

FINAL Significance Analysis
Title 50A RCW
Paid Medical and Family Leave
Phase Five

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Introduction

In 2017, the Washington State Legislature passed Substitute Senate Bill 5975 relating to Paid Family and Medical Leave (PFML). Substitute Senate Bill 5975 was codified as Title 50A RCW.

Title 50A RCW creates a statewide Paid Family and Medical Leave insurance program that provides for at least partial wage replacement when a qualified employee takes leave for an approved reason related to family or medical leave.

The legislation requires the state to develop rules implementing the program.

These rules are being developed by the Employment Security Department (“the department”) and will be filed in multiple phases. This filing comprises rules developed in Phase Five, which covers overpayments, employment restoration, and other topics.

Chapter 1: Describe the proposed rules, including a brief history of the issue, and explain why the proposed rules are needed.

WAC 192-520-010 Parties to collective bargaining agreements. (1) *((The rights and responsibilities under Title 50A RCW do not apply to parties covered by collective bargaining agreements in effect before October 19, 2017, unless and until the agreements expire, are reopened, or are renegotiated.)) 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 50A 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) *((An employer must file quarterly reports once a collective bargaining agreement expires, is reopened, or is renegotiated.*

(4))) *To be eligible for benefits, an employee must have worked at least eight hundred twenty hours during the qualifying period. If the employee's qualifying period includes any quarter prior to a collective bargaining agreement being reopened((,)) or renegotiated((,)) by the parties or expiring, the department will request the employee's qualifying period wages and hours from the employer. The employer must provide the wages and hours to the department within ten calendar days.*

((5))) (4) *Employees not covered by a collective bargaining agreement are subject to the rights and responsibilities of Title 50A RCW and related rules. Employers are also subject to the rights and responsibilities of Title 50A 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.*

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

(6) *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 50A 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.*

This amendment clarifies that parties to a collective bargaining agreement that was in existence on October 19, 2017 that has not yet expired or been reopened or renegotiated are not required to be subject to the rights and responsibilities under Title 50A RCW. Such parties who mutually agree to become subject to those rights and responsibilities may elect to do so by submitting required information to the department.

WAC 192-540-040 How should employers report hours ((worked)) for each calendar quarter? *Each calendar quarter, employers must report to the department the ((number of)) wages paid and the*

associated hours ((worked by)) for each employee. Employers must include the following hours in the report.

(1) **Hourly employees.** Report the total number of hours worked by each employee.

(2) **Employees on salary.** Report forty hours for each week in which a salaried employee as defined in WAC 192-500-100 worked.

(3) **Vacation pay, sick leave pay, holiday pay, paid time off.** Report the number of hours an employee is on paid leave. Do not report hours for a cash out of leave.

(4) **Overtime.** Report the number of hours actually worked for which overtime pay or compensatory time is provided, without regard to the amount of wages or compensation paid.

(5) **Commissioned or piecework employees.** Report the actual number of hours worked by employees paid by commission or by piecework. If there are no reliable time keeping records, report a full-time commissioned or piecework employee at forty hours worked for each week in which any of their duties were performed.

(6) **Wages in lieu of notice.** Report the actual number of hours for which an employee was paid.

(7) **Faculty employees.**

(a) To be considered full time, faculty members of community and technical colleges must ((meet the definition of)) have a "full-time academic workload" as defined in RCW 28B.50.489.

(i) For full-time faculty members, report thirty-five hours per week.

(ii) For part-time faculty members, multiply thirty-five hours by the percentage ((that is)) equal to the percentage of hours worked in relation to a full-time faculty member consistent with RCW 28B.50.489 and 28B.50.4891.

Example: A technical college deems a teaching workload of fifteen hours per week to be full time. An instructor teaches a workload of twelve hours per week. Twelve divided by fifteen is eighty percent. Eighty percent of thirty-five is twenty-eight. Report twenty-eight hours per week.

(b) Part-time faculty members may overcome the presumption of hours established by this formula by providing the department ((with)) sufficient evidence of hours worked that exceeds the hours reported by the employer.

(8) **Severance pay.** Do not report hours for severance pay.

