

WSR 22-17-029

PERMANENT RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed August 8, 2022, 1:10 p.m., effective September 8, 2022]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The paid family and medical leave (PFML) program (Title 50A RCW) is adopting rules to implement 2SSB 5649 (chapter 233, Laws of 2022), which passed into law during the 2022 legislative session. The rules 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 adopted rules also implement the "postnatal period" as the six-week period after an employee gives birth and specifies that leave taken for the postnatal period will default to medical leave unless otherwise selected by the employee or if the employee's available medical leave has been exhausted. The adopted rules 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 rules 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.

Citation of Rules Affected by this Order: Amending WAC 192-520-010 Parties to collective bargaining agreements, and 192-610-025 Birth, placement, or death of a child and required documentation.

Statutory Authority for Adoption: RCW 50A.05.060.

Other Authority: 2SSB 5649, chapter 233, Laws of 2022.

Adopted under notice filed as WSR 22-13-176 on June 22, 2022.

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, TTY 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Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 2, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.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 0, Amended 2, Repealed 0.

Date Adopted: August 8, 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.]