

WSR 25-21-158

EXPEDITED RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed October 22, 2025, 10:58 a.m.]

Title of Rule and Other Identifying Information: The employment security department (department) is proposing an expedited rule to incorporate reference to a law that was passed during the 2025 legislative session.

Amending WAC 192-700-010 Can an employer deny employment restoration?

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: ESSB 5525 was passed during the 2025 legislative session and codified in statute under chapter 49.45 RCW. The new law addresses mass layoffs and business closures in Washington state, and sets new requirements for employers undergoing a business closure or mass layoff. The law exempts employees who are currently on paid family or medical leave (PFML) from being subject to a mass layoff except for under specific circumstances described in the law. PFML chapter 192-700 WAC addresses employment restoration and contains a section addressing the conditions in which an employer may deny employment restoration. This expedited rule will point to the new chapter of law in that section.

Reasons Supporting Proposal: RCW 34.05.353 (1)(b) says that an agency can undergo expedited rule making where "The proposed rules adopt or incorporate by reference without material change federal statutes or regulations, Washington state statutes ..." This proposed rule will incorporate by reference a new Washington state statute. We are proposing adding this reference so that people looking in our regulations will be able to find the new law.

Statutory Authority for Adoption: RCW 50A.05.060 and ESSB 5525 (chapter 277, Laws of 2025).

Statute Being Implemented: Chapter 49.45 RCW.

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.

This notice meets the following criteria to use the expedited adoption process for these rules:

Adopts or incorporates by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: The proposed rule incorporates by reference a recently passed Washington state law. This is necessary so that people can find the new law within the department's regulations. The expedited rule conforms with RCW 34.05.353 (1)(b).

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Janette Benham, Employment Security Department, 212 Maple Park Avenue S.E., Olympia, WA 98501, phone 360-790-6583, email rules@esd.wa.gov, BEGINNING November 5, 2025, AND RECEIVED BY December 22, 2025.

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

RDS-6779.1

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

WAC 192-700-010 Can an employer deny employment restoration?

(1) An employee is not entitled to rights under RCW 50A.35.010 if:

(a) An employer exercises its right to deny restoration under RCW 50A.35.010 and the employee has elected not to return to employment after receiving notice under subsection (2) of this section; or

(b) The employer is able to show that an employee would not otherwise have been employed at the time the employee would return to work after the employee's family or medical leave under Title 50A RCW ends, subject to the limitations described in chapter 49.45 RCW.

(2) An employer that chooses to deny restoration under subsection (1)(a) or (b) of this section to an employee on paid medical or family leave must notify the employee in writing as soon as the employer decides to deny restoration. The employer must serve this notice to the employee either in person or by certified mail. The notice must include:

(a) A statement that the employer intends to deny employment restoration when the leave has ended;

(b) The reasons behind the decision to deny restoration;

(c) An explanation that health benefits will still be paid for the duration of the leave; and

(d) The date on which eligibility for employer-provided health benefits ends.

(3) Employers that choose to deny restoration under this section must provide continuation of health benefits as required in RCW 50A.35.020 and WAC 192-700-020.