

Concise Explanatory Statement

Paid Family and Medical Leave

Phase Two

Chapter 192-01 WAC • Chapter 192-500 WAC • Chapter 192-510 WAC • Chapter 192-530 WAC •
Chapter 192-540 WAC • Chapter 192-550 WAC • Chapter 192-560 WAC • Chapter 192-570 WAC •
Chapter 192-800 WAC

Contents

I. Introduction	3
II. Rules summary and agency reasons for adoption.....	4
III. Changes to rules	8
IV. Public Comment and Responses.....	9

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 (the department) is developing rules to implement, clarify, and enforce this law. Multiple phases of rulemaking will occur around this law. This document will serve as the Concise Explanatory Statement (CES) for Phase Two of rulemaking, which covers the following topics:

- Employment Security Rule Governance
- Definitions
- Assessing and Collecting Premiums
- Voluntary Plans
- Employer Responsibilities
- Penalties and Audits
- Small Business Assistance
- Dispute Resolution

Practice and Procedure: Four 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 5pm on October 29, 2018. The formal CR102 hearings were held on October 24, 2018, in Lacey, WA, and on October 29, 2018 in Spokane, WA.

II. Rules Summary and Agency Reasons for Adoption

WAC 192-01-001 Rule governance statement.

This rule creates subheadings within Chapter 192 of the Washington Administrative Code (WAC) clarifying that rules developed for Paid Family and Medical Leave (PFML) have no bearing on other programs administered by the Employment Security Department (department).

WACs 192-500-010 through 192-510-040 establish definitions that apply only the PFML program.

- **WAC 192-500-010 Employer.**
The department determined that a need existed to clarify that franchisees are included as an employer in order for employers involved in a franchise situation to know how to correctly interact with the program.
- **WAC 192-500-015 Employer agent.**
The department has developed a process whereby a third-party entity may act on behalf of the employer in compliance with Title 50A RCW. This rule establishes how that third-party may be identified to the department. This process is needed as many employers use third-party agent companies to assist with traditional human resources tasks. Employers may desire to use such agents to complete tasks related to the PFML program and this rule permits that use.
- **WAC 192-500-020 Calendar quarter.**
The department has defined “calendar quarter” to clarify the specific time frame in which a calendar quarter exists. This definition is needed to ensure that reporting, premium assessment, and determining the qualifying period, are performed accurately and consistently across the state.
- **WAC 192-500-025 Terms meaning deliver.**
The department determined that clarity was needed to include methods of technology that may be available to the employee or employer to interact with the department. Employers and employees across the state have varied communication abilities and needs. This definition is designed to provide clarity to the department and to the public regarding what communication methods the department will use and accept.
- **WAC 192-500-030 Willful.**
A formal definition of “willful” is necessary to establish parameters around which penalties may be assessed for specific violations of Title 50A RCW.
- **WAC 192-500-035 Interested parties.**
Title 50A RCW requires communication with certain parties when additional fact-finding is required. This rule specifies the identity of those parties to ensure that everyone who has a right to involvement on an issue related to PFML will be able to exercise that right.
- **WAC 192-500-040 Aggrieved person.**
Any aggrieved person is entitled to file an appeal from any determination but the statute does not define “aggrieved person.” This WAC works in tandem with WAC 192-500-035 to define what parties can be involved in such proceedings.

WAC 192-510-045 How will the department assess the size of employers for calendar years 2019 and 2020?

The application of many provisions of the PFML program are based on the number of employees an employer has. RCW 50A.04.115(8)(c) requires the department to annually average the number of employees reported by an employer over the previous four quarters to make this determination. Title 50A RCW requires the department to calculate employer size using four complete quarterly reports. On September 30, 2018 and September 30, 2019, there will not be four complete quarterly reports from which to make this calculation. As a result, a rule was needed to clarify how the department will calculate employer size during the first two years of the program.

WAC 192-510-065 When can an employer deduct premiums from employees?

The department determined that certain protections that were not clearly stated in Title 50A RCW were needed to guarantee uniformity of withholding from employee wages throughout a quarter. This rule provides guidance to employers on the frequency and amount that may be withheld from employee wages for the purposes of PFML premium payments.

WAC 192-510-066 How are premium payments applied?

