WSR 26-18-082
PERMANENT RULES
EMPLOYMENT SECURITY DEPARTMENT

[Filed September 1, 2026, 2:58 p.m., effective October 2, 2026]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The employment security department, insurance services division, is adopting rules for the paid family and medical leave (PFML) program to implement new or amended concepts regarding the following topics:

- Employer penalties
- Small business assistance grants
- Employer payment plans
- Claim determinations
- Benefit overpayments
- Employment restoration
- Fraud determinations

Citation of Rules Affected by this Order: New WAC 192-550-041 Can employer penalties be waived?, and 192-570-060 Will the department allow payment plans for delinquent employer premiums?; and amending WAC 192-550-010 What happens if an employer fails to submit required reports?, 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?, 192-570-010 Conference and conciliation, 192-630-015 How will a determination be made about an employee's eligibility for benefits?, 192-650-005 How will the department collect overpayments owed by an employee?, 192-700-005 When is an employee entitled to employment restoration after leave ends?, and 192-800-005 What is the standard the department will use to determine fraud?

Statutory Authority for Adoption: RCW 50A.05.060.

Adopted under notice filed as WSR 26-15-120 on July 21, 2026.

A final cost-benefit analysis is available by contacting Janette Benham, Employment Security Department, P.O. Box 9046, Olympia, WA 98507-9046, phone 360-790-6583, TTY 711 (contact Teresa Eckstein at 360-507-9890 for accommodations), email rules@esd.wa.gov, website https://paidleave.wa.gov/rulemaking/.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 2, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 2, Amended 7, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 2, Amended 7, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 2, Amended 9, Repealed 0.

Date Adopted: September 1, 2026.

April Amundson
Policy and Rules Manager
Employment System Policy and Integrity
Leave and Care Programs

RDS-7274.1

AMENDATORY SECTION (Amending WSR 20-01-087, filed 12/12/19, effective 1/12/20)

WAC 192-550-010 What happens if an employer fails to submit required reports? (1) An employer that willfully fails to file a complete and timely report under WAC 192-540-030 through 192-540-050 is subject to penalties under RCW 50A.45.010.

(2) The department will send a ((~~warning letter~~)) notice for an employer's first incomplete or untimely report. For a second or subsequent occurrence within five years of the date of the last occurrence, the department will assess penalties under the following schedule:

(a) 2nd occurrence: $75.00

(b) 3rd occurrence: $150.00

(c) 4th and subsequent occurrences: $250.00

(3) After five years without a ((~~warning letter~~)) notice or occurrence, prior occurrences will not count and the employer shall receive a ((~~warning letter~~)) notice instead of a penalty on the next occurrence.

AMENDATORY SECTION (Amending WSR 18-22-080, filed 11/2/18, effective 12/3/18)

WAC 192-550-030 How will the department calculate interest on delinquent payments? (1) When an employer fails to remit payment by the due date, the remaining unpaid balance shall accrue interest at a rate of one percent((~~, compounded~~)) monthly, until payment is received in full.

(2) The department will issue a notice to employers whose payments are delinquent. The notice will include the total amount due for all applicable premiums, penalties, and interest under Title 50A RCW.

NEW SECTION

WAC 192-550-041 Can employer penalties be waived? (1) The department may, at its discretion, waive penalties for late filing of a report, nonpayment of premiums that are due with a report, penalties associated with voluntary plans, or filing of an incomplete report if the commissioner determines that there was no fault attributable to the employer.

(2) An employer must:

(a) Request a waiver of penalties in writing;

(b) Include all relevant facts;

(c) Attach available proof; and

(d) File the request online or in another manner approved by the department.

(3) The department may waive late penalties when there are circumstances beyond the control of the employer. These circumstances include, but may not be limited to, the following:

(a) The report was filed on time with payment but inadvertently mailed to another agency or state program;

(b) The delinquency was caused by an employee of the department, such as providing incorrect information to the employer, when the source can be identified;

(c) The delinquency was caused by the death or serious illness, before the filing deadline, of the employer, a member of the employer's immediate family, the individual primarily responsible for filing reports and remitting payments for the paid family and medical leave program, or a member of that individual's immediate family.

(d) The delinquency was caused by the unavoidable absence of the employer or key employee before the filing deadline. "Unavoidable absence" does not include absences because of business trips, vacations, personnel turnover, or terminations;

(e) The delinquency was caused by the accidental destruction of the employer's place of business or business records;

(f) The delinquency was caused by fraud, embezzlement, theft, or conversion by the employer's employee or other persons contracted with the employer, which the employer could not immediately detect or prevent. The employer must have had reasonable safeguards or internal controls in place;

(g) The employer, before the filing deadline, requested proper forms from the department and the forms were not supplied in enough time to allow the completed report to be filed and paid before the due date. The request must have been timely, which means at least three days before the filing deadline;

(h) An infection from a disease subject to a public health emergency occurred at the employer's place of business and caused the employer to close or severely curtail operations; or

(i) Situations when the department accepting timely reports or payments was difficult or impossible. These include, but are not limited to, equipment breakdown or lack of available staff.

