

Chapter 192-610 WAC
INITIAL APPLICATION FOR BENEFITS

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WAC

192-610-005	How does an employee apply for benefits?
192-610-010	What information is an employee required to provide to the department when applying for benefits?
192-610-015	When will the employee be required to provide documentation or certification to the department?
192-610-020	What is required on the certification for medical leave or for family leave to care for a family member who has a serious health condition?
192-610-025	Birth, placement, or death of a child and required documentation.
192-610-030	Documenting a military exigency for family leave.
192-610-035	Documenting a family relationship.
192-610-040	Can an employee backdate an application or a weekly claim for benefits?
192-610-045	May the department refuse to accept an employee's application, appeal, or petition?
192-610-050	How are typical workweek hours determined?
192-610-051	How is the weekly benefit calculated?
192-610-052	How will the department obtain wages and hours that have not yet been reported by employers?
192-610-055	What is an employee's maximum benefit length?
192-610-060	Will the employer be notified if an employee files an application for benefits?
192-610-065	Will the department provide guidance to an employee filing a claim for paid family and medical leave benefits?
192-610-066	How will the department make employees aware of their rights and responsibilities?
192-610-070	Can an employee cancel a claim after it has been submitted to the department?
192-610-075	Can an employer require an employee to take paid time off in place of paid family or medical leave benefits?
192-610-080	When should an employee reopen a claim?
192-610-085	How should an employee reopen a claim?
192-610-090	What is an illegal act for the purposes of benefit disqualification?
192-610-100	What is the attestation required for an employee claiming pandemic leave assistance?

WAC 192-610-005 How does an employee apply for benefits? (1) An employee may apply for paid family or medical leave benefits under the state plan by:

- (a) Using the department's online services;
 - (b) Contacting the paid family and medical leave customer care center by telephone; or
 - (c) Alternate methods authorized by the commissioner.
- (2) An employee who works for an employer with an approved voluntary plan must follow the application guidelines of the approved plan.

[Statutory Authority: RCW 50A.04.215. WSR 19-08-016, § 192-610-005, filed 3/22/19, effective 4/22/19.]

WAC 192-610-010 What information is an employee required to provide to the department when applying for benefits? (1) When an employee submits an application for paid family or medical leave benefits, the employee must provide information sufficient for the department to determine eligibility for benefits. This information includes, but is not limited to, information identifying the employee, the type and anticipated duration of leave, as well as certification or documentation to validate the qualifying event.

(2) If an employee is in a claim year and has need for successive periods of benefits for the same qualifying event beyond what was originally approved, the employee must update the application.

(3) If an employee experiences a new qualifying event during a claim year, the employee must reopen the claim and provide additional information required by the department before benefits can be paid.

[Statutory Authority: RCW 50A.04.215. WSR 19-08-016, § 192-610-010, filed 3/22/19, effective 4/22/19.]

WAC 192-610-015 When will the employee be required to provide documentation or certification to the department? (1) Any time an employee applies for paid family or medical leave benefits, the application must be supported by documentation or certification as required in Title 50A RCW and the rules adopted by the department.

(2) If an employee does not provide sufficient documentation or certification substantiating the employee's qualification for benefits, the department will deny benefits until sufficient documentation or certification substantiating the qualifying event is provided.

(3) The department may require the employee to provide additional documentation or certification to substantiate the qualification for benefits if:

(a) The employee requests an extension of the leave originally planned;

(b) Circumstances of the serious health condition change;

(c) Information is provided to the department that the employee may no longer be qualified for benefits; or

(d) Other circumstances cause the department to question the employee's qualification for benefits.

[Statutory Authority: RCW 50A.04.215. WSR 19-08-016, § 192-610-015, filed 3/22/19, effective 4/22/19.]

WAC 192-610-020 What is required on the certification for medical leave or for family leave to care for a family member who has a serious health condition? When leave is taken because of an employee's own serious health condition or the serious health condition of a family member, certification from a health care provider will be required. Certification must include the following:

(1) The name, address, telephone number, and contact information of the health care provider and type of medicine the health provider is licensed to practice;

(2) The anticipated duration of leave;

(3) Other information as requested by the department to determine eligibility for the qualifying event; and either

(a) For medical leave, information from a health care provider that the employee has a serious health condition; or

(b) For family leave, information sufficient to establish that the family member has a serious health condition requiring physical or psychological care.

[Statutory Authority: RCW 50A.04.215. WSR 19-08-016, § 192-610-020, filed 3/22/19, effective 4/22/19.]