This rule explains how the department will apply payments to current and previous balances. The department determined that a transparent order was necessary to offer clarity to both department staff and employers on how premium payments would be applied.

WAC 192-530-035 When must an employer with a voluntary plan provide benefit payments?

In keeping with the requirement that voluntary plans meet or exceed state plan benefits, the department identified a need to clarify that this standard should also apply to the timeliness of the payment of those benefits. This rule establishes a timeline for when employers with an approved voluntary plan must provide benefit payments to approved applicants. The clarity this rule provides is meant to help voluntary plan employers meet the statutory requirements.

WAC 192-530-060 What happens at the end of a voluntary plan?

Title 50A RCW offers some general guidance on what occurs when a voluntary plan is withdrawn or terminated. The department determined that it was necessary to establish a clearer process for when this occurs. This rule provides guidance for employer and department actions when a voluntary plan is withdrawn by the employer or terminated by the department. The rule is meant to provide information to employers so that employers know what is expected by the department and can better anticipate what will be required of them throughout the process.

WAC 192-530-070 What is good cause for terminating an approved voluntary plan?

Title 50A RCW refers to the termination of a voluntary plan but does not offer criteria or circumstances under which that termination might occur. This rule provides reasons for which the department may terminate a voluntary plan.

WAC 192-540-010 When must an employer send notice to employees who may need Paid Family and Medical Leave?

RCW 50A.04.070 requires that notice be sent to an employee who may be qualified for benefits under PFML within seven days of leave commencing. Title 50A RCW does not specify whether these are work days or calendar days. This rule clarifies when an employer must send notice to employees who may be entitled to benefits under PFML.

WAC 192-540-020 What are the employer requirements for posting notice in a work place?

Title 50A RCW requires employers to post a notice in a public work area summarizing an employee's rights under PFML. Title 50A RCW does not specify what the exact contents of that notice must be. This rule clarifies the requirements for this notice so that employers can more readily comply with the statutory requirement.

WAC 192-540-025 Is notice required if an employer reduces the portion of employee premiums it is electing to pay?

Title 50A RCW makes reference to an employer paying some or all of the employee share of the premium on behalf of that employee. This rule provides guidance about when an employer must provide notice to its employees when the employer elects to reduce the amount of the employee portion of the premium it will pay.

WAC 192-540-030 What are employers required to report to the department?

Title 50A RCW makes reference to the employer report but does not specify its contents. Certain information is required for the department to effectively administer the program, ensure the proper payment, and ensure program integrity by limiting fraud. This rule lists what an employer must include in its quarterly report to help the department meet these goals.

WAC 192-540-040 How should employers report hours worked for each calendar quarter?

Certain employment scenarios may create confusion regarding the proper method to report hours and wages for employees. This rule provides guidance on how employers should report hours for certain types of employees. The transparency this rule brings is designed to assist employers with accurate reporting.

WAC 192-540-050 When are employers required to submit quarterly reports to the department?

Title 50A RCW makes reference to the employer report but does not specify when the report is due to the department. This rule establishes a deadline for when each employer report must be submitted. Without a reporting deadline, the department would not be able to timely pay benefits and assess premiums.

WAC 192-550-010 What happens if an employer fails to submit required reports?

Title 50A RCW outlines the penalties that an employer will incur if it willfully fails to submit required reports. The department determined that a more specific rule was needed to clarify the process through which these penalties will be incurred to elucidate the ambiguity in statute.

WAC 192-550-020 What happens if an employer willfully fails to remit required payments?

Title 50A RCW outlines the penalties that an employer will incur if it willfully fails to submit required payments. The department determined that a more specific rule was needed to clarify the process through which these penalties will be incurred to ensure consistent and transparent program administration.

WAC 192-550-030 How will the department calculate interest on delinquent payments?

Title 50A RCW specifies the interest rate that will accrue based on late payments. The department determined that a rule was necessary to clarify at what interval the interest will be compounded.

WAC 192-550-040 Can employer interest be waived?

Title 50A RCW authorizes the department to waive interest at the discretion of the commissioner. This

rule clarifies how the department will assess an interest waiver request and make a determination to ensure consistent and transparent program administration.

WAC 192-550-050 Audit procedures

To determine employer compliance with Title 50A RCW, the need for the department to conduct an audit may arise. This rule describes the process by which the department may conduct an audit. The rule is intended to provide employers with information about what to expect during an audit and how to comply.

