

WSR 22-16-111

PROPOSED RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed August 3, 2022, 8:10 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-22-107 and 22-08-039.

Title of Rule and Other Identifying Information: Long-term services and supports trust program (WA Cares).

Amending WAC 192-905-005 Eligibility requirements for an employee to receive a permanent exemption from the long-term services and supports trust program, 192-905-010 How and when can an employee apply for an exemption from the long-term services and supports trust program?, 192-910-015 What are the employer's responsibilities for premium deductions?, 192-915-005 Election of coverage for self-employed persons, and 192-915-015 How will the department determine the wages earned and hours worked for self-employed persons electing coverage?

Adding WAC 192-905-006 Eligibility requirements for an employee to receive a conditional exemption from the long-term services and supports trust program, 192-905-007 Notification requirements and penalties for discontinuing conditional exemptions, 192-930-005 Audit procedures, and 192-930-010 What happens if an employer fails to provide requested information to the department for an audit?

Hearing Location(s): On September 6, 2022, at 9:00 a.m., Microsoft Teams. Join online, link available at esd.wa.gov/newsroom/rulemaking/ltss; join by phone 564-999-2000, PIN 810 809 213#. Hearing will be held remotely due to COVID-19.

Date of Intended Adoption: On or after September 13, 2022.

Submit Written Comments to: Janette Benham, Employment Security Department, P.O. Box 9046, Olympia, WA 98507-9046, email rules@esd.wa.gov, by September 6, 2022.

Assistance for Persons with Disabilities: Contact Teresa Eckstein, state EO officer, phone 360-480-5708, TTY 711, email Teckstein@esd.wa.gov, by August 30, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed new and amended rules implement portions of SHB 1732, ESHB 1733, and the third phase of the employment security department's (department) initial program implementation. SHB 1732 delayed the WA Cares program by 18 months and created a partial benefit for near retirees. ESHB 1733 added four new voluntary exemptions to include veterans who have service-connected disability ratings of 70 percent or greater, spouses or registered domestic partners of active-duty United States armed forces service members, individuals who hold temporary worker visas, and individuals who maintain permanent residence outside of Washington. ESHB 1733 also outlines circumstances under which three of the new voluntary exemptions must be discontinued. Proposed new rules also address employer audit procedures.

Reasons Supporting Proposal: The proposed rules are necessary to implement portions of the WA Cares program related to changes made when SHB 1732 and ESHB 1733 passed and to complete the third phase of the department's initial program implementation. The proposed rules provide guidance to employees, employers, self-employed individuals, and the general public regarding the delay of the program, criteria and application procedures for new voluntary exemptions, and employer audit procedures.

Statutory Authority for Adoption: RCW 50B.04.020, 50B.04.055, 50B.04.080, 50B.04.085, 50B.04.090.

Statute Being Implemented: RCW 50B.04.020, 50B.04.055, 50B.04.080, 50B.04.085, 50B.04.090.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Employment security department, 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. The following rules are exempt under RCW 34.05.328 (5)(b)(v) and (5)(c)(i)(C): WAC 192-905-005 Eligibility requirements for an employee to receive a permanent exemption from the long-term services and supports trust program, and 192-905-010 How and when can an employee apply for an exemption from the long-term services and supports trust program? The rules are explicitly and specifically dictated by RCW 50B.04.055 and RCW 50B.04.085 and are procedural rules that adopt a policy pertaining to the internal operations of the department. Procedural rules are not significant legislative rules under RCW 34.05.328 (5)(c)(iii).

The following rules are exempt under RCW 34.05.328 (5)(b)(v) and (5)(c)(i)(C): WAC 192-905-006 Eligibility requirements for an employee to receive a conditional exemption from the long-term services and supports trust program, and 192-905-007 Notification requirements and penalties for discontinuing conditional exemptions.

The rules are explicitly and specifically dictated by RCW 50B.04.055 and are procedural rules that adopt a policy pertaining to the internal operations of the department. Procedural rules are not significant legislative rules under RCW 34.05.328 (5)(c)(iii).

The following rule is exempt under RCW 34.05.328 (5)(b)(v) and (5)(c)(i)(C): WAC 192-910-015 What are the employer's responsibilities for premium deductions?

The rule is explicitly and specifically dictated by RCW 50B.04.080 and is a procedural rule that adopts a policy pertaining to the internal operations of the department. Procedural rules are not significant legislative rules under RCW 34.05.328 (5)(c)(iii).

The following rules are exempt under RCW 34.05.328 (5)(b)(v) and (5)(c)(i)(C): WAC 192-915-005 Election of coverage for self-employed persons, and 192-915-015 How will the department determine the wages earned and hours worked for self-employed persons electing coverage?

The rules are explicitly and specifically dictated by RCW 50B.04.090 and are procedural rules that adopt a policy pertaining to the internal operations of the department. Procedural rules are not significant legislative rules under RCW 34.05.328 (5)(c)(iii).

