

REASONS FOR ADOPTING THE RULE

Rulemaking history:

CR-101 filed: May 17, 2023, WSR # 23-11-081

Stakeholder meeting: March 7, 2024

CR-102 filed: March 28, 2024, WSR # 24-08-046

Public rulemaking hearing: May 8, 2024

CR-103 filed and rules adopted: May 24, 2024, WSR # 24-12-023

Rules effective: July 1, 2024

This Concise Explanatory Statement is regarding adoption of the following new chapter of rules:

NEW CHAPTER

Chapter 192-511 Transportation network company pilot program.

NEW SECTION

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

(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.

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

(5) "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.

(6) A "transportation network company" has the same meaning as defined in RCW 46.04.652.

(7) A "transportation network company driver" has the same meaning as commercial transportation services provider driver in RCW 48.177.005.

Reason for rule: This new rule provides definitions of terms that will be used throughout the course of the pilot and in other sections of the new chapter of rules.

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.

(4) Any transportation network company driver or third party may file a notice of withdrawal within 30 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.

Reason for rule: This new rule describes the process for how a driver will elect coverage into the program; including the requisite number of hours worked in order to gain eligibility, the time in which a driver can withdraw coverage and when that withdrawal will take effect, and includes the requirement that a driver participating in the pilot must elect both family and medical leave..

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 into 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 premiums; and

(b) Withdrew or canceled 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.

Reason for rule: This new rule largely takes language from outside Employment Security Department statutes and regulations and plugs into our rules. Most language in this section is taken from RCW 46.72B.200 (a section of law in the chapter of RCW related to TNCs), which sets the standards for TNCs whose drivers elect coverage under the pilot.

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 into the pilot program is subject to the rights and responsibilities as they apply to self-employed individuals who elect coverage under Titles 50A RCW and 192 WAC, except for the period of coverage requirements described under RCW 50A.10.010(1) and WAC 192-510-010.

Reason for rule: This new rule states that drivers who elect coverage are subject to the rights and responsibilities as they apply to self-employed individuals who elect paid family and medical leave coverage, except for the period of coverage requirements, which were specifically excluded under RCW 46.72B.200(4).

VARIANCE BETWEEN PROPOSED RULE AND FINAL RULE

A minor change was made between the proposed rules and the final, adopted rules:

WAC 192-511-010(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 the coverage.~~

A person electing to participate in the pilot who has hours of work in employment reported on their behalf may count those hours towards Paid Leave benefit eligibility. We removed the language above to avoid the implication that only work performed in the TNC pilot counts towards a driver's eligibility. This was a non-substantive, technical change to avoid confusion.

SUMMARY OF COMMENTS TO PROPOSED RULES AND AGENCY RESPONSE

We received one comment in support of the process, collaboration, and outreach from the department while rule language was being developed.

We received one comment with concern that multiple third-party representative organizations will participate in the pilot and that it will be confusing for the TNCs whose drivers elect coverage under the pilot.

Agency response: Information about how TNCs can contact and work with third party representative organizations will be available on the Paid Leave website. Additionally, the responsibilities for TNCs whose drivers participate in the pilot are described under new WAC 192-511-015 and RCW 46.72B.200. Leave and Care Division customer service staff will also be trained and available to respond to questions and concerns regarding the administration of the pilot program.