

**Paid Family and Medical Leave -
Proposed amended rules related to implementation of
Substitute Senate Bill (SSB) 5286, SSB 5586, and public
records requests**

September 2023

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. In addition, SSB 5286 and SSB 5586 passed during the 2023 legislative session. The proposed rules implement changes made by this legislation and align PFML rules regarding public records requests with agency rules that are already in place.

SSB 5286 made changes to RCW 50A.10.030 regarding how the annual premium rate is calculated for employers and employees. SSB 5586 made changes to RCW 50A.25.040 that will allow employers to access information about current employees to include the type of leave being taken, the requested duration of leave including the approved dates of leave, and whether the employee was approved for benefits and was paid for any given week.

The proposed rules implement SSB 5286 by clarifying how the department must annually calculate the PFML premium rate for employers and employees and clarifying that there's a difference in premium rate calculation for 2024 and thereafter. The proposed rules implement SSB 5586 by clarifying that employee information for the purposes of RCW 50A.25.040(3), which was changed by SSB 5586, will be available to an employer from whom leave is being taken. The PFML program is also proposing amendments regarding public records rules to eliminate redundancies and refer to agency rules regarding records requests.

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 (Amending WSR 20-20-074, filed 10/2/20, effective 11/2/20)

WAC 192-500-035 Interested parties. (1) In all determinations, cases, and appeals adjudicated under Title 50A RCW the employment security department is an "interested party."

(2) Other interested parties in paid family or medical leave determinations related to the state plan, complaints under chapter 50A.40 RCW, and appeals include:

(a) The employee or former employee; and

(b) An employer or former employer of that employee that is required to provide information to the department related to the determination or appeal in question.

(3) Other interested parties in paid family or medical leave determinations related to an approved voluntary plan include:

(a) The employer or former employer; and

(b) An employee or former employee.

(4) The department may designate an employee or employer as an interested party in other determinations made by the department.

(5) For the purposes of RCW 50A.25.040(3), an employer from whom leave is being taken is considered an interested party.

Explanation of proposed rule: The proposed amendments implement SSB 5586 and clarify that employee information for the purposes of RCW 50A.25.040(3), which was added by SSB 5586, is available to an employer from whom leave is being taken.

AMENDATORY SECTION (Amending WSR 20-20-073, filed 10/2/20, effective 11/2/20)

WAC 192-510-090 How will the department determine the premium rate for each calendar year? (1) For calendar years 2021 ((and thereafter)), 2022, and 2023, 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))~~ (a) 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))~~ (b) 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.

(2) For calendar years 2024 and thereafter, the total premium rate shall be based on the calculation specified in RCW 50A.10.030.

(3) For the purposes of the calculation described in subsection (2) of this section, a small business grant paid to an employer as specified by chapter 50A.24 RCW shall be considered a benefit paid.

Explanation of proposed rule: The proposed amendments implement SSB 5286 and establish how the department must annually calculate the PFML premium rate for employers and employees. The amendments clarify that there's a difference in premium rate calculation for 2024 and thereafter.

AMENDATORY SECTION (Amending WSR 20-01-087, filed 12/12/19, effective 1/12/20)

WAC 192-810-010 Definitions. (1) The definitions set forth in RCW 42.56.010 and WAC 192-02-020 apply to this chapter unless the context clearly (~~requires~~) indicates otherwise.

(2) (~~"Public records officer" means the departmental employee responsible for responses to requests for public records or that person's designee.~~

~~(3) "Department" means the employment security department.~~

(4)) An employer's "own records" as used in RCW 50A.25.040 means records and information provided to the department by the employer or the employer's predecessor in interest.

Explanation of proposed rule: The proposed amendments refer to agency rules in WAC 192-02-020 and eliminate a redundancy. One subsection was kept because it is specific to PFML.

REPEALER

~~**WAC 192-810-020 Purpose.** The purpose of this chapter is to provide rules for the paid family and medical leave program in implementing chapter 42.56 RCW relating to public records and chapter 50A.25 RCW relating to records and information deemed private and confidential by the paid family and medical leave program.~~

Explanation of repealed rule: The proposed repeal eliminates a redundancy because the purpose is already addressed in agency rules under WAC 192-02-010.