(9) **Payment in kind.** Report ((the)) actual hours worked for performing services which are compensated only by payment in kind.

(10) **Fractions of hours.** If the employee's total number of hours for the quarter results in a fraction ((amount)), round the total to the next higher whole number.

(11) **Practice, preparation, and rehearsal time.** If an employee who is part of a performing group is paid for a performance but is also required by the employer to attend practice, preparation, ((and)) or

rehearsal on an organized group basis, report the hours spent in the required practice, preparation, ((and)) or rehearsal as well as the performance.

*(12)(a) **On-call and standby hours.** Report the number of actual hours for which an employee receives wages for being on call or on standby with the employer. Do not report hours for which an on-call employee is scheduled to check in before work((, and if)). Do not report hours for which an on-call employee has been informed they are not required to work((, has no further obligations)).*

(b) For the purpose of this section, "on-call" and "standby" hours are defined as paid hours when employees must comply with employer requirements, such as maintaining physical or mental status, remaining in a specified location, or being required to report to work within a specific time ((frame)).

This rule clarifies the requirement for employers to report wages and hours associated with those wages. This creates consistency for reporting purposes, particularly in situations when an employee may have worked hours in one quarter, but did not receive wages for those hours until the following quarter.

It also provides additional context for when to report 40 hours for a salaried employee, how to report for faculty members, and when hours should be reported for on-call employees.

WAC 192-640-005 Definitions. *For purposes of this chapter:*

(1) "Overpayment" means any or all of the following:

(a) Payment of any paid family or medical leave benefits to which the department determines the employee is not entitled;

(b) Penalties assessed under RCW 50A.04.045; or

(c) Interest accrued under RCW 50A.04.065.

(2) "Equity and good conscience" means fairness as applied to each individual case after considering the totality of the circumstances.

This rule provides a definition for "overpayment" as a clarification for how the department will process and attempt to collect on payments to which an employee on leave was not entitled.

WAC 192-640-010 How are overpayments assessed on employees? *(1) If the department determines an employee has an overpayment as defined in WAC 192-640-005, the department will provide the employee with an overpayment assessment. The overpayment assessment will include all of the following:*

- (a) Whether the employee is found to be at fault;*
- (b) The amount of the overpayment; and*
- (c) The reason for the overpayment.*
- (2) The employee must repay the amount overpaid unless the department waives the overpayment.*
- (3) Any portion of the overpayment that was made on behalf of the employee to another entity is considered paid to the employee and will be included in the overpayment assessment.*

This rule governs how the department will assess overpayments to employees who received payments from the department to which they were not entitled. This rule also clarifies the information that will be included in a notice of overpayment.

WAC 192-640-015 When can the department waive an overpayment? *(1) An employee who is determined to have an overpayment must repay the full amount of the overpayment unless a waiver is granted. The decision to waive an overpayment at all times rests with the department.*

(2) An employee may be eligible for a waiver of an overpayment when the employee is not considered at fault and it would be against equity and good conscience for the department to require the employee to repay the full amount.

(3) When the department identifies an overpayment, the department will send an application for a waiver to any potentially eligible employees.

(4) An employee may request an application for a waiver of an overpayment if one was not already provided by the department, and if the employee's overpayment is not a result of fraud, conditional payment, or fault attributable to the individual.

(5) The waiver application will request information concerning the employee's financial situation or other circumstances which will help the department determine if the overpayment should be waived.

(6) The financial information requested may include, but is not limited to, documentation for the previous month, current month, and following month of the employee's household:

(a) Income and, to the extent available, the income of other household members who contribute financially to the household;

(b) Expenses; and

(c) Readily available liquid assets including, but not limited to, checking and savings account balances, stocks, bonds, and cash on hand.

(7) The completed waiver application and supporting documents must be returned to the department by the response deadline indicated in the overpayment assessment, which will be no less than ten working days. Reasonable mailing time will be added when the overpayment assessment is sent via postal service. If information is not provided by the deadline, the department will make a decision about the employee's eligibility for a waiver based on the available information.

(8) Any waived overpayment amount is considered paid to the employee and will count against the employee's available leave. A waiver cannot exceed the total amount of leave available on a claim. The department will not waive an overpayment to allow the employee more leave than the employee was originally eligible to receive.