WAC 192-550-080 What happens if an employer fails to provide requested information to the department for an audit?

This rule establishes department practices in the event of an employer failing to comply with the requirements of an audit. Such practices are not outlined in statute and are needed to properly administer the program fairly.

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

Title 50A RCW allows for businesses of a certain size to apply for small business grants. To be eligible for the grant, a business with fewer than fifty employees must opt in to full premium assessment for at least one quarter. Due to ambiguity in the statute, the department determined that clarity was needed to establish the criteria a small business must meet before becoming eligible.

WAC 192-560-020 What is the application process for a small business assistance grant?

Title 50A RCW allows for businesses of a certain size to apply for small business grants but does not outline the procedures for such applications. This rule establishes how an eligible employer may apply for those grants and how the department will process them.

WAC 192-560-030 What are significant additional wage-related costs for the purposes of small business assistance grants?

Title 50A RCW cites “significant wage-related costs” as a reason for which an employer may apply for a small business grant, but does not define the term. The department determined that a rule was necessary to fairly and consistently establish grant eligibility across the state.

WAC 192-570-010 Conference and conciliation.

Title 50A RCW requires the department to engage in a process of conference and conciliation with employers prior to assessing certain penalties. The department has developed a process to communicate with employers in certain circumstances to provide an opportunity to rectify the error prior to assessing the penalty. Because that process is only eluded to in statute and more detail was needed to operationalize the concept, the process is established in this rule.

WAC 192-570-020 Complaints regarding unlawful acts.

Title 50A RCW prohibits discrimination against an employee for the exercise of rights under this chapter. This rule establishes a process of investigation upon receipt of a complaint that discrimination of this nature has occurred. This rule is meant to safeguard against discrimination and other unlawful acts.

WAC 192-800-002 Untimely appeals.

This rule establishes the department’s response to an appeal that was not filed in a timely fashion.

III. Changes to rules

WAC 192-510-066(2)(a)

- The words “Current quarter balance” were changed to “Most recently completed quarter’s premium balance.” This change is necessary to clarify that the payment is applied to the quarterly principle rather than to any interest or fees that may have been incurred.

WAC 192-540-030(1)(c)

- Stakeholder feedback indicated that this requirement would result in an overly burdensome imposition to employers. As a result, it has been stricken.

WAC 192-540-030(1)(d)

- Stakeholder feedback indicated that this requirement would result in an overly burdensome imposition to employers. As a result, it has been stricken.

WAC 192-540-030(1)(e)

- Stakeholder feedback indicated that this requirement would result in an overly burdensome imposition to employers. As a result, it has been stricken.

WAC 192-540-030(1)(f) [Now WAC 192-540-030(1)(c)]

- Added the words “and the associated hours.” This change incorporated WAC 192-540-(1)(g) and clarifies that all hours for which wages were paid in a quarter should be reported for that quarter.

WAC 192-540-030(1)(g)

- This subsection was stricken and its contents added to another subsection for conciseness.

WAC 192-540-040(2)

- The phrase “full-time” was removed for conciseness.

IV. Public Comment and Responses

Below is a table of all comments received during the formal comment period on the proposed rules.. In instances where comments with similar content were received, the department only included the first instance for response. All comments are either copied directly from the original written source (online portal post, email, hearing transcript, etc.) or paraphrased from the original verbal source (phone call, comment received at a presentation, etc.).

#	Comment source	Comment	Department Response
1	Phone call	<p><u>WAC 192-540-030</u> The reporting requirements in WAC 192-540-030(1)(c), (d), and (e) are too burdensome.</p>	These requirements have been stricken.
2	Email	<p>A clear definition of “self-employed” is needed to understand who is covered by the law and is subject to premiums and who must opt-in. The Employment Security Department should consult accounting and tax professional for input and advice on preparing a workable definition of “self-employed” as the accountants and tax preparers have a great deal of knowledge of who self-employed people are.</p>	<p>A list of individuals considered to be “self-employed” is included in RCW 50A.04.105(1). The department has engaged in extensive outreach to inform individuals who may be self-employed that they are not required to participate in the PFML program. Based on the feedback received through this outreach, the department has determined that no further clarity around the definition of “self-employed” is necessary at this time.</p>
3	Email	<p>The draft rule does address the opt-in for the small business assistance program. The draft rules needs to include the opt-in process for a self-employed person.</p>	<p>The process through which a self-employed individual may elect coverage under Title 50A RCW was codified as WAC 192-510-010 in Phase One of rulemaking and therefore does not need to be addressed in this Phase.</p>