The following rules are exempt under RCW 34.05.328 (5)(b)(v) and (5)(c)(i)(C): WAC 192-930-005 Audit procedures, and 192-930-010 What happens if an employer fails to provide requested information to the department for an audit?

The rules are explicitly and specifically dictated by RCW 50B.04.020 (4)(c). The rules ensure that standards and procedures for employer audits are coordinated with the same activities conducted under Title 50A RCW. The rules are also procedural rules that adopt a policy pertaining to the internal operations of the department. Proce-

dural 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 rule content is explicitly and specifically dictated by statute.

Explanation of exemptions: The following rules are exempt under RCW 34.05.310 (4) (b) and (e) because the rules relate to internal operations of the department and are dictated by statute (RCW 50B.04.055 and 50B.04.085): WAC 192-905-005 Eligibility requirements for an employee to receive a permanent exemption from the long-term services and supports trust program, and 192-905-010 How and when can an employee apply for an exemption from the long-term services and supports trust program?

The following rules are exempt under RCW 34.05.310 (4) (b) and (e) because the rules relate to internal operations of the department and are dictated by statute (RCW 50B.04.055): WAC 192-905-006 Eligibility requirements for an employee to receive a conditional exemption from the long-term services and supports trust program, and 192-905-007 Notification requirements and penalties for discontinuing conditional exemptions.

The following rule is exempt under RCW 34.05.310 (4) (b) and (e) because the rule relates to internal operations of the department and is dictated by statute (RCW 50B.04.080): WAC 192-910-015 What are the employer's responsibilities for premium deductions?

The following rules are exempt under RCW 34.05.310 (4) (b) and (e) because the rules relate to internal operations of the department and are dictated by statute (RCW 50B.04.090): WAC 192-915-005 Election of coverage for self-employed persons, and 192-915-015 How will the department determine the wages earned and hours worked for self-employed persons electing coverage?

The following rule is exempt under RCW 34.05.310 (4) (b) and (e) because the rule relates to internal operations of the department and is dictated by statute (RCW 50B.04.020 (4) (c)): WAC 192-930-005 Audit procedures, and 192-930-010 What happens if an employer fails to provide requested information to the department for an audit?

August 3, 2022

April Amundson

Policy and Rules Manager

Leave and Care Division

OTS-3995.1

AMENDATORY SECTION (Amending WSR 21-11-013, filed 5/7/21, effective 6/7/21)

WAC 192-905-005 Eligibility requirements for an employee to receive ((an)) a permanent exemption from the long-term services and supports trust program. (1) An employee who has long-term care insurance as outlined in RCW 50B.04.085 and attests to this, may apply

through December 31, 2022, for ((a)) a permanent exemption from the premium assessment under RCW 50B.04.080. "Long-term care insurance" has the meaning provided in RCW 48.83.020.

((2)) (a) Only an employee who is eighteen years of age or older on the date of application may apply for an exemption.

((3)) (b) The employee must provide identification that verifies their age at the time of application.

((4)) (c) The department may verify an employee's long-term care insurance coverage and may request additional information from the employee.

(2) Beginning January 1, 2023, an employee who is a veteran of the United States military and has a service-connected disability rating by the United States department of veterans affairs of 70 percent or greater may apply for a permanent exemption from the premium assessment under RCW 50B.04.080.

(a) The employee must provide information sufficient for the department to verify their identity.

(b) The employee must provide documentation of their service-connected disability rating at the time of application.

(c) The department may verify an employee's service-connected disability rating and may request additional information from the employee.

[Statutory Authority: RCW 50B.04.020 and 50B.04.085. WSR 21-11-013, § 192-905-005, filed 5/7/21, effective 6/7/21.]

NEW SECTION

WAC 192-905-006 Eligibility requirements for an employee to receive a conditional exemption from the long-term services and supports trust program. (1) An employee may apply for a conditional exemption from the premium assessment under RCW 50B.04.080 if:

(a) The employee is a spouse or registered domestic partner of an active duty service member in the United States armed forces whether or not deployed or stationed within or outside of Washington;

(b) The employee holds a nonimmigrant visa for temporary workers, as recognized by federal law; or

(c) The employee maintains a permanent primary residence outside of Washington.

(2) The employee must provide information sufficient for the department to verify their identity.

(3) The employee must provide documentation sufficient to verify or substantiate the exemption under RCW 50B.04.055 at the time of application.

(4) The department may request additional information from the employee at any time.

(5) The employee must notify their employer(s) and the department within 90 days of no longer meeting exemption criteria. Requirements for notification and penalties for failing to provide notification to discontinue the exemption are outlined in WAC 192-905-007.

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NEW SECTION

WAC 192-905-007 Notification requirements and penalties for discontinuing conditional exemptions. (1) The employee must notify their employer(s) and the department within 90 days of no longer qualifying for an exemption outlined in WAC 192-905-006.

