

WSR 21-16-062

PERMANENT RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed July 29, 2021, 3:39 p.m., effective August 1, 2021]

Effective Date of Rule: August 1, 2021.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: RCW 34.05.380 (3)(a), section 2(3), chapter 109, Laws of 2021 (HB [E2SHB] 1073) requires the department to accept applications based on conditions established by the bill beginning August 1, 2021. The August 1, 2021, effective date is necessary to comply with that requirement.

Purpose: The rules amend several sections of Title 192 WAC to implement the passage of chapter 109, Laws of 2021 (HB [E2SHB] 1073) and chapter 232, Laws of 2021 (SB [ESSB] 5097). HB [E2SHB] 1073 creates additional qualifying periods for employees whose employment was affected by the COVID-19 pandemic. SB [ESSB] 5097 modifies the definition of "family member" and creates additional reporting requirements for the division. The rules create a definition for use throughout WAC, clarify premium calculations, offer guidance to employers with an approved voluntary plan, clarify small business grants, add an attestation requirement for certain applicants, and modify language related to documentation.

Citation of Rules Affected by this Order: New 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.

Statutory Authority for Adoption: RCW 50A.05.060, 50A.25.030, 50A.05.010; section 5, chapter 109, Laws of 2021 (HB [E2SHB] 1073).

Adopted under notice filed as WSR 21-13-161 on June 22, 2021.

Changes Other than Editing from Proposed to Adopted Version: A typo in Example 2 of WAC 192-610-100 was corrected.

A final cost-benefit analysis is available by contacting April Amundson, Employment Security Department, P.O. Box 9046, Olympia, WA 98507-9046, phone 360-485-2816, 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 5, Amended 1, 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 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 5, Amended 1, 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 5, Amended 1, Repealed 0.

Date Adopted: July 29, 2021.

April Amundson
Policy and Rules Manager

OTS-3134.1NEW 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.

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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.

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OTS-3136.1

NEW 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.

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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.

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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-3138.2

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 820 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.

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