

WSR 25-03-089

PERMANENT RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed January 16, 2025, 2:11 p.m., effective February 16, 2025]

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

Purpose: The employment security department (department), paid family and medical leave program (Title 50A RCW) is adopting rule amendments and repealing rules. The amendments modify the definition of "health care provider" to include naturopathic physicians licensed under chapter 18.36A RCW, change gender-specific pronouns to gender-neutral pronouns, set a prevailing interest rate for late payments associated with damages to align with the interest rate for late premium payments, align backdating timelines associated with good cause with timelines associated with all other backdating reasons, align rule language with statutory language and agency practice that requires employees to report hours worked in self-employment on a weekly claim for benefits, and give the department discretion to allow for the designation of an authorized representative without written documentation in certain situations. Three rules related to the pandemic leave assistance program are being repealed because the program is no longer available due to statutory timelines.

Citation of Rules Affected by this Order: Repealing WAC 192-500-200 Pandemic leave assistance, 192-530-100 Are voluntary plans required to pay pandemic leave assistance benefits? and 192-610-100 What is the attestation required for an employee claiming pandemic leave assistance?; and amending WAC 192-500-090 Health care provider, 192-510-031 What are reportable wages for self-employed persons electing coverage?, 192-570-050 How are damages and liquidated damages assessed by the department, awarded, and paid?, 192-610-040 Can an employee backdate an application or a weekly claim for benefits?, 192-620-020 What information will the department request from an employee when filing for weekly benefits?, 192-620-035 When will a weekly benefit amount be prorated?, and 192-800-150 Can an employee designate a representative to act on their behalf?

Statutory Authority for Adoption: RCW 50A.05.060.

Adopted under notice filed as WSR 24-24-105 on December 4, 2024.

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, 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 0, 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 7, Repealed 3.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 7, 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 7, Repealed 3.

Date Adopted: January 16, 2025.

April Amundson

**OTS-6013.1**

AMENDATORY SECTION (Amending WSR 19-08-016, filed 3/22/19, effective 4/22/19)

**WAC 192-500-090 Health care provider.** "Health care provider" means:

(1) A physician or an osteopathic physician who is licensed to practice medicine or surgery, as appropriate, by the state in which the physician practices;

(2) Nurse practitioners, nurse-midwives, midwives, clinical social workers, physician assistants, podiatrists, dentists, clinical psychologists, optometrists, and physical therapists licensed to practice under state law and who are performing within the scope of their practice as defined under state law by the state in which they practice;

(3) Naturopathic physicians licensed under chapter 18.36A RCW;

(4) A health care provider listed above who practices in a country other than the United States, who is authorized to practice in accordance with the law of that country, and who is performing within the scope of the health care provider's practice as defined under such law; or

~~((4))~~ (5) Any other provider permitted to certify the existence of a serious health condition under the federal Family and Medical Leave Act of 1993 (Act Feb. 5, 1993, P.L. 103-3, 107 Stat. 6, as it existed on October 19, 2017).

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 192-500-200          Pandemic leave assistance.

**OTS-6014.1**

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

**WAC 192-510-031 What are reportable wages for self-employed persons electing coverage?** Each quarter, a self-employed individual who has elected coverage under Title 50A RCW will report to the department wages equal to the combined total of:

(1) The self-employed individual's net income related to their self-employment; and

(2) The gross amount of wages, if any, as defined in RCW 50A.05.010, paid to the self-employed individual from the self-employed individual's business entity.

**Example 1:** A sole-proprietor selling crafts online earns \$3,000 in a quarter and incurred \$2,000 in business-related expenses. The individual would report \$1,000 to the department for that quarter.

**Example 2:** A member of a limited liability company (~~pays her self~~) draws a salary in the amount of \$10,000 in a quarter. (~~She~~) They also take(~~s~~) a draw from (~~her~~) their company in the amount of \$5,000. (~~She~~) They would report \$15,000 to the department for that quarter.

### OTS-6015.1

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 192-530-100      Are voluntary plans required to pay pandemic leave assistance benefits?

### OTS-6016.1

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

**WAC 192-570-050 How are damages and liquidated damages assessed by the department, awarded, and paid?** (1) If the department finds the employer has violated RCW 50A.40.010, the department will assess monetary damages referenced in RCW 50A.40.030 plus any interest accrued on the assessed damages.

