Concise Explanatory Statement

Paid Family and Medical Leave

Phase Six

Chapter 192-500 WAC • Chapter 192-510 WAC • Chapter 192-530 WAC • Chapter 192-560 WAC
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I. Introduction

In 2017, the Washington State Legislature passed Substitute Senate Bill 5975 relating to Paid Family and Medical Leave. The bill was signed on July 5, 2017 and codified as Title 50A RCW.

The Employment Security Department (department) is developing rules to implement, clarify, and enforce this law. Multiple phases of rulemaking will occur around this law and this is the final phase of that initial rulemaking process. This document will serve as the Concise Explanatory Statement (CES) for Phase Six of rulemaking, which covers the following topics:

- Definitions
- Assessing and collecting premiums
- Voluntary plans
- Small business assistance
- Dispute resolution
- Employee notice to employer
- Initial application for benefits
- Weekly benefits
- Appeals and Procedure

Three informal public meetings were held to gather public comment on draft rules. Informal feedback was accepted on the draft rules through our online portal, by phone, in-person, and by email until the filing of the CR102. After the CR102 was filed, formal comments were accepted until 5 p.m. on November 17, 2019. The formal CR102 hearings were held on November 7, 2019 in Lacey, Washington, and on November 12, 2019 in Spokane, Washington.

II. Rules Summary and Agency Reasons for Adoption

WAC 192-500-035 Interested parties. (1) In all determinations, cases, and appeals adjudicated under Title 50A RCW the employment security department is an "interested party."

(2) Other interested parties in paid family or medical leave determinations related to the state plan and appeals include:

(a) The employee or former employee; and

(b) An employer or former employer of that employee that is required to provide information to the department related to the determination or appeal in question.

(3) Other interested parties in paid family or medical leave determinations related to ((~~a~~)) an approved voluntary plan include:

(a) The employer or former employer; and

(b) An employee or former employee ((~~that is required to provide information to the department related to the determination or appeal in question~~)).

(4) ((~~Other interested parties in a determination related to a small business assistance grant include the employer requesting the grant.~~)) The department may designate an employee or employer as an interested party in other determinations made by the department.

This amendment removes language that may have unintentionally excluded key individuals from processes related to interested parties.

WAC 192-500-040 Aggrieved person. An "aggrieved person" is any interested party who receives an adverse decision from:

(1) The department for which the department has provided notice of appeal;

(2) The employer with an approved voluntary plan for which that employer has provided notice of appeal;

(3) The office of administrative hearings; or

((~~(3)~~)) (4) The commissioner's review office.

The department identified the need to include employers with approved voluntary plans to the definition of "aggrieved person." This amendment includes language to that end.

WAC 192-500-180 Supplemental benefit payment. (1) A "supplemental benefit payment" is a payment offered by an employer to an employee who is taking leave under Title 50A RCW.

(2) Employers may, but are not required to, offer certain benefits including, but not limited to, salary continuation, vacation leave, sick leave, or other paid time off as a supplemental benefit.

(3) Nothing in Title 50A RCW requires an employee to receive

supplemental benefit payments.

The passage of SHB 1399 implemented the concept of supplemental benefit payments within Paid Family and Medical Leave which allows for employees on leave to use paid time off to "top off" their benefit payment so that the employee is receiving their full wage for that week. The supplemental benefit payment would be from the employer. This rule establishes how the department will define the phrase and provides clarification for other rules related to process and implementation. Additionally, the rule is needed to further emphasize that employers are not required to provide, nor an employee receive, supplemental benefit payments.

WAC 192-510-030 How will the department determine the wages earned and hours worked for self-employed persons electing coverage?

(1) The department will use the self-employed person's wages reported ((~~income~~)) in a quarter and divide it by the state's minimum wage to presume the number of hours worked for the quarter being reported.

((**~~Example:~~** ~~For this example, the state's minimum wage is $12.00 per hour. The self-employed person electing coverage reports $10,000 of income in a quarter. The department will divide $10,000 by $12.00 and presume the self-employed person worked 833 hours in that quarter.~~))

(2) The self-employed person may overcome the presumption of hours in subsection (1) of this section by providing sufficient documentation to the department including, but not limited to, personal logs or contracts.

(3) If the determination of hours in subsection (1) or (2) of this section is greater than eight hundred twenty hours for that quarter, the number of hours worked will be considered eight hundred twenty hours.

Example: For this example, the state's minimum wage is $12.00 per hour. The self-employed person electing coverage reports $10,000 in wages in a quarter. The department will divide $10,000 by $12.00 and presume the self-employed person worked 833 hours in that quarter. The department will determine that the self-employed individual worked 820 hours in that quarter.

(4) The department may require copies of tax returns, bank records, or any other documentation deemed necessary by the department to verify or determine the self-employed person's hours and wages.

Self-employed individuals who opt in to Paid Family and Medical Leave are required to report wages and hours to the department like any other employer. This amendment caps the self-employed individual's hours each quarter at 820 hours to allow for program eligibility, and to prevent a calculation resulting in an excessive amount of typical

workweek hours.

WAC 192-510-031 What are reportable wages for self-employed persons electing coverage?

Each quarter, a self-employed individual who has elected coverage under Title 50A RCW will report to the department wages equal to the combined total of:

(1) The self-employed individual's net income related to their self-employment; and

(2) The gross amount of wages, if any, as defined in RCW 50A.05.010(24), paid to the self-employed individual from the self-employed individual's business entity.

Example 1: A sole-proprietor selling crafts online earns $3,000 in a quarter and incurred $2,000 in business-related expenses. The individual would report $1,000 to the department for that quarter.

Example 2: A member of a limited liability company pays herself a salary in the amount of $10,000 in a quarter. She also takes a draw from her company in the amount of $5,000. She would report $15,000 to the department for that quarter.

Self-employed individuals who opt in to Paid Family and Medical Leave are required to report wages and hours to the department like any other employer. This rule identifies what the department considers wages for these individuals.

WAC 192-510-066 How are ((~~premium~~))payments applied to Paid Family and Medical Leave premiums?

(1) A payment received with a premium assessment will be applied to the quarter for which the premium assessment ((~~is filed~~)) applies. A payment exceeding the legal fees, penalties, interest and premiums due for that quarter will be applied to any other debt as provided in subsection ((~~(2)~~)) (4) of this section.

(2) If no debt exists, ((~~a refund will be issued for any~~)) premium overpayments of less than fifty dollars ((~~or more~~)) will be credited to future payments due.

(3) If no debt exists, premium overpayments of ((~~less than~~)) fifty dollars or more may be refunded to the employer at the employer's request. Otherwise, such overpayments will be credited to future ((~~premium assessments~~)) payments due.

((~~(2)~~)) (4) Payments received will be applied in the following order of priority:

(a) ((~~Most recently completed quarter's premium~~)) Current quarter balance;

(b) Any previous quarter premium balance due starting with the oldest quarter;

(c) Then beginning with the oldest quarter in which a balance is

owed:

(i) Penalties;

(ii) Fees; and

(iii) Interest charges.

This rule, as previously implemented, requires the department to refund premium overpayments even if the employer would prefer the department credit the overpayment towards future premium liabilities. This amended version allows greater flexibility for the employer. The rule also adds an administrative efficiency by allowing the department to retain small premium overpayments and provide a refund for larger premiums at the request of the employer rather than immediately issue refunds.

AMENDATORY SECTION

WAC 192-510-080 What are the requirements to be eligible for a conditional premium waiver?

(1) An employer and employee may be eligible for a conditional waiver of premium payments by satisfying the requirements of RCW 50A.10.040.

Example: A storm hits Washington. An employer in Oregon hires a new employee who lives in Oregon to help with repair work. The employee only works in Washington for the employer for one week and is then laid off. The employer and the employee could submit a conditional premium waiver request for this employee.

(2) A conditional premium waiver is not required for work that is not subject to premiums under WAC 192-510-070 or fails to meet the definition of employment in RCW 50A.((~~04~~))05.010 (7)(a).

(3) Any conditional premium waiver request must be submitted to the department online or in another format approved by the department.

(4) As a condition to granting the conditional premium waiver, the employer must file quarterly reports to verify that the employee((~~s~~)) for whom a conditional premium waiver has been granted is still ((~~qualify for the conditional premium~~)) eligible for the waiver.

(5) Once an employee works eight hundred twenty hours in a ((~~qualifying~~)) period of four consecutive complete calendar quarters localized in Washington for an employer, the conditional premium waiver expires.

(6) The department may require the employer to submit additional documentation as necessary.

(7) If the employee exceeds eight hundred twenty hours ((~~or more~~)) in a ((~~qualifying~~)) period of four consecutive complete calendar quarters, the conditional waiver expires and the employer and employee will be responsible for their shares of all premiums

that would have been paid during the ((~~qualifying~~)) period of four consecutive complete calendar quarters in which the employee exceeded eight hundred twenty hours had the waiver not been granted. The employer and employee will each receive a notice of premium assessment. Payment of the missed premiums is due on the date provided in the notice. Upon payment of the missed premiums, the employee will be credited for the hours worked and will be eligible for benefits under this chapter as if the premiums were originally paid.