WAC 192-610-025 Birth, placement, or death of a child and required documentation. (1) When paid family or medical leave is taken for the postnatal period, to bond with the employee's child after birth, or for the death of a child as outlined in subsection (6) of this section, the employee must provide:

(a) A copy of the child's birth certificate;

(b) Certification of birth from a health care provider; or

(c) Documentation sufficient to verify or substantiate the child's birth or death.

(2) When paid family leave is taken to bond with the employee's child after the child's placement as defined in WAC 192-500-195, the employee must provide a copy of a court order verifying placement.

If a court order is not available, the department may accept alternate documentation sufficient to verify the placement.

(3) Additional documentation may be requested to substantiate the qualifying event.

(4) Only the employee giving birth is eligible for medical leave taken for the postnatal period related to recovery from childbirth.

(5) (a) Leave taken by the employee giving birth for the postnatal period is subject to maximum family or medical leave duration and will be medical leave except when:

(i) Medical leave is fully or partially exhausted prior to the birth of the child; or

(ii) An employee chooses to use family leave, if available, for the postnatal period.

(b) An employee who gives birth and is not or will not be eligible for family leave to bond with a child may only use medical leave for the postnatal period.

(6) Subject to the maximum and minimum weekly benefits, duration, and other conditions and limitations established in Title 50A RCW, an employee is eligible for up to seven calendar days of family leave in the event of the death of a child they would have been eligible to bond with or were bonding with. This leave is available for up to seven calendar days beginning the day after the date of the child's death or delivery of the deceased child.

[Statutory Authority: RCW 50A.05.060 and 2022 c 233. WSR 22-17-029, § 192-610-025, filed 8/8/22, effective 9/8/22. Statutory Authority: RCW 50A.05.060. WSR 20-20-073, § 192-610-025, filed 10/2/20, effective 11/2/20. Statutory Authority: RCW 50A.04.215. WSR 19-08-016, § 192-610-025, filed 3/22/19, effective 4/22/19.]

WAC 192-610-030 Documenting a military exigency for family leave. When family leave is taken because of a qualifying military exigency, the employee will be required to provide documents or information such as:

(1) Active duty orders;

(2) The approximate dates in which leave will be needed; or

(3) Other information to substantiate the qualifying event.

[Statutory Authority: RCW 50A.04.215. WSR 19-08-016, § 192-610-030, filed 3/22/19, effective 4/22/19.]

WAC 192-610-035 Documenting a family relationship. The department may request documentation or information from the employee that sufficiently demonstrates that the individual for whom leave is being taken is a "family member" as defined by RCW 50A.05.010 for the purposes of benefit eligibility and program integrity.

[Statutory Authority: RCW 50A.05.060, 50A.25.030, 50A.05.010 and 2021 c 109 § 5. WSR 21-16-062, § 192-610-035, filed 7/29/21, effective 8/1/21. Statutory Authority: RCW 50A.04.215. WSR 19-08-016, § 192-610-035, filed 3/22/19, effective 4/22/19.]

WAC 192-610-040 Can an employee backdate an application or a weekly claim for benefits? (1) Generally, paid family or medical leave benefits are payable on or after the date the employee applies for benefits. An application or weekly claim may be backdated for good cause or for the convenience of the department.

(2) For the purpose of this section:

(a)(i) "Good cause" means factors beyond the employee's control that reasonably prevented an employee from applying for benefits at the time of need for paid leave. These factors include, but are not limited to, a serious health condition, a period of incapacity, or a natural disaster.

(ii) The burden is on the employee to establish that good cause exists. The employee must provide all pertinent information and documentation which demonstrates that the factors prevented the employee from applying for benefits when the qualifying event occurred. This may include, but is not limited to, certification from a health care provider, evidence of a natural disaster, or other information required by the department.

(b) "For the convenience of the department" means for the purpose of program administration or situations when accepting timely applications or weekly claims was difficult or impossible. These include, but are not limited to, equipment breakdown or lack of available staff.

(3) An employee who wants to backdate an application or weekly claim must file for benefits during the first seven days after the date that the factors that constitute good cause no longer exist.

[Statutory Authority: RCW 50A.05.060 and 50A.15.020. WSR 21-18-082, § 192-610-040, filed 8/30/21, effective 9/30/21. Statutory Authority: RCW 50A.04.215. WSR 19-08-016, § 192-610-040, filed 3/22/19, effective 4/22/19.]

WAC 192-610-045 May the department refuse to accept an employee's application, appeal, or petition? No employee or agent of the department may refuse to accept a properly filed application or weekly claim for paid family or medical leave benefits, a signed appeal, or a petition for review by the commissioner related to any program administered by this department regardless of the employee or agent's opinion concerning its merits.

