

WSR 23-19-086

PROPOSED RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed September 19, 2023, 3:32 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-11-082.

Title of Rule and Other Identifying Information: Amending WAC 192-500-035 Interested parties, 192-510-090 How will the department determine the premium rate for each calendar year?, 192-810-010 Definitions, and 192-810-030 How do individuals and entities request records from the department?

Repealing WAC 192-810-020 Purpose.

Hearing Location(s): On October 26, 2023, at 9:00 a.m., via Microsoft Teams. Link available at paidleave.wa.gov/rulemaking; or join by phone 564-999-2000, PIN 400 151 166#.

Date of Intended Adoption: On or after November 2, 2023.

Submit Written Comments to: Janette Benham, Employment Security Department (ESD), P.O. Box 9046, Olympia, WA 98507-9046, email rules@esd.wa.gov, by October 26, 2023.

Assistance for Persons with Disabilities: Contact Teresa Eckstein, state EO officer, phone 360-480-5708, email teckstein@esd.wa.gov, by October 19, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The paid family and medical leave (PFML) program is proposing amendments to existing rules to implement SSB 5286 (chapter 116, Laws of 2023) and SSB 5586 (chapter 375, Laws of 2023). SSB 5286 made changes to RCW 50A.10.030 regarding how the annual premium rate is calculated for employers and employees. SSB 5586 made changes to RCW 50A.25.040 that will allow employers to access information about current employees to include the type of leave being taken, the requested duration of leave including the approved dates of leave, the remaining hours of leave available in the employee's entitlement, the weekly benefit amount, and the actual benefits paid and hours claimed each week.

The PFML program is also proposing amendments regarding public records rules to eliminate redundancies and refer to agency rules regarding records requests.

Reasons Supporting Proposal: The proposed amendments to WAC 192-500-035 implement SSB 5586 and clarify that employee information for the purposes of RCW 50A.25.040(3), which was added by SSB 5586, is available to an employer from whom leave is being taken.

The proposed amendments to WAC 192-510-090 implement SSB 5286 and establish how ESD must annually calculate the PFML premium rate for employers and employees. The amendments clarify that there's a difference in premium rate calculation for 2024 and thereafter.

The proposed amendments to WAC 192-810-010 and 192-810-030 and the repeal of WAC 192-810-020 align PFML rules with agency rules in chapter 192-02 WAC.

Statutory Authority for Adoption: RCW 50A.05.060, 50A.25.040, 50A.10.030.

Statute Being Implemented: RCW 50A.25.040, 50A.10.030.

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

Name of Proponent: ESD, 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 192-500-035 Interested parties, is exempt under RCW 34.05.328 (5)(b)(v) because the content is explicitly and specifically dictated by RCW 50A.25.040(3).

WAC 192-510-090 How will the department determine the premium rate for each calendar year?, is exempt under RCW 34.05.328 (5)(b)(v) because the calculation is explicitly and specifically dictated by RCW 50A.10.030. The rule is also exempt under RCW 34.05.328 (5)(b)(ii) because it relates only to internal governmental operations that are not subject to violation by a nongovernment party.

WAC 192-810-010 Definitions, is exempt under RCW 34.05.328 (5)(b)(ii) because it relates only to internal governmental operations that are not subject to violation by a nongovernment party.

WAC 192-810-020 Purpose, repeal is exempt under RCW 34.05.328 (5)(b)(ii) because it relates only to internal governmental operations that are not subject to violation by a nongovernment party.

WAC 192-810-030 How do individuals and entities request records from the department?, is exempt under RCW 34.05.328 (5)(b)(ii) because it relates only to internal governmental operations that are not subject to violation by a nongovernment party.

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; rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; rule content is explicitly and specifically dictated by statute; and rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

Scope of exemption for rule proposal:

Is fully exempt.

	Proposed WAC Sections and Title	This proposed rule section is not exempt - Analysis is required.	This proposed rule section is exempt. Provide RCW to support this exemption.
1.	WAC 192-500-035 Interested parties.	<input type="checkbox"/>	RCW 34.05.310 (4)(e) - The content is explicitly and specifically dictated by statute (RCW 50A.25.040(3)).

	Proposed WAC Sections and Title	This proposed rule section is not exempt - Analysis is required.	This proposed rule section is exempt. Provide RCW to support this exemption.
2.	WAC 192-510-090 How will the department determine the premium rate for each calendar year?	☐	RCW 34.05.310 (4)(e) - The content regarding the rate calculation is explicitly and specifically dictated by statute (RCW 50A.10.030). RCW 34.05.310 (4)(b) - The amendments relate only to internal governmental operations. RCW 34.05.310 (4)(f) - The rule sets premium rates pursuant to legislative standards.
3.	WAC 192-810-010 Definitions.	☐	RCW 34.05.310 (4)(b) - The amendments relate only to internal governmental operations. RCW 34.05.310 (4)(c) - The amendments incorporate by reference another agency rule (WAC 192-02-020) without material change, adopt an already established process, and the referenced rule has already been analyzed under previous rule making.
4.	WAC 192-810-020 Purpose.	☐	RCW 34.05.310 (4)(b) - The repeal relates only to internal governmental operations. RCW 34.05.310 (4)(c) - The repeal eliminates a redundancy that is already referenced in another agency rule (WAC 192-02-010) without material change, and the agency rule has already been analyzed under previous rule making.
5.	WAC 192-810-030 How do individuals and entities request records from the department?	☐	RCW 34.05.310 (4)(b) - The amendments relate only to internal governmental operations. RCW 34.05.310 (4)(c) - The amendments incorporate by reference other agency rules (Chapter 192-02 WAC) without material change, adopt an already established process, and the referenced rules have already been analyzed under previous rule making.

