

WSR 21-12-104

PROPOSED RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed June 2, 2021, 9:47 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-21-072.

Title of Rule and Other Identifying Information: Long-term services and supports. Adding chapter 192-900 WAC, Definitions: WAC 192-900-005 Aggrieved party, 192-900-010 Calendar quarter, 192-900-015 Employer, 192-900-020 Employer agent, 192-900-025 Interested parties, 192-900-030 Self-employed, and 192-900-035 Terms meaning deliver; adding chapter 192-910 WAC, Assessing and collecting premiums: WAC 192-910-005 Employer reporting requirements, 192-910-010 When are employer premium payments due?, 192-910-015 What are the employer's responsibilities for premium deductions?, and 192-910-020 How are payments applied to long-term services and supports premiums?; adding chapter 192-915 WAC, Self-employed persons: WAC 192-915-005 Election of coverage for self-employed persons, 192-915-010 What are reportable wages for self-employed persons electing coverage?, and 192-915-015 How will the department determine the wages earned and hours worked for self-employed persons electing coverage?; adding chapter 192-920 WAC, Collective bargaining agreements: WAC 192-920-005 Parties to collective bargaining agreements; and adding chapter 192-925 WAC, Appeals and procedure: WAC 192-925-005 Adoption of model rules, 192-925-010 Who can appeal or submit a petition for review?, and 192-925-015 Sections of general procedural rules for appeal under chapter 192-800 WAC apply.

Hearing Location(s): On July 8, 2021, at 9:00 a.m., call-in number 360-407-3780, Pin 930377#. Hearing will be held by conference call due to COVID-19.

Date of Intended Adoption: On or after July 15, 2021.

Submit Written Comments to: April Amundson, Employment Security Department (ESD), P.O. Box 9046, Olympia, WA 98507-9046, email rules@esd.wa.gov, by July 8, 2021.

Assistance for Persons with Disabilities: Contact Teresa Eckstein, state EO officer, phone 360-480-5708, TTY 711, email Teckstein@esd.wa.gov, by July 1, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules are the second of three phases of rules to implement portions of the long-term services and supports trust program (LTSS) (Title 50B RCW) under the ESD's authority. The proposed rules address definitions, assessing and collecting premiums, self-employed elective coverage, collective bargaining agreements, and appeals.

Reasons Supporting Proposal: The proposed rules are necessary to implement portions of LTSS and provide guidance to employees, employers, and self-employed individuals regarding program operations.

Statutory Authority for Adoption: RCW 50B.04.020, 50B.04.080, 50B.04.090, 50B.04.120.

Statute Being Implemented: RCW 50B.04.080, 50B.04.090, 50B.04.120.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: ESD, leave and care division, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: April Amundson, Lacey, Washington, 360-485-2816.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. The following rules are exempt under RCW 34.05.328 (5)(b)(v), (c)(i)(A) and (C) because the rules are dictated by statute (RCW 50B.04.120) and are procedural rules related to internal operations of the department and agency hearings: WAC 192-900-005 Aggrieved party, 192-900-025 Interested parties, 192-925-005 Adoption of model rules, 192-925-010 Who can appeal or submit a petition for review?, and 192-925-015 Sections of general procedural rules for appeal under chapter 192-800 WAC apply. RCW 50B.04.120 requires that standards and procedures for appeals be consistent with those adopted for paid family and medical leave (PFML) under Title 50A RCW. These rules ensure standards and procedures for LTSS are consistent with rules adopted for PFML under Title 50A RCW. The rules are also procedural rules that adopt policies related to internal operations of the department and define requirements related to agency hearings. Procedural rules are not significant legislative rules under RCW 34.05.328 (5)(c)(iii).

The following rules are exempt under RCW 34.05.328 (5)(b)(v) and (c)(i)(C) because the rules are dictated by statute (RCW 50B.04.080) and are procedural rules related to internal operations of the department: WAC 192-900-010 Calendar quarter, 192-900-015 Employer, 192-900-020 Employer agent, 192-900-035 Terms meaning deliver, 192-910-005 Employer reporting requirements, 192-910-010 When are employer premium payments due?, 192-910-015 What are the employer's responsibilities for premium deductions?, 192-910-020 How are payments applied to long-term services and supports premiums?, and 192-920-005 Parties to collective bargaining agreements. RCW 50B.04.080 requires the department, to the extent feasible, to use the premium assessment, collection, and reporting procedures required for PFML under Title 50A RCW. These rules ensure standards and procedures for assessing and collecting premiums for LTSS are consistent with rules adopted for PFML under Title 50A RCW. The rules are also procedural rules that adopt policies related to internal operations of the department. Procedural rules are not significant legislative rules under RCW 34.05.328 (5)(c)(iii).