(2) If the department finds that the employer has committed a violation of RCW 50A.40.010 that is willful as defined in RCW 50A.40.030(4), additional liquidated damages will be added equal to the sum of the assessed damages.

(3) Damages and liquidated damages must be paid by the employer directly to the employee.

(4) If liquidated damages are assessed, the employer must pay all damages owed directly to the employee within (~~thirty~~) 30 calendar days from the day the determination is issued, unless the employer files an appeal under chapter 50A.50 RCW.

(5) The department is not responsible for collection action against an employer that defaults on the payment of all damages awarded. A collection action may be initiated by the employee against the employer by filing a warrant with the clerk of any county within the state.

(6) If damages are not paid to the employee on the date on which they are due and payable as prescribed by the commissioner, the whole or part thereof remaining unpaid shall bear interest at the rate of one percent per month or fraction thereof from and after such date until payment plus accrued interest is received by the employee.

### OTS-6017.1

AMENDATORY SECTION (Amending WSR 21-18-082, filed 8/30/21, effective 9/30/21)

**WAC 192-610-040 Can an employee backdate an application or a weekly claim for benefits?** (1) Generally, paid family or medical leave benefits are payable on or after the date the employee applies for benefits. An application or weekly claim may be backdated for good cause or for the convenience of the department.

(2) For the purpose of this section:

(a) (i) "Good cause" means factors beyond the employee's control that reasonably prevented an employee from applying for benefits at the time of need for paid leave. These factors include, but are not limited to, a serious health condition, a period of incapacity, or a natural disaster.

(ii) The burden is on the employee to establish that good cause exists. The employee must provide all pertinent information and documentation which demonstrates that the factors prevented the employee from applying for benefits when the qualifying event occurred. This may include, but is not limited to, certification from a health care provider, evidence of a natural disaster, or other information required by the department.

(b) "For the convenience of the department" means for the purpose of program administration or situations when accepting timely applications or weekly claims was difficult or impossible. These include, but are not limited to, equipment breakdown or lack of available staff.

(3) An employee who wants to backdate an application or weekly claim must file for benefits during the first (~~seven~~) 30 days after the date that the factors that constitute good cause no longer exist.

### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 192-610-100	What is the attestation required for an employee claiming pandemic leave assistance?
-----------------	--

### OTS-6018.1

AMENDATORY SECTION (Amending WSR 21-11-009, filed 5/7/21, effective 6/7/21)

**WAC 192-620-020 What information will the department request from an employee when filing for weekly benefits?** (1) The department must determine if an employee qualifies for benefits when the employee files a weekly claim for the payment of benefits. For the week that the employee is claiming, the department will ask if the employee:

(a) Worked in self-employment or for wages during the week, and for the hours associated with that work;

(b) Received any paid leave such as vacation leave, sick leave, or other paid time off that was not considered a supplemental benefit payment provided by the employer, and the hours associated with that leave;

(c) Received any benefit that may disqualify the employee for paid family or medical leave, such as unemployment insurance; and

(d) Experienced a change in the qualifying event that affects the eligibility for, or duration of, paid family or medical leave benefits.

(2) The employee may be asked to provide additional information.

AMENDATORY SECTION (Amending WSR 22-10-031, filed 4/26/22, effective 6/9/22)

**WAC 192-620-035 When will a weekly benefit amount be prorated?**

(1) For an employee on paid family or medical leave, a weekly benefit amount is prorated when:

(a) The employee reports hours worked for wages or hours worked in self-employment;

(b) The employee reports hours for paid sick leave, paid vacation leave, or other paid time off that is not considered a supplemental benefit payment as defined in WAC 192-500-180; or

(c) The employee files a weekly application for benefits that contains a day or days for which the employee was not approved for paid family or medical leave.

(2) If an employee reports hours under subsection (1)(a) or (b) of this section, proration will be calculated as specified by RCW 50A.15.020(2).

(3) This section does not apply to a week that is claimed to satisfy an employee's waiting period.

(4) If an employee is approved for leave for part of a week under subsection (1)(c) of this section, proration for that week will occur as follows:

(a) The employee's typical workweek hours are multiplied by the number of days approved for leave, then divided by seven. The result is rounded down to the nearest whole hour. This amount is the employee's adjusted typical workweek hours.