#	Comment source	Comment	Department Response
4	Email	<p><u>WAC 192-500-025</u></p> <p>There are thousands of small employers in Washington State that do not use email or use any internet or electronic service due to a lack of understand of how to use these electronic communication systems operate, or an unwillingness to use these electronic communication systems.</p> <p>There are many different electronic communication systems, email, text message, website notice, social media, etc.</p> <p>Electronic communication systems are subject to hacking where the recipient can be fooled to provide personal data and password information in response to a false and potentially harmful message or inquiry.</p> <p>As proposed, this provision discriminates based on age, location and education and must be changed.</p> <p>Most legal notices are provided by U.S. mail or personal delivery, not electronic communications systems. Federal agencies always use the U.S. mail to deliver a legal notice to a taxpayer or regulated entities. The Department should do the same for the paid family and medical leave law.</p> <p>Notices should be provide by U.S. Mail or by electronic communication system if the employer agrees to using an electronic communication system.</p>	<p>While electronic methods will be the preferred method of interaction with the department for the purposes of PFML, there is nothing in rule that specifically prohibits other types of communication.</p> <p>In many cases, the language of rulemaking specifically allows communication in other formats approved by the department.</p>

#	Comment source	Comment	Department Response
5	Email	<p><u>WAC 192-560-010</u> This proposal is silent on when the employer must “opt to pay the employer share of the premiums.”</p> <p>This must be clarified.</p> <p>IBA suggests (bill drafting format) that this requirement be modified as follows “(2) Employers determined to have fewer than fifty employees are only eligible to apply for a small business assistance grant if they opt to pay the employer share of the premiums at the time the employer applies for a small business assistance grant.”</p>	<p>The department will consider a small employer to have opted in starting with the quarter in which it notifies the department of its intent to opt in.</p> <p>At any time after receipt of the notification, the employer may apply for the grant.</p>
6	Email	<p><u>WAC 192-560-010</u> As written, WAC 192-560-010 is unnecessarily obscure and needs to be more helpful and transparent to small businesses interested in a small business assistance grant to meet the state’s clear-rule-writing standards.</p> <p>IBA suggests (bill drafting format) that this requirement be modified as follows “(b) An employer may submit a revised application for a three thousand dollar grant under RCW 50A.04.230 (3)(c) in an attempt to qualify for additional grant funds if the employer hires a temporary worker to replace an employee on family or medical leave for a period of seven days or more.”</p>	<p>The rule is intended to clarify the process by which a small employer may revise a previous application. Generally, the department makes an effort to avoid recitation of statute in rule when possible for conciseness.</p>
7	Email	<p><u>WAC 192-560-020</u></p>	<p>WAC 192-560-020 as it pertains to applying for small business grants has an inclusion of ‘in another format approved by the department’</p>

#	Comment source	Comment	Department Response
		<p>The requirement to submit a grant application online is unfair to thousands of Washington small employers who do not use the Internet.</p> <p>As proposed, this provision discriminates based on age, location and education and must be changed.</p> <p>IBA suggests (bill drafting format) that this requirement be modified as follows "(1) Applications for small business assistance grants must <u>may</u> be submitted online, <u>using a paper form prepared by the department, or</u> in another format approved by the department."</p>	<p>which is inclusive of submitting the request by paper to the department.</p>
8	Email	<p>Thank you for putting on the informational forum last week. I hadn't heard about this until I saw a post by the Chamber of Commerce. I wasn't sure where to leave comments for rule-making. At the time it was mentioned that what would be considered "wages" is still in the rule-making phase. I would like to comment that wages should be "gross wages paid", same calculation as Employment Security Department, based on hours worked and includes vacation hours paid.</p>	<p>Wages is defined in statute, pointing to unemployment law RCW 50.04.320(2). The reporting of gross wages is expected, with the exclusion of tips. WAC 192-540-040(3) states employers must report vacation pay, sick leave pay, and paid time off hours. This chance was not made because the clarity already exists in statute.</p>
9	Online portal	<p><u>WAC 192-540-030</u></p> <p>The department needs to published very soon (perhaps not in rulemaking) the file layout and submission options (upload, sftp, web service) for the quarterly file. Customization to ERP systems are underway for the premium deduction and the quarterly file creation is interwoven with that work - it cannot wait for spring to be published.</p>	<p>The department is making every effort to inform employers of the reporting requirements for PFML.</p>
10	Online portal	<p><u>WAC 192-540-020</u></p> <p>There is focus on required communication regarding benefits, but little detail on required communication for premium deductions starting Jan 1, 2019 which is likely to cause employee confusion and</p>	<p>There is no statute requiring communication to employees regarding premium deduction. Our communications department has created and will make available to employers an</p>

