

**Chapter 192-700 WAC
EMPLOYMENT RESTORATION**

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WAC

192-700-005	When is an employee entitled to employment restoration after leave ends?
192-700-006	What hours are considered worked for the purposes of an employee's eligibility for employment restoration?
192-700-007	Employment restoration requirements for predecessor and successor employers.
192-700-010	Can an employer deny employment restoration?
192-700-015	How is employer size determined for employment protection?
192-700-020	When does an employer need to provide a continuation of health benefits to an employee who is on paid family or medical leave?

WAC 192-700-005 When is an employee entitled to employment restoration after leave ends? (1) Subject to RCW 50A.35.010, an employee who meets the criteria listed in that section who takes leave under Title 50A RCW is entitled, on return from the leave, to be restored by the employer to:

(a) The position of employment held by the employee when the leave commenced; or

(b) An equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment.

(i) "Equivalent position" means a position that is nearly identical to the employee's former position as if the employee did not take extended leave. This includes pay, benefits and working conditions, privileges, perks, location, and status. It must involve the same or substantially similar duties and responsibilities, which must entail substantially equivalent skill, effort, responsibility, and authority.

(ii) "Employment benefits" includes all benefits provided or made available to employees by an employer such as:

- (A) Insurance;
- (B) Paid time off;
- (C) Educational benefits; or
- (D) Retirement benefits.

(2) An employee is entitled to such reinstatement even if the employee has been replaced or the employee's position has been restructured to accommodate the employee's absence unless the employer can demonstrate the circumstances fall within WAC 192-700-010(1).

(3) The protections provided in RCW 50A.35.010 and this section apply to the employee beginning with the date the employee starts taking leave.

[Statutory Authority: RCW 50A.05.060. WSR 21-04-067, § 192-700-005, filed 1/29/21, effective 3/1/21. Statutory Authority: RCW 50A.05.60 [50A.05.060] and 50A.25.030. WSR 20-01-087, § 192-700-005, filed 12/12/19, effective 1/12/20. Statutory Authority: RCW 50A.04.215. WSR 19-16-081, § 192-700-005, filed 7/31/19, effective 8/31/19.]

WAC 192-700-006 What hours are considered worked for the purposes of an employee's eligibility for employment restoration? For the purposes of employment restoration under Title 50A RCW, the number of hours worked is determined in accordance with 29 C.F.R. Sec. 825.110(c) and any subsequent amendments to that regulation.

[Statutory Authority: RCW 50A.05.060 and 50A.25.030. WSR 21-11-009, § 192-700-006, filed 5/7/21, effective 6/7/21.]

WAC 192-700-007 Employment restoration requirements for predecessor and successor employers. For the purposes of employment restoration under Title 50A RCW, hours worked for a predecessor employer will be considered worked for the successor employer as described in 29 C.F.R. Sec. 825.107 and any subsequent amendments to that regulation.

Example: An employee works at a florist called ABC Flower Shop. The business is sold to another entity and is renamed XYZ Flower Shop. The new owner applies for a new universal business identifier and is considered a new employer. The employee is retained and continues to work in a similar job function for the new employer. According to 29 C.F.R. Sec. 825.107 of the federal Family and Medical Leave Act, XYZ Flower Shop is considered a "successor in interest" of ABC Flower Shop. As such, the hours worked by the employee for ABC Flower Shop should be included when considering whether or not employment restoration rights apply to a period of leave taken from XYZ Flower Shop.

[Statutory Authority: RCW 50A.05.060 and 50A.25.030. WSR 21-11-009, § 192-700-007, filed 5/7/21, effective 6/7/21.]

WAC 192-700-010 Can an employer deny employment restoration?

- (1) An employee is not entitled to rights under RCW 50A.35.010 if:
 - (a) An employer exercises its right to deny restoration under RCW 50A.35.010 and the employee has elected not to return to employment after receiving notice under subsection (2) of this section; or
 - (b) The employer is able to show that an employee would not otherwise have been employed at the time the employee would return to work after the employee's family or medical leave under Title 50A RCW ends.
- (2) An employer that chooses to deny restoration under subsection (1)(a) or (b) of this section to an employee on paid medical or family leave must notify the employee in writing as soon as the employer decides to deny restoration. The employer must serve this notice to the employee either in person or by certified mail. The notice must include:
 - (a) A statement that the employer intends to deny employment restoration when the leave has ended;
 - (b) The reasons behind the decision to deny restoration;
 - (c) An explanation that health benefits will still be paid for the duration of the leave; and
 - (d) The date on which eligibility for employer-provided health benefits ends.
- (3) Employers that choose to deny restoration under this section must provide continuation of health benefits as required in RCW 50A.35.020 and WAC 192-700-020.

[Statutory Authority: RCW 50A.05.060. WSR 21-04-067, § 192-700-010, filed 1/29/21, effective 3/1/21. Statutory Authority: RCW 50A.05.060, 50A.35.010, and 50A.35.020. WSR 20-11-035, § 192-700-010, filed 5/14/20, effective 6/14/20. Statutory Authority: RCW 50A.05.60 [50A.05.060] and 50A.25.030. WSR 20-01-087, § 192-700-010, filed 12/12/19, effective 1/12/20. Statutory Authority: RCW 50A.04.215. WSR 19-16-081, § 192-700-010, filed 7/31/19, effective 8/31/19.]

WAC 192-700-015 How is employer size determined for employment protection? (1) Employment protection applies to employees who work for an employer with fifty or more employees in employment.

(2) For the purpose of employment protection, employers are considered to have fifty or more employees when:

(a) The employer has fifty or more employees working each work day for twenty or more calendar workweeks; and

(b) The twenty calendar workweeks occur in the current calendar year or occurred in the preceding calendar year.

[Statutory Authority: RCW 50A.04.215. WSR 19-16-081, § 192-700-015, filed 7/31/19, effective 8/31/19.]

WAC 192-700-020 When does an employer need to provide a continuation of health benefits to an employee who is on paid family or medical leave? (1) An employee taking family or medical leave under Title 50A RCW is entitled to the continuation of health benefits as provided in this section when there is at least one day of concurrent use with leave taken under the federal Family and Medical Leave Act as it existed on October 19, 2017.

(2) When required under subsection (1) of this section, the employee's health benefits must be maintained as if the employee had continued to work from the date family or medical leave under Title 50A RCW commenced until whichever of the following occurs first:

(a) The employee's family or medical leave under Title 50A RCW ends; or

(b) The employee returns from leave to any employment.

(3) If the employer and employee share the cost of existing health benefits, then during any continuation of health benefits as provided in this section, the employee remains responsible for the employee's share of the cost as prescribed by 29 C.F.R. 825.210, 825.211, and 825.212, and any subsequent amendments to those regulations.

(4) Nothing in this section should be construed as restricting an employer from providing a continuation of health benefits for any employee's claim for paid family or medical leave.

[Statutory Authority: RCW 50A.05.060, 50A.35.010, and 50A.35.020. WSR 20-11-035, § 192-700-020, filed 5/14/20, effective 6/14/20.]