

WSR 22-06-093

PROPOSED RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed March 2, 2022, 8:17 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-22-106.

Title of Rule and Other Identifying Information: Amending WAC 192-500-185 Waiting period, 192-620-035 When will a weekly benefit amount be prorated?, 192-620-040 How will the department determine the number of hours of paid family or medical leave an employee claims each week?, and 192-800-125 When is a petition for review considered delivered to the department?

Hearing Location(s): On April 5, 2022, 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 631874858#. Hearing will be held remotely due to COVID-19.

Date of Intended Adoption: On or after April 12, 2022.

Submit Written Comments to: Janette Benham, Employment Security Department (ESD), P.O. Box 9046, Olympia, WA 98507-9046, email rules@esd.wa.gov, by April 5, 2022.

Assistance for Persons with Disabilities: Contact Teresa Eckstein, state EO officer, phone 360-480-5708, TTY 711, email Teckstein@esd.wa.gov, by March 29, 2022.

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) is proposing amendments to existing rules to provide clarity and make necessary changes based on program and customer needs. Proposed amendments to WAC 192-500-185 provide clarification regarding the required waiting period. The amendments clarify that a waiting period does not reduce the maximum duration of an employee's available paid family or medical leave and that the waiting period does not apply to medical leave taken upon the birth of a child. Proposed amendments to WAC 192-620-035 and 192-620-040 provide clarification that proration of benefits and the calculation of typical work week hours do not apply to the waiting period. Additional changes are technical. Proposed amendments to WAC 192-800-125 allow petitions for review to be submitted by email.

Reasons Supporting Proposal: The proposed amendments to the rules are necessary to provide clear and usable guidance to the public regarding program operations.

Statutory Authority for Adoption: RCW 50A.05.060, 50A.15.020.

Statute Being Implemented: RCW 50A.15.020.

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 192-500-185 is exempt under RCW 34.05.328 (5)(c)(ii). The rule is an interpretive rule that does not subject a person to a penalty or sanction and sets forth the agency's interpretation of statutory provisions of RCW 50A.15.020. Interpretive rules are not significant legislative rules under RCW 34.05.328 (5)(c)(iii).

WAC 192-620-035 and 192-620-040 are exempt under RCW 34.05.328 (5) (b) (ii) and (c) (ii) because the rules relate to internal governmental operations that are not subject to violation by a nongovernment party and they are interpretive rules that do not subject a person to a penalty or sanction and set forth the agency's interpretation of statutory provisions of RCW 50A.15.020. Interpretive rules are not significant legislative rules under RCW 34.05.328 (5) (c) (iii).

WAC 192-800-125 is exempt under RCW 34.05.328 (5) (c) (i) (A) and (C) because it is a procedural rule that amends a procedure, practice, or requirement related to agency hearings and amends a policy statement pertaining to the consistent internal operations of the agency. Procedural rules are not significant legislative rules under RCW 34.05.328 (5) (c) (iii).

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 rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

Explanation of exemptions: WAC 192-620-035 and 192-620-040 are exempt under RCW 34.05.310 (4) (b) because the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

WAC 192-800-125 is exempt under RCW 34.05.310 (4) (g) (i) because the rule relates to a procedure, practice, or requirement relating to agency hearings.

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 192-500-185 does not impact or create a cost of compliance for businesses because the benefit is administered and paid by the department to individuals who are approved to receive partial wage replacement for qualifying paid family or medical leave. The rule provides clarity regarding the duration of paid family or medical leave individuals may receive under RCW 50A.15.020.

March 2, 2022
April Amundson
Policy and Rules Manager
Leave and Care Division

OTS-3635.1

AMENDATORY SECTION (Amending WSR 20-20-074, filed 10/2/20, effective 11/2/20)

WAC 192-500-185 Waiting period. (1) A "waiting period" is the first seven consecutive calendar days beginning with the Sunday of the first week an eligible employee starts taking paid family or medical leave.

(2) An employee will satisfy the waiting period requirement if the employee takes at least eight consecutive hours of leave during the first week of the employee's paid family or medical leave claim.

(3) An employee will not receive a benefit payment for hours claimed during the waiting period.

(4) A waiting period does not reduce the maximum duration of an employee's available paid family or medical leave.

~~((6))~~ (7) Subject to subsection ~~((6))~~ (7) of this section, an employee must only meet the requirement of one waiting period in a claim year.

~~((5))~~ (6) If an employee is denied eligibility for a period of time that satisfied the waiting period requirement, the waiting period requirement will not be deemed satisfied for a future claim for which the employee is deemed eligible.

~~((6))~~ (7) The waiting period does not apply to:

(a) Medical leave taken upon the birth of a child;

(b) Family leave taken for bonding after the child's birth or placement; or

~~((b))~~ (c) Family leave taken for reasons related to a qualified military exigency.

