

## WSR 25-19-099

## PROPOSED RULES

## EMPLOYMENT SECURITY DEPARTMENT

[Filed September 17, 2025, 10:32 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 25-12-047.

Title of Rule and Other Identifying Information: Adding WAC 192-905-008 Automatic exemption for an employee who holds a nonimmigrant visa for temporary workers, 192-905-009 Rescission period for an employee who has received a voluntary long-term care insurance exemption, 192-940-011 How is a qualified individual determination made for the pilot project?; chapter 192-950 WAC, Determinations; WAC 192-950-005 What happens if there is a question regarding an individual's application?, WAC 192-950-010 What happens if an interested party does not respond to the department's request for information?, and 192-950-015 How will determinations be made?

Amending WAC 192-905-005 Eligibility requirements for an employee to receive a permanent exemption from the long-term services and supports trust program, 192-905-006 Eligibility requirements for an employee to receive a conditional exemption from the long-term services and supports trust program, 192-905-020 When is an employee entitled to a refund of premiums?, 192-910-015 What are the employer's responsibilities for premium deductions?, 192-920-005 Parties to collective bargaining agreements, and 192-940-010 How will the department determine if someone is a qualified individual?

Hearing Location(s): On October 21, 2025, at 9:00 a.m., via Microsoft Teams at [paidleave.wa.gov/rulemaking](https://paidleave.wa.gov/rulemaking); or join by phone 564-999-2000, PIN 738 474 083#.

Date of Intended Adoption: On or after October 28, 2025.

Submit Written Comments to: Janette Benham, Employment Security Department, P.O. Box 9046, Olympia, WA 98507-9046, email [rules@esd.wa.gov](mailto:rules@esd.wa.gov), by October 21, 2025.

Assistance for Persons with Disabilities: Contact Teresa Eckstein, state equal opportunity officer, phone 360-480-5708, email [teckstein@esd.wa.gov](mailto:teckstein@esd.wa.gov), by October 14, 2025.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The employment security department (department) is proposing new rules and amendments regarding the long-term services and supports trust program (WA Cares fund) to implement portions of ESSB 5291 (chapter 380, Laws of 2025). The proposed rules implement portions of ESSB 5291 and include requirements regarding qualifying for benefits, a new voluntary exemption for off-duty civilian employment for active-duty service members, automatic exemptions for nonimmigrant work visa holders, voluntary rescission of private long-term care insurance exemptions, qualified individual determinations for a pilot project, and collective bargaining agreement participation requirements. Additional proposed rules include a new chapter regarding due process when additional information is requested by the department.

Reasons Supporting Proposal: The proposed rules implement requirements of ESSB 5291 and outline due process requirements when the department has requested additional information from interested parties in order to make determinations.

Statutory Authority for Adoption: RCW 50B.04.020, 50B.04.053, 50B.04.055, and 50B.04.085.

Statute Being Implemented: RCW 50B.04.050, 50B.04.053, 50B.04.055, 50B.04.080, and 50B.04.085.

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, 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. The following rules are exempt under RCW 34.05.328 (5)(b)(v) because they are explicitly and specifically dictated by ESSB 5291: WAC 192-905-005, 192-905-006, 192-910-015, 192-920-005, and 192-940-010.

The following rules are exempt under RCW 34.05.328 (5)(b)(v) and (c)(ii). Portions of the rules are explicitly and specifically dictated by ESSB 5291 and include portions that are interpretive and set forth the department's interpretation of statutory provisions. Interpretive rules are not significant legislative rules under RCW 34.05.328 (5)(c)(iii): WAC 192-905-008, 192-905-009, 192-905-020, and 192-940-011.

The following rules are exempt under RCW 34.05.328 (5)(c)(i)(C) because they 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): WAC 192-950-005, 192-950-010, and 192-950-015.

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 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.

	<b>Proposed WAC Sections and Title</b>	<b>This proposed rule section is exempt. Provide RCW to support this exemption.</b>
1.	WAC 192-905-005 Eligibility requirements for an employee to receive a permanent exemption from the long-term services and supports trust program.	RCW 34.05.310 (4)(e) - The rule is dictated by statute (ESSB 5291, chapter 380, Laws of 2025).
2.	WAC 192-905-006 Eligibility requirements for an employee to receive a conditional exemption from the long-term services and supports trust program	RCW 34.05.310 (4)(e) - The rule is dictated by statute (ESSB 5291, chapter 380, Laws of 2025).
3.	WAC 192-905-008 Automatic exemption for an employee who holds a nonimmigrant visa for temporary workers.	RCW 34.05.310 (4)(e) - The rule is dictated by statute (ESSB 5291, chapter 380, Laws of 2025).
4.	WAC 192-905-009 Rescission period for an employee who has received a voluntary long-term care insurance exemption.	RCW 34.05.310 (4)(e) - The rule is dictated by statute (ESSB 5291, chapter 380, Laws of 2025).
5.	WAC 192-905-020 When is an employee entitled to a refund of premiums?	RCW 34.05.310 (4)(e) - The rule is dictated by statute (ESSB 5291, chapter 380, Laws of 2025).
6.	WAC 192-910-015 What are the employer's responsibilities for premium deductions?	RCW 34.05.310 (4)(e) - The rule is dictated by statute (ESSB 5291, chapter 380, Laws of 2025).
7.	WAC 192-920-005 Parties to collective bargaining agreements.	RCW 34.05.310 (4)(e) - The rule is dictated by statute (ESSB 5291, chapter 380, Laws of 2025).

