

## WSR 21-04-066

## EMERGENCY RULES

## EMPLOYMENT SECURITY DEPARTMENT

[Filed January 29, 2021, 9:54 a.m., effective January 29, 2021, 9:54 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: This emergency rule clarifies what service is considered localized as it relates specifically to the temporary physical reassignment of an employee due to the COVID-19 pandemic. Clarification is important in order to give notice and certainty to individuals and employers of paid family and medical leave (PFML) benefits eligibility and employer reporting and premium payment considerations, especially as they relate to telework performed out-of-state during the COVID-19 pandemic, and to allow consistent application of localization standards in these circumstances—protecting employees and employers.

Citation of Rules Affected by this Order: New WAC 192-510-091 Localization considerations due to COVID-19.

Statutory Authority for Adoption: RCW 50A.05.060.

Other Authority: RCW 34.05.350; Governor's Proclamations 20-05 and 20-25.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: In Proclamation 20-05, Governor Inslee proclaimed a State of Emergency in Washington regarding COVID-19. The proclamation directs agencies and departments to support the department of health and local officials in alleviating the impacts to people, property, and infrastructure across the state. Proclamation 20-25, the Governor's Stay Home - Stay Healthy order, amends Proclamation 20-05 with respect to certain business activities. Employees, especially those who may be or have been teleworking from out-of-state during the COVID-19 pandemic, need notice and certainty of the considerations relating to their PFML benefit eligibility. The rule provides this guidance. Further, employers need immediate clarification regarding which of their employees are considered localized to Washington and must be reported for the purposes of the PFML program. This rule is specifically related to which employees need to be reported to Washington based on their temporary work location due to the COVID-19 pandemic. Once the pandemic restrictions are lifted, employees who are considered localized may not be if the reassignment of their physical work location becomes permanent.

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 1, 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 0, Repealed 0.

Date Adopted: January 29, 2021.

April Amundson  
Paid Family and Medical Leave  
Policy and Rules Manager

**OTS-2908.1**

NEW SECTION

**WAC 192-510-091 Localization considerations due to COVID-19.**

(1) For the purposes of paid family and medical leave, an employee's service is localized in Washington if:

(a) Prior to March 23, 2020, the employee's service with an employer was considered localized in Washington under RCW 50A.050.010 (8) (a);

(b) The employer requirements or the state's restrictions due to COVID-19 resulted in the employee temporarily working from a location that is not in Washington;

(c) The employee's residence or domicile was out of state prior to March 23, 2020; and

(d) The employer and employee intend for the employee to perform work exclusively or mostly in Washington once COVID-19 restrictions are lifted.

(2) Employers with employees covered by subsection (1) of this section must comply with all the rights and responsibilities under Title 50A RCW and submit amended reports and pay premiums for the affected quarters if applicable. Employers that acted on the advice of the department and did not previously report these employees are not required to amend reports.

[]