((~~**Example:** A storm hits Washington. An employer in Oregon hires a new employee who lives in Oregon to help with repair work. The employee only works in Washington for the employer for one week and is then laid off. The employer could request a conditional premium waiver for this employee.~~))

(8) A request for a conditional premium waiver may be denied if the department finds that the employee does not satisfy the requirements of RCW 50A.10.040.

(9) A conditional premium waiver may be canceled if the department finds that the employee no longer satisfies the requirements of RCW 50A.10.040.

This amendment aligns the rule with language specified in SHB 1399. It also clarifies that the department may deny or cancel a conditional waiver if requirements are not met.

AMENDATORY SECTION

WAC 192-530-030 Voluntary plans—employee eligibility criteria.

1) To qualify for an employer's approved voluntary plan, an employee must have been:

(a) In employment for at least eight hundred twenty hours during the qualifying period and in employment with that employer for at least three hundred forty hours; or

(b) Covered by an approved voluntary plan through their most recent previous employer in the employee's qualifying period.

(2) An employer may waive the requirements of subsection (1) of this section, in whole or in part, to allow an employee to be eligible for benefits through the voluntary plan.

(3) Employees working for an employer with a voluntary plan who have not yet met eligibility requirements for that plan are eligible for benefits under the state plan so long as all other requirements are met.

((~~(3)~~)) (4) When an employee files a claim for benefits, an employer will access the employee's weekly benefit amount and typical workweek hours information online, or in another format approved by the department, and ensure the employee qualifies for at least an equivalent benefit amount from its voluntary plan.

((~~(4)~~)) (5) Upon hiring an employee previously covered under a state plan, the employer with an existing voluntary plan must report

to the department online, or in another format approved by the department, the new employee's status for the voluntary plan after the employee becomes eligible for that plan.

RCW 50A.30.020 states that an employee who was previously covered by an employer's voluntary plan is covered immediately by a new employer's voluntary plan, regardless of how many hours the employee worked. This amendment limits that time frame to the employee's most recent employer in the qualifying period to prevent confusion regarding exactly when an employee is eligible for benefits under a new employer's voluntary plan. The rule also creates more employer flexibility by allowing the employer to waive the hours requirement unilaterally for new employees, as required by SHB 1399.

AMENDATORY SECTION

WAC 192-530-050 Avoiding a duplication of benefits under state and approved voluntary plans.

(1) Employees cannot collect benefits from both the state plan and ((~~a~~)) an approved voluntary plan for the same period. To ensure compliance, employers with an approved voluntary plan must report:

(a) All information required of employers by the state plan; and

(b) Weekly benefit and leave duration information for any employee who takes leave under that plan for reasons that would have qualified for leave under the state plan((~~; and~~

~~(c) Premiums, if any, withheld from employee wages~~)).

(2) Upon request, the department will provide weekly benefit, typical workweek hours, and leave duration information to any employer with an approved voluntary plan that requests it for an employee who intends to take leave under that plan.

(3) If the employee is covered by more than one plan, whether state, voluntary, or a combination of either, the employee is considered covered by the employer for which the employee worked the most hours during the qualifying period.

(a) If the employee worked an equal number of hours for more than one employer during the qualifying period, then the employee is considered covered by the employer for which the employee worked the most hours since the qualifying period.

(b) If the employee worked an equal number of hours for more than one employer since the qualifying period, then the employee is considered covered by the employer for which the employee has an earlier start date.

Rare cases may arise where a "tiebreaker" is needed to determine if an employee is covered by the state Paid Family and Medical Leave plan, or the approved voluntary plan of the employer for which the employee works. This rule provides the opportunity for the department to examine additional information when making this determination.

WAC 192-530-060 ((~~What happens at the end of a voluntary plan?~~)) How can approved voluntary plans end and what happens when they do?

((~~(1) If the employer chooses to withdraw from a voluntary plan due to a legally required increase in the benefit amounts or any change in the rate of employee premiums, the employer must provide notice to the department at least thirty days prior to the date that the change goes into effect. The plan will be considered withdrawn on the date of the change. The employer must remit any deductions from the wages of an employee remaining in the possession of the employer to the department within thirty days of the effective date of the withdrawal.~~

~~(2)(a) If the employer chooses to withdraw from a voluntary plan for any other reason, the employer must provide notice to the department at least thirty days prior to the end of a calendar quarter. The plan will be considered withdrawn on the first day of the following calendar quarter.~~

~~(b) If notice is provided less than thirty days prior to the end of a quarter, the plan will be considered withdrawn on the first day of the second calendar quarter following notice of the withdrawal.~~

~~(c) The employer must remit any deductions from the wages of an employee remaining in the possession of the employer to the department within thirty days of the effective date of the withdrawal.~~

~~(3) If the department terminates an employer's voluntary plan, the department will notify the employer of the effective date and the reason for termination. The department will calculate the amount owed by the employer and send an invoice for payment. The amount due will consist of all moneys in the plan, including premiums paid by the employer, premiums paid by the employees, moneys owed to the voluntary plan by the employer but not yet paid to the plan, and any interest accrued on all these moneys. The amount will be due immediately. Any balance owed will not start collecting interest until thirty calendar days after the date of the invoice.~~

~~(4) Benefit eligibility under a voluntary plan must be maintained for all employees covered by that plan until the effective date of termination or withdrawal.~~

~~(a) On the effective date of a voluntary plan termination, employees currently receiving paid family or medical leave benefits are, if otherwise eligible, immediately entitled to benefits from the state program.~~

~~(b) For employees currently receiving paid family or medical leave benefits on the effective date of a voluntary plan withdrawal, the employer will have the option to:~~

~~(i) Continue to pay benefits under the terms of the voluntary plan until the total amount of the benefit is paid or the duration of leave ends, whichever happens first; or~~

~~(ii) Immediately pay the employee the maximum remaining amount of benefits available to the employee under the terms of the~~

~~voluntary plan, regardless of the duration of leave that is actually taken.~~

~~(c) On the effective date of a voluntary plan termination or withdrawal, employees currently taking family or medical leave under this chapter are, if otherwise eligible, entitled to the job protection provisions of RCW 50A.04.600(5) until the duration of leave ends.~~

~~(5) Employers are required to notify employees of any plan withdrawal or termination within five business days of notification by the department of the effective date of termination or withdrawal.~~)) (1) An approved voluntary plan ends when either the employer withdraws the plan or the agency terminates the plan for good cause. When a voluntary plan ends either through termination or withdrawal the following requirements must be satisfied:

(a) Benefits and benefit eligibility under a voluntary plan must be maintained for all employees covered by that plan until the effective date of termination or withdrawal.

(b) On the effective date of a voluntary plan termination or withdrawal, employees currently taking family or medical leave under this chapter are entitled to employment restoration under RCW 50A.30.010 (5)(h) until the leave ends.

(c) Employers must notify employees of any plan withdrawal or termination within five business days of notification by the department of the effective date of the termination or withdrawal.

(2) **Withdrawal.** Employers have the right to withdraw a voluntary plan under RCW 50A.30.010 (5)(e) and as provided herein:

(a) If an employer chooses to withdraw a voluntary plan due to a legally required increase in the benefit amounts or any change in the rate of employee premiums, the employer must provide notice to the department at least thirty days prior to the date the change goes into effect, stating the reason for the withdrawal. The plan will be considered withdrawn on the date of the change. Within thirty days of the effective date of withdrawal, the employer must remit to the department any employee wages withheld for the purpose of paying paid family or medical leave benefits that were not used to pay paid family or medical leave benefits.

(b) If the employer chooses to withdraw a voluntary plan for any other reason, the employer must provide notice to the department at least thirty days prior to the end of a calendar quarter. The plan will be considered withdrawn on the first day of the calendar quarter following the properly provided notice. If notice is provided less than thirty days prior to the end of a quarter, the plan will be considered withdrawn on the first day of the second calendar quarter following notice of the withdrawal. Within thirty days of the effective date of withdrawal, the employer must remit to the department any employee wages withheld for the purpose of paying paid family or medical leave benefits that were not used to pay paid family or medical leave benefits.

(c) On the effective date of a voluntary plan withdrawal, for employees currently receiving paid family or medical leave benefits under the voluntary plan, the employer will have the option to:

(i) Continue to pay benefits under the terms of the voluntary plan until the total amount of the benefit is paid or the duration of leave ends, whichever happens first; or

(ii) Immediately pay the employee the maximum remaining amount of benefits available to the employee under the terms of the voluntary plan, regardless of the duration of leave that is actually taken.

