

WSR 25-21-149

PROPOSED RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed October 22, 2025, 8:29 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 25-12-056.

Title of Rule and Other Identifying Information: Amending WAC 192-500-010 Employer, 192-500-185 Waiting period, 192-510-040 How does an employer's size affect liability for premiums and eligibility for small business assistance grants?, 192-510-050 How will the department assess the size of new employers?, 192-560-010 Which businesses are eligible for small business assistance grants?, 192-560-020 What is the application process for a small business assistance grant?, 192-620-005 What is the minimum claim duration?, 192-700-015 How is employer size determined for employment protection?, 192-700-020 When does an employer need to provide a continuation of health benefits to an employee who is on paid family or medical leave?, and 192-800-100 What is the process for filing petition for review and any reply to the petition for review?; adding new WAC 192-700-008 What is the time frame in which an employer may apply FMLA leave to a period of PFML job protection?, 192-700-025 How does an employee's use of leave under the federal family and medical leave act (FMLA) affect employment restoration rights?, and 192-700-030 Do employers need to provide a notice to employees regarding their employment restoration rights?; and repealing WAC 192-560-011 What small business grants are available under pandemic leave assistance?

Hearing Location(s): On November 25, 2025, at 9:00 a.m., via Microsoft Teams. Link available at paidleave.wa.gov/rulemaking; or join by phone 564-999-2000, PIN 742 034 32#.

Date of Intended Adoption: On or after December 1, 2025.

Submit Written Comments to: Janette Benham, Employment Security Department (department), P.O. Box 9046, Olympia, WA 98507-9046, email rules@esd.wa.gov, by November 25, 2025, 5:00 p.m.

Assistance for Persons with Disabilities: Contact Teresa Eckstein, state EO office, phone 360-480-5708, email teckstein@esd.wa.gov, by November 18, 2025.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department, leave and care division, is adopting rules for the paid family and medical leave (PFML) program to implement portions of E2SHB 1213 (chapter 304, Laws of 2025) and SSB 5191 (chapter 178, Laws of 2025). Rules include implementation of legislative changes related to benefit eligibility requirements, employer sizing, small business grants, definitions, and employment restoration rights. A procedural rule regarding the filing of a petition for review is also included.

Reasons Supporting Proposal: The proposed rules implement requirements of E2SHB 1213 and SSB 5191. An additional rule is also included to clarify deadlines regarding the filing of a petition for review.

Statutory Authority for Adoption: RCW 50A.05.060.

Statute Being Implemented: RCW 50A.10.030, 50A.15.020, 50A.24.010, 50A.24.030, 50A.35.010, and 50A.35.020.

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

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 192-500-010 Employer.	RCW 34.05.328 (5)(a)(iii): The rule adopts without material change Washington state statutes.
WAC 192-500-185 Waiting period.	RCW 34.05.328 (5)(a)(iii): The rule adopts without material change Washington state statutes.
WAC 192-510-040 How does an employer's size affect liability for premiums and eligibility for small business assistance grants?	RCW 34.05.328 (5)(a)(iii): The rule adopts without material change Washington state statutes.
WAC 192-510-050 How will the department assess the size of new employers?	RCW 34.05.328 (5)(a)(iii): The rule adopts without material change Washington state statutes.
WAC 192-560-010 Which businesses are eligible for small business assistance grants?	RCW 34.05.328 (5)(a)(iii): The rule adopts without material change Washington state statutes.
WAC 192-560-011 What small business grants are available under pandemic leave assistance? (Repeal)	RCW 34.05.310 (4)(e): The content of this rule is explicitly and specifically dictated by statute.
WAC 192-560-020 What is the application process for a small business assistance grant?	RCW 34.05.328 (5)(a)(iii): The rule adopts without material change Washington state statutes.
WAC 192-620-005 What is the minimum claim duration?	RCW 34.05.328 (5)(a)(iii): The rule adopts without material change Washington state statutes.
WAC 192-700-008 What is the time frame in which an employer may apply FMLA leave to a period of PFML job protection?	RCW 34.05.328 (5)(a)(iii): The rule adopts without material change Washington state statutes.
WAC 192-700-015 How is employer size determined for employment protection?	RCW 34.05.328 (5)(a)(iv): The rule only clarifies language of a rule without changing its effect.
WAC 192-700-020 When does an employer need to provide a continuation of health benefits to an employee who is on paid family or medical leave?	RCW 34.05.328 (5)(a)(iii): The rule adopts without material change Washington state statutes.
WAC 192-700-025: How does an employee's use of leave under the federal family and medical leave act (FMLA) affect employment restoration rights?	RCW 34.05.328 (5)(a)(iii): The rule adopts without material change Washington state statutes.
WAC 192-700-030 Do employers need to provide a notice to employees regarding their employment restoration rights?	RCW 34.05.328 (5)(a)(iii): The rule adopts without material change Washington state statutes.
WAC 192-800-100 What is the process for filing petition for review and any reply to the petition for review?	RCW 34.05.328 (5)(c)(i): The rule is a procedural rule that amends a procedure, practice, or requirement relating to an agency hearing.

