

Paid Family and Medical Leave

**Placement, self-employed elective coverage,
employer reporting, and designated representative**

May 2023

REASONS FOR ADOPTING THE RULE

Rulemaking history:

CR-101 filed: October 17, 2022 as WSR # 22-21-096

Stakeholder meeting: March 21, 2023

CR-102 filed: April 4, 2023 as WSR # 23-08-075

Public rulemaking hearing: May 9, 2023

CR-103 filed as WSR # 23-11-083 and rules adopted: May 17, 2023

Rules effective: July 1, 2023

This Concise Explanatory Statement is regarding adoption of the following amended rules:

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))~~ 18 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))~~ 12-month period beginning on the date the child was first placed in the home.

Concise Explanatory Statement
**Placement, self-employed elective coverage,
employer reporting, and designated representative**

(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))~~ 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))~~ 12 months after that child is first placed in the employee's home.

Reason for rule: The adopted amendments clarify the definition of placement by outlining circumstances that will not qualify for paid family leave to bond with the employee's child.

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)~~ (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.

~~((5))~~ (6) Any self-employed person or federally recognized tribe may file a notice of withdrawal within ~~((thirty))~~ 30 calendar days after the end of each period of coverage.

~~((6))~~ (7) A notice of withdrawal from coverage must be submitted to the department online or in another format approved by the department.

~~((7))~~ (8) 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.

Reason for rule: The adopted 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.

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.

~~((2))~~ (3) The report must include the total amount of premiums deducted from all employees' wages, if any, during the calendar quarter.

~~((3))~~ (4)(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.

Reason for rule: The adopted 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 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. The amendments will help ensure that employers report correct information to the department, including when no wages are paid during any given quarter. 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.

Adding employees' dates of birth to employer reports 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 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.

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 claims 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.

Reason for rule: The adopted 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.

VARIANCE BETWEEN PROPOSED RULE AND FINAL RULE

No changes were made between the proposed rules and the final, adopted rules.

SUMMARY OF COMMENTS TO PROPOSED RULES AND AGENCY RESPONSE

Referenced rule: WAC 192-540-030	From: Barb Leeming	Source of comment: Email
<p>Comment: I am a bookkeeper for multiple companies and am writing about the proposed changes for the Paid Family & Medical Leave Reporting. In my opinion it completely makes sense to have a checkbox for a company when there is no payroll, BUT there has to be a way to take a company off the list when they are no longer doing payroll as well. I have several companies I do payroll for and one of the companies I have set up in my list is not longer doing payroll (they haven't had it for a few years now). I called to find out how to remove the company from the list (the only payroll was to the owners of the company) and was told there is no way to remove it.</p> <p>As far as listing birthdates of employees when reporting, before making those kinds of changes you really need to fix what you already have. When uploading a report there is no way to see what has been uploaded. With the WA unemployment upload you can go in and see the uploaded list to check for any errors before submitting the report. You also get a confirmation when a report is submitted and paid. None of these things are available when reporting PFML unless something has changed in the last couple of months. You cannot see what has been uploaded so there is no way to know if something is incorrect. There is also no confirmation given when the payment is made. You just have to wait and see if it comes out of the account. Please fix what you already have before requiring more information from companies.</p>		
<p>Agency response: Thank you for your comments. The department understands there are things that are frustrating for employers when reporting and we are working on improvements. Your comments have been forwarded to our development team for future improvements. In July, employers with full access will see some improvements to the employer reporting portal to include the following:</p> <ul style="list-style-type: none"> • Employer Account Activity showing invoiced amounts and posted payments; and • The ability to see filing errors and warnings for all submitted reports. 		

Referenced rule: WAC 192-540-030	From: Candus Pollard, Lindsay Forest Products	Source of comment: Email
<p>Comment: Please do not make it more complicated and more cumbersome than it is. What do you need birth dates anyway, you have the social. Stop making rules just to make rules.</p>		
<p>Agency response: Thank you for your comments. Adding employees' dates of birth to employer reports 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 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.</p>		

Concise Explanatory Statement
**Placement, self-employed elective coverage,
employer reporting, and designated representative**

Referenced rule: WAC 192-540-030	From: Cynthia Schwartz	Source of comment: Email
<p>Comment: With all due respect, I object to this legislation and the rules requiring participation by my firm. I am winding down my practice; I am only practicing part time now, and anticipate being totally retired in the next year or so. I should not have to be paying for premiums for a benefit I will never use. My assistant who has been with me for 40 years will also be retiring. I respectfully request a revision of the reporting and premium requirements based on age and anticipated withdrawal from the labor force within the next year.</p>		
<p>Agency response: Thank you for your comments. Titles 50A and 50B RCW outline participation requirements for the Paid Family and Medical Leave and WA Cares Fund programs. Any changes to participation requirements must be done by the legislature. The department cannot adopt rules that conflict with these statutes.</p>		