(d) Any benefit payments made by an employer to an employee on leave at the time of a voluntary plan withdrawal under (b) of this subsection will be deducted from any monies owed to the department as described in (a) of this subsection.

(3) **Termination.** The department may terminate an employer's voluntary plan for good cause as defined under WAC 192-530-070 and as provided herein:

(a) If the department terminates an employer's voluntary plan, the department will notify the employer of the effective date of and reason for the termination. The department will calculate the amount owed by the employer and send an invoice for payment. The amount due will consist of all monies in the plan, including any contributions held in trust as required by RCW 50A.30.050, monies owed to the voluntary plan by the employer but not yet paid to the plan, and any interest accrued on all these monies. The amount is due immediately. Any balance owed will begin accruing interest on the thirtieth calendar day after the date of the invoice.

(b) On the effective date of a voluntary plan termination, employees currently receiving paid family or medical leave benefits under the voluntary plan are, if otherwise eligible under the state plan, immediately entitled to benefits from the state plan.

This amendment further identifies what responsibilities an employer has when a voluntary plan ends. A large portion of the changes reflect a reorganization of the existing rule to provide clarity and distinction between the processes and reasons for withdrawing a voluntary plan and when a voluntary plan is terminated.

WAC 192-530-090 Can an employer with an approved voluntary plan make deductions from a benefit payment?

Employers are permitted, with express written agreement from the employee, to make deductions from voluntary plan benefit payments including, but not limited to, health insurance premium payments, retirement contributions, applicable federal taxes, or other purposes, unless prohibited by law.

Employers with approved voluntary plans have requested the ability to withhold certain monies from benefit payments, including taxes and health insurance premiums. This rule provided the opportunity for

that withholding if the employer obtains express written consent from the employee.

WAC 192-560-010 Which employers are eligible for small business assistance grants?

(1) Employers determined to have one hundred fifty or fewer employees in the state that are assessed the employer share of the premium are eligible to apply for small business assistance grants.

(2) Employers determined to have fewer than fifty employees are only eligible ((~~to apply~~)) for a small business assistance grant if ((~~they~~)) those employers opt to pay the employer share of the premiums. ((~~The~~)) Such employers will be assessed the employer share of the premium for a minimum of three years after any grant is received. An employer may provide notice for opting out after the three-year period.

(3) An employer is not eligible for a small business assistance grant if, at the time of application, the employer has outstanding and delinquent reports, outstanding and delinquent payments, or due and owing penalties or interest under Title 50A RCW.

(4) An employer may request only one grant per year for each ((~~period of~~)) employee who takes paid family or medical leave ((~~taken by an employee~~)) under this title. Submissions under (a) and (b) of this subsection do not qualify as grant applications and therefore do not count against the employer's limit of ten applications per year.

(a) An employer that qualifies for a grant under RCW 50A.24.010 (3)(b) for an amount that is less than one thousand dollars may submit documentation of significant additional wage-related costs incurred after filing the initial grant application in an attempt to qualify for additional grant funds.

(b) An employer may submit a revised application for a grant under RCW 50A.((~~04~~))24.((~~230~~))010(3)(c) in an attempt to qualify for additional grant funds.

((~~(4)~~)) (5) An employer must apply for the grant no later than four months following the last day of the employee's paid family or medical leave.

This amendment further aligns with the intent of the law and requires small businesses to be in good standing with the department with regard to quarterly reports and premium payments before they may be eligible for small business assistance grants under Title 50A RCW.

WAC 192-570-010 Conference and conciliation.

(1)(a) The department will engage employers in conference and conciliation when the employer fails to make all required:

(i) Premium payments;

(ii) Payments on penalties assessed by the department for the failure to submit required reports; or

(iii) Payments on penalties assessed by the department for

violations related to voluntary plans.

(b) "Conference and conciliation" for the purpose of this chapter means to encourage an amicable resolution of disputes between the employer and the department prior to the issuance of a warning letter.

(2) The department will promptly attempt to contact the employer to engage in conference and conciliation when appropriate under subsection (1) of this section. If the department does not receive a response from the employer by the deadline given, the department will attempt the contact again, for a total of two attempts. A warning letter will be sent to the employer if no contact can be made.

(3)(a) Through conference and conciliation employers will be given an opportunity to provide information and to explain their reasons for failing to meet the department's requirements in subsection (1) of this section. The department will not issue a warning letter if:

(i) The employer provides good cause;

(ii) The department determines ((~~that~~)) the good cause provided prevented compliance; and

(iii) The parties agree to an approved ((~~repayment~~)) payment schedule.

(b) "Good cause" for the purpose of this section means:

(i) Death or serious illness of one or more persons directly responsible for discharging the employer's duties under Title 50A RCW;

(ii) Destruction of the employer's place of business or business records not caused by, or at the direction of, the employer; or

(iii) Fraud or theft against the employer.

(4) The burden of proof is on the employer to provide all pertinent facts and evidence or documentation for the department to determine good cause.

(5) Conference and conciliation is only available to employers ((~~that meet the requirements of RCW 50A.04.080, 50A.04.090, and 50A.04.655. Those employers that do not meet these requirements will be issued a warning letter without entering conference and conciliation. Penalties and interest will be assessed thereafter under Title 50A RCW and the rules adopted pursuant thereto~~)) in the circumstances described in subsection (1)(a) of this section.

(6) If an employer is eligible for conference and conciliation, the department will issue a warning letter when:

(a) The employer does not comply with the approved repayment schedule; or

(b) A resolution is not reached through conference and conciliation.

This amendment clarifies language without changing effect by pointing to language in the rule and not to statute. This rule also provides clarity to the process for conference and conciliation by removing

unnecessary language that could have caused confusion.

WAC 192-600-030 Can an employer waive the employee's notice requirements?

Employers may waive the notice requirements of this chapter.

To align with the requirements established by SHB 1399, this rule allows an employer to waive the requirement that an employee provide a certain amount of notice to the employer before being approved for benefit payments.

WAC 192-610-050 How are typical workweek hours determined?

(1) The department determines typical workweek hours based on whether the employee is salaried or otherwise at the time of filing the initial application for benefits.

(a) For salaried employees, as defined in WAC 192-500-100, the typical workweek hours are forty hours, regardless of the number of hours worked in ((~~a week are assumed to be forty, regardless of how many hours are actually worked. Typical workweek hours are determined by multiplying the number of weeks in the qualifying period the employee held the salaried position by forty, adding any other hours that were not salaried, if any, and then dividing that amount by fifty-two.~~

~~(2)~~)) the employee's qualifying period.

(b) For all other employees, the department will determine typical workweek hours ((~~are determined~~)) by dividing the sum of all hours reported in the qualifying period by fifty-two and rounded down to the nearest hour.

(2) For a qualifying period that includes the fourth quarter of 2018, the typical workweek hours for an employee described in subsection (1)(b) of this section will be determined by dividing the sum of all hours reported in the first three quarters of 2019 by thirty-nine.

This amendment implements a more plain-reading interpretation of how the department will determine typical workweek hours for full-time salaried employees. This interpretation allows for fewer instances where an employee's schedule during their qualifying period might negatively impact their Paid Family and Medical Leave entitlement duration at the time leave is actually needed. It also addresses scenarios where an employee's qualifying period includes a quarter when reporting was not required of employers.

WAC 192-610-051 How is the weekly benefit calculated?

After a valid claim year is established, the department will calculate the weekly benefit amount using the following process:

(1) The department will establish the employee's average weekly wage by dividing the total reported wages in the employee's two highest-paid quarters in the qualifying period by twenty-six. If the result is not a multiple of one dollar, the result is rounded down to the next lower multiple of one dollar.

(2) If the employee's average weekly wage is equal to or less than one-half of the state's average weekly wage on the date the calculation is made, the benefit amount is ninety percent of the employee's average weekly wage.

Example 1: For this example, the state's average weekly wage is $1,400. An employee's average weekly wage is $600. Since this amount is less than half of the state's average weekly wage, the employee receives 90% of their weekly wage. The weekly benefit is $540.

(3) If the employee's average weekly wage is more than fifty percent of the state's average weekly wage on the date the calculation is made, the weekly benefit amount is the sum of:

(a) Ninety percent of one-half of the state average weekly wage; and

(b) Fifty percent of the difference between one-half of the state average weekly wage and the employee's average weekly wage.

Example 2: For this example, the state's average weekly wage is $1,400. An employee's average weekly wage is $950. Since this number is more than half of the state's average weekly wage, calculate the values for subsection (3)(a) and (b) of this section, then add them together. The first number is equal to 90% of half the state's average weekly wage. Half of $1,400 is $700, and 90% of this number makes the first number $630. The second number is equal to 50% of the amount of the employee's average weekly wage that is higher than half the state's average weekly wage. The amount of the employee's average weekly wage that is higher than half the state's average weekly wage is $250 ($950 - $700). 50% of this amount makes the second number $125. Add the two numbers together. The weekly benefit is $755.