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 only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and 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.

Explanation of exemptions:

WAC 192-500-010 Employer.	RCW 34.05.310 (4)(e): The content of this rule is explicitly and specifically dictated by statute.
WAC 192-500-185 Waiting period.	RCW 34.05.310 (4)(e): The content of this rule is explicitly and specifically dictated by statute.

WAC 192-510-040 How does an employer's size affect liability for premiums and eligibility for small business assistance grants?	RCW 34.05.310 (4)(e): The content of this rule is explicitly and specifically dictated by statute.
WAC 192-510-050 How will the department assess the size of new employers?	RCW 34.05.310 (4)(e): The content of this rule is explicitly and specifically dictated by statute.
WAC 192-560-010 Which businesses are eligible for small business assistance grants?	RCW 34.05.310 (4)(e): The content of this rule is explicitly and specifically dictated by statute.
WAC 192-560-011 What small business grants are available under pandemic leave assistance? (Repeal)	RCW 34.05.310 (4)(e): The content of this rule is explicitly and specifically dictated by statute.
WAC 192-560-020 What is the application process for a small business assistance grant?	RCW 34.05.310 (4)(e): The content of this rule is explicitly and specifically dictated by statute.
WAC 192-620-005 What is the minimum claim duration?	RCW 34.05.310 (4)(e): The content of this rule is explicitly and specifically dictated by statute.
WAC 192-700-008 What is the time frame in which an employer may apply FMLA leave to a period of PFML job protection?	RCW 34.05.310 (4)(e): The content of this rule is explicitly and specifically dictated by statute.
WAC 192-700-015 How is employer size determined for employment protection?	RCW 34.05.310 (4)(d): This rule clarifies language of a rule without changing its effect.
WAC 192-700-020 When does an employer need to provide a continuation of health benefits to an employee who is on paid family or medical leave?	RCW 34.05.310 (4)(e): The content of this rule is explicitly and specifically dictated by statute.
WAC 192-700-025: How does an employee's use of leave under the federal family and medical leave act (FMLA) affect employment restoration rights?	RCW 34.05.310 (4)(e): The content of this rule is explicitly and specifically dictated by statute.
WAC 192-700-030: Do employers need to provide a notice to employees regarding their employment restoration rights?	RCW 34.05.310 (4)(e): The content of this rule is explicitly and specifically dictated by statute.
WAC 192-800-100 What is the process for filing petition for review and any reply to the petition for review?	RCW 34.05.310 (4)(g)(i): This rule amends a procedure, practice, or requirement relating to agency hearings.

Scope of exemption for rule proposal:
Is fully exempt.

October 22, 2025
April Amundson
Policy and Rules Manager
ESPI, Leave and Care Programs

RDS-6694.2

AMENDATORY SECTION (Amending WSR 20-20-074, filed 10/2/20, effective 11/2/20)

WAC 192-500-010 Employer. (1) An "employer" is:

(a) Any individual or type of organization, including any partnership, association, trust, estate, joint stock company, insurance company, limited liability company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee, or the legal representative of a deceased person, having any person in employment or, having become an employer, has not ceased to be an employer as provided in this chapter;

(b) The state, state institutions, and state agencies;

(c) Any unit of local government including, but not limited to, a county, city, town, municipal corporation, quasi-municipal corporation, or political subdivision; (~~and~~)

(d) A franchisee; and

(e) Representatives for employers of dockworkers who normally work for several employers in the same industry interchangeably through a collectively bargained agreement. Other than for their own employees, employer representatives are not obligated to report dockworkers who are not covered by the collective bargaining agreement.

