2022) passed into law during the 2022 legislative session. The proposed rules implement changes made by this legislation.

The proposed rules add an expiration date of December 31, 2023, for provisions allowing parties to collective bargaining agreements that were in effect on October 19, 2017, have not expired, have not been reopened, or have not been renegotiated to be exempt from PFML participation. The proposed amendments implement the “postnatal period” as the six-week period after an employee gives birth and outline that leave taken for the postnatal period will default to medical leave unless otherwise specified by the employee or if the employee’s available medical leave has been exhausted. The proposed amendments also clarify that leave taken for the postnatal period will not require a medical certification and describe other forms of documentation that may be required. Other changes are technical.

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

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.

Explanation of proposed rule: The proposed amendment implements an expiration date of December 31, 2023, for provisions allowing parties to collective bargaining agreements that were in effect on October 19, 2017, have not expired, have not been reopened, or have not been renegotiated to be exempt from PFML participation. 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.

Explanation of proposed rule: The proposed amendments implement the “postnatal period” as the six-week period after an employee gives birth and outline that leave taken for the postnatal period will default to medical leave unless otherwise specified by the employee or if the employee’s available medical leave has been exhausted. The proposed amendments clarify that leave taken for the postnatal period will not require a medical certification and describe other forms of documentation that may be required. The proposed amendments also implement a new provision allowing an employee to take family leave for up to seven calendar days, if available, in the event of the death of a child they would have been eligible to bond with or were bonding with.

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 192-520-010	Parties to collective bargaining agreements.	The proposed rule is explicitly and specifically dictated by 2SSB 5649.	RCW 34.05.328 (5)(b)(v)
WAC 192-610-025	Birth, placement, or death of a child and required documentation.	The proposed rule is explicitly and specifically dictated by 2SSB 5649 and is an interpretive rule that does not subject a person to a penalty or sanction and sets	RCW 34.05.328 (5)(b)(v) and (c)(ii)

		<p>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).</p>	
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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. In addition, rules are needed to implement the provisions of 2SSB 5649.

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 implement and clarify provisions of 2SSB 5649. If the rules are not adopted there will be less clarity for the public regarding the duration of exemption of parties to collective bargaining agreements in place prior to October 19, 2017, the duration and type of leave available to employees giving birth, and leave that may be available when an employee experiences the death of a child they are bonding with or would have bonded with.

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 and 2SSB 5649.

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 and 2SSB 5649. 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

The rules implement 2SSB 5649 (Chapter 233, Laws of 2022).