(4) If the result of the weekly benefit calculation is not a multiple of one dollar, the result is rounded down to the next lower multiple of one dollar.

(5) All weekly benefit amount calculations are subject to the minimum and maximum weekly benefit amounts under RCW 50A.15.020 (5)(a) and (b).

(6) The weekly benefit amount determined in subsections (1) through (4) of this section is prorated by the number of hours claimed for paid family or medical leave compared to the number of typical workweek hours.

Example 3: An employee has a weekly benefit amount determined to be $1,000. The employee worked 20 hours each week in the qualifying period. The employee is now full-time and salaried, causing the department to consider that employee's typical workweek hours to be 40. The employee can claim 40 hours on each weekly claim. No proration would occur because the hours claimed compared to the

typical workweek hours are the same. As a result, the employee would receive 100% of their weekly benefit amount.

This rule provides clarity of the process by which the department will determine an employee's weekly benefit amount. It provides examples to offer further clarity.

WAC 192-610-052 How will the department obtain wages and hours that have not yet been reported by employers?

If an employee's qualifying period includes a quarter for which the employer has not yet submitted a report to the department, the department will contact the employer to request the employee's hour and wage information for that quarter.

The department requires a process to obtain information necessary to determine program eligibility and benefit calculations when such information has not yet been provided to the department by an employer. This rule establishes that process.

WAC 192-620-026 What is the maximum amount of paid family or medical benefits to which an employee is entitled in a claim year?

(1) In any given claim year, an employee is not entitled to paid family or medical leave benefit payments that exceed an amount equal to:

(a) The employee's weekly benefit amount multiplied by twelve for family leave;

(b) The employee's weekly benefit amount multiplied by twelve for medical leave; or

(c) The employee's weekly benefit amount multiplied by sixteen for a combination of family and medical leave.

(2) The amounts in subsection (1)(b) and (c) of this section may be increased by an amount equal to the employee's weekly benefit amount for medical leave multiplied by two if the employee experiences a serious health condition with a pregnancy that results in incapacity.

(3) An overpayment waived under WAC 192-640-015 shall be charged against the employee's applicable entitlement for the claim year containing the weeks to which the overpayment was attributed as though such benefits had been properly paid.

This rule is needed to clarify the process for attributing waived overpayments, which may be used to reduce a future benefit payment. The department reserves the right, in certain circumstances, to waive an overpayment of benefits that was improperly paid to an employee. When such a waiver occurs, the amount of the waived overpayment counts against the employee's total financial entitlement under Paid Family and Medical Leave.

WAC 192-620-030 How do supplemental benefit payments affect employer requirements and weekly benefit payments?

(1) Supplemental benefits made by an employer to an employee are excluded from the definition of wages in RCW 50A.05.010.

(2) Employers should not report supplemental benefit payments or associated hours to the department.

(3) Employees should not report hours of paid time off that have been offered as supplemental benefit payments by the employer to the department on the weekly application for benefits.

The department has determined that supplemental benefit payments, when paid to an employee on leave, are not subject to premiums and should not be reported as wages or hours in the employer's quarterly report. This rule clarifies this determination.

WAC 192-620-035 When will a weekly benefit amount be prorated?

For an employee on paid family or medical leave, a weekly benefit amount is prorated when:

(1) The employee works hours for wages; or

(2) The employee uses paid sick leave, paid vacation leave, or other paid time off that is not considered a supplemental benefit payment as defined in WAC 192-500-180.

Example 1: An employee has already served a waiting period in the claim year and files a claim for a week of paid medical leave. The employee typically works forty hours a week at eight hours per day. In the week for which the employee is claiming, the employee claimed one day of paid medical leave and worked the other four days. This employee's weekly benefit is usually $800. The weekly benefit would then be prorated by the hours on paid medical leave (eight hours) relative to the typical workweek hours (40 hours). Eight hours is 20% of 40 hours. The employee's weekly benefit would be prorated to 20% for a total of $160.

Example 2: An employee files a claim for eight hours of paid family and medical leave and takes sick leave from the employer for the same day. The employer does not offer the sick leave as a supplemental benefit payment. The sick leave is considered hours worked by the employee. The employee is being paid for the same hours claimed on paid family and medical leave. This employee is not eligible for benefits for this week.

This rule establishes and details the process through which the department will prorate a weekly benefit payment to an employee on leave when that employee works or takes paid time off that has not been offered as a supplemental benefit payment.

WAC 192-620-040 How will the department determine the number of hours of paid family or medical leave an employee claims each week?

(1) When the employee submits a weekly application for benefits as described in WAC 192-620-020, the department will determine the number of hours claimed by the employee for that week by determining the typical workweek hours as described in WAC 192-610-050, then deducting the number of hours:

(a) Physically worked by the employee; and

(b) Claimed by the employee as sick leave, vacation leave, or other paid time off that has not been offered as a supplemental benefit by the employer.

(2) The result of the calculation in subsection (1) of this section will be deducted from the employee's duration of paid family and medical leave for the current claim year and, if necessary, for the purposes of proration as described in WAC 192-620-035.

Employees on leave are required to submit a weekly application to the department for any week in which they wish to claim Paid Family and Medical Leave benefits. By establishing the method through which the employee claims a certain number of hours of Paid Family and Medical Leave each week, the department can implement a consistent system for claims without reference to the employee's currently hourly schedule. This rule establishes that process.

WAC 192-620-045 How will the department reduce a payment if the employee owes child support?

(1) After being properly notified by a child support agency, the department will withhold a portion of an employee's benefit payment to send to the agency to satisfy child support obligations.

(2) The child support agency is responsible for notifying the employee of the order to deduct child support from paid family or medical leave benefits.

(3) Benefits deducted to satisfy child support obligations are considered paid to the employee. If an employee receives benefits to which the employee is not entitled, the amount deducted to satisfy child support obligations will be included in the overpayment.

(4) The child support agency is responsible for reimbursing the employee if the amount deducted from the employee's benefits is greater than the employee is required to pay to satisfy the employee's child support obligations. If an amount less than the employee is required to pay is deducted from the employee's benefits, the department will deduct the additional amount from future benefit weeks.

The department is required by statute to verify whether an employee receiving paid family or medical leave benefits is responsible for back child support. If the department discovers such an obligation, there is need of a process to withhold the proper amount and direct it towards the proper child support agency. This rule establishes

that process.

WAC 192-620-046 How can an employee appeal a deduction from weekly benefit payments to satisfy child support obligations?

(1) The employee must file an appeal concerning the validity of the child support order, the total amount due, or the amount to be deducted from the employee's benefits, with the child support agency.

(2) The employee may file an appeal concerning the department's authority to deduct child support from paid family or medical leave benefits, the weeks for which the deduction is made, and the accuracy of the amount deducted with the department in the same manner as eligibility decisions are appealed. All laws and rules pertaining to benefit appeals apply to appeals under this subsection.

This rule creates the process for cases when an employee wishes to appeal the withholding of child support obligations from a paid family or medical leave payment.

WAC 192-800-025 Adoption of model rules. The model rules of procedure contained in chapter 10-08 WAC, are, to the extent they are not inconsistent with the rules contained in this chapter, adopted as the rules of procedure for Title 50A RCW. The rules contained in this title will, to the extent of any conflict with the model rules of procedure, be deemed to supersede the conflicting provisions of the model rules of procedure.

This rule clarifies that the agency is adopting the model rules found in WAC 10-08 that contains the model rules of procedure which the Administrative Procedures Act requires.

WAC 192-800-030 Definitions. Unless context clearly indicates otherwise, the following terms and phrases shall have these meanings for this chapter:

(1) "Appeal" means a request for a hearing before and decision by the office of administrative hearings in a matter involving paid family or medical leave premiums or penalty assessments or any determinations under Title 50A RCW.

(2) "Petition for review" means a request directed to the commissioner for a review of the proceedings held and decision issued by the office of administrative hearings.

(3) "Commissioner" means the commissioner's review office of the employment security department.

This rule provides the definition of terms that are used in this chapter and provides clarity as these terms in other chapters carry different meaning.

WAC 192-800-035 Who can appeal or submit a petition for review?

(1) An aggrieved person as defined in WAC 192-500-040 may file an appeal to the department by using the department's online services, or in another format approved by the department.

(2) Any aggrieved person who receives a decision from the office of administrative hearings, other than an order approving a withdrawal of appeal, a consent order, or an interim order, may file a written petition for review, including filing by using the department's online services, or in another format approved by the department.

This rule provides the process for how to file an appeal. Additionally, this rule is necessary to clarify that in order to appeal or file a petition for review to the department or the commissioner, the person must be aggrieved and meet the provisions in WAC 192-500-040.

WAC 192-800-040 What are the timeliness requirements for submitting an appeal or a petition for review?