(2) "Employer" does not include the United States of America.

(3) For the purposes of paid family and medical leave, the term employer is used for both employer and employer agent.

(4) This section does not apply to:

(a) Any self-employed person or federally recognized tribe that has not elected coverage under Title 50A RCW; and

(b) Any person performing casual labor as defined in RCW 50A.05.010.

AMENDATORY SECTION (Amending WSR 22-10-031, filed 4/26/22, effective 6/9/22)

WAC 192-500-185 Waiting period. (1) A "waiting period" is the first seven consecutive calendar days beginning with the Sunday of the first week an eligible employee starts taking paid family or medical leave.

(2) An employee will satisfy the waiting period requirement if the employee takes at least (~~eight~~) four consecutive hours of leave during the first week of the employee's paid family or medical leave claim.

(3) An employee will not receive a benefit payment for hours claimed during the waiting period.

(4) A waiting period does not reduce the maximum duration of an employee's available paid family or medical leave.

(5) Subject to subsection (7) of this section, an employee must only meet the requirement of one waiting period in a claim year.

(6) If an employee is denied eligibility for a period of time that satisfied the waiting period requirement, the waiting period requirement will not be deemed satisfied for a future claim for which the employee is deemed eligible.

(7) The waiting period does not apply to:

(a) Medical leave taken upon the birth of a child;

(b) Family leave taken for bonding after the child's birth or placement; or

(c) Family leave taken for reasons related to a qualified military exigency.

(8) An employee's use of paid time off for all of or any portion of the waiting period will not affect the satisfaction of the waiting period requirement.

RDS-6695.1

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

WAC 192-510-040 How does an employer's size affect liability for premiums and eligibility for small business assistance grants? (1) To assess premiums and determine eligibility for small business assistance grants, the department must determine the size of each applicable employer. The department will determine the size of each employer as provided in RCW 50A.10.030. The department will only count the number of in-state employees as defined in RCW 50A.05.010 when calculating employer size.

(2) If the department determines that the employer's status has changed as it relates to premium liability, the department will notify the employer. This notification will include the following information:

(a) If the employer was determined to have ~~((fifty))~~ 50 or more employees for the preceding calendar year, and the employer is then determined to have fewer than ~~((fifty))~~ 50 employees for the subsequent calendar year, the employer will not be required to pay the employer portion of the premium for the next calendar year; or

(b) If the employer was determined to have fewer than ~~((fifty))~~ 50 employees for the preceding calendar year, and the employer is then determined to have ~~((fifty))~~ 50 or more employees for the subsequent calendar year, the employer will be required to pay the employer portion of the premium for the next calendar year.

~~((Example: On September 30, 2018, a business is determined to have had 53 employees on average during the previous four completed quarters, which covers July 1, 2017, through June 30, 2018. The employer is liable for the employer portion of premiums for 2019. On September 30, 2019, the business is determined to have had 48 employees on average during the previous four completed quarters, which covers July 1, 2018, through June 30, 2019. The employer is no longer liable for the employer share of premiums for 2020.))~~ (3) An employer that elects to submit the number of employees employed on the last day of each calendar quarter may do so in the employer portal or in another manner approved by the department. Such employers will, on September 30th of each year, have their size determined by averaging the number of employees reported on the last day of each calendar quarter over the last four calendar quarters.

(4) Employers that elect not to submit the number of employees employed on the last day of each calendar quarter as described in subsection (3) of this section will, on September 30th of each year, have their size determined by averaging the total number of employees reported during the preceding four calendar quarters.

(5) For the purposes of subsection (3) of this section, the term "employed" has the same meaning as WAC 192-700-015(3).

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

WAC 192-510-050 How will the department assess the size of new employers? An employer that has not been in business in Washington long enough to report four calendar quarters by September 30th will have its size calculated after the second quarter of reporting is due by averaging the number of employees reported over the quarters for

which reporting exists in accordance with WAC 192-510-040. Premium assessment based on this determination will begin on this reporting date. This size determination remains in effect for the following calendar year under RCW 50A.10.030.

RDS-6696.1

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

WAC 192-560-010 Which businesses are eligible for small business assistance grants? (1) An employer determined to have (~~one hundred fifty~~) 150 or fewer employees in the state that is assessed the employer share of the premiums is eligible to apply for small business assistance grants as provided in chapter 50A.24 RCW.

