

INTRODUCTION

The statewide Paid Family and Medical Leave (PFML) 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.

Title 50B RCW created the Long-term Services and Supports Trust program (WA Cares Fund) to provide up to \$36,500 of long-term care benefits for eligible Washington residents. The WA Cares Fund is administered by four state agencies, each with different program responsibilities. The department will assess and collect premiums, accept and process applications for exemption, determine qualified individual status, and process elective coverage requests from self-employed individuals and interested federally recognized tribes. The Department of Social and Health Services will determine eligible beneficiaries, administer benefits, and manage providers. The Health Care Authority will process payments, track benefit usage, and coordinate benefits. The Office of the State Actuary will perform actuarial audits on the trust fund.

The program is funded through employee premium deductions of 0.58 percent (\$0.58 per \$100) of earnings. Premium deductions will begin on July 1, 2023. Beginning July 1, 2026, employees who have paid into the program for the required number of years and worked the required number of hours in each of those years, will be able to access their earned benefits if needed. To qualify for the full benefit amount, employees must have worked and contributed:

- At least ten years without a break in service of five or more consecutive years, or three of the last six years from the date of application; and
- Worked at least 500 hours per year during those years.

Employees born prior to January 1, 1968, and who are not able to qualify for the full benefit amount may earn partial benefits (10% of the benefit amount) for each year they worked at least 500 hours and contributed to the WA Cares Fund.

The proposed amendments add a new data field to employer quarterly reports to include employees' dates of birth and require a report of "no payroll" for up to a maximum of eight quarters when employers have no paid wages to report. The proposed amendments regarding employer reporting will affect both PFML and WA Cares Fund since employers submit one report to the department for both programs.

Specific to PFML, the proposed amendments correct an RCW pointer reference, clarify the definition of "placement" for the purposes of family leave to bond with the employee's child, clarify that hours worked in self-employment prior to the effective date of the election of coverage for self-employed individuals do not count toward establishing benefit eligibility, and clarify that weekly claims may be filed by an estate executor or administrator if the employee dies after they've been approved for benefits.

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).

One of the proposed rules amends employer reporting requirements and requires a cost-benefit analysis:

- WAC 192-540-030 What are employers required to report to the department?

Three of the proposed rules do not require a cost-benefit analysis:

- WAC 192-500-195 Placement.

- WAC 192-510-010 Election, withdrawal, and cancellation of coverage.
- WAC 192-800-150 Can an employee designate a representative to act on their behalf?

COSTS

WAC 192-540-030 What are employers required to report to the department?

The proposed amendments to WAC 192-540-030 will affect all businesses required to submit quarterly reports for Paid Family and Medical Leave and WA Cares Fund. The department estimates the maximum annual cost of compliance for employers to report employees' dates of birth and submit a report of "no payroll" is a maximum of \$91 for the first year and a maximum of \$73 for each subsequent year. The cost will likely diminish year after year as employers become familiar with the requirements.

The administrative burden of reporting "no payroll" is low and requires employers to log into the system and check a box that indicates they have no payroll to report. Some employers will not have to report "no payroll" if they notify the department that they no longer have employees and don't intend to in the foreseeable future. Other employers will only be required to report "no payroll" for eight consecutive quarters. Employers impacted the most by the report of "no payroll" are those that have fluctuating employment throughout the year. The department determined the cost of compliance based on employers that are most impacted by this requirement. The administrative cost may be less than the department's estimate because this report is already a requirement of other programs, such as Unemployment Insurance. Adding employees' dates of birth to quarterly reports will require employers to add all employees' dates of birth during the first quarter of reporting and then add only new employees for each subsequent quarter of reporting.

To calculate the administrative cost of compliance, the department used the average hourly wage of \$36.50 for payroll services taken from the North American Industry Classification System (NAICS) code 541214. The time estimated to comply with these requirements is 2.5 hours or less of administrative work in the first year, and then two hours or less in each subsequent year. Using NAICS code 541214 at the average of \$36.50 per hour x 2.5 hours = \$91 for the first year and \$36.50 per hour x 2 hours = \$73 for each subsequent year.

BENEFITS

The proposed amendments to WAC 192-540-030 are necessary to ensure that employers are reporting correct information to the department, including when there are no wages paid to employees during any given quarter. The report of "no payroll" will be required for up to a maximum of eight quarters unless the employer notifies the department before the end of eight consecutive quarters that they have no employees to report at that time and in the foreseeable future. In addition, since WA Cares Fund premium assessment begins July 1, 2023, employers must submit quarterly reports that include information for both PFML and WA Cares Fund. The department is utilizing one employer report for both programs. RCW 50B.04.020(4)(c) requires the department to determine the compliance of premium payments (employer audits) in coordination with the same activities conducted for PFML under Title 50A RCW. This requirement will assist the department because a report of "no payroll" will ensure the department doesn't flag a missing report for audit. This will benefit both the department and the employer because the process of auditing an employer for compliance with premium payments will be considerably more time and expense than providing a simple report of "no payroll."

The proposed amendment adding employees' dates of birth will assist with ensuring employee work history and premium assessments are complete. RCW 50B.04.080 requires the department, to the extent feasible, to use the same

premium assessment, collection, and reporting procedures for the WA Cares Fund as it does for Paid Family and Medical Leave. Requiring dates of birth for employees will assist with determining employee eligibility for prorated benefits for WA Cares Fund under RCW 50B.04.050. The new requirements will fulfill the department's obligation under RCW 50B.04.020 to assist the trust commission, council, and Office of the State Actuary in monitoring the solvency and financial status of the program because the information will assist with actuarial modeling and solvency projections. The requirements will also assist the department with projecting fund solvency for the PFML program, align with unemployment insurance practices of "no payroll" reports, and ensure the department has accurate data for annual PFML employer sizing. The consequences of not adopting the rule would affect the ability to determine fund solvency and projections for both programs and would affect the work of other agencies involved in implementation and administration of the WA Cares Fund. In addition, not adopting the rule would require considerably more time, cost, and effort for employers and the department to audit certain employers for premium compliance.

CONCLUSION

Although the amendments to WAC 192-540-030 require additional information for employer quarterly reports, they will benefit the programs, employers, and individuals into the future. The amendments will save time and cost for employers and the department regarding determining program compliance and eligibility for benefits and will assist with determining and maintaining fund solvency. For these reasons, the probable benefits of the proposed amendments outweigh the costs and will help ensure employers, the department, and the public understand program and reporting requirements.