



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: April 04, 2018

TIME: 9:02 AM

WSR 18-08-083

Agency: Employment Security Department

Original Notice

Supplemental Notice to WSR _____

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR 17-23-134 ; 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)

WAC 192-510 Assessing and collecting premiums

- WAC 192-510-010 Election, withdrawal, and cancellation of coverage.
- WAC 192-510-020 Election of coverage for federally recognized tribes.
- WAC 192-510-030 How will the department determine the wages earned and hours worked for self-employed persons electing coverage?
- WAC 192-510-040 How does an employer's size affect liability for premiums and eligibility for small business assistance grant?
- WAC 192-510-050 How will the department assess the size of new employers?
- WAC 192-510-060 When are employer premium payments due?
- WAC 192-510-070 What is "localization" and how does it affect conditional waivers?
- WAC 192-510-080 What are the requirements to be eligible for a conditional premium waiver?

WAC 192-520 Collective bargaining agreements

- WAC 192-520-010 Parties to collective bargaining agreements

WAC192-530 Voluntary Plans

- WAC 192-530-010 What are the employer application requirements for voluntary plans?
- WAC 192-530-020 Voluntary plans – Employer plan requirements.
- WAC 192-530-030 Voluntary plans – Employee eligibility criteria.
- WAC 192-530-040 Voluntary plans – Notice requirements under RCW 50A.04.075.
- WAC 192-530-050 Avoiding a duplication of benefits under state and voluntary plans.
- WAC 192-530-060 What happens at the end of a voluntary plan?

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
May 23, 2018	9:00am	640 Woodland Square Loop SE, Lacey WA 98503	Meeting will be the in Park Place conference room.

Date of intended adoption: 5-23-18 (Note: This is NOT the effective date)

Submit written comments to:

Name: Christina Streuli

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

Email: cstreuli@esd.wa.gov

Fax:

Other: Online portal: https://www.peakdemocracy.com/portals/289/forum_home?phase=open

By (date) May 23, 2018

Assistance for persons with disabilities:

Contact Teresa Eckstein, State EO Officer

Phone: (360) 902-9354
Fax:
TTY: 711
Email: TEckstein@esd.wa.gov
Other:
By (date) May 21, 2018

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The proposal will further define Paid Family and Medical Leave requirements for premium assessment and collection, election of coverage, voluntary plans, conditional premium waivers and businesses with existing collective bargaining agreements.

Reasons supporting proposal: The rules will assist in meeting the requirements to implement the collection of premiums and accept voluntary plans from Washington employers by January 1, 2019, as mandated by Title 50A RCW, Family and Medical Leave.

Statutory authority for adoption: RCW 50A.04.215

Statute being implemented: RCWs 50A.04.010, 50A.04.105, 50A.04.110, 50A.04.115, 50A.04.120, 50A.04.125, 50A.04.235, 50A.04.600, 50A.04.605, 50A.04.610, 50A.04.615, 50A.04.620, 50A.04.650, and 50A.04.665.

Is rule necessary because of a:

Federal Law?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Federal Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
State Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> 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

<input type="checkbox"/> Private
<input type="checkbox"/> Public
<input checked="" type="checkbox"/> Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Christina Streuli	Lacey, WA	360-791-6710
Implementation:	Matt Buelow	Lacey, WA	360-742-7311
Enforcement:	Matt Buelow	Lacey, WA	360-742-7311

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: Christina Streuli

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

Phone: 360-791-6710

Fax:

TTY: Teresa Eckstein, State EO Officer, (360) 902-9354, 711, TEckstein@esd.wa.gov

Email: cstreuli@esd.wa.gov

Other:

No: Please explain:

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 34.05.328(5)(c)(ii) and 34.05.328(5)(c)(iii)(C).

Explanation of exemptions, if necessary: RCW 34.05.328(5)(c)(ii) creates an exemption for interpretive rules. This exemption applies to portions of the proposal. RCW 34.05.328(5)(c)(iii)(C) outlines conditions which must be met for a rule to require analysis. Portions of the proposal do not meet these requirements.

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:

**Small Business Economic Impact Statement
April 4, 2018**

**Rules implementing Title 50A RCW – The Family and Medical
Leave Program
Chapter 192-510, 520, 530 WAC**

1. Provide a brief description of the requirements of the proposed rules

In 2017, the Washington State Legislature passed Substitute Senate Bill 5975 relating to paid family and medical leave. Substitute Senate Bill 5975 was codified as Title 50A RCW.

Title 50A RCW creates a statewide paid family and medical leave insurance program that provides for at least partial wage replacement when a qualified employee takes leave for an approved reason related to family or medical leave.

The legislature requires the state to develop rules implementing the program.

These rules are being developed by the Employment Security Department and will be filed in multiple phases. This filing comprises rules developed in phase one, which covers regulations related to voluntary plans, collective bargaining agreements, and premium assessment.

The rules in phase one provide requirements to which employers with an approved voluntary plan must adhere in order to maintain the integrity of the overall program. The rules contain regulations around communication of necessary information between the state and voluntary plan employers, clearer direction and clarification around certain aspects of the law pertaining to voluntary plans, benefit duplication prevention, and voluntary plan termination determinations.

The rules also lay out eligibility requirements around collective bargaining agreements in effect prior to October 19, 2017, and the responsibilities of employers with respect to certain collective bargaining units who might be exempt under the law.

