



# PROPOSED RULE MAKING

## CR-102 (July 2022) (Implements RCW 34.05.320) Do NOT use for expedited rule making

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STATE OF WASHINGTON  
FILED

DATE: April 04, 2023

TIME: 2:41 PM

WSR 23-08-075

Agency: Employment Security Department

Original Notice

Supplemental Notice to WSR \_\_\_\_\_

Continuance of WSR \_\_\_\_\_

Preproposal Statement of Inquiry was filed as WSR 22-21-096 ; or

Expedited Rule Making--Proposed notice was filed as WSR \_\_\_\_\_; or

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or

Proposal is exempt under RCW \_\_\_\_\_.

Title of rule and other identifying information: (describe subject)

Amending:

WAC 192-500-195 Placement.

WAC 192-510-010 Election, withdrawal, and cancellation of coverage.

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

WAC 192-800-150 Can an employee designate a representative to act on their behalf?

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
May 9, 2023	9:00 a.m.	Microsoft TEAMS  Join online: link available at <a href="https://paidleave.wa.gov/rulemaking">paidleave.wa.gov/rulemaking</a>  Join by phone: 564-999-2000 PIN: 853 918 562#	Hearing will be held remotely

Date of intended adoption: On or after May 16, 2023 (Note: This is **NOT** the **effective** date)

Submit written comments to:

Name: Janette Benham

Address: Employment Security Department, PO Box 9046  
Olympia, WA 98507-9046

Email: [rules@esd.wa.gov](mailto:rules@esd.wa.gov)

Fax:

Other:

By (date) May 9, 2023

Assistance for persons with disabilities:

Contact Teresa Eckstein, State EO Officer

Phone: 360-480-5708

Fax:

TTY:

Email: [teckstein@esd.wa.gov](mailto:teckstein@esd.wa.gov)

Other:

By (date) May 2, 2023

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** The Paid Family and medical Leave (PFML) program (Title 50A RCW) is proposing amendments to existing rules to provide additional clarity and improve program operations.

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 the Long-Term Services and Supports Trust (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.

**Reasons supporting proposal:** The proposed amendments to WAC 192-500-195 provide clear direction when determining eligibility for family leave to bond with the employee's child.

The proposed amendments to WAC 192-510-010 clarify eligibility requirements for self-employed individuals who elect PFML coverage.

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 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 does not 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 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 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 determinations.

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.

**Statutory authority for adoption:** RCW 50A.05.060; RCW 50A.10.010

**Statute being implemented:** RCW 50B.04.020(4)(c); RCW 50B.04.080(4)(b); RCW 50A.05.010; RCW 50A.10.010; RCW 50A.10.030

**Is rule necessary because of a:**

- |                         |                              |  |
|-------------------------|------------------------------|--|
| Federal Law?            | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| Federal Court Decision? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| State Court Decision?   | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

If yes, CITATION:

**Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:**

**Type of proponent:**  Private  Public  Governmental

**Name of proponent:** (person or organization) Employment Security Department, Leave and Care Division

**Name of agency personnel responsible for:**

	Name	Office Location	Phone
Drafting:	April Amundson	Olympia, WA	360-485-2816
Implementation:	April Amundson	Olympia, WA	360-485-2816
Enforcement:	April Amundson	Olympia, WA	360-485-2816

**Is a school district fiscal impact statement required under [RCW 28A.305.135](#)?**  Yes  No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

- Name:
- Address:
- Phone:
- Fax:
- TTY:
- Email:

Other:

**Is a cost-benefit analysis required under [RCW 34.05.328](#)?**

Yes: A preliminary cost-benefit analysis may be obtained by contacting:

Name: Janette Benham

Address: Employment Security Department, PO Box 9046, Olympia, WA 98507-9046

Phone: 360-790-6583

Fax:

TTY:

Email: [rules@esd.wa.gov](mailto:rules@esd.wa.gov) – Also posted online at [paidleave.wa.gov/rulemaking](http://paidleave.wa.gov/rulemaking)

Other: WAC 192-540-030 What are employers required to report to the department? This rule requires a cost-benefit analysis.

No: Please explain: WAC 192-500-195 Placement. This rule is exempt under RCW 34.05.328(5)(c)(ii) because it is an interpretive rule that sets forth the agency's interpretation of statutory provisions. Interpretive rules are not significant legislative rules under RCW 34.05.328 (5)(c)(iii).