(4) For the purposes of subsection (2) of this section, "employer" may include the employee typically responsible for the filing of reports and payment of premiums as required by Title 50A RCW.

(5) The department may waive late penalties if it finds the employer to be out of compliance during an employer-requested audit, but the department decides the employer made a good faith effort to comply with all applicable laws and rules.

(6) If a waiver is approved based on information from the employer, or on behalf of the employer, that is later determined by the department to be false or misleading, the waiver could be void and the amount previously waived will be considered due. The determination to make a waiver void is subject to appeal.

(7) The department may, at its discretion, waive penalties without requiring a request from the employer if the penalty was caused by the department's own error or for other good cause.

(8) An employer is not eligible for a waiver under this section if the employer has outstanding paid family and medical leave reports that have not yet been remitted.

RDS-7275.2

AMENDATORY SECTION (Amending WSR 26-01-027, filed 12/5/25, effective 1/1/26)

WAC 192-560-010 Which businesses are eligible for small business assistance grants? (1) An employer determined to have 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 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 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 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 12th consecutive quarter following approval of the grant has not ended, the opt-out will become effective on the first day of the 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 10 applications per year~~)) will not count against an employer's limit under RCW 50A.24.010 or 50A.24.030, as applicable.

(a) An employer that qualifies for a grant under RCW 50A.24.010 for an amount that is less than $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.

AMENDATORY SECTION (Amending WSR 26-01-027, filed 12/5/25, effective 1/1/26)

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) 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 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) The denial of a grant application is appealable.

RDS-7276.2

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

WAC 192-570-010 Conference and conciliation. (1)(a) The department will engage employers in conference and conciliation when the employer fails to make all required:

(i) Premium payments;

(ii) Payments on penalties assessed by the department for the failure to submit required reports; ((~~or~~))

(iii) Payments on penalties assessed by the department for the failure to remit required premium payments; or

(iv) Payments on penalties assessed by the department for violations related to voluntary plans.

(b) "Conference and conciliation" for the purpose of this chapter means to encourage an amicable resolution of disputes between the employer and the department prior to the issuance of a warning letter.

(2) The department will promptly attempt to contact the employer to engage in conference and conciliation when appropriate under subsection (1) of this section. If the department does not receive a response from the employer by the deadline given, the department will attempt the contact again, for a total of two attempts. A warning letter will be sent to the employer if no contact can be made.

(3)((~~(a) Through conference and conciliation employers will be given an opportunity to provide information and to explain their reasons for failing to meet the department's requirements in subsection (1) of this section. The department will not issue a warning letter if:~~

~~(i) The employer provides good cause;~~

~~(ii) The department determines the good cause provided prevented compliance; and~~

~~(iii) The parties agree to an approved payment schedule.~~

~~(b) "Good cause" for the purpose of this section means:~~

~~(i) Death or serious illness of one or more persons directly responsible for discharging the employer's duties under Title 50A RCW;~~

~~(ii) Destruction of the employer's place of business or business records not caused by, or at the direction of, the employer; or~~

~~(iii) Fraud or theft against the employer.~~

~~(4) The burden of proof is on the employer to provide all pertinent facts and evidence or documentation for the department to determine good cause.~~

~~(5)~~)) Conference and conciliation is only available to employers in the circumstances described in subsection (1)(a) of this section.

((~~(6)~~)) (4) If an employer is eligible for conference and conciliation, the department will issue a warning letter when:

(a) The employer does not comply with the approved repayment schedule; or

(b) A resolution is not reached through conference and conciliation.

NEW SECTION

WAC 192-570-060 Will the department allow payment plans for delinquent employer premiums? (1) The department may, at its discretion, establish payment plans for the payment of delinquent employer premiums, interest, penalties, or fees under RCW 50A.10.030 and chapter 50A.45 RCW.

(2) Employers are not eligible for a payment plan if:

(a) Delinquent premiums, interest, or penalties are the result of the employer willfully making a false statement or misrepresentation regarding a material fact, or willfully failing to report a material fact, to avoid making the required reports or remitting the full amount of the premiums when due under this title; or

(b) The employer has outstanding reports or payments for the paid family and medical leave program for past quarters that have not yet been remitted.

(3) An eligible employer may request a payment plan by contacting the department.

