

WSR 23-11-083

PERMANENT RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed May 17, 2023, 11:26 a.m., effective July 1, 2023]

Effective Date of Rule: July 1, 2023.

Purpose: The paid family and medical leave (PFML) program (Title 50A RCW) is adopting rule amendments to provide additional clarity and improve program operations.

The adopted amendments add a new data field to employer quarterly reports to include employees' dates of birth and require a report of "no payroll" for up to a maximum of eight quarters when employers have no paid wages to report. The amendments will affect both PFML and the long-term services and supports trust (WA Cares fund) since employers submit one report to the department for both programs. The amendments will help ensure that employers report correct information to the department, including when no wages are paid during any given quarter. In addition, since WA Cares fund premium assessment begins July 1, 2023, employers must submit quarterly reports that include information for both PFML and WA Cares fund. The department is utilizing one employer report for both programs. RCW 50B.04.020 (4)(c) requires the department to determine the compliance of premium payments (employer audits) in coordination with the same activities conducted for PFML under Title 50A RCW. This requirement will assist the department because a report of "no payroll" will ensure the department does not flag a missing report for audit.

Adding employees' dates of birth to employer reports will assist with ensuring employee work history and premium assessments are complete. RCW 50B.04.080 requires the department, to the extent feasible, to use the same premium assessment, collection, and reporting procedures for the WA Cares fund as it does for PFML. Requiring dates of birth for employees will assist with determining employee eligibility for prorated benefits for WA Cares fund under RCW 50B.04.050. The requirements will also assist the department with projecting fund solvency for the PFML program, align with unemployment insurance practices of "no payroll" reports, and ensure the department has accurate data for annual PFML employer sizing determinations.

Specific to PFML, the adopted amendments correct an RCW pointer reference, clarify the definition of "placement" for the purpose of family leave to bond with the employee's child, clarify that hours worked in self-employment prior to the effective date of the election of coverage for self-employed individuals do not count toward establishing benefit eligibility, and clarify that weekly claims may be filed by an estate executor or administrator if the employee dies after they've been approved for benefits.

Citation of Rules Affected by this Order: Amending WAC 192-500-195 Placement, 192-510-010 Election, withdrawal, and cancellation of coverage, 192-540-030 What are employers required to report to the department?, and 192-800-150 Can an employee designate a representative to act on their behalf?

Statutory Authority for Adoption: RCW 50A.05.060, 50A.10.010.

Adopted under notice filed as WSR 23-08-075 on April 4, 2023.

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 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 4, 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: May 17, 2023.

April Amundson
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ESPI, Leave and Care Division

OTS-4460.1

AMENDATORY SECTION (Amending WSR 20-20-073, filed 10/2/20, effective 11/2/20)

WAC 192-500-195 Placement. (1) For the purposes of qualifying for paid family leave to bond with a child under RCW 50A.05.010, "placement" means the adoptive, guardianship, foster care, or nonparental custody placement of a child under the age of (~~eighteen~~) 18 with the employee. A placement is considered:

(a) An adoptive placement when the employee is legally and permanently assuming the responsibility of raising the child as their own, and the placement of the child into the employee's home is made through a private arrangement, a child placement agency, or a government agency.

(b) A guardianship placement when the employee is granted guardianship of a child by court order, and the child is placed in the home under:

(i) Title 11 RCW;

(ii) Title 13 RCW; or

(iii) Any other applicable guardianship that reflects the purpose, permanency, and legal authority of guardianships under Titles 11 and 13 RCW, including guardianships granted out of this state or country.

(c) A foster care placement when the employee is providing care for a child placed in the employee's home. Such placements must involve voluntary or involuntary removal of the child from the child's parents or guardian, and an agreement between a government agency and the foster family that the foster family will take care of the child. Although foster care placement may be with a relative of the child or another individual who may not have a foster care license, government agency action must be involved in the removal of the child.

(d) A nonparental custody placement when the child is placed into the home of the employee by court order granting the employee nonparental custody.

(2) For the purposes of this section, a "government agency" may include an agency of any branch of government at the county, state, or federal level, or a foreign jurisdiction.

(3) The entitlement to paid family leave benefits for placement of a child expires at the end of the (~~twelve~~) 12-month period beginning on the date the child was first placed in the home.

(4) When applying for paid family leave to bond with a child, the employee must provide documentation referenced in WAC 192-610-025 to verify placement of the child.

(5) Qualifying paid family leave to bond with a child placed for adoption, guardianship, foster care, or nonparental custody does not include:

(a) (~~Placement with a birth parent; and~~) Any arrangement where the child is already in the care and custody of a parent and remains in that same parent's care and custody;

(b) Any arrangement where a child is returned to the care and custody of a parent or is placed with a parent whose entitlement to family leave to bond with that child has already expired; and

(c) Any adoptive, guardianship, foster care, or nonparental custody placement of a child with an employee that occurs more than (~~twelve~~) 12 months after that child is first placed in the employee's home.

[Statutory Authority: RCW 50A.05.060. WSR 20-20-073, § 192-500-195, filed 10/2/20, effective 11/2/20.]

