



# PROPOSED RULE MAKING

## CR-102 (June 2024) (Implements RCW 34.05.320) Do NOT use for expedited rule making

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STATE OF WASHINGTON  
FILED

DATE: December 04, 2024

TIME: 9:27 AM

WSR 24-24-105

**Agency:** Employment Security Department

**Original Notice**

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

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

**Preproposal Statement of Inquiry was filed as WSR 24-17-075 ; or**

**Expedited Rule Making--Proposed notice was filed as WSR \_\_\_\_\_; or**

**Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or**

**Proposal is exempt under RCW \_\_\_\_\_.**

**Title of rule and other identifying information:** (describe subject)

Amending:

WAC 192-500-090 Health care provider.

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

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

WAC 192-610-040 Can an employee backdate an application or a weekly claim for benefits?

WAC 192-620-020 What information will the department request from an employee when filing for weekly benefits?

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

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

Repealing:

WAC 192-500-200 Pandemic leave assistance.

WAC 192-530-100 Are voluntary plans required to pay pandemic leave assistance benefits?

WAC 192-610-100 What is the attestation required for an employee claiming pandemic leave assistance?

**Hearing location(s):**

| Date:           | Time:  | Location: (be specific)  | Comment: |
|-----------------|--------|--|----------|
| January 8, 2025 | 9:00am | Microsoft TEAMS<br><br>Join online: link available at <a href="http://paidleave.wa/rulemaking">paidleave.wa/rulemaking</a><br><br>Join by phone: 564-999-2000<br>PIN: 189 729 140# |          |

**Date of intended adoption:** On or after January 15, 2025 (Note: This is **NOT** the effective date)

**Submit written comments to:**

Name Janette Benham

Address Employment Security Department, PO Box 9046

Olympia, WA 98507-9046

Email [rules@esd.wa.gov](mailto:rules@esd.wa.gov)

Fax

Other

Beginning (date and time) \_\_\_\_\_

By (date and time) January 8, 2025, 5:00pm

**Assistance for persons with disabilities:**

Contact Teresa Eckstein, State EO Office

Phone 360-480-5708

Fax

TTY

Email [teckstein@esd.wa.gov](mailto:teckstein@esd.wa.gov)

Other

By (date) December 31, 2024

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:**

- Amend [WAC 192-500-090 Health Care Provider](#) to include naturopathic physicians based in Washington who are licensed under chapter 18.36A RCW to sign medical certifications.

- Repeal rules related to the pandemic leave assistance program, which is no longer available.
- Amend [WAC 192-800-150 Can an employee designate a representative to act on their behalf?](#) to include “information as required by the department,” or similar language in addition to written documentation. This will give the department the flexibility to develop processes that would allow for verbal authorization in some cases.
- Employees on leave are required to report hours worked in self-employment on a weekly claim even if they have not opted in to self-employment coverage. This requirement is consistent with RCW [50A.15.060\(1\)\(d\)](#). However, our current rules only refer to hours worked for remuneration or wages, which would not include profits earned in self-employment.
- Change gender-specific pronouns to gender-neutral pronouns
- [WAC 192-610-040](#) requires employees to submit their initial application for benefits within seven days of the expiration of a factor that constitutes good cause prevented them from applying. The department is considering aligning this timeline with the standard 30-day timeline for backdating.
- Set prevailing interest at 1% for damages.

**Reasons supporting proposal:** See above.

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

**Statute being implemented:** RCW 50A.15.060

**Is rule necessary because of a:**

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

If yes, CITATION:

**Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:**

**Name of proponent:** (person or organization)

**Type of proponent:**  Private.  Public.  Governmental.

**Name of agency personnel responsible for:**

|                | Name           | Office Location | Phone        |
|----------------|----------------|-----------------|--------------|
| Drafting       | April Amundson | Olympia, WA     | 360-485-2816 |
| Implementation | April Amundson | Olympia, WA     | 360-485-2816 |
| Enforcement    | April Amundson | Olympia, WA     | 360-485-2816 |

**Is a school district fiscal impact statement required under [RCW 28A.305.135](#)?**  Yes  No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

- Name
- Address
- Phone
- Fax
- TTY
- Email
- Other

**Is a cost-benefit analysis required under [RCW 34.05.328](#)?**

- Yes: A preliminary cost-benefit analysis may be obtained by contacting:
  - Name
  - Address

Phone  
 Fax  
 TTY  
 Email  
 Other

No: Please explain: Please see Significance Analysis at [paidleave.wa.gov/rulemaking](http://paidleave.wa.gov/rulemaking)

**Regulatory Fairness Act and Small Business Economic Impact Statement**

Note: The [Governor's Office for Regulatory Innovation and Assistance \(ORIA\)](#) provides support in completing this part.