There is also clarification around premium assessment, with emphasis on when and how an employer is assessed.

2. Costs to businesses to comply with the proposed rules

The majority of phase one rules do not require a calculation of cost for compliance.¹ The following rules do require this analysis:

*WAC 192-530-010: What are the employer application requirements for voluntary plans?*²

Total Estimated Cost to Employee Benefits	\$11,598,460.66
Total Estimated Opportunity Costs	\$1,412,650.93
Total Estimated Cost	\$13,011,111.59

*WAC 192-530-030: Voluntary plans – employee eligibility criteria*³

Total Estimated Cost to Verification	\$730,067.71
Total Estimated Cost to Reporting	\$1,588,573.96
Total Estimated Cost	\$2,318,641.67

¹ See chapter 5 of the Significance Analysis for a complete list of rules that do and do not require cost analysis in the Small Business Economic Impact Study or the Significance Analysis

² See chapter 5 of the Significance Analysis for full details on the costs imposed on businesses for complying with WAC 192-530-010

³ See chapter 5 of the Significance Analysis for full details on the costs imposed on businesses for complying with WAC 192-530-030

3. Impact on sales or revenue

Any impact on sales or revenue is assumed to be a result of the passage of SSB 5975 by the state legislature rather than the result of agency rulemaking pertaining to its implementation.

4. Cost of compliance for small businesses vs. ten percent of largest businesses

WAC 192-530-010: What are the employer application requirements for voluntary plans?

Analysis has revealed no disproportionate impact on small businesses for the establishment of a quarterly schedule for voluntary plan effective dates.⁴

WAC 192-530-030: Voluntary plans – employee eligibility criteria

Analysis has revealed that there may be a disproportionate impact on small businesses for the establishment of a requirement to notify the department of an employee's eligibility for a voluntary plan who was previously covered by the state plan.

Analysis has revealed that there may be a disproportionate impact on small businesses for the establishment of a requirement requiring small business owners and/or staff to obtain employee data to ensure compliance with the law for a voluntary plan.

5. Steps taken to reduce costs on small businesses

RCW 19.85.030(2) lists several options for agencies to consider when attempting to reduce the impact of proposed rules on small businesses. These options were considered by agency staff and ultimately deemed unfeasible based on the nature of the rules in question.

Since all elements of WAC 192-530-010 and WAC 192-530-030 are dependent on the employer or self-employed individual opting in to a non-required component of the law, no specific steps were taken to reduce costs on small businesses. These rules have been deemed necessary by the department to ensure compliance with statutory requirements.

However, the statute, itself does allow opportunities for businesses that employ 150 or fewer employees to receive grants from the state to assist with monetary losses attributable to certain personnel decisions made when an employee takes leave under Title 50A RCW.

6. How did the agency involve small businesses?

As part of its rulemaking process, the Employment Security Department created an Advisory Committee consisting of advocates for both employer and employee interests. The team of advocates for employer interests represents several businesses in the state, including small businesses. These advocates were integral in the development of both the law and the rules governing it.

In addition, several public meetings were held prior to filing the Notice of Proposed Rules. Two informal "listening sessions" were held where any member of the public, including small businesses owners and stakeholders, could voice their opinions on what should be covered by rule in each phase. The department also hosted two "pre-102 meetings" where representatives of the department presented drafts of rules and opened the floor for public comment.

⁴ See chapter 5 of the Significance Analysis for full details on the costs imposed on businesses for complying with WAC 192-530-010
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All stakeholders, including small business representatives, were also allowed to post comments in response to agency draft rules online through a civic engagement portal.

7. List of industries affected

Title 50A RCW generally applies to all employers in Washington State, apart from the federal government.

2-digit NAICS		Industry sectors	Total Establishments	Total Employment
Total	Total		243,084	3,225,703
11	Agriculture, forestry, fishing and hunting		7,415	89,295
21	Mining		172	2,350
22	Utilities		591	18,747
23	Construction		25,033	180,526
31, 32, 33	Manufacturing		7,698	293,807
42	Wholesale trade		14,199	130,050
44, 45	Retail trade		20,550	368,567
48, 49	Transportation and warehousing		5,633	124,044
51	Information		4,441	128,611
52	Finance and insurance		8,885	93,768
53	Real estate and rental and leasing		8,344	51,941
54	Professional and technical services		25,655	199,303
55	Management of companies and enterprises		716	43,711
56	Administrative and waste services		12,502	161,480
61	Educational services		3,843	283,651
62	Healthcare and social assistance		55,341	460,623
71	Arts, entertainment and recreation		3,104	70,512
72	Accommodation and food services		17,094	267,382
81	Other services, except public administration		19,739	96,565
92	Public administration		2,129	160,770

Source: Employment Security Department

8. Number of jobs lost/created

Any jobs lost or created are assumed to be a result of the passage of SSB 5975 by the state legislature rather than the result of agency rulemaking pertaining to its implementation.

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

Name: Christina Streuli

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

Phone: 360-791-6710

Fax:

TTY: Teresa Eckstein, State EO Officer, (360) 902-9354, 711, TEckstein@esd.wa.gov

Email: cstreuli@esd.wa.gov

Other:

Date: April 4, 2018

Name: Dale Peinecke

Title: Commissioner

Signature:

A handwritten signature in black ink, appearing to read "Dale Peinecke", written in a cursive style.