(9) If a waiver is approved based on information from the employee, or on behalf of the employee, 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 overpaid again. The determination to make a waiver void is subject to appeal.

The department has the discretion to waive the all or part of an overpayment in certain circumstances that qualify under equity and good conscience. This rule describes the process through an employee can obtain a waiver form, the type of information the Department may request to approve a waiver application, the consequences of a waived overpayment, and the circumstances in which a waiver will be voided.

WAC 192-640-020 How will equity and good conscience be applied in overpayment waiver decisions?

(1) It is against equity and good conscience to deny a waiver request when repayment of the overpayment would create hardship for an employee to provide for basic needs such as food, shelter, medicine, utilities, and related expenses. Except in unusual circumstances, the department will presume repayment would leave the employee unable to provide basic needs if total household resources in relation to household size do not exceed seventy percent of the applicable lower living standard income level (LLSIL) and circumstances are not expected to change within the next ninety days.

(2) The department may also consider, but is not limited to, the following factors in determining whether waiver should be granted for reasons of equity and good conscience:

(a) The employee's general health, including disability, competency, and mental or physical impairment;

(b) The employee's education level, including literacy;

(c) The employee's ability to repay the overpayment based on employment or financial resources;

(d) The employee's marital status and number of dependents, including whether other household members are employed;

(e) Whether an error by department staff contributed to the overpayment; and

(f) Other factors indicating that repayment of the full amount would cause the employee undue economic, physical, or mental hardship.

(3) When determining whether a waiver of benefit overpayments may be granted based on equity and good conscience, the department must consider whether the employer or employer's agent failed to respond to the department timely or adequately without good cause. This subsection does not apply to negotiated settlements.

(4) The decision to grant or deny waiver will be based on the totality of circumstances rather than the presence of a single factor listed in subsections (1) through (3) of this section.

This rule clarifies the factors the Department will consider in applying the equity and good conscience standard defined in WAC 192-640-005.

WAC 192-640-025 What does the department consider "at fault" for an overpayment? *(1) The department will decide if the employee is at fault for an overpayment based on information provided by interested parties and from the department's records. The employee will always be considered at fault when the overpayment is the result of fraud or nondisclosure.*

(2) The employee may be considered at fault, even though all relevant information was provided before a decision was issued, when the employee should reasonably have known the payment was improper. The department may determine the employee is at fault for an overpayment when, for example:

(a) It is determined that the employee worked during the same hours for which the employee claimed paid family or medical leave; or

(b) A lower-level decision reversed by the office of administrative hearings, the commissioner, or a court causes an overpayment because of information that the employee did not disclose to the department.

(3) In deciding if the employee is at fault, the department may also consider factors which may affect the employee's ability to report all relevant information to the department.

This rule describes situations in which the department will find an employee is at fault for an overpayment. It also describes the factors the Department may consider in making a fault determination.

WAC 192-640-030 Will the employee be notified of the right to appeal the overpayment? *The department will send all interested parties information about the overpayment assessment and the right to appeal. Employees have the right to appeal any of the following components of the assessment:*

(1) The reason for the overpayment;

(2) The amount of the overpayment;

(3) The finding of fault; and

(4) If an employee submitted a waiver application under WAC 192-640-015, the reason the department did not determine the employee to be potentially eligible for a waiver under WAC 192-640-015(3).

This rule establishes appeal rights for employees determined to have received an overpayment by the department. The rule also clarifies how the employee will be notified of an overpayment determination.

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.

This rule prescribes how the Department will calculate the minimum monthly payment when an employee is assessed an overpayment.

WAC 192-650-010 *Can overpayments be offset against future benefit payments? (1) An overpayment may be offset on a valid claim year at the department's discretion when:*

(a) An employee requests to repay an overpayment;

(b) An employee does not repay an overpayment in full; or

(c) An employee misses a portion of two or more arranged payments.

(2) If the new available claim amount for the current claim year is greater than the balance of the overpayment, the employee can request an amount of benefits to be offset from each payment, subject to approval by the department. However, if the new available claim amount for the current claim year is equal to or less than the balance of an overpayment on that claim year, the offset will be done at the rate of one hundred percent.

