

WSR 24-08-046

PROPOSED RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed March 28, 2024, 2:27 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-11-081.

Title of Rule and Other Identifying Information: Creating a new chapter under Title 192 WAC, chapter 192-511 WAC, Transportation network company pilot program; new WAC 192-511-005 Definitions applicable to the transportation network company pilot program, 192-511-010 How do transportation network company drivers elect paid family and medical leave coverage?, 192-511-015 Transportation network company rights and responsibilities, and 192-511-020 Self-employed elective coverage requirements apply to the pilot program.

Hearing Location(s): On May 8, 2024, at 9:00 a.m., via Microsoft Teams. Join online; link available at paidleave.wa.gov/rulemaking; or join by phone 564-999-2000, PIN 671 059 998#.

Date of Intended Adoption: On or after May 15, 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 May 8, 2024.

Assistance for Persons with Disabilities: Contact Teresa Eckstein, state EO officer, phone 360-480-5708, email teckstein@esd.wa.gov, by May 1, 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 a new chapter of rules under Title 192 WAC to implement the pilot program for transportation network company (TNC) drivers (drivers) created under SHB 1570 (chapter 451, Laws of 2023). The law creates a pilot program for drivers to elect PFML coverage with premiums paid by the driver and reimbursed by their TNC. The pilot begins July 1, 2024, and ends December 31, 2028.

Reasons Supporting Proposal: The proposed new chapter to Title 192 WAC creates standards and provides explanations for how a driver will elect coverage in the pilot program. The new chapter also sets the rights and responsibilities for TNCs related to the pilot program. ESD is given explicit rule-making authority to set standards for the pilot program under RCW 46.72B.200(9).

Statutory Authority for Adoption: RCW 50A.05.060, 46.72B.200.

Statute Being Implemented: RCW 46.72B.200, 50A.25.040; 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. New WAC 192-511-005 Definitions applicable to the transportation network company pilot program. This rule is exempt under RCW 34.05.328

(5)(b)(ii) and (v) because the section provides definitions that do not subject nongovernment parties to a violation, and they reference definitions found in statute.

New WAC 192-511-010 How do transportation network company drivers elect paid family and medical leave coverage? This rule is exempt under RCW 34.05.328 (5) (c) (ii) because the rule does not subject a person to a penalty or sanction and sets forth ESD's interpretation of statutory provisions it administers.

New WAC 192-511-015 Transportation network company rights and responsibilities. This section is exempt under RCW 34.05.328 (b) (v) because this section restates requirements that are found in laws outside of Title 50A RCW. The rule provides this information for people looking at ESD's regulations related to the pilot program. It also incorporates language found in RCW 50A.25.040.

New WAC 192-511-020 Self-employed elective coverage requirements apply to the pilot program. This section is exempt under RCW 34.05.328 (5) (c) (ii) because the rule does not subject a person to a penalty or sanction and sets forth ESD's interpretation of statutory provisions it administers.

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.

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.	New WAC 192-511-005 Definitions applicable to the transportation network company pilot program.	RCW 34.05.310 (4)(b) - This rule provides definitions for the pilot and is not subject to violation by a nongovernmental party.
2.	New WAC 192-511-010 How do transportation network company drivers elect paid family and medical leave coverage?	RCW 19.85.025(4) - The rule does not affect businesses and pertains only to individuals applying for paid family and medical leave benefits.
3.	New WAC 192-511-015 Transportation network company rights and responsibilities.	RCW 34.05.310 (4)(e) - This rule incorporates statutory language found outside of Title 50A RCW, namely language found in RCW 46.72B.200. It also incorporates language found in RCW 50A.25.040.
4.	New WAC 192-511-020 Self-employed elect coverage requirements apply to the pilot program.	RCW 19.85.025(4) - This rule does not affect businesses and pertains only to individuals applying for paid family and medical leave benefits.

March 28, 2024

April Amundson

Policy and Rules Manager, ESPI
Leave and Care Programs

OTS-5291.2

**Chapter 192-511 WAC
TRANSPORTATION NETWORK COMPANY PILOT PROGRAM**

NEW SECTION

WAC 192-511-005 Definitions applicable to the transportation network company pilot program. The following definitions are applicable under this chapter.