The following rules are exempt under RCW 34.05.328 (5)(b)(v) and (c)(i)(C) because the rules are dictated by statute (RCW 50B.04.090) and are procedural rules related to internal operations of the department: WAC 192-900-030 Self-employed, 192-915-005 Election of coverage for self-employed persons, 192-915-010 What are reportable wages for self-employed persons electing coverage?, and 192-915-015 How will the department determine the wages earned and hours worked for self-employed persons electing coverage? RCW 50B.04.090 outlines requirements for self-employed individuals electing coverage under Title 50B.04 RCW and requires the department to adopt rules for determining the hours worked and the wages of individuals electing coverage.

The rules are also procedural rules that adopt policies related to the internal operations of the department. Procedural rules are not significant legislative rules under RCW 34.05.328 (5)(c)(iii).

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to vio-

lation by a nongovernment party; rule content is explicitly and specifically dictated by statute; and rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

Explanation of exemptions: The following rules are exempt under RCW 34.05.310 (4) (b), (e), and (g) because the rules are dictated by statute (RCW 50B.04.120), relate to internal operations of the department, and relate to agency hearings: WAC 192-900-005 Aggrieved party, 192-900-025 Interested parties, 192-925-005 Adoption of model rules, 192-925-010 Who can appeal or submit a petition for review?, and 192-925-015 Sections of general procedural rules for appeal under chapter 192-800 WAC apply. RCW 50B.04.120 requires that standards and procedures for appeals be consistent with those adopted for PFML under Title 50A RCW.

The following rules are exempt under RCW 34.05.310 (4) (e) because the rules are dictated by statute (RCW 50B.04.080): WAC 192-900-010 Calendar quarter, 192-900-015 Employer, 192-900-020 Employer agent, 192-900-035 Terms meaning deliver, 192-910-005 Employer reporting requirements, 192-910-010 When are employer premium payments due?, 192-910-015 What are the employer's responsibilities for premium deductions?, 192-910-020 How are payments applied to long-term services and supports premiums?, and 192-920-005 Parties to collective bargaining agreements. RCW 50B.04.080 requires the department, to the extent feasible, to use the premium assessment collection, and reporting procedures required for PFML under Title 50A RCW.

The following rules are exempt under RCW 34.05.310 (4) (e) because the rules are dictated by statute (RCW 50B.04.090): WAC 192-900-030 Self-employed, 192-915-005 Election of coverage for self-employed persons, 192-915-010 What are reportable wages for self-employed persons electing coverage?, and 192-915-015 How will the department determine the wages earned and hours worked for self-employed persons electing coverage? RCW 50B.04.090 outlines requirements for self-employed individuals electing coverage under Title 50B.04 RCW and requires the department to adopt rules for determining the hours worked and the wages of individuals electing coverage.

June 2, 2021
April Amundson
Policy and Rules Manager
Leave and Care Division

OTS-3092.1

Chapter 192-900 WAC
DEFINITIONS

NEW SECTION

WAC 192-900-005 Aggrieved party. An "aggrieved party" is any interested party who receives an adverse decision from:

- (1) The department for which the department has provided notice of appeal rights;
- (2) The office of administrative hearings; or
- (3) The commissioner's review office.

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NEW SECTION

WAC 192-900-010 Calendar quarter. "Calendar quarter" has the meaning provided in WAC 192-500-020.

