

WSR 22-10-031

PERMANENT RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed April 26, 2022, 3:38 p.m., effective June 9, 2022]

Effective Date of Rule: June 9, 2022.

Purpose: The adopted rules amend four sections under Title 192 WAC related to the required waiting period, proration of benefits, calculation of typical workweek hours, and petitions for review submitted to the commissioner's review office.

The rules 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. The rules also clarify that proration of benefits and the calculation of typical workweek hours do not apply to the waiting period. In addition, the rules allow petitions for review to be submitted by email and make other technical changes.

Citation of Rules Affected by this Order: 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?

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

Adopted under notice filed as WSR 22-06-093 on March 2, 2022.

A final cost-benefit analysis is available by contacting Janette Benham, Employment Security Department, P.O. Box 9046, Olympia, WA 98507-9046, phone 360-790-6583, TTY 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Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 4, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 4, Repealed 0.

Date Adopted: April 26, 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.]