September 19, 2023
April Amundson
Policy and Rules Manager
Leave and Care Programs

OTS-4929.1

AMENDATORY SECTION (Amending WSR 20-20-074, filed 10/2/20, effective 11/2/20)

WAC 192-500-035 Interested parties. (1) In all determinations, cases, and appeals adjudicated under Title 50A RCW the employment security department is an "interested party."

(2) Other interested parties in paid family or medical leave determinations related to the state plan, complaints under chapter 50A.40 RCW, and appeals include:

(a) The employee or former employee; and

(b) An employer or former employer of that employee that is required to provide information to the department related to the determination or appeal in question.

(3) Other interested parties in paid family or medical leave determinations related to an approved voluntary plan include:

- (a) The employer or former employer; and
- (b) An employee or former employee.

(4) The department may designate an employee or employer as an interested party in other determinations made by the department.

(5) For the purposes of RCW 50A.25.040(3), an employer from whom leave is being taken is considered an interested party.

[Statutory Authority: RCW 50A.05.060 and 2020 c 125. WSR 20-20-074, § 192-500-035, filed 10/2/20, effective 11/2/20. Statutory Authority: RCW 50A.04.215. WSR 19-23-090, § 192-500-035, filed 11/19/19, effective 12/20/19; WSR 18-22-080, § 192-500-035, filed 11/2/18, effective 12/3/18.]

OTS-4930.1

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

WAC 192-510-090 How will the department determine the premium rate for each calendar year? (1) For calendar years 2021 (~~and thereafter~~), 2022, and 2023, the total premium rate shall be based on the family and medical leave insurance account balance ratio as of September 30th of the previous year.

~~((2))~~ (a) The commissioner shall calculate the account balance ratio by dividing the balance of the family and medical leave insurance account by total covered wages paid by employers and those electing coverage.

~~((3))~~ (b) For the purposes of this section, "total covered wages" is defined as the total amount of wages paid to employees that are subject to the paid family and medical leave premium from July 1st of the previous calendar year to June 30th of the current calendar year as reported by employers.

(2) For calendar years 2024 and thereafter, the total premium rate shall be based on the calculation specified in RCW 50A.10.030.

(3) For the purposes of the calculation described in subsection (2) of this section, a small business grant paid to an employer as specified by chapter 50A.24 RCW shall be considered a benefit paid.

[Statutory Authority: RCW 50A.05.060. WSR 20-20-073, § 192-510-090, filed 10/2/20, effective 11/2/20.]

OTS-4931.1

AMENDATORY SECTION (Amending WSR 20-01-087, filed 12/12/19, effective 1/12/20)

WAC 192-810-010 Definitions. (1) The definitions set forth in RCW 42.56.010 and WAC 192-02-020 apply to this chapter unless the context clearly ~~((requires))~~ indicates otherwise.

~~(2) ("Public records officer" means the departmental employee responsible for responses to requests for public records or that person's designee.~~

~~(3) "Department" means the employment security department.~~

~~(4))~~ An employer's "own records" as used in RCW 50A.25.040 means records and information provided to the department by the employer or the employer's predecessor in interest.

[Statutory Authority: RCW 50A.05.60 [50A.05.060] and 50A.25.030. WSR 20-01-087, § 192-810-010, filed 12/12/19, effective 1/12/20.]

AMENDATORY SECTION (Amending WSR 21-04-067, filed 1/29/21, effective 3/1/21)

WAC 192-810-030 How do individuals and entities request records from the department? (1) The department will manage ~~((all))~~ records requests ~~((consistent with the provisions of chapter 42.56 RCW))~~ as outlined in chapter 192-02 WAC.

~~(2) ((Requests for public records shall be submitted to the public records officer. Contact the public records officer at:~~

~~Public Records Officer
P.O. Box 9046
Olympia, WA 98507-9046
Phone: 1-844-766-8930
Email: Recordsdisclosure@esd.wa.gov~~

~~(3))~~ If an individual requests records or information concerning that individual held by the department under RCW 50A.25.040, those records must be released only to the requesting individual.

~~((4))~~ (3) If an individual submits a records request and asks that the requested records be sent to a third party directly, the individual must follow the provisions of RCW 50A.25.040.

[Statutory Authority: RCW 50A.05.060. WSR 21-04-067, § 192-810-030, 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, § 192-810-030, filed 12/12/19, effective 1/12/20.]

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 192-810-020 Purpose.