(2) A discontinued exemption will take effect the quarter immediately following notification and premiums will be assessed.

(3) Employees who fail to provide notifications as described in this section and have premiums assessed will owe any unpaid premiums to the department. Unpaid premiums will be assessed interest of one percent, compounded monthly, until payment is made in full.

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AMENDATORY SECTION (Amending WSR 21-11-013, filed 5/7/21, effective 6/7/21)

WAC 192-905-010 How and when can an employee apply for an exemption from the long-term services and supports trust program? (1) Applications for exemption from the long-term services and supports trust program for individuals who have long-term care insurance purchased before November 1, 2021, will be accepted by the department only from October 1, 2021, through December 31, 2022, per RCW 50B.04.085.

(2) Applications for exemption from the long-term services and supports trust program for veterans who are 70 percent disabled and individuals who apply under WAC 192-905-006 will be accepted beginning January 1, 2023, and will be ongoing.

(3) If approved by the department, an employee's exemption will be effective the quarter immediately following approval.

~~((3))~~ (4) Applications for exemption will be available ~~((on the department's website))~~ online or in another format approved by the department.

[Statutory Authority: RCW 50B.04.020 and 50B.04.085. WSR 21-11-013, § 192-905-010, filed 5/7/21, effective 6/7/21.]

OTS-3996.1

AMENDATORY SECTION (Amending WSR 21-17-140, filed 8/18/21, effective 9/18/21)

WAC 192-910-015 What are the employer's responsibilities for premium deductions? (1) Employers must deduct premiums for each pay period in which the employee receives wages.

(2) When an employer is found by the department to be noncompliant with collecting premiums from an employee, the employer must file an amended report and pay the past due premiums.

(3) Subsection (1) of this section does not apply if:

(a) An employer was unable to deduct the premium for a pay period due to a lack of sufficient employee wages for that pay period; or

(b) The employee has an approved exemption (~~under RCW 50B.04.085~~) and has provided the required proof of the exemption to the employer.

(4) Once an employer is notified that an employee no longer qualifies for an exemption, the employer must abide by all premium assessment requirements under chapter 50B.04 RCW for that employee.

[Statutory Authority: RCW 50B.04.020, 50B.04.080, 50B.04.090 and 50B.04.120. WSR 21-17-140, § 192-910-015, filed 8/18/21, effective 9/18/21.]

OTS-3997.1

AMENDATORY SECTION (Amending WSR 21-17-140, filed 8/18/21, effective 9/18/21)

WAC 192-915-005 Election of coverage for self-employed persons.

(1) Self-employed persons as defined in RCW 50B.04.090 may elect coverage under Title 50B RCW.

(2) Coverage may only be elected beginning (~~(January 1, 2022)~~) July 1, 2023, and before (~~(January 1, 2025)~~) July 1, 2026, or within three years of becoming self-employed for the first time.

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

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

(5) A self-employed person who elects coverage must continue to pay premiums until such time that the individual retires from the workforce or is no longer self-employed.

(6) The self-employed person must file a notice with the department if the individual retires from the workforce or is no longer self-employed.

[Statutory Authority: RCW 50B.04.020, 50B.04.080, 50B.04.090 and 50B.04.120. WSR 21-17-140, § 192-915-005, filed 8/18/21, effective 9/18/21.]

AMENDATORY SECTION (Amending WSR 21-17-140, filed 8/18/21, effective 9/18/21)

WAC 192-915-015 How will the department determine the wages earned and hours worked for self-employed persons electing coverage? The department will determine the wages earned and hours worked for self-employed individuals as described in WAC 192-510-030 (1), (2), and (4).

[Statutory Authority: RCW 50B.04.020, 50B.04.080, 50B.04.090 and 50B.04.120. WSR 21-17-140, § 192-915-015, filed 8/18/21, effective 9/18/21.]

OTS-3998.1

**Chapter 192-930 WAC
AUDITS**NEW SECTION

WAC 192-930-005 Audit procedures. (1) The department may inspect and audit employer files and records as needed to ensure compliance with Title 50B RCW. Audits may take place at the discretion of the department.

(2) Employers must provide all requested information to the department within 10 business days or a time frame agreed to by the department.

(3) If the department discovers violations for the time frame being audited, the department may expand the audit to include prior and subsequent quarters, up to the most recently completed calendar quarter.

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NEW SECTION

WAC 192-930-010 What happens if an employer fails to provide requested information to the department for an audit? Employers must provide all requested documentation as it pertains to the long-term services and supports trust program under Title 50B RCW. If an employer fails or refuses to provide necessary payroll or other wage information during an audit, the department may determine payroll and wage information for the purposes of premium assessment based on information otherwise available to the department. This may include information from the same employer, similar employers, labor market information, information provided to other state or local agencies, or the best information otherwise available to the department.

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