

WSR 21-13-161
PROPOSED RULES
EMPLOYMENT SECURITY DEPARTMENT
 [Filed June 22, 2021, 5:00 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-10-047.

Title of Rule and Other Identifying Information: Adding WAC 192-500-200 Pandemic leave assistance, 192-510-095 How will certain moneys owed to the trust be considered when calculating the premium rate?, 192-530-100 Are voluntary plans required to pay pandemic leave assistance benefits?, 192-560-011 What small business grants are available under pandemic leave assistance? and 192-610-100 What is the attestation required for an employee claiming pandemic leave assistance?; and amending WAC 192-610-035 Documenting a family relationship.

Hearing Location(s): On July 27, 2021, at 9:00 a.m., Microsoft TEAMS. Join online, link available at paidleave.wa.gov/rulemaking under "Upcoming Meetings." Join by phone 564-999-2000, PIN 204472260#. Hearing will be held remotely due to COVID-19.

Date of Intended Adoption: July 29, 2021.

Submit Written Comments to: April Amundson, Employment Security Department, P.O. Box 9046, Olympia, WA 98507-9046, email rules@esd.wa.gov, by July 27, 2021.

Assistance for Persons with Disabilities: Contact Teresa Eckstein, state EO officer, phone 360-480-5708, TTY 711, email Teckstein@esd.wa.gov, by July 20, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The rules are necessary to align the paid family and medical leave program with new requirements created by the state legislature in the 2021 legislative session, specifically regarding the passage of HB 1073 and SB 5097.

Reasons Supporting Proposal: Adopting the rules will provide enhanced direction to the public. Failing to do so will create confusion on changes to the program's operation in light of the new statutory requirements.

Statutory Authority for Adoption: RCW 50A.05.060.

Statute Being Implemented: Chapter 109, Laws of 2021 (HB 1073), and chapter 232, Laws of 2021 (SB 5097).

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

Name of Proponent: Employment security department, 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 Section	Section Title	Exempting reason	Exempting statute(s)
WAC 192-500-200	Pandemic leave assistance.	The rule is interpretive and sets forth the agency's interpretation of statutory provisions.	RCW 34.05.328 (5)(c)(ii)
WAC 192-510-095	How will certain moneys owed to the trust be considered when calculating the premium rate?	The rule relates only to internal governmental operations that are not subject to violation by a nongovernment party.	RCW 34.05.328 (5)(b)(ii)
WAC 192-530-100	Are voluntary plans required to pay pandemic leave assistance benefits?	The rule is interpretive and sets forth the agency's interpretation of statutory provisions.	RCW 34.05.328 (5)(c)(ii)

WAC Section	Section Title	Exempting reason	Exempting statute(s)
WAC 192-560-011	What small business grants are available under pandemic leave assistance?	The rule adopts or incorporates by reference without material change Washington state statutes; and is a rule the content of which is explicitly and specifically dictated by statute.	RCW 34.05.328 (5)(b)(iii); 34.05.328 (5)(b)(v)
WAC 192-610-035	Documenting a family relationship.	The rule corrects references and clarifies language without changing the effect of the rule.	RCW 34.05.328 (5)(b)(iv)
WAC 192-610-100	What is the attestation required for an employee claiming pandemic leave assistance?	The rule adopts or incorporates by reference without material change Washington state statutes; and is a rule the content of which is explicitly and specifically dictated by statute.	RCW 34.05.328 (5)(b)(iii); 34.05.328 (5)(b)(v)

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; and rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Explanation of exemptions:

WAC Section	Section Title	Exempting reason	Exempting statute(s)
WAC 192-510-095	How will certain moneys owed to the trust be considered when calculating the premium rate?	The rule relates only to internal governmental operations that are not subject to violation by a nongovernment party.	RCW 34.05.310 (4)(b)
WAC 192-560-011	What small business grants are available under pandemic leave assistance?	The rule adopts or incorporates by reference without material change Washington state statutes; and is a rule the content of which is explicitly and specifically dictated by statute.	RCW 34.05.310 (4)(c); RCW 34.05.310 (4)(e)
WAC 192-610-035	Documenting a family relationship.	The rule corrects references and clarifies language without changing the effect of the rule.	RCW 34.05.310 (4)(d)
WAC 192-610-100	What is the attestation required for an employee claiming pandemic leave assistance?	The rule adopts or incorporates by reference without material change Washington state statutes; and is a rule the content of which is explicitly and specifically dictated by statute.	RCW 34.05.310 (4)(c); RCW 34.05.310 (4)(e)

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. WAC 192-500-200 serves as a general definition of the grant established by the passage of HB 1073 and acts as a reference point to establish the scope of all related rules. This rule creates no costs for employers. WAC 192-530-100 exempts voluntary plan employers from grant liability. This rule creates no costs for employers.

June 22, 2021
 April Amundson
 Policy and Rules Manager
 Leave and Care Division

NEW SECTION

WAC 192-500-200 Pandemic leave assistance. (1) "Pandemic leave assistance" is a temporary grant authorized by the legislature that is only available for employees who:

(a) Do not meet the eight hundred twenty hours threshold in the qualifying period defined in RCW 50A.05.010; and

(b) Are unable to do so due to the impacts of the COVID-19 pandemic.

(2) A pandemic leave assistance qualifying period is either:

(a) The first through fourth completed calendar quarters of 2019; or

(b) If eligibility is not established, the second through fourth completed calendar quarters of 2019 and first completed calendar quarter of 2020.

(3) Pandemic leave assistance is only available for claim years beginning between January 1, 2021, and March 31, 2022.

(4) Employees who receive pandemic leave assistance are subject to all rights and responsibilities of family or medical leave taken under Title 50A RCW.

(5) Employers with employees who receive pandemic leave assistance are subject to all rights and responsibilities associated with an employee's family or medical leave under Title 50A RCW.

[]

OTS-3135.1NEW SECTION

WAC 192-510-095 How will certain moneys owed to the trust be considered when calculating the premium rate? For the purposes of premium rate calculation under RCW 50A.10.030(6), any benefit moneys that have been paid to employees, but have not yet been reimbursed pursuant to section 4, chapter 232, Laws of 2021 (SB 5097), will be included in the balance of the family and medical leave insurance account.

[]

OTS-3136.1NEW SECTION

WAC 192-530-100 Are voluntary plans required to pay pandemic leave assistance benefits? (1) Voluntary plans are not required to pay pandemic leave assistance benefits to employees.

(2) Employees eligible for pandemic leave assistance who work for an employer with an approved voluntary plan may apply to the state for benefits.

[]

OTS-3137.1

NEW SECTION

WAC 192-560-011 What small business grants are available under pandemic leave assistance? (1) An employer may apply for one small business assistance grant based on an employee taking leave under pandemic leave assistance.

(2) An application for a small business grant for an employee taking leave under pandemic leave assistance does not count toward an employer's maximum number of applications for small business grants permitted under RCW 50A.24.010(4).

(3) An employer may not use additional grant applications permitted under RCW 50A.24.010(4) to receive more than one grant for an employee taking leave under pandemic leave assistance.

(4) The application process for a small business grant for an employee taking leave under pandemic leave assistance must follow the same process as described in WAC 192-560-020.

[]

OTS-3133.1

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

WAC 192-610-035 Documenting a family relationship. The department may request documentation or information from the employee that ~~((is sufficient to establish the familial relationship))~~ sufficiently demonstrates that the individual for whom leave is being taken is a "family member" as defined by RCW 50A.05.010 for the purposes of benefit eligibility and program integrity.

[Statutory Authority: RCW 50A.04.215. WSR 19-08-016, § 192-610-035, filed 3/22/19, effective 4/22/19.]

OTS-3138.1

NEW SECTION

WAC 192-610-100 What is the attestation required for an employee claiming pandemic leave assistance? (1) Employees applying for pandemic leave assistance will be required to attest in a manner approved by the department that they did not meet the hours worked threshold for eligibility under RCW 50A.15.010 or 50A.30.020(1) due to reasons related to the COVID-19 pandemic.

(2) Employees must attest that they were not:

(a) Separated from employment due to misconduct; or

(b) Voluntarily separated from employment for reasons not related to the COVID-19 pandemic.

EXAMPLE 1

An employee had a part time job in 2019 resulting in 1,000 hours reported to the department for that calendar year. The employee's workplace closed in 2020 due to the COVID-19 pandemic and the employee was unable to find additional work. The employee experiences a qualifying event in June, 2021, and applies in August, 2021. The department determines that the employee would not qualify under the normal qualifying period but would qualify under the pandemic leave assistance qualifying period. As a part of the application process, the employee must attest that the lack of qualifying hours for their normal qualifying period is attributable to the COVID-19 pandemic before they can be approved.

EXAMPLE 2

An employee had a part time job in the second, third, and fourth quarters of 2019 and the first quarter of 2020 resulting in 800 hours reported to the department for those four quarters. The employee's child care facility was closed in April, 2020, due to the COVID-19 pandemic. The employee had to end their employment to care for their child. The employee experiences a qualifying event in August, 2021, and applies for leave. The department determines that the employee would not qualify under the normal qualifying period but would qualify under the pandemic leave assistance qualifying period. As a part of the application process, the employee must attest that the lack of qualifying hours for their normal qualifying period is attributable to the COVID-19 pandemic before they can be approved.

[]