



Paid Family and Medical Leave Rules Related to: Placement, Proration, Claim Year, Premium Rate, Documentation, Agency Hearings, and General Updates

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Introduction

Title 50A RCW created a statewide Paid Family and Medical Leave insurance program that provides at least partial wage replacement when a qualified employee takes approved family or medical leave.

The law requires the Employment Security Department (department) to develop rules to administer the program.

These rules were developed by the department and were filed in accordance with Chapter 34.05 RCW. Pursuant to RCW 34.05.328, the department offers this analysis of the determinations required by 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

WAC192-500-040 Aggrieved ((person)) party. An "aggrieved ((person)) party" is any interested party who receives an adverse decision from:

- (1) The department for which the department has provided notice of appeal;
- (2) The employer with an approved voluntary plan for which that employer has provided notice of appeal;
- (3) The office of administrative hearings; or
- (4) The commissioner's review office.

Explanation of proposed rule: Amendments to the definition of aggrieved "person" to aggrieved "party" is a technical change for clarification purposes.

AMENDATORY SECTION

WAC192-500-070 Claim year. (1) A "claim year" is the period beginning Sunday of the week of the date an eligible employee files a complete initial application for benefits and ending the Saturday fifty-two weeks later.

(2) The entitlement to family leave benefits for the birth or placement of a child expires at the end of the twelve-month period beginning on the date ~~((of such birth or placement))~~ the child was first placed in the home.

(3) For applications that are backdated, the claim year is the fifty-two week period beginning Sunday of the week to which the application was backdated.

(4) An employee may only have one valid claim year at a time.

(5) A new claim year will not be established for an employee who:

(a) Is determined to have less than eight hundred twenty hours in their qualifying period; or

(b) Fails to sufficiently prove their identity to the department.

Example 1: An employee experiences an injury that qualifies as a serious health condition. Three days later, on Thursday, March 4, 2021, the employee files a complete initial application for medical leave benefits. The employee's claim year will run from Sunday, February 28, 2021, to Saturday, February 26, 2022.

Example 2: An employee filed an application for medical leave in March 2021. The employee took four weeks of medical leave and returned to work. The employee's spouse gives birth to a child in September 2021. The employee elects not to take family leave until April 2022. Because the employee's first claim year has already expired, the employee must file a new application and begin a new claim year in order to take family leave beginning in April 2022.

Example 3: An employee gives birth on Thursday, March 4, 2021. The employee elects not to submit an application for paid family leave until Monday, April 5, 2021. Though the employee's claim year will run from Sunday, April 4, 2021, to Saturday, April 2, 2022, the employee will not be able to claim family leave after March 3, 2022, for the birth of the child. The employee can claim leave for other qualifying reasons for the period March 4, 2022, through April 2, 2022, subject to the maximum duration limits.

Explanation of proposed rule: The rule was amended for clarification purposes. RCW 50A.15.010 requires employees have at least eight hundred twenty hours in their qualifying period. In addition, the department must verify the identity of employees requesting benefits in order to combat fraud. In circumstances where someone applies for benefits but does not establish enough hours in their qualifying period or establish their identity, this amendment clarifies that the department will not consider the applicant to have established a claim year.

AMENDATORY SECTION

WAC 192-500-080 Qualifying event. A "qualifying event" is:

(1) For family leave, events described in RCW 50A.05.010~~((9))~~ (10) and related rules.

(2) For medical leave, events described in RCW 50A.05.010~~((14))~~ (15) and related rules.

Explanation of proposed rule: Amendments to the rule correct RCW references and are technical changes. Adding the reference to additional rules ensures that applicants and employers are aware there is guidance offered in related rules that may provide additional clarification.