(2) An employer determined to have fewer than (~~fifty~~) 50 employees is only eligible for a small business assistance grant if the employer opts to pay the employer share of the premiums.

(a) The employer will be assessed the employer share of the premiums for a minimum of (~~twelve~~) 12 consecutive calendar quarters beginning with the first calendar quarter after the most recent grant is approved.

(b) The employer may provide notice at any time after the approval of the grant to opt out of paying the employer share of the premiums.

(i) If the (~~twelfth~~) 12th consecutive quarter following approval of the grant has ended, the opt-out will become effective on the first day of the following quarter.

(ii) If the (~~twelfth~~) 12th consecutive quarter following approval of the grant has not ended, the opt-out will become effective on the first day of the (~~thirteenth~~) 13th quarter following approval of the grant.

(3) An employer is not eligible for a small business assistance grant if, at the time of application, the employer has outstanding and delinquent reports, outstanding and delinquent payments, or due and owing penalties or interest under Title 50A RCW.

(4) An employer may request only one grant per year for each employee who takes paid family or medical leave under this title. Submissions under (a) and (b) of this subsection do not qualify as grant applications and therefore do not count against the employer's limit of (~~ten~~) 10 applications per year.

(a) An employer that qualifies for a grant under RCW 50A.24.010 for an amount that is less than (~~one thousand dollars~~) \$1,000 may submit documentation of significant additional wage-related costs incurred after filing the initial grant application in an attempt to qualify for additional grant funds.

(b) An employer may submit a revised application for a grant under RCW 50A.24.010 in an attempt to qualify for additional grant funds.

(5) An employer must apply for any grant no later than four months following the last day of the employee's paid family or medical leave.

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

WAC 192-560-020 What is the application process for a small business assistance grant? (1) Applications for small business assistance grants must be submitted online or in another format approved by the department. To be approved, an application must contain:

(a) The name and Social Security number or individual taxpayer identification number of the employee taking leave;

(b) The amount and type of grant being requested; and

~~(c) ((An explanation summarizing any personnel or significant additional wage-related costs that were taken because of an employee taking leave; and~~

~~(d))~~ For businesses with:

(i) Fewer than 50 employees, a written statement attesting that the employer hired a temporary worker or incurred other significant wage-related costs due to an employee's use of family or medical leave.

(ii) Between 50 and 150 employees, written documentation including, but not limited to, personnel records related to the hiring of a new temporary employee, wage reports, and signed statements, showing the temporary worker hired or significant additional wage-related costs incurred are due to an employee's use of paid family or medical leave.

(d) The department may require additional information as necessary to verify an employer's eligibility for a small business grant.

(2) Incomplete applications will not be reviewed and will not count against an employer's limit of ~~((ten))~~ 10 applications per year under RCW 50A.24.010.

(3) The department will deny the application for reasons including, but not limited to, the employer's failure to demonstrate that:

(a) It hired a temporary worker or incurred any significant additional wage-related costs; or

(b) The temporary worker hired or significant additional wage-related cost incurred was not due to an employee's use of family or medical leave.

~~(4) ((If a grant application is denied, the application will count against an employer's limit of ten applications per year.~~

~~(5))~~ The denial of a grant application is appealable.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 192-560-011 What small business grants are available under pandemic leave assistance?

RDS-6697.1

AMENDATORY SECTION (Amending WSR 19-13-001, filed 6/5/19, effective 7/6/19)

WAC 192-620-005 What is the minimum claim duration? (1) The minimum claim duration for paid family or medical leave is ~~((eight))~~ four consecutive hours in a week. If an employee on leave claims ~~((eight))~~ four consecutive hours at any point during a week, the minimum claim duration is satisfied.

~~((Example 1: An employee typically works six-hour shifts each weekday. The employee takes leave Monday, works Tuesday and Wednesday, and takes leave Thursday and Friday. The minimum claim duration requirement would be satisfied with the leave taken Thursday and Friday. That employee could also include the hours missed on Monday in the weekly claim.))~~

~~((2) If an employee on leave typically works less than eight-hour shifts, the employee will meet the requirement of a minimum claim when the employee has missed eight consecutive hours at any point during a week the employee typically would have been scheduled.))~~ (2) If an employee on leave typically works less than four-hour shifts, the employee will meet the requirement of a minimum claim when the employee has missed four consecutive hours at any point during a week the employee typically would have been scheduled.

