



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: September 19, 2023

TIME: 3:32 PM

WSR 23-19-086

Agency: Employment Security Department

Original Notice

Supplemental Notice to WSR _____

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR 23-11-082 ; 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 192-500-035 Interested parties.

WAC 192-510-090 How will the department determine the premium rate for each calendar year?

WAC 192-810-010 Definitions.

WAC 192-810-030 How do individuals and entities request records from the department?

Repealing:

WAC 192-810-020 Purpose.

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
October 26, 2023	9:00 a.m.	Microsoft TEAMS Join online: link available at paidleave.wa.gov/rulemaking Join by phone: 564-999-2000 PIN: 400 151 166#	Hearing will be held remotely

Date of intended adoption: On or after November 2, 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

Fax:

Other:

By (date) October 26, 2023

Assistance for persons with disabilities:

Contact Teresa Eckstein, State EO Officer

Phone: 360-480-5708

Fax:

TTY:

Email: teckstein@esd.wa.gov

Other:

By (date) October 19, 2023

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The Paid Family and Medical Leave (PFML) program is proposing amendments to existing rules to implement Substitute Senate Bill (SSB) 5286 (Chapter 116, Laws of 2023) and SSB 5586 (Chapter 375, Laws of 2023). 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, the remaining hours of leave available in the employee's entitlement, the weekly benefit amount, and the actual benefits paid and hours claimed each week.

The PFML program is also proposing amendments regarding public records rules to eliminate redundancies and refer to agency rules regarding records requests.

Reasons supporting proposal: The proposed amendments to WAC 192-500-035 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.

The proposed amendments to WAC 192-510-090 implement SSB 5286 and establish how the Employment Security 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.

The proposed amendments to WAC 192-810-010 and WAC 192-810-030 and the repeal of WAC 192-810-020 align PFML rules with agency rules in Chapter 192-02 WAC.

Statutory authority for adoption: RCW 50A.05.060; RCW 50A.25.040; 50A.10.030

Statute being implemented: RCW 50A.25.040; 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:
Address:
Phone:
Fax:
TTY:
Email:
Other:

No: Please explain: WAC 192-500-035 Interested parties. This rule is exempt under RCW 34.05.328(5)(b)(v) because the content is explicitly and specifically dictated by RCW 50A.25.040(3).

WAC 192-510-090 How will the department determine the premium rate for each calendar year? The rule is exempt under RCW 34.05.328(5)(b)(v) because the calculation is explicitly and specifically dictated by RCW 50A.10.030. The rule is also exempt under RCW 34.05.328(5)(b)(ii) because it relates only to internal governmental operations that are not subject to violation by a nongovernment party.

WAC 192-810-010 Definitions. This rule is exempt under RCW 34.05.328(5)(b)(ii) because it relates only to internal governmental operations that are not subject to violation by a nongovernment party.

WAC 192-810-020 Purpose. The repeal of this rule is exempt under RCW 34.05.328(5)(b)(ii) because it relates only to internal governmental operations that are not subject to violation by a nongovernment party.

WAC 192-810-030 How do individuals and entities request records from the department? The rule is exempt under RCW 34.05.328(5)(b)(ii) because it relates only to internal governmental operations that are not subject to violation by a nongovernment party.

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:

- | | |
|--|--|
| <input checked="" type="checkbox"/> RCW 34.05.310 (4)(b)
(Internal government operations) | <input checked="" type="checkbox"/> RCW 34.05.310 (4)(e)
(Dictated by statute) |
| <input checked="" type="checkbox"/> RCW 34.05.310 (4)(c)
(Incorporation by reference) | <input checked="" type="checkbox"/> RCW 34.05.310 (4)(f)
(Set or adjust fees) |
| <input type="checkbox"/> RCW 34.05.310 (4)(d)
(Correct or clarify language) | <input type="checkbox"/> 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 not exempt - Analysis is required	This proposed rule section is exempt . Provide RCW to support this exemption.
1.	WAC 192-500-035 Interested parties.	<input type="checkbox"/>	RCW 34.05.310(4)(e) – The content is explicitly and specifically dictated by statute (RCW 50A.25.040(3)).
2.	WAC 192-510-090 How will the department determine the premium rate for each calendar year?	<input type="checkbox"/>	RCW 34.05.310(4)(e) – The content regarding the rate calculation is explicitly and specifically dictated by statute (RCW 50A.10.030). RCW 34.05.310(4)(b) – The amendments relate only to internal governmental operations. RCW 34.05.310(4)(f) – The rule sets premium rates pursuant to legislative standards.
3.	WAC 192-810-010 Definitions.	<input type="checkbox"/>	RCW 34.05.310(4)(b) – The amendments relate only to internal governmental operations. RCW 34.05.310(4)(c) – The amendments incorporate by reference another agency rule (WAC 192-02-020) without material change, adopt an already established process,

			and the referenced rule has already been analyzed under previous rulemaking.
4.	WAC 192-810-020 Purpose.	<input type="checkbox"/>	RCW 34.05.310(4)(b) – The repeal relates only to internal governmental operations. RCW 34.05.310(4)(c) – The repeal eliminates a redundancy that is already referenced in another agency rule (WAC 192-02-010) without material change, and the agency rule has already been analyzed under previous rulemaking.
5.	WAC 192-810-030 How do individuals and entities request records from the department?	<input type="checkbox"/>	RCW 34.05.310(4)(b) – The amendments relate only to internal governmental operations. RCW 34.05.310(4)(c) – The amendments incorporate by reference other agency rules (Chapter 192-02 WAC) without material change, adopt an already established process, and the referenced rules have already been analyzed under previous rulemaking.

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.
- 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: September 19, 2023

Name: April Amundson

Title: Policy and Rules Manager, Leave and Care Programs

Signature:

