

AMENDATORY SECTION (Amending WSR 18-12-032, filed 5/29/18, effective 6/29/18)

WAC 192-510-010 Election, withdrawal, and cancellation of coverage. (1) Self-employed persons as defined in RCW 50A.04.105(1) and federally recognized tribes as defined in RCW 50A.04.110 may elect coverage under Title 50A RCW.

(2) Notice of election of coverage must be submitted to the department online or in another format approved by the department.

(3) Elective coverage begins on the first day of the (~~calendar~~) quarter immediately following the notice of election.

(4) A period of coverage is defined as:

(a) Three (~~calendar~~) years following the first day of elective coverage or any gap in coverage; and

(b) Each subsequent (~~calendar~~) year.

(5) Any self-employed person or federally recognized tribe may file a notice of withdrawal within thirty calendar days after the end of each period of coverage.

(6) A notice of withdrawal from coverage must be submitted to the department online or in another format approved by the department.

(7) Any levy resulting from the department's cancellation of coverage is in addition to the due and unpaid premiums and interest for the remainder of the period of coverage.

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

WAC 192-510-065 When can an employer deduct premiums from employees? (1) An employer may not deduct more than the maximum allowable employee share of the premium from wages paid for a pay period.

(2) If an employer fails to deduct the maximum allowable employee share of the premium from wages paid for a pay period, the employer is considered to have elected to pay that portion of the employee share under RCW 50A.04.115 (3)(d) for that pay period. The employer cannot deduct this amount from a future paycheck of the employee for a different pay period.

(3) Subsections (1) and (2) of this section do not apply if an employer was unable to deduct the maximum allowable employee share of the premium for a pay period due to a lack of sufficient employee wages for that pay period.

NEW SECTION

WAC 192-510-085 How will the department assess premiums when a conditional premium waiver expires? (1) If an employee who is exempt from premiums under a conditional waiver works eight hundred twenty hours in any period of four consecutive quarters, the waiver will be determined to have expired.

(2) Upon expiration of a conditional premium waiver, the department will assess and notify:

- (a) The employer of all the owed employer premiums; and
- (b) The employee of all the owed employee premiums.
- (3) Payment will be due upon receipt of the assessment.
- (4) Failure to pay the assessment by the required date will result in the accrual of interest under RCW 50A.04.140.
- (5) Upon payment of the employee premiums, the employee will be credited for the hours worked and will be eligible for benefits under Title 50A RCW as if the premiums were originally paid.
- (6) Nothing in this section prevents the employer from paying part or all of the employee's share of the premiums.

NEW SECTION

WAC 192-500-050 De facto parent. A "de facto parent" is limited to those adults who have fully and completely undertaken a permanent, unequivocal, committed, and responsible parental role in a child's life where the natural or legal parent consented to and fostered the parent-like relationship.

NEW SECTION

WAC 192-500-060 In loco parentis. An individual stands "in loco parentis" when the individual acts in place of a parent, intentionally takes over parental duties, and is responsible for exercising day-to-day care and control fulfilling the child's physical and psychological needs.

NEW SECTION

WAC 192-500-070 Claim year. (1) "Claim year" is the fifty-two week period beginning Sunday of the week of:

- (a) The date of the birth or placement of a child; or
- (b) The date of the filing of a complete and timely application for all other qualifying events.

(2) For applications that are backdated, the claim year is the fifty-two week period beginning Sunday of the week to which the application was backdated.

- (3) An employee may only have one valid claim year at a time.

NEW SECTION

WAC 192-500-080 Qualifying event. A "qualifying event" is:

- (1) For family leave, events described in RCW 50A.04.010(9).
- (2) For medical leave, events described in RCW 50A.04.010(14).

NEW SECTION

WAC 192-500-090 Health care provider. "Health care provider" means:

(1) A physician or an osteopathic physician who is licensed to practice medicine or surgery, as appropriate, by the state in which the physician practices;

(2) Nurse practitioners, nurse-midwives, midwives, clinical social workers, physician assistants, podiatrists, dentists, clinical psychologists, optometrists, and physical therapists licensed to practice under state law and who are performing within the scope of their practice as defined under state law by the state in which they practice;

(3) A health care provider listed above who practices in a country other than the United States, who is authorized to practice in accordance with the law of that country, and who is performing within the scope of the health care provider's practice as defined under such law; or

(4) Any other provider permitted to certify the existence of a serious health condition 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 October 19, 2017).

NEW SECTION

WAC 192-500-100 Salaried employee. (1) A "salaried employee" is any employee who receives a fixed periodic compensation from an employer to be paid for hours worked full-time as defined by the employer.

(2) Employees that work less than full-time as defined by the employer are not considered a salaried employee for the purposes of Title 50A RCW.

**Chapter 192-600 WAC
EMPLOYEE NOTICE TO EMPLOYER**

NEW SECTION

WAC 192-600-005 When must an employee provide notice to the employer for foreseeable leave? (1) (a) An employee must provide the employer at least thirty days' written notice before paid family or medical leave is to begin if the need for the leave is foreseeable based on an expected birth, placement of a child, or planned medical treatment for a serious health condition.

(b) An employee must provide the employer written notice as soon as is practicable when thirty days' notice is not possible, such as because of a lack of knowledge of approximately when leave will be required to begin, a change in circumstances, or a medical emergency.

(2) An employee must provide the employer written notice as soon as is practicable for foreseeable leave due to a qualifying military

exigency, regardless of how far in advance such leave is foreseeable.

(3) Whether paid family or medical leave is to be continuous or is to be taken intermittently or on a reduced schedule basis, written notice need only be given one time, but the employee must inform the employer as soon as is practicable if dates of the scheduled leave change, are extended, or were initially unknown.

NEW SECTION

WAC 192-600-010 When must an employee provide notice for unforeseeable leave? (1) When the need for leave is not foreseeable, an employee must provide written notice to the employer as soon as is practicable under the facts and circumstances of the particular situation.

(2) If the employee is unable to provide notice personally, written notice may be given by another responsible party, such as the employee's spouse, neighbor, or coworker.

Example 1: An employee's spouse is in a car accident and is taken to the emergency room. The employee would not be required to leave the spouse in the emergency room in order to report the absence while the spouse is receiving emergency treatment. The employee would be expected to provide written notice, such as an email, to the employer as soon as is practicable.

Example 2: An employee is in a car accident and is taken to the emergency room for emergency surgery. The employee's parent may provide written notice on behalf of the employee as soon as is practicable.

NEW SECTION

WAC 192-600-015 What does "as soon as is practicable" mean for this chapter? For the purposes of this chapter, "as soon as is practicable" means as soon as it is both possible and practical to provide notice, taking into account all of the facts and circumstances in the individual situation. When an employee becomes aware of a need for paid family or medical leave less than thirty days in advance, the determination of when an employee could practicably provide notice must take into account the individual facts and circumstances.

NEW SECTION

WAC 192-600-020 What must an employee's notice for leave to an employer include? An employee must provide written notice to make the employer aware that the employee may need paid family or medical leave. The notice must contain at least the anticipated timing and duration of the leave. Written notice includes, but is not limited to, handwritten or typed notices, and all forms of written electronic communications such as text messages and email.

NEW SECTION

WAC 192-600-025 What happens if an employee fails to provide proper notice? If the department determines that the employee failed to provide proper notice to the employer, the employee's benefits will be denied for a period of time equal to the number of days that notice was insufficient.

Example: If an employee should have provided thirty days' notice for a qualifying event the employee was aware of sixty days in advance, but instead the employee provided notice fifteen days prior to the scheduled leave, the department will deny paid family or medical leave benefits for fifteen days. The employee is not required to file a new initial application for benefits. After the required fifteen days, the employee may start receiving benefits upon proper filing of weekly claims if otherwise eligible.

Chapter 192-610 WAC INITIAL APPLICATION FOR BENEFITS

NEW SECTION

WAC 192-610-005 How does an employee apply for benefits? (1) An employee may apply for paid family or medical leave benefits under the state plan by:

- (a) Using the department's online services;
 - (b) Contacting the paid family and medical leave customer care center by telephone; or
 - (c) Alternate methods authorized by the commissioner.
- (2) An employee who works for an employer with an approved voluntary plan must follow the application guidelines of the approved plan.

NEW SECTION

WAC 192-610-010 What information is an employee required to provide to the department when applying for benefits? (1) When an employee submits an application for paid family or medical leave benefits, the employee must provide information sufficient for the department to determine eligibility for benefits. This information includes, but is not limited to, information identifying the employee, the type and anticipated duration of leave, as well as certification or documentation to validate the qualifying event.

(2) If an employee is in a claim year and has need for successive periods of benefits for the same qualifying event beyond what was originally approved, the employee must update the application.

(3) If an employee experiences a new qualifying event during a claim year, the employee must reopen the claim and provide additional information required by the department before benefits can be paid.

NEW SECTION

WAC 192-610-015 When will the employee be required to provide documentation or certification to the department? (1) Any time an employee applies for paid family or medical leave benefits, the application must be supported by documentation or certification as required in Title 50A RCW and the rules adopted by the department.

(2) If an employee does not provide sufficient documentation or certification substantiating the employee's qualification for benefits, the department will deny benefits until sufficient documentation or certification substantiating the qualifying event is provided.

(3) The department may require the employee to provide additional documentation or certification to substantiate the qualification for benefits if:

(a) The employee requests an extension of the leave originally planned;

(b) Circumstances of the serious health condition change;

(c) Information is provided to the department that the employee may no longer be qualified for benefits; or

(d) Other circumstances cause the department to question the employee's qualification for benefits.

NEW SECTION

WAC 192-610-020 What is required on the certification for medical leave or for family leave to care for a family member who has a serious health condition? When leave is taken because of an employee's own serious health condition or the serious health condition of a family member, certification from a health care provider will be required. Certification must include the following:

(1) The name, address, telephone number, and contact information of the health care provider and type of medicine the health provider is licensed to practice;

(2) The anticipated duration of leave;

(3) Other information as requested by the department to determine eligibility for the qualifying event; and either

(a) For medical leave, information from a health care provider that the employee has a serious health condition; or

(b) For family leave, information sufficient to establish that the family member has a serious health condition requiring physical or psychological care.

NEW SECTION

WAC 192-610-025 Documenting the birth or placement of a child for family leave. When family leave is taken to bond with the employee's child after birth or placement, the department may request a copy of:

(1) The child's birth certificate;

(2) Certification from a health care provider;

(3) Court documents to show placement; or

(4) Other reasonable documentation to substantiate the qualifying

event.

NEW SECTION

WAC 192-610-030 Documenting a military exigency for family leave. When family leave is taken because of a qualifying military exigency, the employee will be required to provide documents or information such as:

- (1) Active duty orders;
- (2) The approximate dates in which leave will be needed; or
- (3) Other information to substantiate the qualifying event.

NEW SECTION

WAC 192-610-035 Documenting a family relationship. The department may request documentation or information from the employee that is sufficient to establish the familial relationship for the purposes of benefit eligibility and program integrity.

NEW SECTION

WAC 192-610-040 Can an employee backdate an application or a weekly claim for benefits? (1) Generally, paid family or medical leave benefits are payable on or after the date the employee applies for benefits. An application or weekly claim may be backdated for good cause or for the convenience of the department.

(2) For the purpose of this section:

(a) (i) "Good cause" means factors that prevented an employee from applying for benefits prior to or at the time of need for paid leave such as a serious health condition, a period of incapacity, or a natural disaster.

(ii) The burden of proof is on the employee to provide all pertinent facts and evidence to the department to determine good cause. The evidence must show that the factors prevented the employee from applying for or claiming benefits when the qualifying event occurred and any subsequent duration in which the employee did not apply for or claim benefits. This evidence may include, but is not limited to, medical certification from a health care provider, evidence of a natural disaster, or other information required by the department.

(b) "For the convenience of the department" means for the purpose of program administration or situations when accepting timely applications or weekly claims was difficult or impossible. These include, but are not limited to, equipment breakdown or lack of available staff.

(3) An employee who wants to backdate an application or weekly claim must file for benefits during the first week in which the factors that constitute good cause no longer exist.

NEW SECTION

WAC 192-610-045 May the department refuse to accept an employee's application, appeal, or petition? No employee or agent of the department may refuse to accept a properly filed application or weekly claim for paid family or medical leave benefits, a signed appeal, or a petition for review by the commissioner related to any program administered by this department regardless of the employee or agent's opinion concerning its merits.

NEW SECTION

WAC 192-610-050 How are typical workweek hours determined? (1)

For salaried employees, the number of hours worked in a week are assumed to be forty, regardless of how many hours are actually worked. Typical workweek hours are determined by multiplying the number of weeks in the qualifying period the employee held the salaried position by forty, adding any other hours that were not salaried, if any, and then dividing that amount by fifty-two.

(2) For all other employees, typical workweek hours are determined by dividing the sum of all hours reported in the qualifying period by fifty-two.

NEW SECTION

WAC 192-610-055 What is an employee's maximum benefit length?

(1) The maximum duration of paid family leave may not exceed twelve times the typical workweek hours during a claim year.

(2) The maximum duration of paid medical leave may not exceed twelve times the typical workweek hours during a claim year. This leave may be extended to fourteen times the typical workweek hours during a claim year if the employee experiences a serious health condition with a pregnancy that results in a period of incapacity.

(3) An employee is not entitled to paid family or medical leave benefits under this chapter that exceeds a combined total of sixteen times the typical workweek hours during a claim year. The combined total of family and medical leave may be extended to eighteen times the typical workweek hours during a claim year if the employee experiences a serious health condition with a pregnancy that results in a period of incapacity.

NEW SECTION

WAC 192-610-060 Will the employer be notified if an employee files an application for benefits? (1) The department will send a notice to the employee's current employer(s), if applicable, when an employee files an application for paid family or medical leave benefits.

(2) The department may, when necessary, send a notice to the employee's most recent employer(s).

(3) Any employer that receives such a notice must respond to the department as indicated on the notice. If the employer does not reply within the provided time frame, the department will determine eligibility without input from the employer.

NEW SECTION

WAC 192-800-003 Designating an authorized representative. (1)

The department may authorize another individual to act on the employee's behalf for the purposes of paid family and medical leave benefits if:

(a) An employee designates an authorized representative by submitting written documentation as required by the department;

(b) A court-appointed legal guardian with authority to make decisions on a person's behalf submits documentation as required by the department;

(c) An individual designated as a power of attorney submits documentation satisfactory to the department to act on the employee's behalf; or

(d) If an employee is unable to designate an authorized representative due to a serious health condition, an individual may represent the employee by submitting a complete and signed authorized representative designation form made available by the department, which must include:

(i) Documentation from the employee's health care provider certifying that the employee is incapable of completing the administrative requirements necessary for receiving paid family and medical leave benefits and is unable to designate an authorized representative to act on the employee's behalf; and

(ii) An affidavit or declaration authorized by RCW 9A.72.085 attesting to the responsibility to act in the employee's best interest.

(2) The department will terminate the authority given to the authorized representative:

(a) When the employee or authorized representative notifies the department verbally or in writing; or

(b) At the department's discretion.

(3) For the purposes of paid family and medical leave the term employee is used for both employee and authorized representative.