Referenced rule: WAC 192-540-030	From: Dawn L. Wilson, Branch Business Services	Source of comment: Email
<p>Comment: I strongly propose the following be added to your rule making decision for ESD filed CR-102. Please add: 1) Taxpayers would really like to have available a copy of the actual report with the submitted data not just a page with a long confirmation asserted on it. 2) The tax liability amount automatically generated on the voucher form for the taxpayer. 3) The taxpayers would really appreciate the date due be extended to the end of the month like all other payroll tax liabilities as opposed to the required 10 days. Your consideration to this request would be greatly appreciated.</p>		
<p>Agency response: Thank you for your comments. The department understands there are things that are frustrating for employers when reporting and we are working on improvements. Your comments have been forwarded to our product development team for future improvements. In July employers with full access will see some improvements to the employer reporting portal to include the following:</p> <ul style="list-style-type: none"> • Employer Account Activity showing invoiced amounts and posted payments; and • The ability to see filing errors and warnings for all submitted reports. <p>Employer reports and payments are due by the last day of the month that follows the calendar quarter. Additional information regarding employer reports and payments can be found on our website at paidleave.wa.gov/reporting.</p>		

**Placement, self-employed elective coverage,
employer reporting, and designated representative**

Referenced rule: WAC 192-540-030	From: Jimmie Britton, Kirkpatrick, Utgaard, & Perry	Source of comment: Email
<p>Comment: I believe the one rule change should be corporate officers and owners that get W2 wages should be exempt from the Paid Family Leave. If these multiple changes that are coming and even if they don't the reporting should be made less cumbersome and possibly combined with Employment Security reporting since the information is pretty much the same and only one report would be needed to report both taxes. You need to make things easier for the employer and those who submit reports for employers. Too much time is being spent filing what should be simple reports.</p>		
<p>Agency response: Thank you for your comments. Making corporate officers exempt from Paid Family and Medical Leave would require the legislature to change definitions in RCW 50A.05.010. The department is unable to adopt rules that conflict with statute. The department understands there are things that are frustrating for employers when reporting and we are working on improvements. Your comments have been forwarded to our product development team for future improvements.</p>		

Referenced rule: WAC 192-540-030	From: Mary Schwedland, Frahm & Associates, CPAs, PLLC	Source of comment: Hearing
<p>Comment: I feel that this rule would put an unnecessary burden on us because we have a lot of annual payrolls that we file and our payroll partner, Patriot Software, has a hard time filing the zero reports for L&I, and for other requirements for Washington State. Having to put Paid Family and Medical leave as a zero report every quarter could mess the software up.</p>		
<p>Agency response: Thank you for your comments. The department offers assistance with issues employers and employer agents have when preparing and filing quarterly reports. Please relay this information to Patriot Software so they can reach out to our employer reporting team at esdgppfmlcompliance@esd.wa.gov.</p>		

Referenced rule: WAC 192-540-030	From: Veronica Castro, Inuit Payroll	Source of comment: Hearing
<p>Comment: My comment is regarding the second requirement which is to add the employees' dates of birth to the quarterly wage reports. It will put a burden on employers since all employers today when using our payroll services, aren't required to provide us with the birthdate. Not a lot of agencies request that information and that's why it's not a required data element that we collect. Not a lot of employers collect that information from employees either. There are agencies that have new hire reporting, and depending on the agency, we do ask for that information, but again it would make employers try to get that information from employees. Again, it's not typical for most of the agency reporting that we do.</p>		
<p>Agency response: Thank you for your comments. Adding employees' dates of birth to employer reports will assist with ensuring employee work history and premium assessments are complete. RCW 50B.04.080</p>		

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 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.

Referenced rule: WAC 192-540-030	From: Fawn Butler, FBCPA Group, PS Inc	Source of comment: Hearing
Comment: Thank you for your comments. We provide payroll for clients, and I think the requirement to provide date of birth would put an unnecessary burden on certain employers, specifically, employers who use union labor. Oftentimes they are getting sparse information from people coming out of the union hall and it does not include date of birth. That’s not something they are currently collecting, and it would be an unnecessary burden on them.		
Agency response: Adding employees’ dates of birth to employer reports 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 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.		