(1) An appeal or a petition for review from a determination, redetermination, order and notice of assessment of premiums or penalties, appeals decision, or commissioner's decision is deemed filed and received if the provisions within RCW 50A.50.040 are met.

(2) An appeal must be filed within thirty days of the date the notification or mailing, whichever is the earlier. The appeal must be filed in accordance with the provisions of RCW 50A.50.010.

(3) The petition for review must be filed within thirty days of the date of delivery or mailing of the decision of the office of administrative hearings, whichever is the earlier. The petition for review must be filed in accordance with the provisions of RCW 50A.50.080.

(4) The following factors shall be considered in determining whether good cause exists under RCW 50A.50.120 for the late filing of an appeal or a petition for review:

(a) The length of the delay;

(b) The excusability of the delay; and

(c) Whether acceptance of the late filed appeal or petition for review will result in prejudice to other interested parties, including the department.

(5) In determining the excusability for the late filing of an appeal or petition for review, the office of administrative hearings or the commissioner's review office will consider:

(a) Whether any physical, mental, educational or linguistic limitations of the appealing or petitioning party exist, including any lack of facility with the English language; and

(b) The length of the delay in filing. Untimely appeals filed after the filing deadline require a more compelling reason

commensurate with the length of the delay.

It is important for the department to describe the process and provide an understanding of when a filing will be deemed late for a reason that is defined as "good cause." The rule is also needed to establish clear processes for items such as time limitations for appeals.

WAC 192-800-045 When can an appeal be withdrawn?
An aggrieved person may withdraw their appeal or petition for review upon approval by the office of administrative hearings or the commissioner's review office, respectively, at any time prior to the decision, in which case the determination, redetermination, order and notice of assessment of premiums or penalties, or other decision appealed, shall be final in accordance with the provisions of Title 50A RCW.

There are certain timelines for when someone can withdraw an appeal. This rule provides that timeline.

WAC 192-800-050 What happens after an appeal is submitted?
Upon receipt of a notice of appeal, the commissioner shall request the assignment of an administrative law judge under chapter 34.12 RCW to conduct a hearing in accordance with chapter 34.05 RCW and issue an initial order.

The process of what happens to an appeal after it is submitted may not be known by our customers or parties impacted. This rule clarifies the role of the Office of Administrative Hearings in appeal processes.

WAC 192-800-055 Who will be notified if an appeal is filed and what will it include?
(1) All interested parties to an appeal will be notified when an appeal has been filed.
(2) The notice will contain information related to the determination or redetermination being appealed.

This rule is necessary to identify the parties that will be notified with information related to the determination or redetermination.

WAC 192-800-060 What happens if an appeal or a petition has been filed and one of the parties has a change of contact information?
(1) Once an appeal has been filed, any interested party must

notify the office of administrative hearings of any change of contact information.

(2) Once a petition for review has been filed, any interested party must notify the commissioner's review office of any change of contact information.

(3) Any interested party who fails to comply with this section will not have good cause for failure to appear at a hearing or for late filing of a petition for review or untimely submission of a reply or petition for reconsideration.

Some appellants will have a change in contact information. This rule clarifies the process and identifies the agencies to contact if such change occurs. Additionally, the rule provides the consequence of "no good cause" finding when a party fails to appear in certain circumstances.

WAC 192-800-065 How does the time computation work for perfecting an appeal or petition for review?

The time within which an appeal or a petition for review is to be perfected under Title 50A RCW is computed by excluding the day of delivery or mailing of the determination or redetermination, and by including the last day. If the last day is a Saturday or Sunday or a holiday, as defined in RCW 1.16.050, the appeal or petition for review must be perfected no later than the next business day.

This rule is necessary to detail the process for perfecting an appeal and aligns with the process currently described for the unemployment insurance program.

WAC 192-800-070 Who can give testimony and examine witnesses during an appeal hearing?

In an appeal hearing, any interested party, or legally authorized representative of an interested party, has the right to give testimony and to examine and cross-examine any other interested party or witnesses with respect to facts material and relevant to the issues involved.

This rule is necessary to clearly indicate which individuals can participate in appeal hearings.

WAC 192-800-075 Who can request a postponement of a hearing?

(1) Any party to a hearing may request a postponement of a hearing at any time prior to the actual convening of the hearing. The granting or denial of the request will be at the discretion of the presiding

administrative law judge.
(2) The presiding administrative law judge may in the exercise of sound discretion grant a continuance of a hearing at any time at the request of any interested party or on the judge's own motion.

This rule is necessary to clarify procedures that allow a hearing to be postponed or continued.

WAC 192-800-080 Will depositions and written discovery be permitted?
The presiding administrative law judge has the discretion to allow taking of depositions and submission of interrogatories or requests for production either on the judge's own motion or at the request of any interested party.

This rule is needed to align discovery procedures conducted for the unemployment insurance program with the procedures for paid family and medical leave appeals.

WAC 192-800-085 When will administrative law judges hear consolidated cases?
The presiding administrative law judge may hear individual matters on a consolidated record if there is a substantial identity of issues and the rights of no interested party will be adversely affected. This procedure should provide for the hearing of additional or unique issues relating to individual cases.

In unemployment insurance proceedings, an administrative law judge can hear consolidated cases. This rule aligns the process for paid family medical leave with the process for unemployment insurance. The department recognizes that consolidated cases may sometimes be needed or more efficient in the context of Paid Family and Medical Leave.

WAC 192-800-090 What is included in decisions issued by the office of administrative hearings? Every decision issued by the office of administrative hearings, other than an order approving a withdrawal of appeal, a consent order, or an interim order, and every decision issued by the commissioner under RCW 50A.50.090, other than an interim order or an order granting or denying a motion for reconsideration or a stay, shall:
(1) Be captioned and include the name of the agency and name of the proceeding;

(2) Designate all parties and representatives participating in the proceeding;

(3) Include a concise statement of the nature and background of the proceeding;

(4) Contain appropriate numbered findings of fact meeting the requirements in RCW 34.05.461;

(5) Contain appropriate numbered conclusions of law, including citations of statutes and rules relied upon;

(6) Contain an initial or final order disposing of all contested issues; and

(7) Be accompanied by or contain a statement of petition for review or petition for judicial review rights.

This rule provides for clarity and uniformity in how decisions will be communicated to interested parties and recognizes that some appeals will be resolved without requiring a decision on the merits of the appeal.

WAC 192-800-095 Can a decision of the commissioner incorporate a decision under review?.

A decision of the commissioner issued under RCW 50A.50.090 may incorporate by reference any portion of the decision under review. Such incorporation satisfies the requirements of WAC 192-800-090.

Like proceedings in unemployment insurance, this rule allows the commissioners review office to incorporate all or part of the decision(s) under review. The rule provides clarification that the incorporation of earlier decisions meets the requirements of what must be included in a decision.

WAC 192-800-100 What is the process for filing petition for review and any reply to the petition for review?

(1) The written petition for review must be filed by using the department's online services or by mailing it to the Commissioner's Review Office, Employment Security Department, Post Office Box 9555, Olympia, WA 98507-9555, within thirty days of the date of mailing or delivery of the decision of the office of administrative hearings, whichever is earlier.

(2) Any written argument in support of the petition for review must be attached to the petition for review and be filed at the same time. The commissioner's review office will acknowledge receipt of the petition for review by assigning a review number to the case,

entering the review number on the face of the petition for review, and setting forth the acknowledgment date on the petition for review. The commissioner's review office will also send copies of the acknowledged petition for review and attached argument in support thereof to the petitioning party, nonpetitioning party, and their representatives of record, if any.

(3) Any reply to the petition for review and any argument in support thereof by the nonpetitioning party must be filed by using the department's online services or by mailing it to the Commissioner's Review Office, Employment Security Department, Post Office Box 9555, Olympia, WA 98507-9555. The reply must be received by the commissioner's review office within fifteen days of the date of the acknowledged petition for review. An informational copy must be mailed by the nonpetitioning party to all other parties of record and their representatives, if any.

(4) The petition for review and argument in support thereof, and the reply to the petition for review and argument in support thereof, must:

(a) Be captioned, and include the docket number of the decision of the office of administrative hearings, and be signed by the party submitting it or by a designated representative of that party; and

(b) Be legible, reproducible, and five pages or less.

(5) Arrangements for representation and requests for copies of the hearing record and exhibits will not extend the period for the filing of a petition for review, argument in support thereof, or a reply to the petition for review.

(6) Any argument in support of the petition for review or in reply thereto not submitted in accordance with the provisions of this regulation is not considered in the disposition of the case unless it is determined that the failure to comply with these provisions was beyond the reasonable control of the individual seeking relief.

This rule clarifies the process for a customer who has gone through proceedings at Office of Administrative Hearings to seek a review by the Commissioner's Review Office.

WAC 192-800-105 When and how can an administrative law judge dispose of an appeal?