#	Comment source	Comment	Department Response
		potentially upset. Can the department offer any additional detail on required communication on premium deduction?	employer toolkit that will include a notice to employees regarding the deduction of premiums from wages.
11	Online portal	<p><u>WAC 192-540-040</u> WAC 192-540-040 Sec. 12(a) states that an employer should report on-call and standby hours and defines it as "paid hours when employees must comply with the employer requirements, such as maintaining physical or mental status, remaining in a specified location, or being required to report to work within a specified time frame." Is this intended to be a different definition than the Department of Labor & Industries' definition in Administrative Policy ES.C.2, which states:</p> <p>What constitutes "on-call" time and when is it considered "hours worked"?</p> <p>Whether or not employees are "working" during on-call depends on whether they are required to remain on or so close to the employer's premises that they cannot use the time effectively for their own purposes. Employees who are not required to remain on the employer's premises but are merely required to leave word with company officials or at their homes as to where they may be reached are not working while on-call. If the employer places restrictions on where and when the employee may travel while "on call" this may change the character of that "on call" status to being engaged in the performance of active duty. The particular facts must be evaluated on a case-by-case basis.</p> <p>For greater ease of administration, I request that you use the same definition be used to report hours for PFMLA as is used to determine on-call hours worked under the Industrial Welfare Act. If it is</p>	<p>The Department of Labor & Industries sets its own definitions for the proper execution and implementation of programs under its jurisdiction. PFML is administered by the Employment Security Department, which sets its own definitions, some of which may vary from those of other agencies.</p> <p>The definition of "on-call" for PFML is based largely on the definition used by Unemployment Insurance, which is also administered by the Employment Security Department, with some minor changes made based on stakeholder feedback.</p>

#	Comment source	Comment	Department Response
		<p>intended to track with that definition already, I request that you clarify this.</p> <p>Thank you.</p>	
12	Online portal	<p><u>WAC 192-510-045</u> Draft WAC 192-510-045 provides that ESD [department] will use an employer's 1st quarter report for 2019 to determine employer size for 2019, and will reevaluate September 30, 2019 using an average of employee headcount for reported quarters. However, RCW 50A.04.235 indicates that where an employer is party to an unexpired CBA that was in effect on October 19, 2017, it has no rights or responsibilities under the new law as to employees covered by that CBA until the CBA expires or is reopened. That suggests that employers would not be filing any reports with regard to employees excluded from coverage until the CBA expires (and ESD confirmed this in a Q&A). How will ESD accurately determine employer headcount (for purposes of the small employer designation) if a portion of the employer's workforce is not included on the reports because they are covered by a grandfathered CBA. Please provide more clarity as to whether employers have an obligation to notify ESD of the number of its employees who are covered by an unexpired CBA.</p>	<p>RCW 50A.04.235 states that any party to a collective bargaining agreement in existence on 10/19/2017 is exempt from all rights or responsibilities under this chapter. Employees covered by a collective bargaining agreement do not have to be reported or counted for the assessment of size until such collective bargaining agreement is reopened, renegotiated or expired. This could mean that for a period, an employer would be assessed as if it were small business. The department is attempting to avoid putting more requirements on employers that are not necessary, so is not making the suggested change to rule.</p>
13	Online portal	<p><u>WAC 192-540-030</u> New Section WAC 192-540-030 What are employers required to report to the department? You note that employers are to report Wages paid (this is okay) but you also state we must report hours worked (this is difficult). We have a lot of timesheets that are turned in late, sometimes months late. How do we report "retro" or "late" time for a previous quarter?</p>	<p>In order to properly implement Title 50A RCW, the department is required to collect information related to hours worked by employees from employers. This information is necessary to establish program eligibility and determine the maximum duration of the benefit to which the employee is entitled.</p> <p>In response to employer concerns, the department has amended WAC 192-540-030</p>

