

WSR 21-06-110

PROPOSED RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed March 3, 2021, 9:40 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-14-086.

Title of Rule and Other Identifying Information: Long-term services and supports trust program, adding chapter 192-905 WAC, Exemptions; WAC 192-905-005 Eligibility requirements for an employee to receive an exemption from the long-term services and supports trust program, 192-905-010 How and when can an employee apply for an exemption from the long-term services and supports trust program?, 192-905-015 What happens after an employee's exemption application is processed, and 192-905-020 Is an exempt employee entitled to a refund of premiums?

Hearing Location(s): On April 6, 2021, at 9:00 a.m., call-in number 360-407-3780, Pin 474082#. Hearing will be held by conference call due to COVID-19.

Date of Intended Adoption: On or after April 13, 2021.

Submit Written Comments to: April Amundson, Employment Security Department (ESD), P.O. Box 9046, Olympia, WA 98507-9046, email rules@esd.wa.gov, by April 6, 2021.

Assistance for Persons with Disabilities: Contact Teresa Eckstein, state EO officer, phone 360-480-5708, TTY 711, email Teckstein@esd.wa.gov, by March 30, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules are the first of three phases of rules to implement portions of the long-term services and supports trust program (Title 50B RCW) under ESD's authority. The proposed rules address exemptions from participation in the program and include rules related to eligibility and application requirements, employee and employer responsibilities, and refunds of premiums.

Reasons Supporting Proposal: The proposed rules are necessary to implement portions of the long-term services and supports trust program and provide guidance to employees and employers regarding exemptions from the program.

Statutory Authority for Adoption: RCW 50B.04.020, 50B.04.085.

Statute Being Implemented: RCW 50B.04.050, 50B.04.085.

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, 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 192-905-005, 192-905-010, and 192-905-015 are exempt under RCW 34.05.328 (5)(b)(v) and (c)(i)(C). The rules are explicitly and specifically dictated by statute (RCW 50B.04.085) and are procedural rules that adopt policy pertaining to the internal operations of the department. Procedural rules are not significant legislative rules under RCW 34.05.328 (5)(c)(iii).

WAC 192-905-020 is exempt under RCW 34.05.328 (5)(b)(v). The rule is explicitly and specifically dictated by statute (RCW 50B.04.085).

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; and rule content is explicitly and specifically dictated by statute.

Explanation of exemptions: WAC 192-905-005 Eligibility requirements for an employee to receive an exemption from the long-term services and supports trust program, 192-905-010 How and when can an employee apply for an exemption from the long-term services and supports trust program?, and 192-905-015 What happens after an employee's exemption application is processed?, the rules are exempt under RCW 34.05.310 (4) (b) and (e) because the rules are related to internal operations of the department and are specifically dictated by statute (RCW 50B.04.085).

WAC 192-905-020 Is an exempt employee entitled to a refund of premiums?, the rule is exempt under RCW 34.05.310 (4) (e) because the rule is specifically dictated by statute (RCW 50B.04.085).

March 3, 2021
 April Amundson
 Policy and Rules Manager
 Leave and Care Division

OTS-2844.3

Chapter 192-905 WAC EXEMPTIONS

NEW SECTION

WAC 192-905-005 Eligibility requirements for an employee to receive an exemption from the long-term services and supports trust program. (1) An employee who has long-term care insurance as defined in RCW 48.83.020 and attests to this, may apply for an exemption from the premium assessment under RCW 50B.04.080.

(2) Only an employee who is eighteen years of age or older on the date of application may apply for an exemption.

(3) The employee must provide identification that verifies their age at the time of application.

(4) The department may verify an employee's long-term care insurance coverage and may request additional information from the employee.

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NEW SECTION

WAC 192-905-010 How and when can an employee apply for an exemption from the long-term services and supports trust program? (1) Applications for exemption from the long-term services and supports trust program will be accepted by the department only from October 1, 2021, through December 31, 2022, per RCW 50B.04.085.

(2) If approved by the department, an employee's exemption will be effective the quarter immediately following approval.

(3) Applications for exemption will be available on the department's website or in another format approved by the department.

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NEW SECTION

WAC 192-905-015 What happens after an employee's exemption application is processed? (1) After an employee's exemption application is processed, the department will send the employee either:

(a) An approval letter stating the employee is exempt from the program; or

(b) A denial letter stating the reason for the denial.

(2) A determination made by the department may be appealed in accordance with RCW 50B.04.120(2).

(3) An employee who is approved for an exemption must notify any current or future employer of their exempt status by providing a copy of their approval letter to the employer.

(4) The employer must maintain a copy of the approval letter provided by the employee.

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NEW SECTION

WAC 192-905-020 Is an exempt employee entitled to a refund of premiums? (1) If an exempt employee fails to notify an employer of their exemption, the exempt employee is not entitled to a refund of any premium deductions made before notification was provided.

(2) Any premium deductions made before notification was provided to the employer remain with the employer.

(3) If an employer deducts premiums after the employee provides notification of the employee's exempt status, the employer must refund the deducted premiums to the employee.

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