AMENDATORY SECTION

WAC192-500-170 Self-employed. (1) A "self-employed" person is:

- (a) A sole proprietor;
 - (b) A joint venturer or a member of a partnership that carries on a trade or business, contributes money, property, labor or skill and shares in the profits or losses of the business;
 - (c) A member of a limited liability company;
 - (d) An independent contractor who works as described in RCW 50A.05.010 ~~((7)(b)(ii))~~ (8)(b)(iii) and (iv);
or
 - (e) Otherwise in business for oneself as indicated by the facts and circumstances of the situation, including a part-time business.
- (2) A corporate officer is an employee and not self-employed.

Explanation of proposed rule: The amendment to the rule corrects the RCW reference and is a technical change.

NEW SECTION

WAC192-500-195 Placement. (1) For the purposes of qualifying for paid family leave to bond with a child under RCW 50A.05.010, "placement" means the adoptive, guardianship, foster care, or nonparental custody placement of a child under the age of eighteen with the employee. A placement is considered:

- (a) An adoptive placement when the employee is legally and permanently assuming the responsibility of raising the child as their own, and the placement of the child into the employee's home is made through a private arrangement, a child placement agency, or a government agency.
 - (b) A guardianship placement when the employee is granted guardianship of a child by court order, and the child is placed in the home under:
 - (i) Title 11 RCW;
 - (ii) Title 13 RCW; or
 - (iii) Any other applicable guardianship that reflects the purpose, permanency, and legal authority of guardianships under Titles 11 and 13 RCW, including guardianships granted out of this state or country.
 - (c) A foster care placement when the employee is providing care for a child placed in the employee's home. Such placements must involve voluntary or involuntary removal of the child from the child's parents or guardian, and an agreement between a government agency and the foster family that the foster family will take care of the child. Although foster care placement may be with a relative of the child or another individual who may not have a foster care license, government agency action must be involved in the removal of the child.
 - (d) A nonparental custody placement when the child is placed into the home of the employee by court order granting the employee nonparental custody.
- (2) For the purposes of this section, a "government agency" may include an agency of any branch of government at the county, state, or federal level, or a foreign jurisdiction.
- (3) The entitlement to paid family leave benefits for placement of a child expires at the end of the twelve-month period beginning on the date the child was first placed in the home.
- (4) When applying for paid family leave to bond with a child, the employee must provide documentation referenced in WAC 192-610-025 to verify placement of the child.

- (5) Qualifying paid family leave to bond with a child placed for adoption, guardianship, foster care, or nonparental custody does not include:
- (a) Placement with a birth parent; and
 - (b) Any adoptive, guardianship, foster care, or nonparental custody placement of a child with an employee that occurs more than twelve months after that child is first placed in the employee's home.

Explanation of proposed rule: Adding the definition of placement provides the department's interpretation and guidance regarding what constitutes a "placement" for the purposes of bonding with a child.

NEW SECTION

WAC 192-510-090 How will the department determine the premium rate for each calendar year? (1) For calendar year 2021 and thereafter, the total premium rate shall be based on the family and medical leave insurance account balance ratio as of September 30th of the previous year.

(2) The commissioner shall calculate the account balance ratio by dividing the balance of the family and medical leave insurance account by total covered wages paid by employers and those electing coverage.

(3) For the purposes of this section, "total covered wages" is defined as the total amount of wages paid to employees that are subject to the paid family and medical leave premium from July 1st of the previous calendar year to June 30th of the current calendar year as reported by employers.

Explanation of proposed rule: RCW 50A.10.030 requires the department to determine the premium rate for each calendar year. In order to provide clear direction to the public on how the premium rate will be determined, the new rule clarifies the time period of the "total covered wages" used in the calculation.

AMENDATORY SECTION

WAC 192-610-025 Documenting the birth or placement of a child for paid family leave. (1) When paid family leave is taken to bond with the employee's child after birth (or placement, the department may request), the employee must provide a copy of:

~~((1))~~ (a) The child's birth certificate; or

~~((2))~~ (b) Certification of birth from a health care provider(;

~~(3) Court documents to show);~~

(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(;

~~(4) Other reasonable);~~ 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.