AMENDATORY SECTION (Amending WSR 21-04-067, filed 1/29/21, effective 3/1/21)

WAC 192-810-030 How do individuals and entities request records from the department? (1) The department will manage (~~all~~) records requests (~~consistent with the provisions of chapter 42.56 RCW~~) as outlined in chapter 192-02 WAC.

(2) (~~Requests for public records shall be submitted to the public records officer. Contact the public records officer at:~~

~~Public Records Officer~~

~~P.O. Box 9046~~

~~Olympia, WA 98507-9046~~

~~Phone: 1-844-766-8930~~

~~Email: Recordsdisclosure@esd.wa.gov~~

(3)) If an individual requests records or information concerning that individual held by the department under RCW 50A.25.040, those records must be released only to the requesting individual.

((4)) (3) If an individual submits a records request and asks that the requested records be sent to a third party directly, the individual must follow the provisions of RCW 50A.25.040.

Explanation of proposed rule: The proposed amendments refer to agency rules in Chapter 192-02 WAC and eliminate redundant information regarding how to request records. The information that isn't changed or eliminated in this rule is specific to PFML privacy provisions in RCW 50A.25.040.

Is a Significant Analysis required for these rules?

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 192-500-035	Interested parties.	The content is explicitly and specifically dictated by statute (RCW 50A.25.040(3)).	RCW 34.05.328(5)(b)(v)
WAC 192-510-090	How will the department determine the premium rate for each calendar year?	The calculation is explicitly and specifically dictated by statute (RCW 50A.010.030). The rule relates only to internal governmental operations that are not subject to violation by a nongovernment party.	RCW 34.05.328(5)(b)(v) RCW 34.05.328(5)(b)(ii)
WAC 192-810-010	Definitions.	The amendments relate only to internal governmental operations that are not subject to violation by a nongovernment party.	RCW 34.05.328(5)(b)(ii)
WAC 192-810-020	Purpose.	The repeal relates only to internal governmental operations that are not subject to violation by a nongovernment party.	RCW 34.05.328(5)(b)(ii)
WAC 192-810-030	How do individuals and entities request records from the department?	The amendments relate only to internal governmental operations that are not subject to violation by a nongovernment party.	RCW 34.05.328(5)(b)(ii)

Clearly state in detail the general goals and specific objectives of the statute that the rules implement.

The department is required under RCW 50A.10.030 to calculate the annual PFML premium rate for employers and employees. Amendments to WAC 192-510-090 implement changes made by SSB 5286, which passed during the 2023 legislative session, and clarify how the premium rate will be calculated. The rule specifies the internal process the department will use to calculate the premium rate.

SSB 5586, which also passed during the 2023 legislative session, made changes to RCW 50A.25.040 that allow employers to access information about current employees to include the type of leave being taken, the requested duration of leave including the approved dates of leave, and whether the employee was approved for benefits and was paid for any given week. Amendments to WAC 192-500-035 specify that the employer from whom leave is being taken is considered an interested party and may have access to that information.

The amendments to WAC 192-810-010 and WAC 192-810-030, and the repeal of WAC 192-810-020 regarding public records requests eliminate redundancies and refer to agency rules already in place in Chapter 192-02 WAC. The goal is to align rules related to public records requests made for PFML with agency rules that are already in place. Portions of the rules were not changed that are specific to PFML records and privacy provisions.

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 implement SSB 5286 and SSB 5586 to provide clear requirements for changes to the law that were passed during the 2023 legislative session. In addition to implementing legislation, the proposed amendments eliminate redundancies regarding public records requests and align with agency rules that are already in place. Adopting these rule amendments will provide clear guidance regarding new requirements for annual premium calculations, public records, and will enable an employer from whom leave is being taken to be an “interested party” with access to information about current employees to include the type of leave being taken, the requested duration of leave including the approved dates of leave, and whether the employee was approved for benefits and was paid for any given week. The consequences of not adopting the rules would be continued lack of clarity for employers, employees, and anyone requesting public records for the PFML program.

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.

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 Title 50A and will provide clarification to the public. No alternative versions of the rules were considered. These rules were determined to be the least burdensome for those required to comply with them because they provide needed clarification regarding premium rate calculation, public records requests, and employer access to information.

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, there is no evidence to suggest that any proposed rule will have a measurably different impact between the two sectors. In addition, the same requirements for requesting public records apply to both public and private sector employees.

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 50A.25.040(3), RCW 50A.10.030, and chapter 42.56 RCW. They do not conflict with any federal, state, or local laws.