OTS-4461.1

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

WAC 192-510-010 Election, withdrawal, and cancellation of coverage. (1) Self-employed persons as defined in RCW 50A.10.010 and federally recognized tribes as defined in RCW 50A.10.020 may elect coverage under Title 50A RCW.

(2) Notice of election of coverage must be submitted to the department online or in another format approved by the department.

(3) Elective coverage begins on the first day of the quarter immediately following the notice of election.

(4) Hours worked in self-employment prior to the effective date of the election of coverage cannot be used to establish benefit eligibility.

(5) A period of coverage is defined as:

(a) Three years following the first day of elective coverage or any gap in coverage; and

(b) Each subsequent year.

(~~(5)~~) (6) Any self-employed person or federally recognized tribe may file a notice of withdrawal within (~~thirty~~) 30 calendar days after the end of each period of coverage.

~~((6))~~ (7) A notice of withdrawal from coverage must be submitted to the department online or in another format approved by the department.

~~((7))~~ (8) Any levy resulting from the department's cancellation of coverage is in addition to the due and unpaid premiums and interest for the remainder of the period of coverage.

[Statutory Authority: RCW 50A.05.060. WSR 21-04-067, § 192-510-010, filed 1/29/21, effective 3/1/21. Statutory Authority: RCW 50A.05.60 [50A.05.060] and 50A.25.030. WSR 20-01-087, § 192-510-010, filed 12/12/19, effective 1/12/20. Statutory Authority: RCW 50A.04.215. WSR 19-08-016, § 192-510-010, filed 3/22/19, effective 4/22/19; WSR 18-12-032, § 192-510-010, filed 5/29/18, effective 6/29/18.]

OTS-4462.1

AMENDATORY SECTION (Amending WSR 18-22-080, filed 11/2/18, effective 12/3/18)

WAC 192-540-030 What are employers required to report to the department? (1) Each calendar quarter, every employer must file a complete report with the department, including employers that have no payroll for the quarter as outlined in subsection (4) of this section.

(2) The report must include each employee's:

- (a) Full name;
- (b) Social Security number; ~~((and))~~
- (c) Date of birth; and
- (d) Wages paid during that quarter and the associated hours.

~~((2))~~ (3) The report must include the total amount of premiums deducted from all employees' wages, if any, during the calendar quarter.

~~((3))~~ (4) (a) If no wages were paid to employees during a calendar quarter, a report of no payroll must be filed for that quarter.

(b) The requirement to report no payroll shall continue for eight consecutive calendar quarters unless the employer notifies the department before the end of eight consecutive quarters that they have no employees to report at that time and in the foreseeable future.

(5) If an employee does not have a Social Security number but does have an individual taxpayer identification number (ITIN), the ITIN qualifies as a Social Security number. If the employee later obtains a Social Security number, the employer should use the Social Security number when filing the report of the employee's wages.

[Statutory Authority: RCW 50A.04.215. WSR 18-22-080, § 192-540-030, filed 11/2/18, effective 12/3/18.]

OTS-4463.1

AMENDATORY SECTION (Amending WSR 20-11-036, filed 5/14/20, effective 6/14/20)

WAC 192-800-150 Can an employee designate a representative to act on their behalf? (1) The department may authorize another individual to act on the employee's behalf for the purposes of paid family and medical leave benefits if:

(a) An employee designates an authorized representative by submitting written documentation as required by the department;

(b) A court-appointed legal guardian with authority to make decisions on a person's behalf submits documentation as required by the department;

(c) An individual designated as an attorney-in-fact under a power of attorney submits documentation satisfactory to the department to act on the employee's behalf; or

(d) If an employee is unable to designate an authorized representative due to a serious health condition, an individual may represent the employee by submitting a complete and signed authorized representative designation form made available by the department, which must include:

(i) Documentation from the employee's health care provider certifying that the employee is incapable of completing the administrative requirements necessary for receiving paid family and medical leave benefits and is unable to designate an authorized representative to act on the employee's behalf; and

(ii) An affidavit or declaration authorized by (~~RCW 9A.72.085~~) chapter 5.50 RCW attesting to the responsibility to act in the employee's best interest.

(2) A person meeting the requirements under subsection (1) of this section may file an initial application and weekly claims up to and including the week in which the employee died subject to WAC 192-620-010.

(3) If an employee has been approved for benefit payments and the employee dies, an estate executor or administrator may file ((a)) weekly claims for ((the)) any weeks in which the employee ((died)) was unable to file a weekly claim up to and including the week in which they died, subject to WAC 192-620-010.

(4) The department will terminate the authority given to the authorized representative:

(a) When the employee or authorized representative notifies the department verbally or in writing; or

(b) At the department's discretion.

(5) For the purposes of paid family and medical leave the term employee is used for both employee and authorized representative.

[Statutory Authority: RCW 50A.05.060. WSR 20-11-036, § 192-800-150, filed 5/14/20, effective 6/14/20. Statutory Authority: RCW 50A.04.215. WSR 19-23-090, § 192-800-150, filed 11/19/19, effective 12/20/19.]