

## WSR 22-13-176

## PROPOSED RULES

## EMPLOYMENT SECURITY DEPARTMENT

[Filed June 22, 2022, 8:49 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-08-049.

Title of Rule and Other Identifying Information: Amending WAC 192-520-010 Parties to collective bargaining agreements and 192-610-025 Birth, placement, or death of a child and required documentation.

Hearing Location(s): On July 26, 2022, at 9:00 a.m., Microsoft Teams. Join online, link available at [paidleave.wa.gov/rulemaking](https://paidleave.wa.gov/rulemaking); join by phone 564-999-2000, PIN 524 452 625#. Hearing will be held remotely due to COVID-19.

Date of Intended Adoption: On or after August 2, 2022.

Submit Written Comments to: Janette Benham, Employment Security Department, P.O. Box 9046, Olympia, WA 98507-9046, email [rules@esd.wa.gov](mailto:rules@esd.wa.gov), by July 26, 2022.

Assistance for Persons with Disabilities: Contact Teresa Eckstein, state EO officer, phone 360-480-5708, TTY 711, email [Teckstein@esd.wa.gov](mailto:Teckstein@esd.wa.gov), by July 19, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The paid family and medical leave (PFML) program (Title 50A RCW) is proposing amendments to existing rules to implement 2SSB 5649, which passed into law during the 2022 legislative session. The proposed amendments implement an expiration date of December 31, 2023, for provisions allowing parties to collective bargaining agreements that were in effect on October 19, 2017, have not expired, have not been reopened, or have not been renegotiated to be exempt from PFML participation. The proposed amendments implement the "postnatal period" as the six-week period after an employee gives birth and outline that leave taken for the postnatal period will default to medical leave unless otherwise specified by the employee or if the employee's available medical leave has been exhausted. The proposed amendments clarify that leave taken for the postnatal period will not require a medical certification and describe other forms of documentation that may be required. The proposed amendments also implement a new provision allowing an employee to take family leave for up to seven calendar days, if available, in the event of the death of a child they would have been eligible to bond with or were bonding with. Additional changes are technical.

Reasons Supporting Proposal: The proposed amendments to the rules are necessary to implement 2SSB 5649, which passed into law during the 2022 legislative session.

Statutory Authority for Adoption: 2SSB 5649 (chapter 233, Laws of 2022); RCW 50A.05.060.

Statute Being Implemented: 2SSB 5649 (chapter 233, Laws of 2022).

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, 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. WAC 192-520-010 is exempt under RCW 34.05.328 (5)(b)(v). The content of the proposed amendment is explicitly and specifically dictated by 2SSB 5649.

WAC 192-610-025 is exempt under RCW 34.05.328 (5)(b)(v) and (c)(ii). The proposed amendments are explicitly and specifically dictated by 2SSB 5649 and are interpretive rules that do not subject a person to a penalty or sanction and set forth the agency's interpretation of statutory provisions it administers. Interpretive 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 rule content is explicitly and specifically dictated by statute.

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: WAC 192-510-010 is exempt under RCW 34.05.310 (4)(e). The proposed amendment is explicitly and specifically dictated by 2SSB 5649.

WAC 192-610-025 is exempt under RCW 34.05.310 (4)(e) and 19.85.025(4). The proposed amendments are explicitly and specifically dictated by 2SSB 5649. The proposed amendments also do not apply to businesses and only apply to individuals applying for and receiving paid family or medical leave benefits.

June 22, 2022  
April Amundson  
Policy and Rules Manager  
Leave and Care Division

## OTS-3892.1

AMENDATORY SECTION (Amending WSR 19-16-081, filed 7/31/19, effective 8/31/19)

### **WAC 192-520-010 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 50A 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) To be eligible for benefits, an employee must have worked at least (~~eight hundred twenty~~) 820 hours during the qualifying period. If the employee's qualifying period includes any quarter prior to a collective bargaining agreement being reopened or renegotiated by the parties or expiring, the department will request the employee's qualifying period wages and hours from the employer. The employer must provide the wages and hours to the department within (~~ten~~) 10 calendar days.

(4) Employees not covered by a collective bargaining agreement are subject to the rights and responsibilities of Title 50A RCW and

related rules. Employers are also subject to the rights and responsibilities of Title 50A 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.

(5) Employers party to multiple collective bargaining agreements among different bargaining units are subject to the rights and responsibilities of Title 50A 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.

(6) 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 50A 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.

(7) The provisions described in this section are effective until December 31, 2023.

[Statutory Authority: RCW 50A.04.215. WSR 19-16-081, § 192-520-010, filed 7/31/19, effective 8/31/19; WSR 18-12-032, § 192-520-010, filed 5/29/18, effective 6/29/18.]

## OTS-3893.1

AMENDATORY SECTION (Amending WSR 20-20-073, filed 10/2/20, effective 11/2/20)

### WAC 192-610-025 ((Documenting the)) Birth ((or)), placement, or death of a child ((for paid family leave)) 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 copy of)):

- (a) A copy of the child's birth certificate; ((or))
- (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. 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.]