(3) An employee may request to repay overpayments owing on prior claim years by offset.

(4) For subsection (1)(b) and (c) of this section, the overpayment will be offset as follows:

(a) If the overpayment was caused by a denial for fraud the amount deducted will be one hundred percent of the benefits payable for each week the employee claims benefits. These overpayments will be collected first.

(b) For all other overpayments, the amount deducted will be fifty percent of the benefits payable for each week claimed by the employee, or such other percentage approved under subsection (2) of this section, up to one hundred percent of benefits payable. The percent deducted is based on the total weekly benefit amount, before deductions for such items as pensions, child support, income taxes.

(c) Interest, penalties, surcharges, court costs, and charges for dishonored payments will not be deducted from benefit payments; they must be repaid.

(5) During any valid claim year, the total amount of benefits paid to the employee plus offset credits granted will not exceed the maximum benefits payable on the claim.

(6) If offset of an overpayment is granted against weeks that are later found to have been paid in error or as a result of fraud, the offset for those weeks will be canceled and the amount will be restored to the employee's overpayment balance.

This rule describes the process wherein an employee may be permitted to repay an overpayment through future benefit payments rather than a lump sum or periodic reimbursement to the department.

WAC 192-650-015 Are negotiated settlements of overpayments permitted? *(1) The department can accept a negotiated settlement to repay a debt of overpayment under RCW 50A.04.185. Except as provided in subsection (3) of this section, a negotiated settlement of the overpayment for less than the full amount owed will be considered when requiring an employee to repay the full amount would be against equity and good conscience as defined in WAC 192-640-005.*

(2) In considering settlement offers, the department will first consider whether it is financially advantageous to the department to collect the debt. The department may also consider:

- (a) The age and amount of the overpayment;*
 - (b) The number of prior contacts with the employee;*
 - (c) If the employee previously made good faith efforts to pay the debt;*
 - (d) The ability to enforce collection; or*
 - (e) Other information relevant to the employee's ability to repay the debt.*
- (3) Except in unusual circumstances, a settlement offer will not be accepted when the employee's overpayment is the result of fraud. Unusual circumstances that may warrant a negotiated settlement of the overpayment and associated penalties include, but are not limited to, long-term or terminal illness, severe permanent disability, or other circumstances that seriously impair the employee's long-term ability to generate income.*
- (4) The department's decision to accept or reject a settlement offer is not subject to appeal. If the department rejects the settlement offer, the employee is permitted to make another offer if the employee's circumstances change.*

This rule sets the process by which the department will consider a negotiated settlement of an overpayment. A negotiated settlement may result in the department not collecting the full amount of an overpayment based on various circumstances.

WAC 192-650-020 How does an employee make a negotiated settlement offer to repay overpayments? *(1) An employee may contact the department online or in another manner approved by the department to make an offer to settle a debt for less than the full amount the employee owes. The employee must:*

- (a) Specify the amount the employee is offering to repay; and*
 - (b) Be prepared to provide financial and other information to support the offer.*
- (2) The department may request a credit report to verify the information the employee provides.*
- (3) The department will notify the employee of its decision to accept or decline the offer.*

This rule specifies how an employee may submit an offer to the department for a negotiated settlement. The department will use this offer as a basis to make a determination on whether a negotiated settlement is accepted.

WAC 192-650-025 *How are payments and offsets applied when an employee has more than one overpayment?* (1) *If the department has assessed more than one overpayment against an employee, the department will apply payments and offsets beginning with the oldest debt. The department will apply payments and offsets to the outstanding balance in the following order:*

(a) Court costs including, but not limited to, filing fees and surcharges paid to the court for their official services, and surcharges and fees collected by the court for distribution to other programs or funds. It does not, however, apply to surcharges paid to the court under RCW 40.14.027 which are applied under (f) of this subsection;

(b) Interest;

(c) Penalties based on fraud;

(d) Charges for payments dishonored by nonacceptance or nonpayment;

(e) Overpaid benefits; and

(f) Surcharges assessed under RCW 40.14.027.