(1) The presiding administrative law judge may dispose of any appeal through:

(a) An order approving a withdrawal of appeal;

(b) A consent order; or

(c) An order of default.

(2) There will be no petition for review rights from an order approving a withdrawal of appeal or a consent order.

There are existing reasons that an administrative law judge could

dispose of an appeal. This rule aligns paid family and medical leave appeals with current procedures governed by unemployment insurance law.

WAC 192-800-110 What options are available for an aggrieved person who received an order of default?

(1) Any person aggrieved by the entry of an order of default may:

(a) File a motion to vacate the order of default with the office of administrative hearings within seven days of issuance of the order; or

(b) File a petition for review from such order by complying with the filing requirements set forth in WAC 192-800-100.

(2) The provisions in subsection (1)(a) of this section toll the appeal period for filing a timely petition for review with the commissioner's review office until the office of administrative hearings issues a ruling on the motion. However, should a petition for review be filed while a ruling on a motion to vacate is pending, the office of administrative hearings no longer has jurisdiction to vacate the default order.

(3) Under subsection (1)(b) of this section, an order of default will be set aside by the commissioner's review office only upon a showing of good cause for failure to appear or to request a postponement prior to the scheduled time for hearing. In the event such an order of default is set aside, the commissioner will remand the matter to the office of administrative hearings for hearing and decision.

This rule is necessary to clarify the options to remedy an order of default.

WAC 192-800-115 What is the process for filing a petition for reconsideration to the Commissioner's Review Office?

(1) A written petition for reconsideration and argument in support thereof must be filed within ten days of the date of the decision of the commissioner. It must be filed by using the department's online services or by mailing it to the Employment Security Department, Post Office Box 9555, Olympia, WA 98507-9555.

(2) The petitioner must provide the petition for reconsideration in subsection (1) of this section to all interested parties.

(3) No matter will be reconsidered by the commissioner unless it clearly appears from the face of the petition for reconsideration and the argument submitted in support thereof that:

(a) There is obvious material, clerical error in the decision; or

(b) The petitioner, through no fault of the petitioner, was

denied a reasonable opportunity to present argument or respond to argument under WAC 192-800-100.

(4) A petition for reconsideration is deemed to have been denied if, within twenty days from the date the petition for reconsideration is filed, the commissioner does not either:

(a) Dispose of the petition for reconsideration; or

(b) Mail or deliver to the parties a written notice specifying the date by which the parties will act on the petition for reconsideration. If no action is taken by the date specified in such written notice, the petition will be deemed to have been denied.

(5) A petition for reconsideration does not stay the effectiveness of the decision of the commissioner. The filing of a petition for reconsideration is not a prerequisite for filing a petition for judicial review. An order denying reconsideration or a written notice specifying the date upon which action will be taken on the petition for reconsideration is not subject to judicial review.

This rule clarifies the process for a customer who has gone through proceedings at Office of Administrative Hearings to seek a petition for reconsideration by the Commissioner's Review Office.

WAC 192-800-120 When would the commissioner not issue declaratory orders.

The commissioner will not issue a declaratory order on any matter that may be adjudicated under any statute, regulation, or other provision of law. No declaratory order will be issued that is merely an advisory opinion.

Matters that may be determined by the procedures established in this chapter are not subject to declaratory judgment as stated in RCW 50A.50.200.

WAC 192-800-125 When is a petition for review considered delivered to the department?

Delivery under RCW 34.05.542(4) is made when a copy of the petition for judicial review is received by the Commissioner's Office at 212 Maple Park Avenue S.E., Olympia, WA or received by mail at the Commissioner's Review Office, Post Office Box 9555, Olympia, WA 98507-9555.

In alignment with procedures of the Commissioner's Review Office for unemployment insurance, this rule provides an equivalent understanding of when a petition for review is considered delivered.

WAC 192-800-150 Can an employee designate a representative to act on their behalf?

(1) The department may authorize another individual to act on the employee's behalf for the purposes of paid family and medical leave benefits if:

(a) An employee designates an authorized representative by submitting written documentation as required by the department;

(b) A court-appointed legal guardian with authority to make decisions on a person's behalf submits documentation as required by the department;

(c) An individual designated as a power of attorney submits documentation satisfactory to the department to act on the employee's behalf; or

(d) If an employee is unable to designate an authorized representative due to a serious health condition, an individual may represent the employee by submitting a complete and signed authorized representative designation form made available by the department, which must include:

(i) Documentation from the employee's health care provider certifying that the employee is incapable of completing the administrative requirements necessary for receiving paid family and medical leave benefits and is unable to designate an authorized representative to act on the employee's behalf; and

(ii) An affidavit or declaration authorized by RCW 9A.72.085 attesting to the responsibility to act in the employee's best interest.

(2) The department will terminate the authority given to the authorized representative:

(a) When the employee or authorized representative notifies the department verbally or in writing; or

(b) At the department's discretion.

(3) For the purposes of paid family and medical leave the term employee is used for both employee and authorized representative.

This rule is being renumbered to fit into the chapter. The language is not being changed from the previous filing.

III. Changes to rules

- Changed the word “designate” and its variants to “offer” and its variant with regard to supplemental benefits to clarify that the employer is not required to notify the department which benefits it has specified as supplemental.

- Changed all RCW pointers to align with the recodification of Title 50A RCW.

IV. Public Comment and Responses

	Source	WAC	Comment	Agency Response
1	Portal	192-620-030	Please clarify if an employer can differentiate supplemental benefit payments between paid medical leave and paid family leave. May an employer designate certain leave as supplemental benefit payments when the employee is on paid medical leave through an approved voluntary plan, but not under the state's paid family leave?	An employer is permitted to offer supplemental benefits in any way it determines. The department has no requirements around how such benefits are managed at this time.
2	Portal	192-530-090	Please clarify "express written agreement". Are benefit enrollment forms signed by the employee sufficiently meet the requirement of "express written agreement" or will there be a separate agreement required?	As long as such benefit enrollment forms include withholding from a paid family and medical leave benefit payment, they would be deemed sufficient for the purposes of this rule.
3	Portal		Will time spent while on WA PFML be required to count towards the accrual of an employee's paid time off or sick time?	Nothing in Title 5A requires an employee accrue PTO or sick time.

4	Portal		Please provide more guidelines for designating benefits as "supplemental". How does an employer go about designating leave benefits as supplemental? Does the designation have to be established for all employees throughout the calendar year and only be used for supplementing Paid Family and Medical Leave? Or could an employer designate an employee's entire PTO benefit as supplemental, and therefore not have to report any PTO hours taken throughout the year even if not used for Paid Family and Medical leave, during quarterly reporting?	An employer may internally offer a particular benefit in any way it determines. There is no requirement to notify the department, and there are no requirements regarding who is able to receive such a benefit. The material requirement is that, if the employer offers paid time off as a supplemental benefit, the employee should not report that paid time off on the weekly application. Otherwise, the employee's benefit payment will be reduced.
5	Portal	*192-700-020**	Please ensure that employers only need to continue health benefits to an employee on PFML when the employee is on FMLA or has FMLA available. As a small business employer with under 50 employees we do not have FMLA, it would be financially burdensome to require employers to continue healthcare premiums for their use of PFML when we do not have FMLA.	The language of the rule clarifies that only employees who meet the eligibility requirements for leave under the Family and Medical Leave Act are entitled to the continuation of health care benefits.

6	Portal	*192-800-060*	(Excerpt) These proposed rules for Paid Family Leave are geared to an appeals process that will be very similar to the one used for unemployment benefits. We feel it is important to provide for contact information that will be useful to parties within the administrative hearing process. In acknowledgment of the abbreviated hearing process in these cases, we believe that for sending copies of documents necessary for a hearing, the contact information should include not only an address, but insofar as it is possible an accurate fax number or email. Just as ESD has shifted the vast majority of its claim and tax filing online, almost all businesses and other entities now use such electronic means to communicate, and to ensure due process for all parties, the same communication method should be used in the appeals process.	The department feels that "contact information" is sufficient to allow an employer to provide a fax number if they elect to do so.

7	Hearing	*192-610-050*	Not all salaried employees work a 40 hour workweek. This could result in employees earning more than 100 percent of their weekly wage.	The department does not agree with this assessment. The number of hours determined to be the employee's typical workweek hours does not determine the employee's benefit amount. An employee may not claim a number of hours of Paid Family and Medical Leave in a week that exceeds their typical workweek hours, therefore an employee will never be able to receive more than their weekly benefit amount.
8	Hearing	*192-500-035*	Employers should be allowed to define third parties such as leave and disability administrator companies as an interested party on their behalf.	WAC 192-500-010(3) states: "For the purposes of paid family and medical leave, the term employer is used for both employer and employer agent." Therefore, in all cases where an employer is an interested party, a third-party designated by the employer to act on its behalf would also be included.
9	Hearing	*192-620-026*	(Excerpt) 192-620-026 indicates that the maximum weekly benefits benefit amount is 12 times the maximum amount of paid medical benefits, or paid family leave benefits is 12 times the employee's weekly benefit. I'm unclear on how that works with the unpaid waiting period taking from the 12 week entitlement. It seems like there's an inconsistency there where the employee would never be able to reach the maximum benefit amount because the unpaid waiting period would deduct from it.	Even if an employee is required to serve a waiting period, it is possible that the employee would be entitled to 12 times their weekly benefit amount in benefits from the state. Such a scenario would occur when the employee elects to use paid time off for the entirety of the waiting period. This would result in the employee claiming zero hours of Paid Family and Medical Leave for that week.