~~((7))~~ (8) An employee's use of paid time off for all of or any portion of the waiting period will not affect the satisfaction of the waiting period requirement.

[Statutory Authority: RCW 50A.05.060 and 2020 c 125. WSR 20-20-074, § 192-500-185, filed 10/2/20, effective 11/2/20. Statutory Authority: RCW 50A.05.60 [50A.05.060] and 50A.25.030. WSR 20-01-087, § 192-500-185, filed 12/12/19, effective 1/12/20.]

OTS-3636.1

AMENDATORY SECTION (Amending WSR 21-18-082, filed 8/30/21, effective 9/30/21)

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 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) This section does not apply to a week that is claimed to satisfy an employee's waiting period.

(4) If an employee is approved for leave for part of a week under subsection (1)(c) of this section, proration for that week will 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))~~ 40 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))~~ \$800. The weekly benefit would then be prorated by the hours on paid medical leave (eight hours) relative to the typical workweek hours ~~((forty))~~ 40 hours). Eight hours is ~~((twenty))~~ 20 percent of ~~((forty))~~ 40 hours. The employee's weekly benefit would be prorated to ~~((twenty))~~ 20 percent for a total of ~~((one hundred sixty dollars))~~ \$160.

Example 2: An employee with typical workweek hours of ~~((forty))~~ 40 and a weekly benefit amount of ~~((one thousand dollars))~~ \$1,000 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))~~ 40 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))~~ 28.

(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))~~ 28.

(c) The number of hours claimed for that week ~~((twenty-eight))~~ 28 are then divided by the employee's normal typical workweek hours ~~((forty))~~ 40. This results in a percentage of ~~((seventy))~~ 70 percent.

(d) The percentage ~~((seventy))~~ 70 is then multiplied by the employee's weekly benefit amount ~~((one thousand))~~ 1,000. For that week, the employee will receive ~~((seven hundred dollars))~~ \$700.

Example 3: An employee with typical workweek hours of ~~((forty))~~ 40 and a weekly benefit amount of ~~((one thousand dollars))~~ \$1,000 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))~~ 40 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))~~ 28.

(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~~) 16 hours of work and paid time. The resulting number of hours claimed for that week are (~~twelve~~) 12.

(c) The number of hours claimed for that week (~~twelve~~) 12 are then divided by the employee's normal typical workweek hours (~~forty~~) 40. This results in a percentage of (~~thirty~~) 30 percent.

(d) The percentage (~~thirty~~) 30 is then multiplied by the employee's weekly benefit amount (~~one thousand dollars~~) \$1,000. For that week, the employee will receive (~~three hundred dollars~~) \$300.

[Statutory Authority: RCW 50A.05.060 and 50A.15.020. WSR 21-18-082, § 192-620-035, filed 8/30/21, effective 9/30/21. 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.]

AMENDATORY SECTION (Amending WSR 19-23-090, filed 11/19/19, effective 12/20/19)

WAC 192-620-040 How will the department determine the number of hours of paid family or medical leave an employee claims each week?

(1) When the employee submits a weekly application for benefits as described in WAC 192-620-020, the department will determine the number of hours claimed by the employee for that week by determining the typical workweek hours as described in WAC 192-610-050, then deducting the number of hours:

(a) Physically worked by the employee; and

(b) Claimed by the employee as sick leave, vacation leave, or other paid time off that has not been offered as a supplemental benefit by the employer.

(2) The result of the calculation in subsection (1) of this section will be deducted from the employee's duration of paid family and medical leave for the current claim year and, if necessary, for the purposes of proration as described in WAC 192-620-035.

(3) This section does not apply to a week that is claimed to satisfy an employee's waiting period.

[Statutory Authority: RCW 50A.04.215. WSR 19-23-090, § 192-620-040, filed 11/19/19, effective 12/20/19.]

OTS-3637.1

AMENDATORY SECTION (Amending WSR 21-04-067, filed 1/29/21, effective 3/1/21)

WAC 192-800-125 When is a petition for review considered delivered to the department? Delivery under RCW 34.05.542 is made when a copy of the petition for judicial review is received by:

(1) Delivery to the Commissioner's Office at 212 Maple Park Avenue S.E., Olympia, WA (~~or received by~~);

(2) Mail at the Commissioner's Review Office, Post Office Box 9555, Olympia, WA 98507-9555; or

(3) Email at the commissioner's review office at cro@esd.wa.gov.

[Statutory Authority: RCW 50A.05.060. WSR 21-04-067, § 192-800-125, filed 1/29/21, effective 3/1/21. Statutory Authority: RCW 50A.04.215. WSR 19-23-090, § 192-800-125, filed 11/19/19, effective 12/20/19.]