(2) The department will charge twenty-five dollars for each dishonored payment the employee submits. This is considered a commercial charge under the Uniform Commercial Code (RCW 62A.3-515).

When multiple overpayments to a single employee exist, the department will use this rule to determine the order in which payments received will apply to each overpayment.

WAC 192-700-005 *When is an employee entitled to employment restoration after leave ends?* (1) *Subject to RCW 50A.04.025(3), an employee who meets the criteria listed in RCW 50A.04.025 (6)(a) 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 restructured 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.04.025 and this section apply to the employee beginning with the date the employee starts taking leave.

This rule clarifies when and how an employer must restore an employee on leave to a position of employment after the leave has ended. It also provides definitions for language used in statute with regard to the type of position and the benefits to which an employee is entitled.

WAC 192-700-010 Can an employer deny employment restoration? *(1) An employee is not entitled to employment protection under Title 50A RCW if:*

(a) An employer exercises its right to deny restoration under RCW 50A.04.025 (6)(b) 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 of reinstatement.

(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 in which eligibility for employer-provided health benefits ends.

(3) Employers that choose to deny restoration are required to adhere to the continuation of health benefits in RCW 50A.04.245 for the remainder of the employee's approved leave.

This rule clarifies when and how an employer can deny restoration to a position of employment when the employee would otherwise have been entitled to such restoration. It also specifies the notice that must be provided to the employee in a circumstance where the employer has elected to deny restoration.

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.*

(2) For the purpose of employment protection, employers are considered to have fifty or more employees when:

(a) The employer has fifty or more employees working each work day for twenty or more calendar workweeks; and

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

Statute requires a different calculation of employer size for the purposes of employment restoration than is required for other purposes in Title 50A RCW. This rule clarifies the calculation that the department will use to determine eligibility for employment restoration.

WAC 192-800-020 *How will the department differentiate between employers? (1) The department will determine each entity in possession of its own unified business identifier number as assigned by the state's business licensing service to be an individual employer.*

(2) If the department finds an employer acted in such a way to avoid paying the full amount of premiums when due under RCW 50A.04.080 (3)(b), the employer may be subject to penalties under RCW 50A.04.090.

(3) If the department finds under subsection (2) of this section that an employer acted in such a way to avoid paying the full amount of premiums when due, the department may require the employer to report under a single unified business identifier selected by the department. In such cases, the department will notify the employer of the determination. Notice will include the department's findings, the unified business identifier under which the employer must report, and the full amount of remaining premiums, if any, due by the responsible employer.

This rule is intended to clarify how the department may act in circumstances where a single employer employs multiple Unified Business Numbers and the entities with which those numbers are associated are acting in such a way as to avoid certain responsibilities that would be required if the entities were designated as a single employer. This rule gives the Department the option of requiring an employer to report under a single UBI when the employer has been found to have avoided paying premiums by using multiple UBIs.

WAC 192-610-065 *Will the department provide guidance to an employee filing a claim for paid family and medical leave benefits? The department will provide paid family and medical leave information and guidance to any employee who requests help filing an application for benefits.*

This rule confirms that the department will offer assistance to employees who request it when filing for benefits under Title 50A RCW.

WAC 192-610-066 *How will the department make employees aware of their rights and responsibilities? (1) The department will publish and post on its web site an informational employee guide for basic information on the laws, rules and procedures for the paid family and medical leave program. A copy of the guide will be available to the public at no charge when requested.*

(2) The department will send an electronic link to the guide to employees who file an application for benefits and have authorized the department to contact them by email or other electronic means. For employees who have not authorized the department to contact them electronically, the department will send a written notice containing the web address for the guide and a phone number for the department.

(3) The department will maintain a brief descriptive web address for the online location of the employee guide.

(4) Employees are responsible for filing weekly applications and following all instructions as required in the employee guide.

(5) When requested, the department will assist employers and employees in understanding the employee guide.

(6) All employees are presumed to understand the employee guide and will be held responsible for failing to comply with its contents.

(7) If a conflict exists between the employee guide and spoken information provided by the department, the written information will prevail.