10	Hearing	*192-500-190*	Consider redefining that the beginning of that waiting period was the first day of employee an unable to work due to a disability or a family's disability and the duration of the hours worked in a typical workweek for that individual. I feel that the beginning with Sunday the waiting period beginning on Sunday is inconsistent as some employees could be eligible one day on a Friday and satisfy that waiting period, whereas somebody else may go out on a Monday and have to and have to be in unpaid in unpaid waiting period status five consecutive days.	The department has considered this alternative and determined that it is more appropriate for an employee's claim, including the commencement of the employee's waiting period, to always begin on a Sunday. This makes the program far more manageable to administer.
11	Hearing	*192-620-035*	My suggestion is that, for Example 2 that the Department clarify that in that example the employee may count the day of sick leave toward their waiting period. That's my understanding, is that even if an employee takes sick leave that's not designated as a supplemental benefit, that would count toward the employee's waiting period. Or I guess if that's not the case, then I would ask the Department to clarify it the other way, to address an example to whether that day of sick leave would count toward the waiting period.	An employee is permitted to use paid time off, supplemental or otherwise, for some or all of the waiting period and still have the requirements of the waiting period satisfied.

12	Hearing	*192-500-180*	I would like to understand if an employer can name a salary continuation or any other leave as supplemental benefit payment under a voluntary medical plan but have different supplemental benefits payments for the state paid family plan.	Yes, an employer is permitted to offer supplemental benefits in any manner it determines.
13	Hearing	*192-530-030*	I would like to suggest there's clarification provided when an employee moves from the state plan under their employer to a voluntary plan that you account for one in (1)(b) what happens when a person is on a prior plan covered previous employer under a voluntary plan but you don't account for prior employer that's covered under the state plan.	An employer with an approved voluntary plan will be expected to cover an employee once that employee meets the eligibility requirements of that plan. The employee's leave will be paid by the plan (whether voluntary or state) of the employer for which the employee has worked the most hours in the qualifying period.
14	Hearing		(Excerpt) we would like to see what has been codified and then what has been proposed in this Phase 6 all in one draft document because when you publish the final in December, it's going to have everything together. So it's really important for us to see it in draft because Phase 6 contains so many changes to things that have happened in the prior phases. It will be beneficial for us to see one complete document that would say where the draft proposed Phase 6 changes were there.	We have passed this comment on to our communications team for review.

15	Hearing		I just want to follow up on what you just mentioned about further rulemaking beyond Phase 6. Do you have a proposed calendar? And I ask that because, you know, we're all preparing for January 1, 2020. But if there will be changes, we kind of want to understand the timeline for further changes to the rules.	All planned rulemaking information is available at http://bit.ly/commentforum.
16	Hearing	*192 530 050*	The comment on No. 1, "Employees cannot collect benefits from both the state plan and an approved voluntary plan." I'd like to make the comment that this will prevent employees who have part time employment with a voluntary plan employer and a state plan employer, that they may not be able to receive their full weekly benefit.	If a voluntary plan pays benefits to an employee, those payments must meet or exceed what the state would pay. Because the state pays benefits on all hours worked for all employers in the employee's qualifying period, the voluntary plan benefit would be required to do the same.
17	Hearing		My only comment or concern is with the FLA going away, with this replacing it, is the discrepancy between protected time. Under the FLA moms can have up to 24 weeks depending on disability with pregnancy and circumstances. But the new law that's going into effect only talks about 18 weeks. And so there's a discrepancy of a couple weeks there that I just wanted to call out.	Paid Family and Medical Leave is not the only provider of protected leave for a disability related to a pregnancy. The Washington State Law Against Disability also allows for leave to be taken for this reason. That leave is in addition to leave taken under Paid Family and Medical Leave.

18	Hearing		So we are a fire district of five paid employees. Three of them are commissioners to attend two meeting two hour meetings once a month, and the fire chief, who also attends the meetings as a chief of the department, and then me, the secretary. And none of us will ever qualify for this benefit, but yet we have to pay into this Paid Family & Medical Leave. And I'm just curious as to why.	The department is required to implement the law as it was passed by the legislature. For comments related to requirements of the legislation, we would encourage stakeholders to contact their state representative and/or senator.
19	Hearing	*192-620-030*	I have a question or a clarification about WAC 192-620-030, How do supplemental benefits payments affect employer requirements and weekly benefit payments? If an employee is receiving supplemental benefits, say vacation or sick time that's been designated as a supplemental benefit, will are we required to still deduct Washington PFML premiums from those wages if they're not defined as wages? I'm assuming no, but I just wanted to clarify.	Supplemental benefit payments are not considered a wage for the purposes of Paid Family and Medical Leave. As such, they are not subject to the premium.
20	Hearing	*192-500-180*	I wanted to understand if, when it comes to reporting, if we define our existing vacation, paternity, or PTO plans as supplemental benefits, will we still be reporting those while the employee is not on leave and then just stop reporting them while they are taking an approved leave of absence?	This is correct. Paid time off taken as a supplemental benefit should not be reported to the department.

21	Hearing		I would like to urge ESD to provide as many examples as possible of how supplemental benefits will interact with paid the state paid family leave, including disability, vacation, any other paid time off, various scenarios. As an example, if the employee has this, how does that impact their ability or right to take Washington paid family leave. Some examples will help flesh out the very confusing situation on how PFML interacts with other provided benefits.	We have passed this comment on to our communications team for review.
22	Hearing		I just had a comment. I was wondering if the Department could possibly come up with a protected leave matrix similar to what L&I had come up with that shows the interplay between all the protected leave available in Washington state, what the qualifications are, what the differences are, so that in the future we can maybe figure out how to best strategize our leave policies.	We have passed this comment on to our communications team for review.

23	Hearing		I have a clarification I apologize if this has already been done in rule setting regarding employers being notified when an employee becomes eligible and then what amount the employee is going to receive. A comment for ourselves is that we plan on providing supplemental benefits to keep an employee whole during that time. And we wondered what the amount was going to be so that we're not paying over 100 percent of the employee's wages while they're on leave. And I wasn't sure if a decision's been made if an employer will receive that information and how they'll receive that information.	The department has determined that the employer of an employee who applies for Paid Family and Medical Leave will be designated as an interested part for the purposes of that application. As such, the employer will receive a copy of the employee's determination letter. Assuming the employee is determined to be eligible for leave, the letter will include the employee's leave duration entitlement weekly benefit amount.
24	Hearing		When can we expect the Department to hold seminars or training for employers in Washington to implement this new program? Can we expect to have more of an open forum where we can ask questions in a room? Or do another Webex where we can ask some questions and get some answers to how to implement intermittently leaves that involve pregnancy, leaves that involve employees that are eligible through the state but are new hires of the employer? I feel like there's still a lot of outstanding questions.	Upcoming webinars and other events may found at https://paidleave.wa.gov/events.

25	Hearing		I guess my question or comment is more about the timing of all this. It's November 7th. 2020's coming. We already have an employee that's on leave. And I just want to know when we can expect more concrete answers. You know, again, if this person's going to be on leave the beginning of 2020 and we're not withholding correctly, we're withholding incorrectly, will there be a grace period? What's the State's plan on answering and finalizing this?	The most up-to-date information may be found at https://paidleave.wa.gov for general Paid Family and Medical Leave information and http://bit.ly/commentforum for rulemaking.
26	Hearing		My question is surrounding the employer webinars that have already transpired. Are those going to be made available to us so that we can watch them at a later date if we miss them or if we're not available on the dates that they occur?	A pre-recorded webinar will soon be available at https://paidleave.wa.gov.
27	Hearing		I was curious if there's going to be a way that the Department will notify employers of how many hours of use of Paid Family and Medical Leave an employee has used in case the employee is also using the federal program.	The department has determined that the employer of an employee who applies for Paid Family and Medical Leave will be designated as an interested part for the purposes of that application. As such, the employer will receive a copy of the employee's determination letter. Assuming the employee is determined to be eligible for leave, the letter will include the employee's leave duration entitlement weekly benefit amount.