- (1) "Compensation" has the same meaning as defined in RCW 49.46.300.
- (2) "Department" means the employment security department.
- (3) "Digital network" has the same meaning as defined in RCW 49.46.300.
- (4) "Pilot program" refers to the temporary program providing elective coverage to transportation network company drivers created under chapter 451, Laws of 2023. The pilot program is effective from July 1, 2024, through December 31, 2028.
- (5) "Third party" means a designated representative that is authorized to conduct business on behalf of the transportation network company driver. To represent a driver before the department, the driver or third party must submit documentation in a format approved by the department. The driver is responsible for all acts taken or failures to act by the third party on the driver's behalf.
- (6) A "transportation network company" has the same meaning as defined in RCW 46.04.652.
- (7) A "transportation network company driver" has the same meaning as commercial transportation services provider driver in RCW 48.177.005.

NEW SECTION

WAC 192-511-010 How do transportation network company drivers elect paid family and medical leave coverage? (1) Notice of election of coverage must be submitted to the department online or in another format approved by the department. Either the department or the third party if designated by a driver, may inform transportation network companies of a driver's election of coverage into the pilot program.

- (2) Election of coverage begins on the first day of the quarter immediately following the notice of election.
- (3) A transportation network company driver electing coverage is eligible for family and medical leave after working 820 hours in the state during the qualifying period following the effective date of coverage.
- (4) Any transportation network company driver or third party may file a notice of withdrawal within 30 days after the end of each quarterly period of coverage. The withdrawal will take effect the first day of the following quarter.
- (5) A notice of withdrawal from coverage must be submitted to the department online or in another format approved by the department.
- (6) 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 quarterly period of coverage.
- (7) Transportation network company drivers electing coverage must elect both family and medical leave and are responsible for 100 percent of all premiums assessed to an employee under RCW 50A.10.030.

NEW SECTION

WAC 192-511-015 Transportation network company rights and responsibilities. (1) By the 15th day of the month following the end of a calendar quarter, transportation network companies must report to each driver in Washington who opted into the pilot program, and to the driver's third-party representative when so designated by a driver, the total amount of compensation that the driver earned providing network services through the transportation network company's digital network in that quarter. The transportation network company shall share data with the third-party representative in a standard format approved by the department to facilitate quarterly reporting and premium payment.

(2) By the 15th day of the month following the driver's deadline for the calendar quarter, the department will provide data to each transportation network company on the drivers who, in that calendar quarter:

(a) Reported and paid all obligated premiums; and

(b) Withdrew or canceled paid family and medical leave coverage.

(3) Data described in subsection (2) of this section provided by the department includes:

(a) When a driver has elected coverage;

(b) A driver's assessed and paid premiums;

(c) When a driver's elective coverage has been withdrawn or canceled; and

(d) Information related to a third party authorized to be acting on the driver's behalf regarding reporting and paying of premiums.

(e) The data described in this subsection will be provided to transportation network companies until February 15, 2029.

(4) By the 15th day following the receipt of information from the department described under subsection (3) of this section, transportation network companies must pay each driver who elected coverage under WAC 192-511-010 the premiums paid by the transportation network company driver. If the driver has designated a third-party representative, then the transportation network companies must pay the third party, rather than the driver, for any premiums paid by the third party on behalf of the transportation network company driver.

(a) For the purposes of this section, compensation does not include any amount listed in RCW 50A.05.010 (22) (d).

(b) The requirement to pay premiums under the pilot program ends December 31, 2028.

NEW SECTION

WAC 192-511-020 Self-employed elective coverage requirements apply to the pilot program. As described in RCW 46.72B.200, a driver who opts into the pilot program is subject to the rights and responsibilities as they apply to self-employed individuals who elect coverage under Titles 50A RCW and 192 WAC, except for the period of coverage requirements described under RCW 50A.10.010(1) and WAC 192-510-010.