Example ((2)): An employee typically works ~~((four))~~ two-hour shifts. The employee will need to take two consecutive shifts of leave in a week to have a minimum claim.

RDS-6778.1

NEW SECTION

WAC 192-700-008 What is the time frame in which an employer may apply federal family and medical leave (FMLA) to a period of paid family and medical leave (PFML) job protection? (1) If leave under the federal Family and Medical Leave Act of 1993 (Act Feb. 5, 1993, P.L. 103-3, 107 Stat. 6, as it existed on January 1, 2026 (FMLA)), is not taken, or if a PFML claim year is in effect when a duration of FMLA leave is taken that the employer designates as counting against a future duration of PFML job protection, the "52 consecutive calendar weeks" as referenced in RCW 50A.35.010 means the employee's PFML claim year.

(2) If a PFML claim year is not in effect when a duration of FMLA leave is taken that the employer designates as counting against a future duration of PFML job protection, the "52 consecutive calendar weeks" as referenced in RCW 50A.35.010 means a 52-week period beginning with the first day of such FMLA leave. In such cases, an employee is entitled to a maximum of a combined total of 16 times the typical workweek hours of job protection in the 52-week period. The maximum duration is extended to 18 times the typical workweek hours if the employee took leave due to a serious health condition with a pregnancy that results in incapacity.

AMENDATORY SECTION (Amending WSR 19-16-081, filed 7/31/19, effective 8/31/19)

WAC 192-700-015 How is employer size determined for employment protection? (1) ~~Employment protection ((applies to employees who work for an employer with fifty or more employees in employment)) is available to employees as provided in RCW 50A.35.010.~~

(2) For the purpose of ~~((employment protection))~~ RCW 50A.35.010 (6)(a)(i), employers are considered to have ~~((fifty or more))~~ the required number of employees when:

(a) The employer has ~~((fifty or more))~~ the required number of employees ((working)) or more employed each work day for ~~((twenty))~~ 20 or more calendar workweeks; and

(b) The ~~((twenty))~~ 20 calendar workweeks occur in the current calendar year or occurred in the preceding calendar year.

(3) For the purposes of this section, any employee whose name appears on the employer's payroll will be considered employed. Employees on paid or unpaid leave, including leave taken under Title 50A RCW, leave taken under the federal Family and Medical Leave Act, leaves of absence, disciplinary suspension, etc., are counted as long as the employer has a reasonable expectation that the employee will later return to active employment. If there is no employer/employee relationship (as when an employee is laid off, whether temporarily or permanently) such individual is not counted.

AMENDATORY SECTION (Amending WSR 20-11-035, filed 5/14/20, effective 6/14/20)

WAC 192-700-020 When does an employer need to provide a continuation of health benefits to an employee who is on paid family or medical leave? (1) An employee taking family or medical leave under Title 50A RCW is entitled to the continuation of health benefits as provided in ~~((this section when there is at least one day of concurrent use with leave taken under the federal Family and Medical Leave Act as it existed on October 19, 2017))~~ RCW 50A.35.020.

(2) When required under subsection (1) of this section, the employee's health benefits must be maintained as if the employee had continued to work from the date family or medical leave under Title 50A RCW commenced until whichever of the following occurs first:

(a) The employee's family or medical leave under Title 50A RCW ends; or

(b) The employee returns from leave to any employment.

(3) If the employer and employee share the cost of existing health benefits, then during any continuation of health benefits as provided in this section, the employee remains responsible for the employee's share of the cost as prescribed by 29 C.F.R. 825.210, 825.211, and 825.212, and any subsequent amendments to those regulations.

(4) If an employee gives the employer unequivocal notice of intent not to return to work, the employer's obligations under Title 50A RCW to maintain health benefits cease.

(5) Nothing in this section should be construed as restricting an employer from providing a continuation of health benefits for any employee's claim for paid family or medical leave.

