

WSR 24-12-023

PERMANENT RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed May 24, 2024, 1:16 p.m., effective July 1, 2024]

Effective Date of Rule: July 1, 2024.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: SHB 1570 (chapter 451, Laws of 2023) requires the pilot program to begin July 1, 2024.

Purpose: The paid family and medical leave (PFML) program is proposing a new chapter of rules under Title 192 WAC to implement the pilot program for transportation network company drivers (drivers) created under SHB 1570 (chapter 451, Laws of 2023). The law creates a pilot program for drivers to elect PFML coverage with premiums paid by the driver and reimbursed by their transportation network company. The pilot begins July 1, 2024, and ends December 31, 2028.

Citation of Rules Affected by this Order: New chapter 192-511 WAC, Transportation network company pilot program; WAC 192-511-005 Definitions applicable to the transportation network company pilot program, 192-511-010 How do transportation network company drivers elect paid family and medical leave coverage?, 192-511-015 Transportation network company rights and responsibilities, and 192-511-020 Self-employed elective coverage requirements apply to the pilot program.

Statutory Authority for Adoption: RCW 50A.05.060; chapter 451, Laws of 2023.

Adopted under notice filed as WSR 24-08-046 on March 28, 2024.

A final cost-benefit analysis is available by contacting Janette Benham, Employment Security Department, P.O. Box 9046, Olympia, WA 98507-9046, phone 360-790-6583, Washington relay 711, (contact Teresa Eckstein at 360-507-9890 for accommodations), email rules@esd.wa.gov, website <https://paidleave.wa.gov/rulemaking/>.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 4, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 4, Amended 0, Repealed 0.

Date Adopted: May 24, 2024.

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ESPI, Leave and Care Programs

OTS-5291.3

Chapter 192-511 WAC

TRANSPORTATION NETWORK COMPANY PILOT PROGRAMNEW SECTION

WAC 192-511-005 Definitions applicable to the transportation network company pilot program. The following definitions are applicable under this chapter.

(1) "Compensation" has the same meaning as defined in RCW 49.46.300.

(2) "Department" means the employment security department.

(3) "Digital network" has the same meaning as defined in RCW 49.46.300.

(4) "Pilot program" refers to the temporary program providing elective coverage to transportation network company drivers created under chapter 451, Laws of 2023. The pilot program is effective from July 1, 2024, through December 31, 2028.

(5) "Third party" means a designated representative that is authorized to conduct business on behalf of the transportation network company driver. To represent a driver before the department, the driver or third party must submit documentation in a format approved by the department. The driver is responsible for all acts taken or failures to act by the third party on the driver's behalf.

(6) A "transportation network company" has the same meaning as defined in RCW 46.04.652.

(7) A "transportation network company driver" has the same meaning as commercial transportation services provider driver in RCW 48.177.005.

NEW SECTION

WAC 192-511-010 How do transportation network company drivers elect paid family and medical leave coverage? (1) Notice of election of coverage must be submitted to the department online or in another format approved by the department. Either the department or the third party if designated by a driver, may inform transportation network companies of a driver's election of coverage into the pilot program.

(2) Election of coverage begins on the first day of the quarter immediately following the notice of election.

(3) A transportation network company driver electing coverage is eligible for family and medical leave after working 820 hours in the state during the qualifying period.

(4) Any transportation network company driver or third party may file a notice of withdrawal within 30 days after the end of each quarterly period of coverage. The withdrawal will take effect the first day of the following quarter.

(5) A notice of withdrawal from coverage must be submitted to the department online or in another format approved by the department.

(6) Any levy resulting from the department's cancellation of coverage is in addition to the due and unpaid premiums and interest for the remainder of the quarterly period of coverage.

(7) Transportation network company drivers electing coverage must elect both family and medical leave and are responsible for 100 percent of all premiums assessed to an employee under RCW 50A.10.030.

NEW SECTION

WAC 192-511-015 Transportation network company rights and responsibilities. (1) By the 15th day of the month following the end of a calendar quarter, transportation network companies must report to each driver in Washington who opted into the pilot program, and to the driver's third-party representative when so designated by a driver, the total amount of compensation that the driver earned providing network services through the transportation network company's digital network in that quarter. The transportation network company shall share data with the third-party representative in a standard format approved by the department to facilitate quarterly reporting and premium payment.

(2) By the 15th day of the month following the driver's deadline for the calendar quarter, the department will provide data to each transportation network company on the drivers who, in that calendar quarter:

(a) Reported and paid all obligated premiums; and

(b) Withdrew or canceled paid family and medical leave coverage.

(3) Data described in subsection (2) of this section provided by the department includes:

(a) When a driver has elected coverage;

(b) A driver's assessed and paid premiums;

(c) When a driver's elective coverage has been withdrawn or canceled; and

(d) Information related to a third party authorized to be acting on the driver's behalf regarding reporting and paying of premiums.

(e) The data described in this subsection will be provided to transportation network companies until February 15, 2029.

(4) By the 15th day following the receipt of information from the department described under subsection (3) of this section, transportation network companies must pay each driver who elected coverage under WAC 192-511-010 the premiums paid by the transportation network company driver. If the driver has designated a third-party representative, then the transportation network companies must pay the third party, rather than the driver, for any premiums paid by the third party on behalf of the transportation network company driver.

(a) For the purposes of this section, compensation does not include any amount listed in RCW 50A.05.010 (22) (d).

(b) The requirement to pay premiums under the pilot program ends December 31, 2028.

NEW SECTION

WAC 192-511-020 Self-employed elective coverage requirements apply to the pilot program. As described in RCW 46.72B.200, a driver who opts into the pilot program is subject to the rights and responsibilities as they apply to self-employed individuals who elect coverage

under Titles 50A RCW and 192 WAC, except for the period of coverage requirements described under RCW 50A.10.010(1) and WAC 192-510-010.