

WSR 25-01-166

PROPOSED RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed December 18, 2024, 11:31 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-08-028.

Title of Rule and Other Identifying Information: Adding new WAC 192-900-040 Out-of-state participant, 192-900-045 Qualified individual, and 192-900-050 Year; and chapter 192-940 WAC, Qualified individuals: WAC 192-940-005 Earning years to become a qualified individual and 192-940-010 How will the department determine if someone is a qualified individual? Amending WAC 192-925-015 Sections of general procedural rules for appeal under chapter 192-800 WAC apply.

Hearing Location(s): On January 22, 2025, at 9:00 a.m., via Microsoft Teams, paidleave.wa.gov/rulemaking; or join by phone 564-999-2000, PIN 309 494 035#.

Date of Intended Adoption: On or after January 29, 2025.

Submit Written Comments to: Janette Benham, Employment Security Department, P.O. Box 9046, Olympia, WA 98507-9046, email rules@esd.wa.gov, by January 22, 2025.

Assistance for Persons with Disabilities: Contact Teresa Eckstein, state EO officer, phone 360-480-5708, email teckstein@esd.wa.gov, by January 15, 2025.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The employment security department (department) is proposing new rules and amendments regarding the long-term services and supports trust program (WA Cares fund) to implement a portion of SHB 2467, which passed into law during the 2024 legislative session. The proposed rules implement a portion of the bill that was codified in RCW 50B.04.180 by defining "out-of-state participant." The proposed rules also add additional program definitions, outline qualified individual requirements and determinations, and further align the WA Cares fund and paid family and medical leave (PFML) appeals processes.

Reasons Supporting Proposal: The proposed new rules add definitions to clarify program operations, clarify how individuals qualify for program coverage, and outline how the department will make determinations regarding qualified individuals. The amended rule ensures the WA Cares fund appeals procedures are aligned with those in place for PFML, as required under RCW 50B.04.120.

Statutory Authority for Adoption: RCW 50B.04.020.

Statute Being Implemented: RCW 50B.04.050, 50B.04.120, 50B.04.180.

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

Name of Proponent: Employment security department, leave and care division, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: April Amundson, Olympia, 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. WAC 192-900-040 Out-of-state participant. This rule is exempt under RCW 34.05.328 (5)(c)(ii) because it is an interpretive rule that sets forth the department's interpretation of statutory provisions. Inter-

pretive rules are not significant legislative rules under RCW 34.05.328 (5) (c) (iii).

WAC 192-900-045 Qualified individual. This rule is exempt under RCW 34.05.328 (5) (c) (ii) because it is an interpretive rule that sets forth the department's interpretation of statutory provisions. Interpretive rules are not significant legislative rules under RCW 34.05.328 (5) (c) (iii). Portions of the rule are also exempt under RCW 34.05.328 (5) (b) (5) because the content is explicitly and specifically dictated by RCW 50B.04.050.

WAC 192-900-050 Year. This rule is exempt under RCW 34.05.328 (5) (c) (ii) because it is an interpretive rule that sets forth the department's interpretation of statutory provisions. Interpretive rules are not significant legislative rules under RCW 34.05.328 (5) (c) (iii).

WAC 192-925-015 Sections of general procedural rules for appeal under chapter 192-800 WAC apply. This rule is exempt under RCW 34.05.328 (5) (c) (i) (A) and (C) because it is a procedural rule that adopts policies related to internal operations of the department and defines requirements related to department hearings. Procedural rules are not significant legislative rules under RCW 34.05.328 (5) (c) (iii). The rule is also exempt under RCW 34.05.328 (5) (b) (v) because the content is explicitly and specifically dictated by RCW 50B.04.120 requiring the department to align appeal standards and procedures between programs.

WAC 192-940-005 Earning years to become a qualified individual. This rule is exempt under RCW 34.05.328 (5) (c) (ii) because it is an interpretive rule that sets forth the department's interpretation of statutory provisions. Interpretive rules are not significant legislative rules under RCW 34.05.328 (5) (c) (iii).

WAC 192-940-010 How will the department determine if someone is a qualified individual? This rule is exempt under RCW 34.05.328 (5) (c) (ii) because it is an interpretive rule that sets forth the department's interpretation of statutory provisions. Interpretive rules are not significant legislative rules under RCW 34.05.328 (5) (c) (iii). Portions of the rule are also exempt under RCW 34.05.328 (5) (b) (v) because the content is explicitly and specifically dictated by RCW 50B.04.050.

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 violation 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.

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

	Proposed WAC Sections and Title	This proposed rule section is exempt. Provide RCW to support this exemption.
1.	WAC 192-900-040 Out-of-state participant	RCW 34.05.310 (4)(b) - The rule relates to internal governmental operations that are not subject to violation by a nongovernment party. RCW 19.85.025(4) - The rule does not affect businesses and pertains only to individuals choosing to participate in the program.