	<b>Proposed WAC Sections and Title</b>	<b>This proposed rule section is exempt. Provide RCW to support this exemption.</b>
8.	WAC 192-940-010 How will the department determine if someone is a qualified individual?	RCW 34.05.310 (4)(e) - The rule is dictated by statute (ESSB 5291, chapter 380, Laws of 2025).
9.	WAC 192-940-011 How is a qualified individual determination made for the pilot project?	RCW 34.05.310 (4)(e) - The rule is dictated by statute (ESSB 5291, chapter 380, Laws of 2025).
10.	WAC 192-950-005 What happens if there is a question regarding an individual's application?	RCW 19.85.025(4) - The rule does not affect businesses and pertains only to individuals applying for program benefits, exemptions, or out-of-state coverage.
11.	WAC 192-950-010 What happens if an interested party does not respond to the department's request for information?	RCW 19.85.025(4) - The rule does not affect businesses and pertains only to individuals applying for program benefits, exemptions, or out-of-state coverage.
12.	WAC 192-950-015 How will determinations be made?	RCW 19.85.025(4) - The rule does not affect businesses and pertains only to individuals applying for program benefits, exemptions, or out-of-state coverage.

September 17, 2025  
April Amundson  
Policy and Rules Manager  
ESPI, Leave and Care Programs

## RDS-6609.2

AMENDATORY SECTION (Amending WSR 22-20-044, filed 9/28/22, effective 10/29/22)

**WAC 192-905-005 Eligibility requirements for an employee to receive 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 permanent exemption from the premium assessment under RCW 50B.04.080. Prior to July 1, 2028, an employee may rescind this exemption and participate in the program as described under WAC 192-905-009. "Long-term care insurance" has the meaning provided in RCW 48.83.020.

(a) Only an employee who is ((eighteen)) 18 years of age or older on the date of application may apply for an exemption.

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

(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.

AMENDATORY SECTION (Amending WSR 22-20-044, filed 9/28/22, effective 10/29/22)

**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))~~) is an active duty service member in the United States armed forces, whether or not deployed or stationed within or outside of Washington, who is concurrently engaged in off-duty civilian employment as an employee of an employer; 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.

NEW SECTION

**WAC 192-905-008 Automatic exemption for an employee who holds a nonimmigrant visa for temporary workers.** (1) An employee who holds a nonimmigrant visa for temporary workers, as recognized by federal law, is not subject to the rights and responsibilities of Title 50B RCW, unless the employee notifies their employer(s) in writing that they would like to participate.

(2) The employer(s) must maintain a copy of the written notice of the employee's request to participate in the program.

(3) If an employee notifies their employer(s) that they would like to participate in the program, participation begins and premiums must be assessed:

(a) At employment commencement for new employees; or

(b) The quarter immediately following notification.

(4) If an employee who holds a nonimmigrant visa for temporary workers becomes a permanent resident or citizen employed in Washington, the employee becomes subject to the rights and responsibilities

of this chapter beginning the quarter immediately following permanent status and premiums must be assessed.

(5) Wages and hours reported when an employee did not participate in the program do not count toward qualifying for the benefit.

NEW SECTION

**WAC 192-905-009 Rescission period for an employee who has received a voluntary long-term care insurance exemption.** From January 1, 2026, through June 30, 2028, an employee who has received a permanent exemption under RCW 50B.04.085 may rescind their exemption and participate in the program.

(1) An employee must notify the department that they would like to rescind their exemption in a format approved by the department.

(2) The rescission will be effective the quarter immediately following notification.

(3) The employee must notify any current employer of their rescinded exemption by providing a copy of their rescission letter to the employer.

(4) The employer that is the employer at the time of rescission must maintain a copy of the rescission letter provided by the employee and begin assessing and collecting premiums on the effective date of the rescission.

(5) Wages and hours reported when an employee had an approved exemption do not count toward qualifying for the benefit.

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

**WAC 192-905-020 When is an ((exempt)) employee entitled to a refund of premiums?** (1) If an exempt employee fails to notify an employer of their exemption, the exempt employee is not entitled to a refund of any premium deductions made before notification was provided.

(2) Any premium deductions made before notification was provided to the employer remain with the employer.

(3) ~~((If an employer deducts premiums after the employee provides notification of the employee's exempt status,))~~ The employer must refund ~~((the))~~ deducted premiums to the employee if:

(a) The employer deducts premiums after the employee provides notification of the employee's exempt status; or

(b) The employee is automatically exempt under WAC 192-905-008 and has not chosen to participate in the program.