Explanation of proposed rule: Amendments to the rule provide clarification regarding documentation for the birth or placement of a child and add a reference to the definition of placement. This additional requirement will reduce the number of fraudulent claims by requiring substantiating documentation.

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:

((4)) (a) The employee ((works)) reports hours ((for wages; or (2)) worked;

(b) The employee ((uses)) 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 did not claim 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) If an employee claims part of a week under subsection (1)(c) of this section, proration will be calculated by dividing the employee's typical workweek hours and weekly benefit amount for that week by sevenths, then multiplying by the number of days for which the employee claimed paid family or medical leave for that week. The remainder of the week will be calculated as specified by RCW 50A.15.020(2) and subsection (1)(a) and (b) of this section.

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 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 ((800)) eight hundred dollars. The weekly benefit would then be prorated by the hours on paid medical leave (eight hours) relative to the typical workweek hours ((40)) forty hours. Eight hours is ((20% of 40)) twenty percent of forty hours. The employee's weekly benefit would be prorated to ((20%)) twenty percent for a total of ((160)) one hundred sixty dollars.

Example 2: An employee files a claim for eight hours of paid family and medical leave and takes sick leave from the employer for the same day. The employer does not offer the sick leave as a supplemental benefit payment. The sick leave is considered hours worked by the employee. The employee is being paid for the same hours claimed on paid family and medical leave. This employee is not eligible for benefits for this week.

Example 3: The employee's typical workweek hours are forty hours per week, and the weekly benefit amount is one thousand dollars. The employee files a claim for leave that starts on a Tuesday. Because the employee's claim did not include Sunday or Monday of that week, the employee's typical workweek hours and weekly benefit amount for that week will be prorated by two-sevenths, or two days of the seven days in the week. For that week only, the employee's typical workweek hours will be twenty-eight (five-sevenths of forty, rounded down to the nearest hour) and the weekly benefit amount will be seven hundred fourteen dollars (five-sevenths of one thousand dollars, rounded down to the nearest dollar).

Explanation of proposed rule: Amendments to the rule provide clarification regarding when and how the department prorates benefit amounts.

AMENDATORY SECTION

WAC 192-800-035 Who can appeal or submit a petition for review? (1) An aggrieved ~~((person))~~ party as defined in WAC 192-500-040 may file an appeal to the department by using the department's online services, or in another format approved by the department.

(2) Any aggrieved ~~((person))~~ party who receives a decision from the office of administrative hearings, other than an order approving a withdrawal of appeal, a consent order, or an interim order, may file a written petition for review, including filing by using the department's online services, or in another format approved by the department.

Explanation of proposed rule: Amendments to the rule are technical changes for clarification purposes.

AMENDATORY SECTION

WAC 192-800-045 When can an appeal be withdrawn? An aggrieved ~~((person))~~ party may withdraw their appeal or petition for review upon approval by the office of administrative hearings or the commissioner's review office, respectively, at any time prior to the decision, in which case the determination, redetermination, order and notice of assessment of premiums or penalties, or other decision appealed, shall be final in accordance with the provisions of Title 50A RCW.

Explanation of proposed rule: The amendment to the rule is technical for clarification purposes.

AMENDATORY SECTION

WAC 192-800-110 What options are available for an aggrieved ~~((person))~~ party who received an order of default? (1) Any ~~((person))~~ party aggrieved by the entry of an order of default may:

(a) File a motion to vacate the order of default with the office of administrative hearings within ~~((seven))~~ ten days of ~~((issuance))~~ the date of mailing of the order of default; or

(b) File a petition for review from such order by complying with the filing requirements set forth in WAC 192-800-100.

(2) The provisions in subsection (1)(a) of this section toll the appeal period for filing a timely petition for review with the commissioner's review office until the office of administrative hearings issues a ruling on the motion. However, should a petition for review be filed while a ruling on a motion to vacate is pending, the office of administrative hearings no longer has jurisdiction to vacate the default order.