This rule clarifies how the department will provide employees with information pertaining to their rights and responsibilities under Title 50A RCW. It also addresses the employee's responsibility to know and follow the information contained in the guide, and clarifies which information will prevail in the event of a conflict between written and spoken information.

Chapter 2: Is a Significance Analysis required for these rules?

Rules requiring a significance analysis.

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

Rules not requiring a significant analysis.

The following rules do not require a Significance Analysis because they either:

1. Adopt, amend, or repeal: a) Any procedure, practice, or requirement relating to any agency hearings; b) Any filing or related process requirement for making application to an agency for a license or permit; or c) Any policy statement pertaining to the consistent internal operations of an agency (RCW 34.05.328(5)(c)(i));
2. Set forth the agency's interpretation of statutory provisions it administers, the violation of which does not subject a person to a penalty or sanction (RCW 34.05.328(5)(c)(i) and (5)(c)(ii));
3. Adopt or incorporate 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 (RCW 34.05.328(5)(b)(iii));
4. Only correct typos, address or name changes, or clarify language without changing effect (RCW 34.05.328(5)(b)(iv));
5. That put forth content specifically and explicitly dictated by statute (RCW 34.05.328(5)(b)(v)); or
6. Are not "significant legislative rules" insofar as the proposed rule does not make significant amendments to a policy or regulatory program (RCW 34.05.328(5)(c)(iii)(C)).

WAC Section	Section Title	Exempting reason	Exempting statute
WAC 192-540-040	How should employers report hours ((worked)) for each calendar quarter?	Procedural; Interpretive	RCW 34.05.328(5)(c)(i) RCW 34.05.328(5)(c)(ii)
WAC 192-640-005	Definitions.	Interpretive	RCW 34.05.328(5)(c)(ii)
WAC 192-640-010	How are overpayments assessed on employees?	Procedural	RCW 34.05.328(5)(c)(i)
WAC 192-640-015	When can the department waive an overpayment?	Procedural; Interpretive	RCW 34.05.328(5)(c)(i) RCW 34.05.328(5)(c)(ii)

WAC 192-640-020	How will equity and good conscience be applied in overpayment waiver decisions?	Procedural; Interpretive	RCW 34.05.328(5)(c)(i) RCW 34.05.328(5)(c)(ii)
WAC 192-640-025	What does the department consider "at fault" for an overpayment?	Interpretive	RCW 34.05.328(5)(c)(ii)
WAC 192-640-030	Will the employee be notified of the right to appeal the overpayment?	Procedural	RCW 34.05.328(5)(c)(i)
WAC 192-650-005	How will the department collect overpayments owed by an employee?	Procedural	RCW 34.05.328(5)(c)(i)
WAC 192-650-010	Can overpayments be offset against future benefit payments?	Procedural	RCW 34.05.328(5)(c)(i)
WAC 192-650-015	Are negotiated settlements of overpayments permitted?	Procedural	RCW 34.05.328(5)(c)(i)
WAC 192-650-020	How does an employee make a negotiated settlement offer to repay overpayments?	Procedural	RCW 34.05.328(5)(c)(i)
WAC 192-650-025	How are payments and offsets applied when an employee has more than one overpayment?	Procedural	RCW 34.05.328(5)(c)(i)
WAC 192-700-005	When is an employee entitled to employment restoration after leave ends?	Interpretive	RCW 34.05.328(5)(c)(ii)
WAC 192-700-010	Can an employer deny employment restoration?	Procedural; Interpretive	RCW 34.05.328(5)(c)(i) RCW 34.05.328(5)(c)(ii)
WAC 192-700-015	How is employer size determined for employment protection?	Procedural; Interpretive	RCW 34.05.328(5)(c)(i) RCW 34.05.328(5)(c)(ii)
WAC 192-800-020	How will the department differentiate between employers?	Procedural; Interpretive	RCW 34.05.328(5)(c)(i) RCW 34.05.328(5)(c)(ii)
WAC 192-610-065	Will the department provide guidance to an employee filing a claim for paid family and medical leave benefits?	Procedural	RCW 34.05.328(5)(c)(i)
WAC 192-610-066	How will the department make employees aware of their rights and responsibilities?	Procedural	RCW 34.05.328(5)(c)(i)

Chapter 3: Clearly state in detail the general goals and specific objectives of the statute that the rules implement.