[Statutory Authority: RCW 50A.04.215. WSR 19-08-016, § 192-610-045, filed 3/22/19, effective 4/22/19.]

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 the employee's qualifying period.

(b) For all other employees, the department will determine typical workweek hours 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 subsec-

tion (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.

[Statutory Authority: RCW 50A.04.215. WSR 19-23-090, § 192-610-050, filed 11/19/19, effective 12/20/19; WSR 19-08-016, § 192-610-050, filed 3/22/19, effective 4/22/19.]

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.

(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.

[Statutory Authority: RCW 50A.05.060. WSR 21-04-067, § 192-610-051, filed 1/29/21, effective 3/1/21. Statutory Authority: RCW 50A.04.215. WSR 19-23-090, § 192-610-051, filed 11/19/19, effective 12/20/19.]

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.

[Statutory Authority: RCW 50A.04.215. WSR 19-23-090, § 192-610-052, filed 11/19/19, effective 12/20/19.]

WAC 192-610-055 What is an employee's maximum benefit length?

(1) The maximum duration of paid family leave may not exceed twelve times the typical workweek hours during a claim year.

(2) The maximum duration of paid medical leave may not exceed twelve times the typical workweek hours during a claim year. This leave may be extended to fourteen times the typical workweek hours during a claim year if the employee experiences a serious health condition with a pregnancy that results in a period of incapacity.

(3) An employee is not entitled to paid family or medical leave benefits under this chapter that exceeds a combined total of sixteen times the typical workweek hours during a claim year. The combined total of family and medical leave may be extended to eighteen times the typical workweek hours during a claim year if the employee experiences a serious health condition with a pregnancy that results in a period of incapacity.

[Statutory Authority: RCW 50A.04.215. WSR 19-08-016, § 192-610-055, filed 3/22/19, effective 4/22/19.]

WAC 192-610-060 Will the employer be notified if an employee files an application for benefits? (1) The department will send a notice to the employee's current employer(s), if applicable, when an employee files an application for paid family or medical leave benefits.

(2) The department may, when necessary, send a notice to the employee's most recent employer(s).

(3) Any employer that receives such a notice must respond to the department as indicated on the notice. If the employer does not reply within the provided time frame, the department will determine eligibility without input from the employer.

[Statutory Authority: RCW 50A.04.215. WSR 19-08-016, § 192-610-060, filed 3/22/19, effective 4/22/19.]

WAC 192-610-065 Will the department provide guidance to an employee filing a claim for paid family and medical leave benefits? The

department will provide paid family and medical leave information and guidance to any employee who requests help filing an application for benefits.

[Statutory Authority: RCW 50A.04.215. WSR 19-16-081, § 192-610-065, filed 7/31/19, effective 8/31/19.]

WAC 192-610-066 How will the department make employees aware of their rights and responsibilities? (1) The department will publish and post on its website an informational employee guide for basic information on the laws, rules and procedures for the paid family and medical leave program. A copy of the guide will be available to the public at no charge when requested.

(2) The department will send an electronic link to the guide to employees who file an application for benefits and have authorized the department to contact them by email or other electronic means. For employees who have not authorized the department to contact them electronically, the department will send a written notice containing the web address for the guide and a phone number for the department.

(3) The department will maintain a brief descriptive web address for the online location of the employee guide.

(4) Employees are responsible for filing weekly applications and following all instructions as required in the employee guide.

(5) When requested, the department will assist employers and employees in understanding the employee guide.

(6) All employees are presumed to understand the employee guide and will be held responsible for failing to comply with its contents.

(7) If a conflict exists between the employee guide and spoken information provided by the department, the written information will prevail.

[Statutory Authority: RCW 50A.04.215. WSR 19-16-081, § 192-610-066, filed 7/31/19, effective 8/31/19.]

WAC 192-610-070 Can an employee cancel a claim after it has been submitted to the department? (1) If an employee has not been issued a payment on the claim, an employee may cancel a claim within thirty days of the date of the submitted application for benefits.

(2) The commissioner, at the commissioner's discretion, may permit cancellation of a claim without an issued payment after thirty days from the date of the submitted application for benefits in extreme and unusual circumstances.

(3) An employee may not cancel a claim that has been issued a payment. The department will only cancel a claim that has been issued a payment in any amount if the department made the payment due to departmental error.

(4) If the department has denied benefits before the request to cancel the claim was received, the denial will remain in effect.

(5) The denial of a request to cancel a claim is not subject to appeal.

[Statutory Authority: RCW 50A.04.215. WSR 19-13-001, § 192-610-070, filed 6/5/19, effective 7/6/19.]