(4) When making a determination on a request for a payment plan, the department may request financial data or other information to evaluate the request. If the requested information is not provided, the department will make a determination based on available information.

(5) The employer may request a specific duration (in months) for the payment plan, but the duration will ultimately be determined by the department. Additional balances will not be included in a payment plan unless requested by the employer and approved by the department. If additional balances are approved, the minimum monthly payment may change.

(6) The department will establish a minimum monthly payment amount for each payment plan. The amount of the minimum monthly payment will be determined based on the following factors:

(a) The total amount owed, including penalties and interest;

(b) The duration of the payment plan; and

(c) The financial circumstances of the individual or employer, if provided.

(7) A payment plan will be considered in default when the employer fails to make a total of two required installment payments by the agreed upon due date.

(8) If a payment plan is determined to be in default and the balance is not remitted to the department by the described date, the plan may be canceled and/or the department may engage in additional collection activities as described in chapter 50A.45 RCW.

(9) If the department receives information that indicates the employer will be unable to meet the requirements of the approved payment plan, the payment plan may be canceled at the department's discretion and the remaining balance will be due immediately.

(10) Entering into a payment plan agreement with the department does not waive any interest, penalties, or other charges unless expressly provided.

RDS-7277.1

AMENDATORY SECTION (Amending WSR 20-11-034, filed 5/14/20, effective 6/14/20)

WAC 192-630-015 How will a determination be made about an employee's eligibility for benefits? (1) When the department has issued a notice under WAC 192-630-005 the department will not make a determination on whether an employee qualifies for paid family or medical leave until all interested parties have had an opportunity to provide information about the question of eligibility 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 whether it has approved or denied the employee's application.

(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.

(5) If an employee is serving a waiting period for unemployment benefits under Title 50 RCW, the employee is not eligible for paid family or medical leave benefits under Title 50A RCW for that period as prescribed in RCW 50A.15.100.

RDS-7278.1

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

WAC 192-650-005 How will the department collect overpayments owed by an employee? When an employee is assessed an overpayment, the department will calculate a minimum monthly payment as follows:

(1) For overpayments due to fraud as defined in WAC 192-500-120, ((~~conditional payments, or fault attributable to the employee,~~)) the minimum monthly payment for an employee will be the greater of:

(a) The employee's weekly benefit amount; or

(b) Three percent of the outstanding balance when the billing statement is sent, rounded down to the next whole dollar amount.

(2) For all other overpayments, the minimum monthly payment will be the greater of:

(a) One-third of the weekly benefit amount;

(b) Three percent of the outstanding balance when the billing statement is sent, rounded down to the next whole dollar amount; or

(c) Twenty-five dollars.

(3) The employee may request a minimum monthly payment that is different than the amounts described in subsections (1) and (2) of this section. The department may request financial data or other information to evaluate the request. If the requested information is not provided, the department will make a determination based on available information.

RDS-7279.1

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

WAC 192-700-005 When is an employee entitled to employment restoration after leave ends? (1) Subject to RCW 50A.35.010, an employee who meets the criteria listed in that section who takes leave under Title 50A RCW is entitled, on return from the leave, to be restored by the employer to:

(a) The position of employment held by the employee when the leave commenced; or

(b) An equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment.

(i) "Equivalent position" means a position that is nearly identical to the employee's former position as if the employee did not take extended leave. This includes pay, benefits and working conditions, privileges, perks, location, and status. It must involve the same or substantially similar duties and responsibilities, which must entail substantially equivalent skill, effort, responsibility, and authority.

(ii) "Employment benefits" includes all benefits provided or made available to employees by an employer such as:

(A) Insurance;

(B) Paid time off;

(C) Educational benefits; or

(D) Retirement benefits.

(2) An employee is entitled to such reinstatement even if the employee has been replaced or the employee's position has been restruc-

tured to accommodate the employee's absence unless the employer can demonstrate the circumstances fall within WAC 192-700-010(1).

(3) The protections provided in RCW 50A.35.010 and this section apply to the employee beginning with the date the employee starts taking leave.

(4) For the purpose of employment restoration as described in RCW 50A.35.010, an employee is considered to have begun employment with the current employer at least 180 calendar days before taking the leave when the most recent hire date for that employee was at least 180 days prior to the leave start date. Any period of employment prior to the most recent start date will not be considered for this requirement.

RDS-7280.1

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

WAC 192-800-005 What is the standard the department will use to determine fraud? (1) The department will determine if fraud has been committed under WAC 192-500-120 based on a showing of clear, cogent, and convincing evidence.

(2) An employee who is determined to have committed fraud is not eligible for any benefits or rights guaranteed under Title 50A RCW for the period in which fraud was determined to have occurred.