NEW SECTION

WAC 192-700-025 How does an employee's use of leave under the federal Family and Medical Leave Act (FMLA) affect employment restoration rights? (1) An employee is entitled to employment restoration upon returning from:

(a) Family or medical leave under Title 50A RCW (PFML), regardless of whether the employee also qualifies for and receives concurrent leave under the federal Family and Medical Leave Act of 1993 (Act Feb. 5, 1993, P.L. 103-3, 107 Stat. 6, as it existed on January 1, 2026 (FMLA)), as provided under RCW 50A.15.110; or

(b) Leave protected by the FMLA, during a period in which the employee was eligible for benefits under this title but did not apply for and receive those benefits.

(2) An employee is entitled to a combined maximum duration of 16 typical workweeks of leave under subsection (1) of this section taken during a period of 52 consecutive calendar weeks, except this duration is extended to 18 typical workweeks if any of the leave was taken as a result of a serious health condition with a pregnancy resulting in incapacity.

(3) If the employee is approved for a duration of PFML and the associated job protection of such leave would result in a combined duration of job protected leave in excess of the maximum duration described in subsection (2) of this section, an employer may reduce the employee's job protection associated with the duration of PFML by a duration of leave previously taken under FMLA, if the FMLA leave was taken no more than 52 weeks prior to the leave taken under PFML to the extent that such a reduction still entitles the employee to the maximum duration of job protection described in subsection (2) of this section.

(4) Employers that choose to offset job protection, as described in subsection (1) of this section, must provide written notice to the employee in a language understood by the employee and transmitted by a method reasonably certain to be received promptly by the employee. The notice must include the following:

(a) That the employer is designating and counting the employee's initial use of leave against the employee's entitlement under FMLA, including specifying the amount of the entitlement used and remaining, as estimated by the employer based on information provided by the department and employee;

(b) The start and end dates of the employer's designated 12-month leave year under the FMLA;

(c) Since the employee is eligible for paid family or medical leave under this title but is not applying for and receiving benefits, that the employer is counting the FMLA leave toward the maximum periods of job protection associated with leave taken under PFML, including specifying the start and end dates of FMLA leave, and the total amount of FMLA leave counting toward those maximum periods, as estimated by the employer based on information provided by the department and employee; and

(d) That the use of FMLA leave counting against job protection associated with PFML does not affect the employee's eligibility for paid family or medical leave benefits under this title.

(5) The notice described in subsection (2) of this section must be delivered within five business days of the employee requesting or taking FMLA leave and at least monthly thereafter.

(a) The requirement to provide this notice will cease if:

(i) The employer has applied the maximum amount of FMLA leave to an employee's PFML job protection; or

(ii) The employer does not wish to retain the option to reduce PFML job protected leave by FMLA job protected leave.

(b) The notice requirement resumes if the employee takes additional FMLA leave and the employer chooses to apply that leave to reduce job protection under PFML as described in this section.

(6) An employer that does not comply with the notice requirements in this section is required to recognize an employee's full employment restoration rights under PFML regardless of any prior use of leave under FMLA.

(7) An employer may apply FMLA leave toward an employee's job protection under PFML regardless of whether leave taken under either program is intermittent or for different qualifying events.

(8) Any investigation of a complaint filed by an employee under RCW 50A.40.020 that includes an alleged violation of this section will be based on information the employer had or reasonably should have had when the employer allegedly committed the unlawful act.

(9) Nothing in this section prevents an employer from adopting more generous leave or job protection not covered by Title 50A RCW.

Example 1: An employee takes six weeks of leave under FMLA but does not receive benefits under PFML for the same period. The employer wishes to retain the right to apply these six weeks of FMLA leave toward a potential future use of paid family or medical leave that would result in a combined maximum of more than 16 weeks of leave. Leave is not being taken as a result of a serious health condition with a pregnancy resulting in incapacity. The employer provides the proper notice and continues to do so monthly. Six months later, the employee is approved for 12 weeks of paid family leave to bond with a new child in the home. The employer notifies the employee that their previous use of FMLA within the last 52 weeks is being applied to job protection associated with their paid family leave. Because the combined total of job protection would amount to 18 weeks, the employee would need to return to work after the 10th week of paid family leave to retain job protection rights. This would result in a maximum of 16 weeks of job protection. If the employee elects to remain on paid family leave after the 10th week, they will still be eligible for PFML benefits, but the employer would not be required to offer the same or a substantially similar position of employment when the employee returns to work.