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

RCW 50A.04.025(6)(b)(ii) requires the employer to provide written notice to an employee if the employer does not intend to restore the employee to his or her previous position of employment if certain criteria are met. Because employment restoration is an integral part of Paid Family and Medical Leave, proper notification to an employee who was expecting to be restored to his or her previous position of employment is paramount. In addition to specifying the manner in which the notice must be delivered, the rule prescribes the content of the notice itself.

WAC 192-700-010 requires written notification to be delivered in-person or by certified mail. While little or no cost would be incurred as a result of an in-person delivery, the department recognizes that certified mail does carry a certain cost.

Chapter 4: Explain how the department determined that the rules are needed to achieve these general goals and specific objectives. Analyze alternatives to rulemaking and the consequences of not adopting the rules.

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

Employment restoration is an integral component of Paid Family and Medical Leave. The legally guaranteed protection of employment offers employees assurances that, if they were to take this leave, their positions will be waiting for them when they return. It will encourage use of this program, which is intended to encourage an employee's use of time to care for themselves or loved ones.

The law does allow, under very strict circumstances, the denial of employment protection to which an employee on leave would otherwise be legally entitled. These circumstances are defined in RCW 50A.04.025(6)(b):

An employer may deny restoration under this section to any salaried employee who is among the highest paid ten percent of the employees employed by the employer within seventy-five miles of the facility at which the employee is employed if:

- (i) Denial is necessary to prevent substantial and grievous economic injury to the operations of the employer;*
- (ii) The employer notifies the employee of the intent of the employer to deny restoration on such basis at the time the employer determines that the injury would occur; and*
- (iii) The leave has commenced and the employee elects not to return to employment after receiving the notice.*

The requirement of notification is unspecific. The employee is entitled to return to work immediately if the employee so chooses once he or she receives the notice. In order to guarantee this right, the department will require the delivery of written notice in-person or by certified mail to guarantee that the employee is promptly notified of the employer's decision to deny restoration and decide whether to return to work.

Failure to adopt rules around this subject leads to ambiguity about how the employer is required to provide notice and could result in an employee not receiving the information necessary to decide whether to return to work and ensure their continued employment.

Chapter 5: Explain how the department determined that the probable benefits of the rules are greater than the probable costs, taking into account both the qualitative and quantitative benefits and costs and the specific directives of the statute being implemented.

The department is unable to calculate an approximate cost to employers in order to adhere to this rule due to an inability to obtain data points on several subjects:

- The likelihood that an employer will elect to deny restoration to an employee on leave
- How many employers electing to deny restoration to an employee on leave will chose to provide notification by certified mail rather than in person
- Pricing variations on the cost of certified mail
 - \$3.50 is the base rate in 2019, but this can rise depending on various options

The department has determined that this cost is necessary in order to ensure proper notification as required by statute. The benefits of proper notifications to employees being denied job restoration are greater than the relatively minor cost of certified mail or in-person delivery.

Chapter 6: Identify alternative versions of the rule that were considered and explain how the department determined that the rule being adopted is the least burdensome alternative for those required to comply with it that will achieve the general goals and specific objectives stated previously.

Various alternatives of this rule were discussed, including the exclusion of certified mail. The department determined that this would have been insufficient to address the need of prompt written notification to an employee whose position is not being restored.

Adding certified mail also gives employers a second option and more flexibility for providing notice if in-person delivery is overly burdensome.

Chapter 7: Conflicts with Federal or State law

None of the rules analyzed in this Significance Analysis conflict with Federal or State law.

Chapter 8: Performance impositions on private vs. public sectors

Since all employers and employees, regardless of public or private sector employment status, are required to participate in Paid Family and Medical Leave, there is no evidence to suggest that any proposed rule will have a measurably different impact between the two sectors.

Chapter 9: Conflicts with Federal or State regulatory bodies

None of the rules analyzed in this Significance Analysis conflict with any applicable Federal or State regulatory requirements.

Chapter 10: Coordination with Federal, State, or local laws

There are no other Federal, State, or local laws applicable to the rules analyzed in this Significance Analysis.