WAC 192-510-010 Election, withdrawal, and cancellation of coverage. This rule is exempt under RCW 34.05.328(5)(c)(ii) because it is an interpretive rule that sets forth the agency's interpretation of statutory provisions. Interpretive rules are not significant legislative rules under RCW 34.05.328 (5)(c)(iii).

WAC 192-800-150 Can an employee designate a representative to act on their behalf? A portion of this rule is exempt under RCW 34.05.328(5)(c)(ii) because it is an interpretive rule that sets forth the agency's interpretation of statutory provisions. Interpretive rules are not significant legislative rules under RCW 34.05.328 (5)(c)(iii). A portion of this rule is exempt under RCW 34.05.328(5)(b)(iv) because it corrects a reference to a repealed RCW pointer without changing the rule's effect.

**Regulatory Fairness Act and Small Business Economic Impact Statement**

Note: The [Governor's Office for Regulatory Innovation and Assistance \(ORIA\)](#) provides support in completing this part.

**(1) Identification of exemptions:**

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see [chapter 19.85 RCW](#)). For additional information on exemptions, consult the [exemption guide published by ORIA](#). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.061](#) because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by [RCW 34.05.313](#) before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of [RCW 15.65.570\(2\)](#) because it was adopted by a referendum.

This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.025\(3\)](#). Check all that apply:

[RCW 34.05.310](#) (4)(b)  
(Internal government operations)

[RCW 34.05.310](#) (4)(e)  
(Dictated by statute)

[RCW 34.05.310](#) (4)(c)  
(Incorporation by reference)

[RCW 34.05.310](#) (4)(f)  
(Set or adjust fees)

[RCW 34.05.310](#) (4)(d)  
(Correct or clarify language)

[RCW 34.05.310](#) (4)(g)  
((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit)

This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.025\(4\)](#) (does not affect small businesses).

This rule proposal, or portions of the proposal, is exempt under RCW \_\_\_\_\_.

Explanation of how the above exemption(s) applies to the proposed rule:

**(2) Scope of exemptions: Check one.**

The rule proposal is fully exempt (*skip section 3*). Exemptions identified above apply to all portions of the rule proposal.

The rule proposal is partially exempt (*complete section 3*). The exemptions identified above apply to portions of the rule proposal, but less than the entire rule proposal. Provide details here (consider using [this template from ORIA](#)):

	Proposed WAC Sections and Title	This proposed rule section is <u>not exempt</u> - Analysis is required	This proposed rule section is <u>exempt</u> . Provide RCW to support this exemption.
1.	WAC 192-500-195 Placement.	<input type="checkbox"/>	RCW 19.85.025(4) – The rule does not affect businesses and pertains only to individuals applying for PFML benefits.
2.	WAC 192-510-010 Election, withdrawal, and cancellation of coverage.	<input type="checkbox"/>	RCW 19.85.025(4) – The rule does not affect businesses and pertains only to individuals applying for PFML benefits.
3.	WAC 192-540-030 What are employers required to report to the department?	<input checked="" type="checkbox"/>	
4.	WAC 192-800-150 Can an employee designate a representative to act on their behalf?	<input type="checkbox"/>	RCW 19.85.025(4) – The rule does not affect businesses and pertains only to applicants and representatives acting on their behalf in order to claim PFML benefits. RCW 34.05.310(4)(d) – A portion of the rule corrects a reference to a previously repealed statute without changing the effect.

The rule proposal is not exempt (*complete section 3*). No exemptions were identified above.

**(3) Small business economic impact statement:** *Complete this section if any portion is not exempt.*

If any portion of the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

No Briefly summarize the agency's minor cost analysis and how the agency determined the proposed rule did not impose more-than-minor costs. 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. This cost does not exceed the minor cost threshold estimates for businesses affected (using all NAICS codes for WA employers required to submit quarterly reports), therefore a Small Business Economic Impact Statement is not required under RCW 19.85.030.

Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses and a small business economic impact statement is required. Insert the required small business economic impact statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

Name:  
Address:  
Phone:  
Fax:  
TTY:  
Email:  
Other:

**Date:** April 4, 2023

**Name:** April Amundson

**Title:** Policy and Rules Manager, Leave and Care Programs

**Signature:**

A handwritten signature in black ink, appearing to read 'April Amundson', written in a cursive style.