



## **Paid Family and Medical Leave - Proposed amended rules related to placement, self- employed elective coverage, employer reporting, and designated representative**

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### 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 WA Cares 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).

Describe the proposed rules, including a brief history of the issue, and explain why the proposed rules are needed.

#### AMENDATORY SECTION

**WAC 192-500-195 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;~~ Any arrangement where the child is already in the care and custody of a parent and remains in that same parent's care and custody;

(b) Any arrangement where a child is returned to the care and custody of a parent or is placed with a parent whose entitlement to family leave to bond with that child has already expired; and

(c) 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:** The proposed amendments clarify the definition of placement by outlining circumstances that will not qualify for paid family leave to bond with the employee's child.

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#### AMENDATORY SECTION

**WAC 192-510-010 Election, withdrawal, and cancellation of coverage.** (1) Self-employed persons as defined in RCW 50A.10.010 and federally recognized tribes as defined in RCW 50A.10.020 may elect coverage under Title 50A RCW.

(2) Notice of election of coverage must be submitted to the department online or in another format approved by the department.

(3) Elective coverage begins on the first day of the quarter immediately following the notice of election.

(4) Hours worked in self-employment prior to the effective date of the election of coverage cannot be used to establish benefit eligibility.

(5) A period of coverage is defined as:

(a) Three years following the first day of elective coverage or any gap in coverage; and

(b) Each subsequent year.

(56) Any self-employed person or federally recognized tribe may file a notice of withdrawal within thirty calendar days after the end of each period of coverage.

(67) A notice of withdrawal from coverage must be submitted to the department online or in another format approved by the department.

(78) Any levy resulting from the department's cancellation of coverage is in addition to the due and unpaid premiums and interest for the remainder of the period of coverage.

**Explanation of proposed rule:** The proposed amendments clarify provisions of RCW 50A.10.010 by outlining that hours worked in self-employment prior to an individual electing coverage do not count toward an individual's benefit eligibility determination.

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#### AMENDATORY SECTION

**WAC 192-540-030 What are employers required to report to the department?** (1) Each calendar quarter, every employer must file a complete report with the department, including employers that have no payroll for the quarter as outlined in subsection (4) of this section.

(2) The report must include each employee's:

(a) Full name;

(b) Social Security number; ~~and~~

(c) Date of birth; and

(d) Wages paid during that quarter and the associated hours.

~~(3)~~ The report must include the total amount of premiums deducted from all employees' wages, if any, during the calendar quarter.

~~(3)~~ (a) If no wages were paid to employees during a calendar quarter, a report of no payroll must be filed for that quarter.

(b) The requirement to report no payroll shall continue for eight consecutive calendar 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.

(5) If an employee does not have a Social Security number but does have an individual taxpayer identification number (ITIN), the ITIN qualifies as a Social Security number. If the employee later obtains a Social Security number, the employer should use the Social Security number when filing the report of the employee's wages.

**Explanation of proposed rule:** 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 will affect both PFML and WA Cares Fund since employers submit one report to the department for both programs.

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#### AMENDATORY SECTION

**WAC 192-800-150 Can an employee designate a representative to act on their behalf?** (1) The department may authorize another individual to act on the employee's behalf for the purposes of paid family and medical leave benefits if:

(a) An employee designates an authorized representative by submitting written documentation as required by the department;

(b) A court-appointed legal guardian with authority to make decisions on a person's behalf submits documentation as required by the department;

(c) An individual designated as an attorney-in-fact under a power of attorney submits documentation satisfactory to the department to act on the employee's behalf; or

(d) If an employee is unable to designate an authorized representative due to a serious health condition, an individual may represent the employee by submitting a complete and signed authorized representative designation form made available by the department, which must include:

(i) Documentation from the employee's health care provider certifying that the employee is incapable of completing the administrative requirements necessary for receiving paid family and medical leave benefits and is unable to designate an authorized representative to act on the employee's behalf; and

(ii) An affidavit or declaration authorized by ~~RCW 9A.72.085~~ chapter 5.50 RCW attesting to the responsibility to act in the employee's best interest.

(2) A person meeting the requirements under subsection (1) of this section may file an initial application and weekly claims up to and including the week in which the employee died subject to WAC 192-620-010.

(3) If an employee has been approved for benefit payments and the employee dies, an estate executor or administrator may file ~~a weekly claim~~ for the any weeks in which the employee ~~died~~ was unable to file a weekly claim up to and including the week in which they died, subject to WAC 192-620-010.

(4) The department will terminate the authority given to the authorized representative:

(a) When the employee or authorized representative notifies the department verbally or in writing; or

(b) At the department's discretion.

(5) For the purposes of paid family and medical leave the term employee is used for both employee and authorized representative.

**Explanation of proposed rule:** The proposed amendments correct a pointer to a repealed statute 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.

## Is a Significant Analysis required for these rules?

The following rule meets the definition of a significant legislative rule under RCW 34.05.328 and requires analysis:

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

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 analysis. Each rule and the reason for the exemption is listed below:

PROPOSED AMENDED SECTIONS			
WAC Section	Section Title	Exempting reason	Exempting statute
WAC 192-500-195	Placement	The rule does not affect businesses and pertains only to individuals applying for PFML benefits.	RCW 19.85.025(4)
WAC 192-510-010	Election, withdrawal, and cancellation of coverage.	The rule does not affect businesses and pertains only to individuals applying for PFML benefits.	RCW 19.85.025(4)

WAC 192-800-150	Can an employee designate a representative to act on their behalf?	The rule does not affect businesses and pertains only to applicants and representatives acting on their behalf in order to claim PFML benefits. In addition, a portion of the rule corrects a reference to a previously repealed statute without changing the effect.	RCW 19.85.025(4) and RCW 34.05.310(4)(d)
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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 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.”