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NEW SECTION

WAC 192-900-015 Employer. (1) An "employer" is:

- (a) Any individual or type of organization, including any partnership, association, trust, estate, joint stock company, insurance company, limited liability company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee, or the legal representative of a deceased person, having any person in employment or, having become an employer, has not ceased to be an employer as provided in this chapter;
 - (b) The state, state institutions, and state agencies;
 - (c) Any unit of local government including, but not limited to, a county, city, town, municipal corporation, quasi-municipal corporation, or political subdivision; and
 - (d) A franchisee.
- (2) "Employer" does not include the United States of America.
- (3) The term employer is used for both employer and employer agent.
- (4) This section does not apply to:
- (a) Any self-employed person or federally recognized tribe that has not elected coverage under Title 50B RCW; or
 - (b) Any person performing casual labor as defined in RCW 50A.05.010.

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NEW SECTION

WAC 192-900-020 Employer agent. "Employer agent" has the meaning provided in WAC 192-500-015.

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NEW SECTION

WAC 192-900-025 Interested parties. (1) In all determinations, cases, and appeals adjudicated by the employment security department under Title 50B RCW, the department is an "interested party."

(2) Other interested parties in determinations, cases, 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) The department may designate an employee or employer as an interested party in other determinations made by the department.

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NEW SECTION

WAC 192-900-030 Self-employed. A "self-employed" person has the meaning provided in WAC 192-500-170.

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NEW SECTION

WAC 192-900-035 Terms meaning deliver. (1) Unless otherwise specified, the terms "mail," "provide," "file," "submit," and "send" are interchangeable and mean to properly transmit, deliver, or distribute:

(a) By email or other electronic services; or

(b) In another format approved by the department.

(2) This section does not apply to appeals filed under Title 50B RCW.

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OTS-3093.1

**Chapter 192-910 WAC
ASSESSING AND COLLECTING PREMIUMS**

NEW SECTION

WAC 192-910-005 Employer reporting requirements. Per RCW 50B.04.080, premium assessment, collection, and reporting procedures under Title 50B RCW must align with the procedures under Title 50A RCW

to the extent feasible. The following reporting requirements under the paid family and medical leave program apply to the long-term services and supports trust program:

(1) WAC 192-510-025 What wages are reportable to the department for premium assessment purposes?

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

(3) WAC 192-540-040 How should employers report hours for each calendar quarter?

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

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NEW SECTION

WAC 192-910-010 When are employer premium payments due? (1)

Premiums must be paid quarterly. Each payment must include the premiums owed on all wages subject to premiums during that calendar quarter. Payments are due to the department by the last day of the month following the end of the calendar quarter for which premiums are being paid.

(2) Payments made by mail are considered paid on the postmarked date. If the last day of the month falls on a Saturday, Sunday, or a legal holiday, the premium payment must be postmarked by the next business day.

(3) Premium payments are due within ten calendar days when a business is dissolved or the account is closed by the department.

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NEW SECTION

WAC 192-910-015 What are the employer's responsibilities for premium deductions? (1) Employers must deduct premiums for each pay period in which the employee receives wages.

(2) When an employer is found by the department to be noncompliant with collecting premiums from an employee, the employer must file an amended report and pay the past due premiums.

(3) Subsection (1) of this section does not apply if:

(a) An employer was unable to deduct the premium for a pay period due to a lack of sufficient employee wages for that pay period; or

(b) The employee has an approved exemption under RCW 50B.04.085 and has provided the required proof of the exemption to the employer.

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NEW SECTION

WAC 192-910-020 How are payments applied to long-term services and supports premiums? (1) A payment received with a premium assess-

ment will be applied to the quarter for which the premium assessment applies. A payment exceeding the premiums due for that quarter will be applied to any other debt as provided in subsection (4) of this section.

(2) If no debt exists, premium overpayments of less than fifty dollars will be credited to future payments due.

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

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

(a) 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.

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OTS-3094.1

Chapter 192-915 WAC SELF-EMPLOYED PERSONS

NEW SECTION

WAC 192-915-005 Election of coverage for self-employed persons.

(1) Self-employed persons as defined in RCW 50B.04.090 may elect coverage under Title 50B RCW.

(2) Coverage may only be elected beginning January 1, 2022, and before January 1, 2025, or within three years of becoming self-employed for the first time.

(3) Notice of election of coverage must be submitted to the department online or in another format approved by the department.

(4) Elective coverage begins on the first day of the quarter immediately following the notice of election.

(5) A self-employed person who elects coverage must continue to pay premiums until such time that the individual retires from the workforce or is no longer self-employed.