Example 2: An employee takes four weeks of leave under FMLA, but does not receive paid family or medical leave benefits for the same period. The employee begins their FMLA leave on March 12, 2026, and returns to work on April 10, 2026. The employer wishes to retain the right to apply these four weeks of FMLA leave toward a potential future use of paid family or medical leave. The employer provides the proper notice and continues to do so monthly. On April 2, 2027, the employee elects to take 16 weeks of paid family and medical leave after giving birth to a child. The employer notifies the employee that their previous use of FMLA within the last 12 months is being applied to job protection associated with their paid family leave. The employer is only able to apply one week of previously used FMLA leave toward the employee's paid medical leave job protection because the additional FMLA leave occurred more than one year prior to the employee's use of paid medical leave.

NEW SECTION

WAC 192-700-030 Do employers need to provide a notice to employees regarding their employment restoration rights? (1) Employers are required to provide a notice to employees eligible for employment restoration rights as described in RCW 50A.35.010 (7) (b).

(2) Employers must provide this notice:

(a) Each time an employee takes or is expected to take a continuous period of leave that lasts at least two typical workweeks; or

(b) One time for each qualifying event if the employee takes or is expected to take combined intermittent periods of leave exceeding 14 typical work days for that qualifying event. In this case, an employer may use an approximate date rather than a precise date for the employee's first scheduled workday after the leave ends.

Example: An employee applies for and receives paid medical leave benefits on an intermittent basis, taking every Monday off for treatment over an extended period of time. After the 14th Monday, an employer is required to provide the notice. The employer may provide a single notice for this qualifying event, and the notice may list "the day after you have received your treatment" as the expected time for the employee's return to work.

(3) The notice described in this section must be delivered in a language understood by the employee and transmitted by a method reasonably certain to be received by the employee no later than:

(a) Five business days in advance of the date the employee is expected to return to work; or

(b) If the employer becomes aware of the employee's use of paid family or medical leave less than five business days in advance of the date the employee is expected to return to work, as soon as is practicable.

(4) Any investigation of a complaint filed by an employee under RCW 50A.40.020 that includes an alleged violation of this section will be based on information the employer had or reasonably should have had when the employer allegedly committed the unlawful act.

RDS-6698.1

AMENDATORY SECTION (Amending WSR 19-23-090, filed 11/19/19, effective 12/20/19)

WAC 192-800-100 What is the process for filing petition for review and any reply to the petition for review? (1) The written petition for review must be filed by using the department's online services or by mailing it to the Commissioner's Review Office, Employment Security Department, Post Office Box 9555, Olympia, WA 98507-9555, within (~~thirty~~) 30 days of the date of mailing or delivery of the decision of the office of administrative hearings, whichever is earlier.

(2) Any written argument in support of the petition for review must be attached to the petition for review and be filed at the same time. The commissioner's review office will acknowledge receipt of the petition for review by assigning a review number to the case, entering the review number on the face of the petition for review, and setting

forth the acknowledgment date on the petition for review. The commissioner's review office will also send copies of the acknowledged petition for review and attached argument in support thereof to the petitioning party, nonpetitioning party, and their representatives of record, if any.

(3) Any reply to the petition for review and any argument in support thereof by the nonpetitioning party must be filed by using the department's online services or by mailing it to the Commissioner's Review Office, Employment Security Department, Post Office Box 9555, Olympia, WA 98507-9555. The reply must be (~~received by~~) filed with the commissioner's review office within (~~fifteen~~) 15 days of the date of the acknowledged petition for review. An informational copy must be mailed by the nonpetitioning party to all other parties of record and their representatives, if any.

(4) The petition for review and argument in support thereof, and the reply to the petition for review and argument in support thereof, must:

(a) Be captioned, and include the docket number of the decision of the office of administrative hearings, and be signed by the party submitting it or by a designated representative of that party; (~~and~~)

(b) Be legible, reproducible, and five pages or less; and

(c) Be filed in accordance with the provisions of RCW 50A.50.040.

(5) Arrangements for representation and requests for copies of the hearing record and exhibits will not extend the period for the filing of a petition for review, argument in support thereof, or a reply to the petition for review.

(6) Any argument in support of the petition for review or in reply thereto not submitted in accordance with the provisions of this regulation is not considered in the disposition of the case unless it is determined that the failure to comply with these provisions was beyond the reasonable control of the individual seeking relief.