

**Paid Family and Medical Leave -
Proposed new chapter of rules to implement the
transportation network company pilot program created
under Substitute House Bill 1570 (2023)**

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.

Substitute House Bill 1570 (Chapter 451, Laws of 2023) passed the legislature in 2023. Among other things, the bill created a pilot program for transportation network company (TNC) drivers to elect coverage in to the PFML program. The provisions of the pilot were codified in statute under RCW 46.72B.200 and RCW 50A.25.040.

The proposed new chapter of rules under Title 192 WAC creates standards and provides explanations for how a TNC driver will elect coverage in to the PFML program. The proposed new chapter also sets the rights and responsibilities for TNCs related to the pilot program. The Employment Security Department (department) is given explicit rulemaking authority to set standards for the pilot program under RCW 46.72B.200(9).

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.

NEW SECTION

WAC 192-511-005 Definitions applicable to the transportation network company pilot program. The following definitions are applicable under chapter 192-511 WAC.

- (1) "Compensation" has the same meaning as defined in RCW 49.46.300.
- (2) "Department" means the employment security department.
- (3) "Digital network" has the same meaning as defined in RCW 49.46.300.

(1) “Pilot program” refers to the temporary program providing elective coverage to transportation network company drivers created under chapter 451, law of 2023. The pilot program is effective from July 1, 2024, through December 31, 2028.

(2) “Third party” means a designated representative that is authorized to conduct business on behalf of the transportation network company driver. To represent a driver before the department, the driver or third party must submit documentation in a format approved by the department. The driver is responsible for all acts taken or failures to act by the third party on the driver’s behalf.

(3) A “Transportation network company” has the same meaning as defined in RCW 46.04.652.

(4) A “Transportation network company driver” has the same meaning as commercial transportation services provider driver in RCW 48.177.005.

Explanation of proposed rule: The proposed new rule provides definitions for terms that may be used throughout the pilot. The proposed section largely refers to definitions that are found in statute, with reference to the specific statute. It also clarifies that “department” refers to the Employment Security Department and provides a definition for “pilot program” and “third party”.

NEW SECTION

WAC 192-511-010 How do transportation network company drivers elect paid family and medical leave coverage?

(1) Notice of election of coverage must be submitted to the department online or in another format approved by the department. Either the department or the third party if designated by a driver, may inform transportation network companies of a driver’s election of coverage into the pilot program.

(2) Election of coverage begins on the first day of the quarter immediately following the notice of election.

(3) A transportation network company driver electing coverage is eligible for family and medical leave after working 820 hours in the state during the qualifying period following the effective date of coverage.

(4) Any transportation network company driver or third party may file a notice of withdrawal within thirty days after the end of each quarterly period of coverage. The withdrawal will take effect the first day of the following quarter.

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

(6) 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 quarterly period of coverage.

(7) Transportation network company drivers electing coverage must elect both family and medical leave and are responsible for 100 percent of all premiums assessed to an employee under RCW 50A.10.030.

Explanation of proposed rule: The proposed new rule provides direction for drivers interested in participating in the pilot program. The proposed language largely mirrors self-employed elective coverage rules currently in place for PFML elective coverage participants outside of the pilot under chapter 192-510 WAC.

NEW SECTION

WAC 192-511-015 Transportation network company rights and responsibilities.

(1) By the 15th day of the month following the end of a calendar quarter, transportation network companies must report to each driver in Washington who opted in to the pilot program, and to the driver's third party representative when so designated by a driver, the total amount of compensation that the driver earned providing network services through the transportation network company's digital network in that quarter. The transportation network company shall share data with the third party representative in a standard format approved by the department to facilitate quarterly reporting and premium payment.

(2) By the 15th day of the month following the driver's deadline for the calendar quarter, the department will provide data to each transportation network company on the drivers who, in that calendar quarter:

(a) Reported and paid all obligated TNC premiums; and

(b) Withdrew or cancelled paid family and medical leave coverage.

(3) Data described in subsection (2) of this section provided by the department includes:

(a) When a driver has elected coverage;

(b) A driver's assessed and paid premiums;

(c) When a driver's elective coverage has been withdrawn or canceled; and

(d) Information related to a third party authorized to be acting on the driver's behalf regarding reporting and paying of premiums.

(e) The data described in this subsection will be provided to transportation network companies until February 15, 2029.

(4) By the 15th day following the receipt of information from the department described under subsection (3) of this section, transportation network companies must pay each driver who elected coverage under WAC 192-511-010 the premiums paid by the transportation network company driver. If the driver has designated a third party representative, then the transportation network companies must pay the third party, rather than the driver, for any premiums paid by the third party on behalf of the transportation network company driver.