The goals and objectives of the WA Cares Fund are to provide long-term care services to individuals who demonstrate a need and have paid into the program through employment for the required period of time. Qualified individuals will have access to a lifetime benefit of up to \$36,500 that will be adjusted annually for inflation.

According to RCW 50B.04.900, an alternative funding mechanism for long-term care access could save the Medicaid program eight hundred ninety-eight million dollars in the 2051-2053 biennium. The statute also states in part:

“The majority of people over sixty-five years of age will need long-term services and supports within their lifetimes. The senior population has doubled in Washington since 1980, to currently over one million, and will more than double again by 2040. Without access to insurance, seniors must rely on family care and spend their life savings down to poverty levels in order to access long-term care through Medicaid. Middle class families are at the greatest risk because most have not saved enough to cover long-term care costs. When seniors reach the point of needing assistance with eating, dressing, and personal care, they must spend down to their last remaining two thousand dollars before they qualify for state assistance, leaving family members in jeopardy for their own future care needs. In Washington, more than eight hundred fifty thousand unpaid family caregivers provided care valued at eleven billion dollars in 2015. Furthermore, family caregivers who leave the workforce to provide unpaid long-term services and supports lose an average of three hundred thousand dollars in their own income and health and retirement benefits.”

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 proposed amendments to WAC 192-500-195 provide clear direction when determining eligibility for family leave to bond with a child. Adopting these rule amendments will provide clear guidance regarding types of placements that do not qualify for family leave to bond with a child. The consequences of not adopting the amendments would be continued lack of clarity to determine if applicants qualify for family leave to bond with a child.

The proposed amendments to WAC 192-510-010 clarify eligibility requirements for self-employed individuals who elect coverage. Adopting these rule amendments will provide clear guidance for self-employed individuals who have elected coverage. The rule clarifies the requirement in RCW 50A.10.010 that hours worked in self-employment before the election of coverage don't count toward benefit eligibility determination. The consequences of not adopting the amendments would be continued lack of clarity for applicants.

The proposed amendments to WAC 192-800-150 correct a pointer to a previously repealed RCW and clarify the requirements for executors or administrators of estates when filing weekly claims if an employee dies after being approved for paid family or medical leave. The consequences of not adopting the rule amendments would be continued lack of clarity for applicants and reference to a repealed statute.

The proposed amendments to WAC 192-540-030 are necessary in order to ensure that employers are reporting correct information to the department, including when no wages are paid to employees during any given quarter. The report of “no payroll” will be required for up to a maximum of eight consecutive quarters unless the employer notifies ESD 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 and employers because a report of “no payroll” will ensure the department doesn’t flag a missing report for audit.

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 PFML. 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 amendments would affect the ability to determine fund solvency and projections for both programs, would affect the work of other agencies involved in implementation and administration of the WA Cares Fund, and would result in unnecessary compliance audits for employers. In addition, not adopting the amendments would require considerably more time, cost, and effort for employers and the department in order to audit certain employers for premium compliance.

No alternatives to rulemaking were considered for any of the proposed rules.

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 and don’t require analysis. The rules will benefit the public by providing clarity and transparency in program administration.

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

**Cost:** The proposed amendments to WAC 192-540-030 will affect all businesses required to submit quarterly reports for PFML 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 in order 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 PFML. 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 benefits of adopting the rule will help determine fund solvency and projections for both programs and will assist the work of other agencies involved in implementation and administration of the WA Cares Fund. In addition, a report of “no payroll” will ensure that employers are not flagged for unnecessary audits. This will save time, cost, and effort for employers and the department.

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.

Adoption of the rule amendments will achieve the general goals and specific objectives of administering Titles 50A and 50B RCW and will provide clarification to the public. No alternative versions of the rules were considered for WAC 192-500-195, WAC 192-510-010, and WAC 192-800-150. These rules were determined to be the least burdensome for those required to comply with them because they provide needed clarification regarding program compliance, eligibility, and benefits.

Specific to WAC 192-540-030 regarding employer reporting requirements, the requirement to report employees’ dates of birth will proactively assist with projecting trust fund solvency for both PFML and WA Cares Fund in order to ensure both programs will remain solvent, so the benefits provided to individuals and families are stable into the future. In addition, it will assist with determining if individuals are entitled to partial WA Cares Fund benefits based on their date of birth. The requirement for employers to report “no payroll” will proactively ensure that the department will not flag an employer audit when a quarterly report was not submitted. This will save resources and time for employers and the department. In addition, the department determines employer size annually to determine if employers are required to pay the employer portion of PFML premiums. The report of “no payroll” will assist the department with accurate determinations in order to accurately assess premiums.

An alternative version of the rule was considered that did not put a limit on the number of quarters an employer must submit a report of “no payroll.” The department considered employer resources, and the complexities of businesses that may not have employees at all times, or employers that have downsized and may not intend to have employees in the future. Because of this, the department added the option for employers to only report “no payroll” for eight consecutive quarters, at which time that requirement ends. The department also added the option for employers to provide notification if they do not currently have employees and don’t intend to in the foreseeable future, at which time the requirement to report “no payroll” ends. The consideration of making a report of “no payroll” temporary will ease the burden on employers while still achieving the general goals and specific objectives of program administration.

## 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 PFML and WA Cares Fund, 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 align with requirements of RCW 50B.04.020(4)(c), RCW 50B.04.080(4)(b), RCW 50A.05.010, RCW 50A.10.010, and RCW 50A.10.030 and do not conflict with any federal, state, or local laws.