



Paid Family and Medical Leave - Proposed amended rules related to the definition of placement and precedential decisions

March 2024

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.

The proposed amendments clarify under which circumstances family leave can be taken to bond with a child placed in the home. Clarification was also added that an employee is only entitled to a maximum of 12 weeks of family leave for the placement of a child.

The proposed amendments also outline that a decision appealed to the Commissioner's Review Office may be made available to the public and that all personal identifying information will be redacted. If a Commissioner's decision is appealed to Superior Court, the department is required to file the record unsealed and court rules will apply if an interested party moves to seal the record.

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 23-11-083, filed 5/17/23, effective 7/1/23)

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, or legal adoption of a child under the age of 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; or

(e) A legally finalized adoption as described in chapter 26.33 RCW.

(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 12-month period (~~(beginning on)~~):

(a) From the date the child was first placed in the home; or

(b) From the date the child's adoption was legally finalized as described in chapter 26.33 RCW if no leave was taken within 12 months of when 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) 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 12 months after that child is first placed in the employee's home, except for leave taken under subsection (1)(e) of this section.

(6) An employee is only entitled to a maximum of 12 weeks of family leave for the placement of a child.

Explanation of proposed rule: The proposed amendments clarify under which circumstances family leave can be taken to bond with a child placed in the home. Clarification was also added that an employee is only entitled to a maximum of 12 weeks of family leave for the placement of a child. The amendments allow qualifying leave to be taken either within 12 months of the date a child is physically placed in the employee's home or within 12 months of the date a child's adoption is legally finalized. The change will provide clarity regarding family leave that can be taken to bond with a child placed in the home.

AMENDATORY SECTION (Amending WSR 21-11-009, filed 5/7/21, effective 6/7/21)

WAC 192-800-155 When are proceedings open to the public, and what information from a proceeding before the appeal tribunal or commissioner is publicly disclosable? (1) To maintain confidentiality of records under chapter 50A.25 RCW:

~~((1))~~ (a) All proceedings will be closed to the public unless otherwise agreed upon by all parties appearing for hearing;

~~((2))~~ (b) All proceeding records will be sealed for hearings closed to the public and are not publicly disclosable; and

~~((3))~~ (c) All personal identifying information concerning an individual or employer will be redacted from the record if the hearing is open to the public.

(2) If a decision is appealed to the commissioner's review office, that decision may be published online or in another manner approved by the department. All personal identifying information concerning an individual or employer will be redacted if the decision is made public.

(3) If an interested party appeals a commissioner's decision to superior court, the department will file the record with the court unsealed as required by RCW 34.05.566. Any interested party may move to seal those records under applicable court rules.

Explanation of proposed rule: The proposed amendments outline that a decision appealed to the Commissioner's Review Office may be made available to the public and that all personal identifying information will be redacted. If a Commissioner's decision is appealed to Superior Court, the department is required to file the record unsealed and court rules will apply if an interested party moves to seal the record. The change will allow for publication of decisions appealed to the Commissioner's Review Office. Publishing decisions that set precedent for the PFML program will allow for added transparency and consistency in interpreting the law, from program adjudication through the appeal process.

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 192-500-195	Placement.	The rule 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).	RCW 34.05.328(5)(c)(ii)

WAC 192-800-155	When are proceedings open to the public, and what information from a proceeding before the appeal tribunal or commissioner is publicly disclosable?	The rule is a procedural rule related to agency hearings. Procedural rules are not significant legislative rules under RCW 34.05.328(5)(c)(iii).	RCW 34.05.328(5)(c)(i)(A)
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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.”

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 allow qualifying leave to be taken *either* within 12 months of the date a child is physically placed in the employee’s home or within 12 months of the date a child’s adoption is legally finalized. The change will provide clarity to applicants regarding family leave that can be taken to bond with a child placed in the home. Clarification was also added that an employee is only entitled to a maximum of 12 weeks of family leave for the placement of a child. The

consequences of not adopting the rules would be continued lack of clarity and support for applicants who may be eligible for family leave to bond with a child placed in the home.

The proposed amendments to WAC 192-800-155 provide clarity regarding appeals and decisions made by the Commissioner's Review Office. The rules outline that a decision appealed to the Commissioner's Review Office may be made available to the public and that all personal identifying information will be redacted. If a Commissioner's decision is appealed to Superior Court, the department is required to file the record unsealed and court rules will apply if an interested party moves to seal the record. This will assist the public by allowing publication of decisions appealed to the Commissioner's Review Office. Publishing decisions that set precedent for the PFML program will allow for added transparency and consistency in interpreting the law, from program adjudication through the appeal process.

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 family leave to bond with a child placed in the home and offer guidance regarding precedential decisions made by the Commissioner's Review Office and how the department will file cases that may be appealed to Superior Court.

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.

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.05.010, RCW 50A.15.020, and chapter 50A.50 RCW. They do not conflict with any federal, state, or local laws.