



# PROPOSED RULE MAKING

## CR-102 (December 2017) (Implements RCW 34.05.320)

Do NOT use for expedited rule making

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STATE OF WASHINGTON  
FILED

DATE: August 05, 2020

TIME: 10:45 AM

WSR 20-16-148

**Agency:** Employment Security Department

**Original Notice**

**Supplemental Notice to WSR** \_\_\_\_\_

**Continuance of WSR** \_\_\_\_\_

**Preproposal Statement of Inquiry was filed as WSR** 20-09-111 ; 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)

Implementing Substitute House Bill (SHB) 2614 (Chapter 125, Laws of 2020) related to administering the Paid Family and Medical Leave Program.

Amending:

WAC 192-500-010 Employer.

WAC 192-500-035 Interested parties.

WAC 192-500-185 Waiting period.

Adding new sections:

WAC 192-570-030 What is the process for an employee to file a complaint alleging that an employer committed unlawful acts?

WAC 192-570-040 What happens when the department receives a complaint alleging unlawful acts by an employer?

WAC 192-570-050 WAC 192-570-050 How are damages and liquidated damages assessed by the department, awarded, and paid?

**Hearing location(s):**

Date:	Time:	Location: (be specific)	Comment:
September 9, 2020	9:00 AM	Conference call number: 360-407-3780 PIN: 962631#	Hearing will be held remotely due to COVID-19.

**Date of intended adoption:** On or after September 23, 2020 (Note: This is **NOT** the **effective** date)

**Submit written comments to:**

Name: April Amundson

Address: Employment Security Department, PO Box 9046 Olympia, WA 98507-9046

Email: rules@esd.wa.gov

Fax:

Other: Online portal: [https://www.opentownhall.com/portals/289/forum\\_home?phase=open](https://www.opentownhall.com/portals/289/forum_home?phase=open)

By (date) September 9, 2020

**Assistance for persons with disabilities:**

Contact Teresa Eckstein, State EO Officer

Phone: 360-480-5708

Fax:

TTY: 711

Email: Teckstein@esd.wa.gov

Other:

By (date) September 2, 2020

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** The proposed amendments and new rules implement provisions of SHB 2614. The definition of employer is amended to add a reference to casual labor. The definition of interested parties is amended to allow interested parties to receive information about complaints under chapter 50A.40 RCW. The definition of waiting period is amended to reference that the waiting period does not apply to family leave taken for reasons related to a qualified military exigency. New rules are added to outline the process for employees to file complaints alleging unlawful acts by an employer, the process the Employment Security Department (department) will use to investigate allegations of unlawful acts, and how the department will assess damages and liquidated damages when an employer violates RCW 50A.40.010.

**Reasons supporting proposal:** Rulemaking is necessary in order to implement the provisions of SHB 2614. The proposed rules will assist in clarifying the requirements of SHB 2614 and provide clear and usable guidance to the public regarding program operations.

**Statutory authority for adoption:** RCW 50A.05.060

**Statute being implemented:** RCW 50A.05.010, RCW 50A.15.020, chapter 50A.40 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:**

**Name of proponent:** (person or organization) Employment Security Department , Paid Family and Medical Leave Division  Private  Public  Governmental

**Name of agency personnel responsible for:**

	Name	Office Location	Phone
Drafting:	April Amundson	Lacey, WA	360-485-2816
Implementation:	April Amundson	Lacey, WA	360-485-2816
Enforcement:	April Amundson	Lacey, 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:

The amendment to WAC 192-500-010 incorporates by reference the definition of casual labor in RCW 50A.05.010 and is exempt under RCW 34.05.328(5)(b)(iii) and (v).

The amendment to WAC 192-500-035 adds the subject of "complaints under chapter 50A.40 RCW" to determinations made by the department which are sent to interested parties. The amendment is exempt under RCW 34.05.328(5)(b)(ii) and (c)(i). The rule relates to internal governmental operations that are not subject to violation by a nongovernment party. The rule is also a procedural rule because it adopts a policy pertaining to the internal operations of the department.

The amendment to WAC 192-500-185 is explicitly and specifically dictated by RCW 50A.15.020 and is exempt under RCW 34.05.328(5)(b)(v).

WAC 192-570-030, WAC 192-570-040, and WAC 192-570-050 are new rules exempt under RCW 34.05.328(5)(b)(iii) and (v) because the rules adopt or incorporate statute by reference and are explicitly and specifically dictated by RCW 50A.05.010 and chapter 50A.40 RCW.

### Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). 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 \_\_\_\_\_.

Explanation of exemptions, if necessary: The amendment to WAC 192-500-010 incorporates by reference the definition of casual labor in RCW 50A.05.010 and is exempt under RCW 34.05.310(4)(c) and (e).

The amendment to WAC 192-500-035 adds the subject of "complaints under chapter 50A.40 RCW" to determinations made by the department which are sent to interested parties. The amendment is exempt under RCW 34.05.310(4)(b) and (g)(i). The amendment references an internal department operation and does not subject a nongovernment party to a violation. It also amends a procedure, practice, or requirement related to agency hearings.

The amendment to WAC 192-500-185 is explicitly and specifically dictated by RCW 50A.15.020 and is exempt under RCW 34.05.310(4)(e).

WAC 192-570-030, 192-570-040, and 192-570-050 are new sections exempt under RCW 34.05.310(4)(c) and (e) because the content of the rules is explicitly and specifically dictated by RCW 50A.05.010 and chapter 50A.40 RCW.

### COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES

If 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 analysis showing how costs were calculated. \_\_\_\_\_

Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert 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:** August 5, 2020

**Signature:**

**Name:** April Amundson



**Title:** Policy and Rules Manager for Paid Family and Medical Leave