(3) Under subsection (1)(a) of this section, an order of default will be vacated by the presiding officer only upon a showing of good cause for failure to appear or to request a postponement prior to the scheduled time for hearing. If the order of default is vacated, the presiding administrative law judge will conduct a hearing on the merits and issue a decision.

(4) Under subsection (1)(b) of this section, an order of default will be set aside by the commissioner's review office only upon a showing of good cause for failure to appear or to request a postponement prior to the scheduled time for hearing. In the event such an order of default is set aside, the commissioner will remand the matter to the office of administrative hearings for hearing and decision.

Explanation of proposed rule: Amendments to the rule are technical and clarifying excepting the amendment regarding the extension of deadline from seven to ten days to file a motion to vacate. The addition of (3) provides information related to agency hearings.

Is a Significant Analysis required for these rules?

None of the proposed rules meet the definition of legislatively significant in RCW 34.05.328 and do not require a significant analysis. Each rule and the reason for the exemption is listed below:

WAC Section	Section Title	Exempting reason	Exempting statute
192-500-040	Aggrieved party.	The rule corrects references and clarifies language without changing the effect of the rule.	RCW 34.05.328(5)(b)(iv)
192-500-070	Claim year.	The rule is interpretive and sets forth the agency's interpretation of statutory provisions.	RCW 34.05.328(5)(c)(ii)
192-500-080	Qualifying event.	The rule corrects references and clarifies language without changing the effect of the rule.	RCW 34.05.328(5)(b)(iv)
192-500-170	Self-employed.	The rule corrects references and clarifies language without changing the effect of the rule.	RCW 34.05.328(5)(b)(iv)
192-500-195	Placement.	The rule is interpretive and sets forth the agency's interpretation of statutory provisions.	RCW 34.05.328(5)(c)(ii)
192-510-090	How will the department determine the premium rate for each calendar year?	The rule is interpretive and sets forth the agency's interpretation of statutory provisions.	RCW 34.05.328(5)(c)(ii)

192-610-025	Documenting the birth or placement of a child for paid family leave.	The rule is interpretive and sets forth the agency's interpretation of statutory provisions.	RCW 34.05.328(5)(c)(ii)
192-620-035	When will a weekly benefit amount be prorated?	The rule is related to internal government operations and does not subject a nongovernmental party to a violation.	RCW 34.05.328(5)(b)(ii)
192-800-035	Who can appeal or submit a petition for review?	The rule corrects references and clarifies language without changing the effect of the rule.	RCW 34.05.328(5)(b)(iv)
192-800-045	When can an appeal be withdrawn?	The rule corrects references and clarifies language without changing the effect of the rule.	RCW 34.05.328(5)(b)(iv)
192-800-110	What options are available for an aggrieved party who received an order of default?	The rule is a procedural rule related to agency hearings.	RCW 34.05.328(5)(c)(i)(A)

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 correct and clarify language, formalize departmental procedures, define terms, and further clarify administration of the provisions of the Paid Family and Medical Leave program under Title 50A RCW. If the rules are not adopted, there will continue to be confusion regarding definitions, proration of benefit amounts, and how premium rates are determined. Adopting the rules will provide enhanced direction to the public and will assist in streamlining administration and utilization of the program.

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 rules will benefit the public by providing clarity and transparency in program administration. The rules do not impose any additional costs on employers. Any cost to employees to obtain documentation would be minor and is necessary to ensure program integrity. The benefits of the rules provide clarity for the public with the intent of streamlining administration and utilization of the program. This will help ensure the department, employers, employees, the public, and individuals receiving benefits have clear and relevant information.

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.

The rules were drafted as the least burdensome alternative to those required to comply with them. Adoption of the rules will achieve the general goals and objectives of administering Title 50A RCW and will provide clarification for employees when submitting applications and claims.

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, 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

There are no other Federal, State, or local laws applicable to the rules.