28	Hearing		And speaking about comments about information available for employers, I would like to make the comment that it would be incredibly beneficial for all employers, including we have multiple employers in the state that have hundreds of thousands of employees. A portal that would be available for employers to evaluate information about eligibility and time taken would be incredibly beneficial for the employees, the employers and ultimately the ESD since employers will be coming to you asking questions.	Technology solutions to facilitate Paid Family and Medical Leave for both employees and employers will be rolled out over time.
29	Hearing		I also would encourage and find it an incredibly useful tool to develop some kind of communication flowchart so that payroll officers can have access to ESD as needed and in swift fashion to get information and resolve any hiccups or discrepancies in the process.	We have passed this comment on to our communications team for review.
30	Hearing		And I'd just like to comment it would be incredibly helpful if there was a one stop shop Internet site that had all the different places where you can comment, review materials that are being put out for employers and employees. It's very difficult to find things now.	We have passed this comment on to our communications team for review.

31	Hearing		For a lot of short term disability plans outside of I know there's no waiting period for placement or birth of a child. But in a lot of STD cases, if an employee is admitted to a hospital, their usually their supplemental benefits or STD will kick in Day 1 as part of a hospital rider. And I was wondering if there's any consideration on those type of different types of disabilities and not having a waiting period for some types of medical leave.	The department is required to implement the law as it was passed by the legislature. The only exemption in statute for the waiting period applies to the birth or placement of a child.
32	Hearing		This is in regards to the job protection element of the Washington Paid Family and Medical Leave. Currently under for FM for FLA and FMLA, if they qualified for both, they run concurrently. I was wondering if there's been any rule setting if it's the same with the Washington state protection, that if they qualified for all three, they would run concurrently, or the employer can require so.	Previous use of leave under the Family and Medical Leave Act is not a consideration in determining an employee's eligibility for Paid Family and Medical Leave. The Family and Medical Leave Act is administered by the U.S. Department of Labor and is therefore not subject to oversight by the Employment Security Department. The Family Leave Act is scheduled to sunset at the end of 2019.

33	Hearing		Regarding health insurance, concerns about continuation of health benefits being new in legislation from this last session. FMLA & PFML concurrency to provide health benefits throughout the duration of PFML leave, there is no incentive for employee's to return from employment when their FMLA leave is concluded. It will be a burden for employers if the state does not consider whether someone has already been on FMLA prior to coming to PFML. For the department to interpret that health benefit continuation should happen throughout the PFML leave when a person could potentially have 24 weeks of leave there is no incentive for an employee to return to work. How will employers go about collecting any portion of employee's health insurance premiums that might be due if there is a continuation of health insurance benefits.	The department's interpretation of statute with regard to health benefit continuation is based on statutory language and legislative intent to continue an eligible employee's health coverage for the entirety of their use of Paid Family and Medical Leave. To the last comment, the department points to RCW 50A.35.020 provides that if the employee shares the cost of the existing health benefits, the employee remains responsible for the employee's share of the cost. The statute does not provide a process for this directly therefore this process is likely a matter between the employer and employee.
34	Hearing		Is there with respect to PFML benefits, options to notify employee's who do not maintain any hours or pay of leave from the employer that premiums can be deducted from PFML benefits for continuing health benefits? Or will the employee have to find a way to pay for those health benefit premiums?	The department is not able to withhold health insurance premiums from a Paid Family and Medical Leave benefit payment at this time.
35	Hearing		Will there be a look back (backdating) of claims is there a time limit in which back dating will be allowed? Employers would like to receive clarification on how far the department will allow an applicant to retroactively submit a claim and if there are limitations to that.	Backdating is permitted as long as good cause, defined in WAC 192-610-040, for why the employee did not apply for benefits at the time the qualifying event occurred can be demonstrated.

36	Hearing		VP, when and how can an employer access state information for clarification of benefit eligibility and benefit pay and hours that the VP employer can receive from the state? Also how is the employer supposed to report to the department when an employee is taking leave.	Employers with an approved voluntary plan may contact the Paid Family and Medical Leave customer care team to file a request for benefit information with regard to a specific employee.
37	Hearing		Need clarification on the waiting period. What are the maximum hours available in a week, will waiting week hours count against an employee's time for leave?	If an employee claims hours of Paid Family and Medical Leave during the waiting period (because they did not work and did not take paid time off), then those hours will be deducted from the employee's entitlement and will be unpaid.
38	Hearing		Made comments about already promulgated rules for fraud, as well as not understanding reportable wages. (comment was on WAC about self-employed reporting hours and wages, but there was confusion about actual WAC being reviewed. Did not mean to reference WAC about self-employed reporting)	The rule that regulates reportable wages can be found in WAC 192-510-025. The comments regarding fraud and reportable wages are from a previous rulemaking and is outside the scope of this rulemaking. Therefore, the department is not making any changes to the rule.

39	Hearing	*192-500-180*	Supplemental benefits, for concerns of how leave hours are reported and concerns about having to have additional coding to not have to report supplemental benefit (PTO hours & wages) in quarterly report, individual wanted to report all hours and wages and make them subject to premium collection. Or just report wages for premium collection. Conversely could remove PTO from reportable wages (also a WAC that has already been promulgated) Have some clarification of sick leave laws if those can be used for PFML benefit supplementation. Making supplemental benefits not reportable makes time keeping and payroll difficult for employers who have to code things differently so not to collect premiums or report hours on paid supplemental benefits. Comment about supplemental benefits and how they are included in collective bargaining agreements. This could impact labor groups. It may be difficult for employers to coordinate how much supplemental leave to "top up" if there is a lag in time of when the employer knows how much their weekly benefit amount is. Would like the department to consider allowing employees to top up without penalty and change reporting requirements of the employer involving the dollars and hours paid to the employee and want the hours to be counted to reduce coding and extra tracking from employers.	The department implemented an exception for supplemental benefit wages based on employer feedback. This issue may be revisited in a future round of rulemaking. This comment is outside the scope of rulemaking as well as the authority of the department and not change was made. Statute clarifies that the choice to both offer and receive supplemental benefits lies with the employer and employee respectively. Therefore, the department is not making a change to this rule.
40	Hearing		Request for clarification on what the minimum increment of hours an employee needs to have to meet the waiting week requirement and if those hours must be consecutive. Also, clarification on the total number of hours in a week to be eligible for the benefit.	Leave must be claimed in increments of one hour. The minimum claim duration for each week of Paid Family and Medical Leave is for at least eight consecutive hours of leave from the employer.

41	Hearing	*192-610-050*	This rule does not clarify how typical work week hours interact with voluntary plan employers. For voluntary plans the customer care team told VP employer that the VP employer could use the current schedule of the employee to determine how many weeks of benefits the employee receives. Also requesting clarification on if a voluntary plan employer must designate 40 hours to salaried employees or if they can use actual hours worked.	Voluntary plans are required to offer at least the same as what the state would offer in terms of benefit amount and leave duration. As long as the employee would receive the same or better under the voluntary plan, the policy would be acceptable. This comment is partially addressed in previous rulemaking that establishes the definition of salaried employee. WAC 192-500-100. And the proposed WAC clarifies this comment by stating if the employee is considered salaried, the typical work week hours would be considered 40.
42	Hearing	*192-510-030*	Referring to WAC 192-510-030, will the department be considering PTO or any unpaid leave of absence as hours worked when determining the 820 eligibility requirement?	There was a misunderstanding and the comment was not on the proposed rule 192-510-030 for this phase.
43	Hearing		Clarification of the differing standard of calculating hours worked for the qualifying 820-hour requirement from that of job restoration rights of 1,250. The two calculations are different and clarification would be extremely helpful.	The department considers hours-worked for the 820 requirement to be hours that would have been reported by the employer per WAC 192-510-025. Calculations for job restoration are outside the scope of this rulemaking and no change was made. However, the department will provide resources to clarify these standards online.

44	Hearing		Clarification on what hours of paid time off or sick days are reportable for premiums. Also does that count toward the 820 hours for benefits.	The hours and wages required to be reported and on which employers would owe premiums are outside the scope of this rulemaking. No changes were made to this draft of rules.
45	Hearing		Clarification from the department on how employees taking leave in 2019 and continuing into 2020 will affect existing Washington Family Leave Act claims when those employees do not apply for PFML on January 1, 2020.	As mandated in the original bill that passed the legislature in 2017, the Washington Family Leave Act will sunset December 31, 2019. To this comment, the department is not able to make changes as the law did not direct the agency to consider previous FLA eligibility as a part of the requirements for PFML. Therefore, no change is being made to the rules.
46	Hearing		Clarification from the state on a potential conflict with the inclusion of sick leave as a supplemental benefit. Current sick and safe leave laws may interfere or conflict if an employer decides to say they are not going to allow use of paid sick leave as a supplemental benefit.	To clarify, an employer's decision not to designate sick leave as supplemental does not prevent an employee from using that leave during a week of PFML. The employee will simply need to report that leave on their weekly application and their PFML benefit will be reduced accordingly.

*This rule is not included in Phase Six of PFML rulemaking.