#	Comment source	Comment	Department Response
			to clarify that wages should be reported along with the hours with which those wages are associated.
14	Online portal	<p><u>WAC 192-530-035</u> In WAC 192.530.035 on voluntary plans where it states, "payments must be sent at the established regular pay schedule" whose pay schedule is that referring to? The employer's pay schedule or a pay schedule that will be established by the ESD or other rule making?</p>	The intent of the rule is to allow employers who have a voluntary plan to pay benefits at the same time as their normal pay schedule. The employer must establish a benefit payment schedule that does not exceed payment on a monthly basis.
15	Online portal	<p><u>WAC 192-510-045</u> New WAC 192-510-045 does not take into account employees covered by CBA's which will still be in effect 1/1/19, thereby affecting employee size (less than 50) for small employers. WAC 192-540-030 does not state that an employer only has to report eligible/affected employee. Concerned that assumptions will be made without regard to CBA status for non-union employees.</p>	RCW 50A.04.235 states that any party to a collective bargaining agreement in existence on 10/19/2017 is exempt from all rights or responsibilities under this chapter. Employees covered by a collective bargaining agreement do not have to be reported or counted for the assessment of size until such collective bargaining agreement is reopened, renegotiated or expired.
16	Online portal	<p>Being a small business bookkeeper and QuickBooks consultant, I have a few questions/concerns after having read through the WACs linked to the August 2018 email notice.</p> <p>1) For "number of employees," I don't see anywhere whether this means the number of FTE (Full Time Equivalent) employees or not. It seems it should be stated, since that is most often used by government agencies and might be assumed by employers. If FTE isn't intended, then I think that should be specifically stated.</p>	<p>1 - 50A.04.115(8)(c) requires the department to include all employees reported by the employer when determining the employer's size. There is no distinction between full-time, part-time, or any other employee status for the purposes of the employee count.</p> <p>2 and 3 – The subject of these comments has been previously addressed in this document.</p>

#	Comment source	Comment	Department Response
		<p>2) Since such a large number of employers use QuickBooks for their accounting and knowing how QuickBooks reports work, I'm concerned about the quarterly reporting list. There is no way to produce a single QuickBooks report of hours and wages that also includes employees' hire dates and job titles. Having to manually look up and type in each employee's hire date and job title(s), will be unduly onerous. At least could it be required only the first time an employee is reported?</p> <p>3) For some employers (construction, restaurants), employees can work multiple jobs in a given pay period, so you might need to think about how that should be listed. Is it really necessary for job title to be included? What purpose does that serve?</p> <p>Washington employers--and bookkeepers--will appreciate you addressing these concerns so that you don't create a greater reporting hardship than necessary.</p>	
17	Online portal	<p><u>WAC 192-560-030</u> WAC 192-560-030 is inconsistent with the intent of SB 5925. The law states " an employer may receive a grant of up to one thousand dollars as reimbursement for significant additional wage-related costs due to the employee's leave. " The Department's proposed WAC 192-560-030 primarily limit thos costs to:</p> <ol style="list-style-type: none"> (1) Paying additional wages to an existing employee; (2) Outsourcing costs; (3) Certification; (4) Equipment purchases; or (5) Other costs that the department, in its discretion, determines are appropriate. 	<p>It is in statute that if an employer hires a temporary worker to replace an employee (hire a replacement worker) on family or medical leave for seven days or more, the employer may receive a grant of three thousand dollars. WAC 192-560-030(5) allows the department to approve a small business grants, at its discretion, for the costs up to one thousand dollars. This may include costs to train or relocate a worker. The department does not believe this rule is inconsistent with the statute and is therefore not making the suggested change.</p>