(a) For the purposes of this section, compensation does not include any amount listed in RCW 50A.05.010(22)(d).

(b) The requirement to pay premiums under the pilot program ends December 31, 2028.

Explanation of proposed rule: The proposed new rule mirrors language codified from SHB 1570 into RCW 46.72B.200 and RCW 50A.25.040. The proposed language is provided for those who are looking for pilot program requirements within the department's regulations, as much of the language from the bill was codified under statutes related to TNCs and drivers outside of ESD's laws and regulations.

NEW SECTION

WAC 192-511-020 Self-employed elective coverage requirements apply to the pilot program.

As described in RCW 46.72B.200, a driver who opts in to the pilot program is subject to the rights and responsibilities as they apply to self-employed individuals who elect coverage under Title 50A RCW and

Title 192 WAC, with the exception of the period of coverage requirements described under 50A.10.010(1) and WAC 192-510-010.

Explanation of proposed rule: The proposed new rule points to the section of statute that details the requirements of the pilot program and clarifies that current self-employed PFML statutes and administrative regulations apply to pilot program participants, with the exemption of current elective coverage period of coverage requirements, which are specifically exempted under the TNC pilot law.

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 192-511-005	Definitions applicable to the transportation network company pilot.	The section provides definitions that do not subject nongovernment parties to a violation, and they reference definitions found in statute.	RCW 34.05.328(5)(b)(ii) RCW 34.05.328(5)(b)(v)
WAC 192-511-010	How do transportation network company drivers elect paid family and medical leave coverage?	The rule does not subject a person to a penalty or sanction and sets forth the agency’s interpretation of statutory provisions it administers.	RCW 34.05.328(5)(c)(ii)
WAC 192-511-015	Transportation network company rights and responsibilities.	This section restates requirements that are found in laws outside of Title 50A RCW. The rule provides this information for people looking at ESD’s regulations related to the pilot program. It also incorporates language found in RCW 50A.25.040.	RCW 34.05.328(b)(v)
WAC 192-511-020	Self-employed elective coverage requirements apply to the pilot program.	The rule does not subject a person to a penalty or sanction and sets forth the agency’s interpretation of statutory provisions it administers.	RCW 34.05.328(5)(c)(ii)

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.

Proposed new WAC 192-511-005 provides definitions used throughout the new proposed chapter and defines terms that may be used throughout the course of the pilot program. These rules are necessary to provide clarity and consistency in terms used and what they mean in relation to the pilot program.

Proposed new WAC 192-511-010 provides direction for drivers interested in participating in the pilot program. The proposed language largely mirrors self-employed elective coverage rules currently in place for PFML elective coverage participants outside of the pilot under chapter 192-510 WAC.

Proposed new WAC 192-511-015 mirrors language codified from SHB 1570 into RCW 46.72B.200 and RCW 50A.25.040. The proposed language is provided for those who are looking for pilot program requirements within the department's regulations, as much of the language from the bill was codified under statutes related to TNCs and drivers outside of ESD's laws and regulations.

Proposed new WAC 192-511-020 points to the section of statute that details the requirements of the pilot program and clarifies that current self-employed PFML statutes and administrative regulations apply to pilot program participants, with the exemption of current elective coverage period of coverage requirements, which are specifically exempted under the TNC pilot law.

No alternatives to rulemaking were considered for the new sections of rule as they are necessary to implement the pilot program. Not adopting rules would possibly create confusion and ambiguity regarding the requirements and procedures for those interested in participating in the PFML TNC pilot program.

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 new 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 and provide guidance to drivers who would like to participate in the PFML TNC pilot program.

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 rules will achieve the general goals and specific objectives of administering Title 50A RCW and implementing SHB 1570 and will provide clarification to the public. These rules were determined to be the least burdensome for those required to comply with them because they provide needed clarification regarding how to participate in the PFML TNC pilot program.

An alternate version of proposed new WAC 192-511-020 was considered that included the terms "employee" and "employer" that may have conflicted with RCW 49.46.300 stating that TNC drivers are not considered employees if certain conditions are met. Also, the original version did not point to the section outside of ESD law that sets forth the pilot program requirements. The proposed new section eliminates the terms "employee" and "employer" and points to relevant law.

Conflicts with Federal or State law

None of the rules conflict with federal or state law.

Performance impositions on private vs. public sectors

There is no evidence to suggest that any of the proposed new sections of rule will have a measurably different impact between the public versus private 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 46.72B.200, RCW 50A.25.040, and chapter 50A.50 RCW. They do not conflict with any federal, state, or local laws.