**RDS-6610.1**

AMENDATORY SECTION (Amending WSR 22-20-044, filed 9/28/22, effective 10/29/22)

**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 and has provided the required proof of the exemption to the employer; or

(c) The employee holds a nonimmigrant visa for temporary workers, unless the employee participates in the program under WAC 192-905-008.

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

(a) Notifies the employer that they no longer qualify for an exemption under WAC 192-905-007;

(b) Becomes a permanent resident or citizen who was previously exempt under WAC 192-905-008; or

(c) Rescinds their exemption under WAC 192-905-009.

## RDS-6611.1

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

**WAC 192-920-005 Parties to collective bargaining agreements.**

(1) Parties to a collective bargaining agreement in existence on October 19, 2017, are not required to be subject to the rights and responsibilities under Title 50B RCW and related rules unless and until the existing agreement is reopened or renegotiated by the parties or expires.

(2) Employers must inform the department immediately upon the reopening, renegotiation, or expiration of a collective bargaining agreement that was in effect prior to October 19, 2017.

(3) Employees not covered by a collective bargaining agreement are subject to the rights and responsibilities of Title 50B RCW and related rules. Employers are also subject to the rights and responsibilities of Title 50B RCW and related rules for employees not covered by a collective bargaining agreement, regardless of whether the employer is party to a collective bargaining agreement covering other employees.

(4) Employers party to multiple collective bargaining agreements among different bargaining units are subject to the rights and responsibilities of Title 50B RCW and related rules as they pertain to the bargaining units whose collective bargaining agreement is reopened or renegotiated by the parties or expires, on or after October 19, 2017.

(5) Parties to a collective bargaining agreement in existence on October 19, 2017, that has not been reopened or renegotiated by the parties or expired may elect to be subject to all applicable rights and responsibilities under Title 50B RCW and related rules prior to the expiration, reopening, or renegotiation of the agreement. Parties seeking to do so must submit to the department a memorandum of understanding, letter of agreement, or a similar document signed by all parties.

(6) The provisions described in this section are effective through December 31, 2025.

### RDS-6612.1

AMENDATORY SECTION (Amending WSR 25-05-068, filed 2/14/25, effective 3/17/25)

**WAC 192-940-010 How will the department determine if someone is a qualified individual?** (1) Qualified individual status under RCW 50B.04.050 is determined as follows:

(a) An individual who has earned 10 years toward becoming a qualified individual (~~((without a break of five or more consecutive years in that 10 years))~~) will be eligible for the full benefit amount (~~((. Years with less than 500 hours reported will count toward the break of five or more consecutive years))~~);

(b) An individual who, from the date of application for benefits, has earned three of the last six years toward becoming a qualified individual will qualify for the full benefit amount; or

(c) An individual born before January 1, 1968, who does not qualify under (a) or (b) of this subsection will qualify for one-tenth of the maximum program benefit amount for each earned year toward becoming a qualified individual.

(2) An individual who continues to work in employment or in covered self-employment after qualifying for subsection (1) (b) or (c) of this section, or both, may be eligible to earn additional years toward becoming a qualified individual.

(3) An individual may not exceed the maximum (~~((lifetime))~~) program benefit amount under RCW 50B.04.060.

(4) An individual who has an approved exemption cannot become a qualified individual.

### NEW SECTION

**WAC 192-940-011 How is a qualified individual determination made for the pilot project?** (1) Selected individuals may participate in a pilot project established under chapter 50B.04 RCW between January 1, 2026, and June 30, 2026.

(2) The department will make qualified individual determinations in accordance with provisions outlined under this chapter.

RDS-6613.1

**Chapter 192-950 WAC  
DETERMINATIONS**NEW SECTION

**WAC 192-950-005 What happens if there is a question regarding an individual's application?** (1) The department will send interested parties a notice when the department needs more information to make a determination. The notice will include:

(a) The information the department needs to make a determination; and

(b) The date by which the interested parties must respond. This date will be no earlier than 10 calendar days from the date the notice is sent. Reasonable mailing time will be added when the notice is sent via postal service.

(2) The individual and interested parties have a right to respond to the department regarding questions on exemption, qualified individual, and out-of-state coverage applications.

NEW SECTION

**WAC 192-950-010 What happens if an interested party does not respond to the department's request for information?** (1) If an interested party fails to respond by the due date on the notice provided under WAC 192-950-005, the department will make a determination based on available information.

(2) Subject to RCW 50B.04.120, if an application is denied because the interested party did not respond to a request for information, the denial will remain in effect until sufficient information is provided that results in an approved determination.

NEW SECTION

**WAC 192-950-015 How will determinations be made?** (1) When the department has issued a notice under WAC 192-950-005, the department will not make a determination on an individual's application until all interested parties have had an opportunity to provide information by the due date indicated on the notice.

(2) If new facts are discovered before the determination is made, the department will provide interested parties with an opportunity to respond to the new information.

(3) After the department makes a determination, it will inform all interested parties of the outcome.

(4) If the department receives new and relevant information after a determination is made:

(a) The information will be considered by the department;

(b) Interested parties will be given an opportunity to respond, if necessary; and

(c) The department may make a new determination based on the newly provided information.