#	Comment source	Comment	Department Response
		The listed costs should include the cost to hire a replacement worker, cost to train a worker, cost to relocate a worker, cost to hire a part-time worker	
18	Online portal	<p><u>WAC 192-510-045</u>, <u>WAC 192-560-010</u></p> <p>Proposed WAC WAC 192-510-045 and WAC 192-560-010 are unclear and need to be clarified. Since the Department does not have its reporting forms yet available, how will the Department know if a <50 employee firm is paying the employer premium or not?</p>	WAC 192-510-045 will allow the department to assess the size of the employer without four completed quarters of reporting in 2019 and 2020. Technology will be developed to allow a small business employer to pay the employer premium. The department will be able to determine employer portion of premiums based on the assessed size, the wages reported, and the premiums paid. Because technology will be developed, no change to rule is currently needed.
19	Hearing	So the comment that we have relates to the definition section of Phase 2. So that's 192-500-010. We were interested in having a definition of "employee," as well as "employer." Cities have elected officials. We also have a number of appointed, unpaid positions, and they may receive some type of per diem or some type of value transfer, et al. And while we've received some indication from the Agency, that elected officials fall under the definition of employee, many of our elected officials are unpaid. And so we are very interested in getting to the bottom of what is an employee, who qualifies under PFML, and who we should be paying premium for. So, with that, I will cede the rest of my time.	The department is conducting extensive outreach to clarify who is and who is not considered an employer and an employee under Title 50A RCW. The law offers definitions for both terms. Attempt to redefine them in rule is unnecessary and risks creating inconsistencies with the statute.
20	Hearing	And we have a comment about the Phase 2 rulemaking 50A.04.070, "Employee notice of rights." It says, "Whenever an employee of an employer who is qualified for benefits under this chapter is absent from work to provide family leave or take medical leave for more than seven consecutive days." Can we ask clarification on calendar or workdays within that section.	This issue is addressed in WAC 192-540-010.

#	Comment source	Comment	Department Response
21	Online portal	<p>1. For WAC 192-540-030, we have the following comments:</p> <p>a. "(e) Start Date" assumes the most recent start date, but could it be interpreted as the original hire date? We have employees who come in and out of service.</p> <p>b. "(f) Wages paid during that quarter" may be clearer if it stated these are gross wages.</p> <p>c. Under section (3), if an employee moves from an ITIN to a SNN, what is the process for correction with ESD? If the SSN is just reported in the quarter the SSN is received, will ESD be able to match the wages for the employee?</p>	<p>a. The subject of this comment was addressed previously in this document.</p> <p>b. Statute requires the assessment of gross wages for the purposes of PFML. The department has conducted extensive outreach to clarify that gross wages is in the ended wage base. The department will consider a change in a future phase if it is evident that there is confusion around this rule.</p> <p>c. This issue will be addressed at the operational level and no rule is needed</p>
22	Online portal	<p>2. Under WAC 192-540-040, we have the following comments:</p> <p>a. Under (2), if we report 40 hours for a full-time salaried employee, how do we report the paid leave (3) if in total the employee only received gross wages for 40 hours? Do the paid leave hours have to be reported as separate hours?</p>	<p>The employer will report 40 hours for all full-time salaried employees regardless of whether hours are actually worked or if paid time off is used. There is no need to indicate whether the hour was worked or paid time off was used.</p>
23	Online portal	<p>3. For (2) and (7), in order to increase reporting accuracy and improve reporting burden, we would suggest that the statement to start with the following "Report the total hours worked by the employee unless the payroll system does not record actual hours worked per employee. Otherwise, use the estimation of ... <>" Our concern for our faculty is that for our semi-monthly payroll, reporting 40 hours per week instead of actual hours per week may be more challenging.</p>	<p>Statute requires the reporting of hours on an as-worked basis. The rule as it is written is intended to mirror the reporting requirements of Unemployment Insurance in order to reduce the additional burden on employers when reporting to the department.</p>
24	Online portal	<p>4. Under (2), we'd like to point out that the University has both salaried exempt and salaried nonexempt employees. Is the intent of (2) to speak to exempt employees only, since they don't report time? Salaried nonexempt employees report hours worked, but are paid on an exception pay basis. In order to e would assume that our salary nonexempt workers fall under (1).</p>	<p>The department will consider addressing this issue in a future phase of rulemaking as it does not topically fit with this phase.</p>

#	Comment source	Comment	Department Response
		Additionally, (2) speaks only to full-time employees, but does not address part-time employees as is outlined in (7). Is this deliberate?	