**(1) Identification of exemptions:**

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see [chapter 19.85 RCW](#)). For additional information on exemptions, consult the [exemption guide published by ORIA](#). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.061](#) because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by [RCW 34.05.313](#) before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of [RCW 15.65.570\(2\)](#) because it was adopted by a referendum.

This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.025\(3\)](#). Check all that apply:

- |  |   |
|--|---|
| <input checked="" type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(b)<br>(Internal government operations) | <input checked="" type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(e)<br>(Dictated by statute)   |
| <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(c)<br>(Incorporation by reference)                | <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(f)<br>(Set or adjust fees)   |
| <input checked="" type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(d)<br>(Correct or clarify language)    | <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(g)<br>(i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit) |

This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.025\(4\)](#). (Does not affect small businesses).

This rule proposal, or portions of the proposal, is exempt under RCW \_\_\_\_\_.

Explanation of how the above exemption(s) applies to the proposed rule:

|    | Proposed WAC Sections and Title  | This proposed rule section is exempt. Provide RCW to support this exemption.   |
|----|--|--|
| 1. | WAC 192-500-090 Health care provider.  | RCW 19.85.025(4) – There is no evidence to suggest that employees of small businesses would be more likely to seek care from a naturopathic physician than employees of large businesses.  |
| 2. | WAC 192-510-031 What are reportable wages for self-employed persons electing coverage?                         | RCW 19.85.025(4) – This change is intended to replace gender-specific pronouns with gender-neutral pronouns and has no impact on businesses.   |
| 3. | WAC 192-570-050 How are damages and liquidated damages assessed by the department, awarded, and paid?          | RCW 34.05.310 (4)(b) – This rule gives direction to department staff when calculating the interest rate on late payments related to damages as required by RCW 50A.40.030(5).  |
| 4. | WAC 192-610-040 Can an employee backdate an application or a weekly claim for benefits?                        | RCW 34.05.310 (4)(b) – Aligning “good cause” backdating language with standard operational policy.   |
| 5. | WAC 192-620-020 What information will the department request from an employee when filing for weekly benefits? | RCW 34.05.310 (4)(e) – 50A.15.060(1)(d) requires all work done “for remuneration or profit” be included in the proration formula for benefit payments.   |
| 6. | WAC 192-620-035 When will a weekly benefit amount be prorated?   | RCW 34.05.310 (4)(e) – 50A.15.060(1)(d) requires all work done “for remuneration or profit” be included in the proration formula for benefit payments.   |
| 7. | WAC 192-800-150 Can an employee designate a representative to act on their behalf?                             | RCW 34.05.310 (4)(b) – This will allow the department flexibility in determining what, if any documentation is required for an employee to designate an authorized representative to interact with the department on their behalf. |

|     |  |  |
|-----|--|--|
| 8.  | WAC 192-500-200 Pandemic leave assistance.   | RCW 34.05.310 (4)(e) – The authorizing statute has elapsed |
| 9.  | WAC 192-530-100 Are voluntary plans required to pay pandemic leave assistance benefits?              | RCW 34.05.310 (4)(e) – The authorizing statute has elapsed |
| 10. | WAC 192-610-100 What is the attestation required for an employee claiming pandemic leave assistance? | RCW 34.05.310 (4)(e) – The authorizing statute has elapsed |

**(2) Scope of exemptions:** *Check one.*

- The rule proposal: Is fully exempt. (*Skip section 3.*) Exemptions identified above apply to all portions of the rule proposal.
- The rule proposal: Is partially exempt. (*Complete section 3.*) The exemptions identified above apply to portions of the rule proposal, but less than the entire rule proposal. Provide details here (consider using [this template from ORIA](#)):
- The rule proposal: Is not exempt. (*Complete section 3.*) No exemptions were identified above.

**(3) Small business economic impact statement:** *Complete this section if any portion is not exempt.*

If any portion of the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

- No Briefly summarize the agency's minor cost analysis and how the agency determined the proposed rule did not impose more-than-minor costs. \_\_\_\_\_
- Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses and a small business economic impact statement is required. Insert the required small business economic impact statement here:

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

Name  
Address  
Phone  
Fax  
TTY  
Email  
Other

**Date:** December 4, 2024

**Name:** April Amundson

**Title:** Policy and Rules Manager, Leave and Care Programs

**Signature:**