	Proposed WAC Sections and Title	This proposed rule section is exempt. Provide RCW to support this exemption.
2.	WAC 192-900-045 Qualified individual.	RCW 34.05.310 (4)(b) - The rule relates to internal governmental operations that are not subject to violation by a nongovernment party. RCW 34.05.310 (4)(e) - Portions of the rule are dictated by RCW 50B.04.050. RCW 19.85.025(4) - The rule does not affect businesses and pertains only to individuals applying for program benefits.
3.	WAC 192-900-050 Year	RCW 34.05.310 (4)(b) - The rule relates to internal governmental operations that are not subject to violation by a nongovernment party. RCW 19.85.025(4) - The rule does not affect businesses and pertains only to individuals applying for program benefits.
4.	WAC 192-925-015 Sections of general procedural rules for appeal under chapter 192-800 WAC apply.	RCW 34.05.310 (4)(g) - The rule outlines a procedure, practice, or requirement relating to agency hearings. RCW 34.05.310(4)(e) - The rule is dictated by RCW 50B.04.120 regarding alignment of appeals processes.
5.	WAC 192-940-005 Earning years to become a qualified individual.	RCW 34.05.310 (4)(b) - The rule relates to internal governmental operations that are not subject to violation by a nongovernment party. RCW 19.85.025(4) - The rule does not affect businesses and pertains only to individuals applying for program benefits.
6.	WAC 192-940-010 How will the department determine if someone is a qualified individual?	RCW 34.05.310 (4)(b) - The rule relates to internal governmental operations that are not subject to violation by a nongovernment party. RCW 19.85.025(4) - The rule does not affect businesses and pertains only to individuals applying for program benefits. RCW 34.05.310 (4)(e) - Portions of the rule are dictated by RCW 50B.04.050.

December 18, 2024
April Amundson
Policy and Rules Manager, ESPI
Leave and Care Programs

OTS-6043.1

NEW SECTION

WAC 192-900-040 Out-of-state participant. An individual who has elected coverage under RCW 50B.04.180 is considered an "out-of-state participant."

NEW SECTION

WAC 192-900-045 Qualified individual. A "qualified individual" is an individual who has met the requirements outlined in RCW 50B.04.050 and chapter 192-940 WAC.

NEW SECTION

WAC 192-900-050 Year. A "year" for the purpose of qualified individual determinations made by the department under RCW 50B.04.050

means a calendar year, beginning on January 1 and ending on December 31.

OTS-6044.1

AMENDATORY SECTION (Amending WSR 21-17-140, filed 8/18/21, effective 9/18/21)

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?
- (19) WAC 192-800-155 When are proceedings open to the public, and what information from a proceeding before the appeal tribunal or commissioner is publicly disclosable?

OTS-6045.1

**Chapter 192-940 WAC
QUALIFIED INDIVIDUALS**

NEW SECTION**WAC 192-940-005 Earning years to become a qualified individual.**

(1) The department will determine years earned toward qualified individual status under RCW 50B.04.050 based on wages earned and hours worked in employment as reported under chapter 192-910 WAC or in covered self-employment under chapter 192-915 WAC.

(2) Only hours worked in reportable employment or covered self-employment will be considered when determining whether an individual has worked at least 500 hours each year.

(3) A year toward qualified individual status may be earned once an individual has accrued 500 hours in employment as reported under chapter 192-910 WAC or in covered self-employment as reported under chapter 192-915 WAC.

(4) Wages and hours reported when an individual had an approved exemption do not count toward qualifying for the benefit.

NEW SECTION

WAC 192-940-010 How will the department determine if someone is a qualified individual? (1) Qualified individual status under RCW 50B.04.050 is determined as follows:

(a) An individual who has earned 10 years toward becoming a qualified individual without a break of five or more consecutive years in that 10 years will be eligible for the full benefit amount. Years with less than 500 hours reported will count toward the break of five or more consecutive years;

(b) An individual who, from the date of application for benefits, has earned three of the last six years toward becoming a qualified individual will qualify for the full benefit amount; or

(c) An individual born before January 1, 1968, who does not qualify under (a) or (b) of this subsection will qualify for one-tenth of the benefit amount for each earned year toward becoming a qualified individual.

(2) An individual who continues to work in employment or in covered self-employment after qualifying for subsection (1) (b) or (c) of this section, or both, may be eligible to earn additional years toward becoming a qualified individual.

(3) An individual may not exceed the maximum lifetime benefit amount under RCW 50B.04.060.

(4) An individual who has an approved exemption cannot become a qualified individual.