

WSR 24-07-082

PROPOSED RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed March 18, 2024, 2:42 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-20-110.

Title of Rule and Other Identifying Information: Amending WAC 192-500-195 Placement and 192-800-155 When are proceedings open to the public, and what information from a proceeding before the appeal tribunal or commission is publicly disclosable?

Hearing Location(s): On April 24, 2024, at 9:00 a.m., on Microsoft Teams. Join online, link available at paidleave.wa.gov/rulemaking; or join by phone 564-999-2000, PIN 239 339 620#.

Date of Intended Adoption: On or after May 1, 2024.

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 24, 2024.

Assistance for Persons with Disabilities: Contact Teresa Eckstein, state EO officer, phone 360-480-5708, email teckstein@esd.wa.gov, by April 17, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The paid family and medical leave (PFML) program is proposing amendments to the definition of "placement" to clarify under which circumstances family leave can be taken to bond with a child placed in the home. Clarification was also added that an employee is only entitled to a maximum of 12 weeks of family leave for the placement of a child.

In addition, the PFML program is proposing amendments to outline that a decision appealed to the commissioner's review office may be made available to the public and that all personal identifying information will be redacted. If a commissioner's decision is appealed to superior court, the department is required to file the record unsealed and court rules will apply if an interested party moves to seal the record.

Reasons Supporting Proposal: The proposed amendments to WAC 192-500-195 allow qualifying leave to be taken *either* within 12 months of the date a child is physically placed in the employee's home or within 12 months of the date a child's adoption is legally finalized. The change will provide clarity regarding family leave that can be taken to bond with a child placed in the home.

The proposed amendments to WAC 192-800-155 allow for publication of decisions appealed to the commissioner's review office. Publishing decisions that set precedent for the PFML program will allow for added transparency and consistency in interpreting the law, from program adjudication through the appeal process.

Statutory Authority for Adoption: RCW 50A.05.060.

Statute Being Implemented: RCW 50A.05.010, 50A.15.020; chapter 50A.50 RCW.

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, Olympia, 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 192-500-195 Placement. This rule is exempt under RCW 34.05.328 (5)(c)(ii) because it is an interpretive rule that sets forth the agency's interpretation of statutory provisions. Interpretive rules are not significant legislative rules under RCW 34.05.328 (5)(c)(iii).

WAC 192-800-155 When are proceedings open to the public, and what information from a proceeding before the appeal tribunal or commissioner is publicly disclosable? This rule is exempt under RCW 34.05.328 (5)(c)(i)(A) because it is a procedural rule related to agency hearings. 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 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.

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

	Proposed WAC Sections and Title	This proposed rule section is exempt. Provide RCW to support this exemption.
1.	WAC 192-500-195 Placement.	RCW 19.85.025(4) The rule does not affect businesses and pertains only to individuals applying for paid family leave benefits.
2.	WAC 192-800-155 When are proceedings open to the public, and what information from a proceeding before the appeal tribunal or commissioner is publicly disclosable?	RCW 34.05.310 (4)(g) The rule outlines a procedure, practice, or requirement relating to agency hearings.

March 18, 2024
April Amundson
Policy and Rules Manager
Leave and Care Programs

OTS-5267.1

AMENDATORY SECTION (Amending WSR 23-11-083, filed 5/17/23, effective 7/1/23)

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))~~ non-parental custody placement, or legal adoption of a child under the age of 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 ~~((or))~~;

(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; or

(e) A legally finalized adoption as described in chapter 26.33 RCW.

(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 12-month period ~~((beginning on))~~;

(a) From the date the child was first placed in the home; or

(b) From the date the child's adoption was legally finalized as described in chapter 26.33 RCW if no leave was taken within 12 months of when 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) 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 12 months after that child is first placed in the employee's home, except for leave taken under subsection (1)(e) of this section.

(6) An employee is only entitled to a maximum of 12 weeks of family leave for the placement of a child.

OTS-5268.1

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

WAC 192-800-155 When are proceedings open to the public, and what information from a proceeding before the appeal tribunal or commissioner is publicly disclosable? (1) To maintain confidentiality of records under chapter 50A.25 RCW:

~~((1))~~ (a) All proceedings will be closed to the public unless otherwise agreed upon by all parties appearing for hearing;

~~((2))~~ (b) All proceeding records will be sealed for hearings closed to the public and are not publicly disclosable; and

~~((3))~~ (c) All personal identifying information concerning an individual or employer will be redacted from the record if the hearing is open to the public.

(2) If a decision is appealed to the commissioner's review office, that decision may be published online or in another manner approved by the department. All personal identifying information concerning an individual or employer will be redacted if the decision is made public.

(3) If an interested party appeals a commissioner's decision to superior court, the department will file the record with the court unsealed as required by RCW 34.05.566. Any interested party may move to seal those records under applicable court rules.