



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: March 28, 2024

TIME: 2:27 PM

WSR 24-08-046

Agency: Employment Security Department

- Original Notice
- Supplemental Notice to WSR _____
- Continuance of WSR _____

- Preproposal Statement of Inquiry was filed as WSR 23-11-081 ; 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)
 Creating a new chapter under Title 192 WAC:
 Chapter 192-511 WAC Transportation network company pilot program.
 New WAC 192-511-005 Definitions applicable to the transportation network company pilot program.
 New WAC 192-511-010 How do transportation network company drivers elect paid family and medical leave coverage?
 New WAC 192-511-015 Transportation network company rights and responsibilities.
 New WAC 192-511-020 Self-employed elective coverage requirements apply to the pilot program.

Hearing location(s):

| Date: | Time: | Location: (be specific) | Comment: |
|-------------|-----------|---|-------------------------------|
| May 8, 2024 | 9:00 a.m. | Microsoft TEAMS Join online: link available at paidleave.wa.gov/rulemaking Join by phone: 564-999-2000 PIN: 671 059 998# | Hearing will be held remotely |

Date of intended adoption: On or after May 15, 2024 (Note: This is **NOT** the **effective** date)

| | |
|---|--|
| <p>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) May 8, 2024</p> | <p>Assistance for persons with disabilities: Contact <u>Teresa Eckstein, State EO Officer</u> Phone: 360-480-5708 Fax: TTY: Email: teckstein@esd.wa.gov Other: By (date) May 1, 2024</p> |
|---|--|

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The Paid Family and Medical Leave (PFML) program is proposing a new chapter of rules under Title 192 to implement the pilot program for transportation network company (TNC) drivers (drivers) created under Substitute House Bill 1570 (Chapter 451, Laws of 2023). The law creates a pilot program for drivers to elect PFML coverage with premiums paid by the driver and reimbursed by their transportation network company. The pilot begins July 1, 2024, and ends December 31, 2028.

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

Statutory authority for adoption: RCW 50A.05.060, RCW 46.72B.200

Statute being implemented: RCW 46.72B.200, RCW 50A.25.040, chapter 50A.50 RCW

Is rule necessary because of a:

- Federal Law? Yes No
Federal Court Decision? Yes No
State Court Decision? Yes 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: New WAC 192-511-005 Definitions applicable to the transportation network company pilot program. This rule is exempt under RCW 34.05.328(5)(b)(ii) and RCW 34.05.328(5)(b)(v) because the section provides definitions that do not subject nongovernment parties to a violation, and they reference definitions found in statute.

New WAC 192-511-010 How do transportation network company drivers elect paid family and medical leave coverage? This rule is exempt under RCW 34.05.328(5)(c)(ii) because the rule does not subject a person to a penalty or sanction and sets forth the agency's interpretation of statutory provisions it administers.

New WAC 192-511-015 Transportation network company rights and responsibilities. This section is exempt under RCW 34.05.328(b)(v) because 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.

New WAC 192-511-020 Self-employed elective coverage requirements apply to the pilot program. This section is exempt under RCW 34.05.328(5)(c)(ii) because the rule does not subject a person to a penalty or sanction and sets forth the agency's interpretation of statutory provisions it administers.

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:

- [RCW 34.05.310](#) (4)(b) (Internal government operations)
- [RCW 34.05.310](#) (4)(e) (Dictated by statute)
- [RCW 34.05.310](#) (4)(c) (Incorporation by reference)
- [RCW 34.05.310](#) (4)(f) (Set or adjust fees)
- [RCW 34.05.310](#) (4)(d) (Correct or clarify language)
- [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 exempt. Provide RCW to support this exemption. |
|----|--|---|
| 1. | New WAC 192-511-005 Definitions applicable to the transportation network company pilot program. | RCW 34.05.310(4)(b) – This rule provides definitions for the pilot and are not subject to violation by a nongovernmental party. |
| 2. | New WAC 192-511-010 How do transportation network company drivers elect paid family and medical leave coverage? | RCW 19.85.025(4) – The rule does not affect businesses and pertains only to individuals applying for paid family and medical leave benefits. |
| 3. | New WAC 192-511-015 Transportation network company rights and responsibilities. | RCW 34.05.310(4)(e) – This rule incorporates statutory language found outside of Title 50A RCW, namely language found in RCW 46.72B.200. It also incorporates language found in RCW 50A.25.040. |
| 4. | New WAC 192-511-020 Self-employed elect coverage requirements apply to the pilot program | RCW 19.85.025(4) – This rule does not affect businesses and pertains only to individuals applying for paid family and medical leave benefits. |

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: March 28, 2024

Name: April Amundson

Title: Policy and Rules Manager, ESPI, Leave and Care Programs

Signature:

