

WSR 21-14-093

PROPOSED RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed July 7, 2021, 9:42 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-11-077.

Title of Rule and Other Identifying Information: Amending WAC 192-610-040 Can an employee backdate an application or a weekly claim for benefits?, and 192-620-035 When will a weekly benefit amount be prorated?

Hearing Location(s): On August 10, 2021, at 9:00 a.m., Microsoft TEAMS. Join online, link available at [paidleave.wa.gov/rulemaking-under "Upcoming Meetings."](https://paidleave.wa.gov/rulemaking-under-Upcoming-Meetings) Join by phone 564-999-2000, PIN 819916431#. Hearing will be held remotely due to COVID-19.

Date of Intended Adoption: August 11, 2021.

Submit Written Comments to: Janette Benham, Employment Security Department, P.O. Box 9046, Olympia, WA 98507-9046, email rules@esd.wa.gov, by August 10, 2021.

Assistance for Persons with Disabilities: Contact Teresa Eckstein, state EO officer, phone 360-480-5708, TTY 711, email Teckstein@esd.wa.gov, by August 3, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The paid family and medical leave (PFML) program (Title 50A RCW) requires updating existing rules to ensure clarity and make necessary changes based on programmatic needs. Proposed amendments to WAC 192-620-035 provide clearer examples related to the proration of weekly claims for the benefit of employers, employees, and department staff. Proposed amendments to WAC 192-610-040 provide clarification by using plain language and allowing for department staff to consider all information provided when processing claims.

Reasons Supporting Proposal: Proposed amendments to the proration rules are necessary to provide clarification and to ensure that proper payment is consistent with statutory requirements for instances where an employee's leave begins in the middle of the week. The proposal is also necessary to provide ease of readability and operational flexibility for department staff when determining whether benefit claims may be backdated.

Statutory Authority for Adoption: RCW 50A.05.060.

Statute Being Implemented: RCW 50A.05.060, 50A.15.020.

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 required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Janette Benham, Employment Security Department, P.O. Box 9046, Olympia, WA 98507-9046, phone 360-790-6583, TTY 771 [711], email rules@esd.wa.gov.

WAC 192-610-040 requires a cost-benefit analysis.

WAC 192-620-035 is exempt under RCW 34.05.328 (5)(b)(ii) because the proposed amendments are related to internal government operations and do not subject a nongovernmental party to a violation.

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. Proposed amendments to WAC 192-610-040 and 192-620-035 do not impact businesses and pertain only to individuals applying for paid family and medical leave benefits.

July 7, 2021
April Amundson
Policy and Rules Manager
Leave and Care Division

OTS-3174.2

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

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 ((prior to or)) at the time of need for paid leave ((such as)). These factors include, but are not limited to, a serious health condition, a period of incapacity, or a natural disaster.

(ii) The burden ((of proof is on the employee to provide all pertinent facts and evidence to the department to determine good cause. The evidence must show that the factors prevented the employee from applying for or claiming benefits when the qualifying event occurred and any subsequent duration in which the employee did not apply for or claim benefits. This evidence may include, but is not limited to, medical)) 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 ((week in which)) seven days after the date that the factors that constitute good cause no longer exist.

[Statutory Authority: RCW 50A.04.215. WSR 19-08-016, § 192-610-040, filed 3/22/19, effective 4/22/19.]

OTS-3175.1

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

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;

(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 (~~did not claim~~) 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) If an employee (~~claims part~~) is approved for leave for part of a week under subsection (1)(c) of this section, proration for that week will (~~be calculated by dividing the employee's typical workweek hours and weekly benefit amount for that week by sevenths, then multiplying by the number of days for which the employee claimed paid family or medical leave for that week. The remainder of the week will be calculated as specified by RCW 50A.15.020(2) and subsection (1)(a) and (b) of this section~~) 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 forty 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 eight hundred dollars. The weekly benefit would then be prorated by the hours on paid medical leave (eight hours) relative to the typical workweek hours (forty hours). Eight hours is twenty percent of forty hours. The employee's weekly benefit would be prorated to twenty percent for a total of one hundred sixty dollars.

Example 2: An employee (~~files a claim for eight hours of paid family or medical leave and takes sick leave from the employer for the same day. The employer does not offer the sick leave as a supplemental benefit payment. The sick leave is considered hours worked by the employee. The employee is being paid for the same hours claimed on paid~~

family or medical leave. This employee is not eligible for benefits for this week.

~~**Example 3:** The employee's typical workweek hours are forty hours per week, and the weekly benefit amount is one thousand dollars. The employee files a claim for leave that starts on a Tuesday. Because the employee's claim did not include Sunday or Monday of that week, the employee's typical workweek hours and weekly benefit amount for that week will be prorated by two-sevenths, or two days of the seven days in the week. For that week only, the employee's typical workweek hours will be twenty-eight (five-sevenths of forty, rounded down to the nearest hour) and the weekly benefit amount will be seven hundred fourteen dollars (five-sevenths of one thousand dollars, rounded down to the nearest dollar)) with typical workweek hours of forty and a weekly benefit amount of one thousand dollars 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 (forty) 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 twenty-eight.~~

~~(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 twenty-eight.~~

~~(c) The number of hours claimed for that week (twenty-eight) are then divided by the employee's normal typical workweek hours (forty). This results in a percentage of seventy percent.~~

~~(d) The percentage (seventy) is then multiplied by the employee's weekly benefit amount (one thousand). For that week, the employee will receive seven hundred dollars.~~

~~**Example 3:** An employee with typical workweek hours of forty and a weekly benefit amount of one thousand dollars 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 (forty) 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 twenty-eight.~~

~~(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 sixteen hours of work and paid time. The resulting number of hours claimed for that week are twelve.~~

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

~~(d) The percentage (thirty) is then multiplied by the employee's weekly benefit amount (one thousand dollars). For that week, the employee will receive three hundred dollars.~~

[Statutory Authority: RCW 50A.05.060 and 50A.25.030. WSR 21-11-009, § 192-620-035, filed 5/7/21, effective 6/7/21. Statutory Authority: RCW 50A.05.060. WSR 20-20-073, § 192-620-035, filed 10/2/20, effective 11/2/20. Statutory Authority: RCW 50A.04.215. WSR 19-23-090, § 192-620-035, filed 11/19/19, effective 12/20/19.]