(6) The self-employed person must file a notice with the department if the individual retires from the workforce or is no longer self-employed.

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NEW SECTION

WAC 192-915-010 What are reportable wages for self-employed persons electing coverage? Each quarter, self-employed individuals who elected coverage under Title 50B RCW will report wages as described in WAC 192-510-031.

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NEW SECTION

WAC 192-915-015 How will the department determine the wages earned and hours worked for self-employed persons electing coverage? The department will determine the wages earned and hours worked for self-employed individuals as described in WAC 192-510-030.

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OTS-3095.1

**Chapter 192-920 WAC
COLLECTIVE BARGAINING AGREEMENTS**

NEW SECTION**WAC 192-920-005 Parties to collective bargaining agreements.**

(1) Parties to a collective bargaining agreement in existence on October 19, 2017, are not required to be subject to the rights and responsibilities under Title 50B RCW and related rules unless and until the existing agreement is reopened or renegotiated by the parties or expires.

(2) Employers must inform the department immediately upon the reopening, renegotiation, or expiration of a collective bargaining agreement that was in effect prior to October 19, 2017.

(3) Employees not covered by a collective bargaining agreement are subject to the rights and responsibilities of Title 50B RCW and related rules. Employers are also subject to the rights and responsibilities of Title 50B RCW and related rules for employees not covered by a collective bargaining agreement, regardless of whether the employer is party to a collective bargaining agreement covering other employees.

(4) Employers party to multiple collective bargaining agreements among different bargaining units are subject to the rights and responsibilities of Title 50B RCW and related rules as they pertain to the bargaining units whose collective bargaining agreement is reopened or renegotiated by the parties or expires, on or after October 19, 2017.

(5) Parties to a collective bargaining agreement in existence on October 19, 2017, that has not been reopened or renegotiated by the

parties or expired may elect to be subject to all applicable rights and responsibilities under Title 50B RCW and related rules prior to the expiration, reopening, or renegotiation of the agreement. Parties seeking to do so must submit to the department a memorandum of understanding, letter of agreement, or a similar document signed by all parties.

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OTS-3096.1

**Chapter 192-925 WAC
APPEALS AND PROCEDURE**

NEW SECTION

WAC 192-925-005 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 50B RCW. The rules contained in this 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.

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NEW SECTION

WAC 192-925-010 Who can appeal or submit a petition for review?

(1) An aggrieved party as defined in WAC 192-900-005 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 party 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.

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NEW SECTION

WAC 192-925-015 Sections of general procedural rules for appeal under chapter 192-800 WAC apply. Per RCW 50B.04.120, appeal procedures under Title 50B RCW must align with the appeal procedures under Title 50A RCW. The following general procedural rules for appeal under

the paid family and medical leave program apply to the long-term services and supports trust program:

- (1) WAC 192-800-040 What are the timeliness requirements for submitting an appeal or a petition for review?
- (2) WAC 192-800-045 Can an appeal be withdrawn?
- (3) WAC 192-800-050 What happens after an appeal is submitted?
- (4) WAC 192-800-055 Who will be notified if an appeal is filed and what will it include?
- (5) 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?
- (6) WAC 192-800-065 How does the time computation work for perfecting an appeal or petition for review?
- (7) WAC 192-800-070 Who can give testimony and examine witnesses during an appeal hearing?
- (8) WAC 192-800-075 Who can request a postponement of a hearing?
- (9) WAC 192-800-080 Will depositions and written discovery be permitted?
- (10) WAC 192-800-085 When will administrative law judges hear consolidated cases?
- (11) WAC 192-800-090 What is included in decisions issued by the office of administrative hearings?
- (12) WAC 192-800-095 Can a decision of the commissioner incorporate a decision under review?
- (13) WAC 192-800-100 What is the process for filing petition for review and any reply to the petition for review?
- (14) WAC 192-800-105 When and how can an administrative law judge dispose of an appeal?
- (15) WAC 192-800-110 What options are available for an aggrieved party who received an order of default?
- (16) WAC 192-800-115 What is the process for filing a petition for reconsideration to the commissioner's review office?
- (17) WAC 192-800-120 When would the commissioner not issue declaratory orders?
- (18) WAC 192-800-125 When is a petition for review considered delivered to the department?

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