WAC 192-610-075 Can an employer require an employee to take paid time off in place of paid family or medical leave benefits? Employers may not require employees to take paid vacation leave, paid sick leave, or other forms of paid time off provided by the employer before, in place of, or concurrently with paid family or medical leave benefits.

[Statutory Authority: RCW 50A.04.215. WSR 19-13-001, § 192-610-075, filed 6/5/19, effective 7/6/19.]

WAC 192-610-080 When should an employee reopen a claim? (1) When an employee has an existing claim year and more than four consecutive weeks have passed since the employee filed a weekly claim for benefits, or the employee experiences a new qualifying event, the employee must reopen the claim in order to receive benefit payments.

(2) If the duration of leave for a qualifying event has not expired:

(a) The employee can reopen the claim and file weekly claims as necessary.

(b) If the employee requests to claim the weeks prior to the date the claim is reopened, the employee must have good cause as defined in WAC 192-610-040 to claim prior weeks.

(3) If the duration of leave for the qualifying event has expired or the reason for leave is not the same as the previous qualifying event, the employee must reopen the claim by updating the application as required under WAC 192-610-010 before benefits will be paid.

[Statutory Authority: RCW 50A.04.215. WSR 19-13-001, § 192-610-080, filed 6/5/19, effective 7/6/19.]

WAC 192-610-085 How should an employee reopen a claim? An employee may reopen a claim by:

(1) By using the department's online services;

(2) Contacting the paid family and medical leave customer care center by telephone; or

(3) Alternate methods authorized by the commissioner.

[Statutory Authority: RCW 50A.04.215. WSR 19-13-001, § 192-610-085, filed 6/5/19, effective 7/6/19.]

WAC 192-610-090 What is an illegal act for the purposes of benefit disqualification? (1) Under RCW 50A.15.060, an employee is not entitled to paid family or medical leave benefits for any absence resulting from any injury or illness sustained in the perpetration by the employee of an illegal act.

(2) For purposes of benefit disqualification the following definitions apply:

(a) An "illegal act" is any unlawful action punishable as a felony or gross misdemeanor of which the individual has been convicted or has admitted committing to a competent authority.

(b) A "competent authority" is:

(i) A court (including magistrate or court commissioner), prosecuting attorney, or law enforcement agency; or

(ii) An administrative law judge; or

- (iii) A regulatory agency or professional association charged by law with maintaining professional standards or codes of conduct; or
 - (iv) Any other person or body, other than your employer, with authority to administer disciplinary action against you.
- (3) An admission to your employer or to an employee of the department that you have committed a criminal act is not considered an admission to a competent authority for the purposes of RCW 50A.15.060.

[Statutory Authority: RCW 50A.05.060 and 50A.25.030. WSR 21-11-009, § 192-610-090, filed 5/7/21, effective 6/7/21.]

WAC 192-610-100 What is the attestation required for an employee claiming pandemic leave assistance? (1) Employees applying for pandemic leave assistance will be required to attest in a manner approved by the department that they did not meet the hours worked threshold for eligibility under RCW 50A.15.010 or 50A.30.020(1) due to reasons related to the COVID-19 pandemic.

(2) Employees must attest that they were not:

(a) Separated from employment due to misconduct; or

(b) Voluntarily separated from employment for reasons not related to the COVID-19 pandemic.

EXAMPLE 1

An employee had a part time job in 2019 resulting in 1,000 hours reported to the department for that calendar year. The employee's workplace closed in 2020 due to the COVID-19 pandemic and the employee was unable to find additional work. The employee experiences a qualifying event in June, 2021, and applies in August, 2021. The department determines that the employee would not qualify under the normal qualifying period but would qualify under the pandemic leave assistance qualifying period. As a part of the application process, the employee must attest that the lack of qualifying hours for their normal qualifying period is attributable to the COVID-19 pandemic before they can be approved.

EXAMPLE 2

An employee had a part time job in the second, third, and fourth quarters of 2019 and the first quarter of 2020 resulting in 820 hours reported to the department for those four quarters. The employee's child care facility was closed in April, 2020, due to the COVID-19 pandemic. The employee had to end their employment to care for their child. The employee experiences a qualifying event in August, 2021, and applies for leave. The department determines that the employee would not qualify under the normal qualifying period but would qualify under the pandemic leave assistance qualifying period. As a part of the application process, the employee must attest that the lack of qualifying hours for their normal qualifying period is attributable to the COVID-19 pandemic before they can be approved.

[Statutory Authority: RCW 50A.05.060, 50A.25.030, 50A.05.010 and 2021 c 109 § 5. WSR 21-16-062, § 192-610-100, filed 7/29/21, effective 8/1/21.]