(b) Any hours worked or taken as paid time off as reported by the employee are then subtracted from the employee's adjusted typical workweek hours. This amount will be the number of hours of paid family or medical leave claimed for that week.

(c) The number of hours claimed for that week are then divided by the employee's typical workweek hours to produce a percentage.

(d) The resulting percentage is then multiplied by the employee's normal weekly benefit amount. The resulting amount, rounded down to

the nearest whole dollar, is the employee's benefit payment for that week.

**Example 1:** An employee has already served a waiting period in the claim year and files a claim for a week of paid medical leave. The employee typically works 40 hours a week at eight hours per day. In the week for which the employee is claiming, the employee claimed one day of paid medical leave and worked the other four days. This employee's weekly benefit is usually \$800. The weekly benefit would then be prorated by the hours on paid medical leave (eight hours) relative to the typical workweek hours (40 hours). Eight hours is 20 percent of 40 hours. The employee's weekly benefit would be prorated to 20 percent for a total of \$160.

**Example 2:** An employee with typical workweek hours of 40 and a weekly benefit amount of \$1,000 is approved for leave through Thursday. The employee is not approved for leave Friday or Saturday. For this week only, the following proration will occur:

(a) The employee's typical workweek hours (40) are multiplied by the number of approved days of leave for that week (five) and then divided by seven and rounded down. The result is an adjusted typical workweek hours of 28.

(b) The employee reports no hours of work or paid time off for that week. The resulting number of hours claimed for that week are 28.

(c) The number of hours claimed for that week (28) are then divided by the employee's normal typical workweek hours (40). This results in a percentage of 70 percent.

(d) The percentage (70) is then multiplied by the employee's weekly benefit amount (\$1,000). For that week, the employee will receive \$700.

**Example 3:** An employee with typical workweek hours of 40 and a weekly benefit amount of \$1,000 is approved for leave through Thursday. The employee is not approved for leave Friday or Saturday. For this week only, the following proration will occur:

(a) The employee's typical workweek hours (40) are multiplied by the number of approved days of leave for that week (five) and then divided by seven and rounded down. The result is an adjusted typical workweek hours of 28.

(b) The employee reports eight hours of work and eight hours of paid time for that week. The adjusted workweek hours are reduced to reflect 16 hours of work and paid time. The resulting number of hours claimed for that week are 12.

(c) The number of hours claimed for that week (12) are then divided by the employee's normal typical workweek hours (40). This results in a percentage of 30 percent.

(d) The percentage (30) is then multiplied by the employee's weekly benefit amount (\$1,000). For that week, the employee will receive \$300.

**OTS-6019.1**

AMENDATORY SECTION (Amending WSR 23-11-083, filed 5/17/23, effective 7/1/23)

**WAC 192-800-150 Can an employee designate a representative to act on their behalf?** (1) The department may authorize another individual to act on the employee's behalf for the purposes of paid family and medical leave benefits if:

(a) An employee designates an authorized representative by submitting written documentation or other information as required by the department;

(b) A court-appointed legal guardian with authority to make decisions on a person's behalf submits documentation as required by the department;

(c) An individual designated as an attorney-in-fact under a power of attorney submits documentation satisfactory to the department to act on the employee's behalf; or

(d) If an employee is unable to designate an authorized representative due to a serious health condition, an individual may represent the employee by submitting a complete and signed authorized representative designation form made available by the department, which must include:

(i) Documentation from the employee's health care provider certifying that the employee is incapable of completing the administrative requirements necessary for receiving paid family and medical leave benefits and is unable to designate an authorized representative to act on the employee's behalf; and

(ii) An affidavit or declaration authorized by chapter 5.50 RCW attesting to the responsibility to act in the employee's best interest.

(2) A person meeting the requirements under subsection (1) of this section may file an initial application and weekly claims up to and including the week in which the employee died subject to WAC 192-620-010.

(3) If an employee has been approved for benefit payments and the employee dies, an estate executor or administrator may file weekly claims for any weeks in which the employee was unable to file a weekly claim up to and including the week in which they died, subject to WAC 192-620-010.

(4) The department will terminate the authority given to the authorized representative:

(a) When the employee or authorized representative notifies the department verbally or in writing; or

(b) At the department's discretion.

(5) For the purposes of paid family and medical leave the term employee is used for both employee and authorized representative.