



PROPOSED RULE MAKING

CR-102 (December 2017) (Implements RCW 34.05.320)

Do NOT use for expedited rule making

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STATE OF WASHINGTON
FILED

DATE: January 07, 2019

TIME: 10:44 AM

WSR 19-03-035

Agency: Employment Security Department

☒ **Original Notice**

☐ **Supplemental Notice to WSR** _____

☐ **Continuance of WSR** _____

☒ **Preproposal Statement of Inquiry was filed as WSR** 18-16-088 ; or

☐ **Expedited Rule Making--Proposed notice was filed as WSR** _____; or

☐ **Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or**

☐ **Proposal is exempt under RCW** _____.

Title of rule and other identifying information: (describe subject)

WAC 192-510 Assessing and Collecting Premiums

- WAC 192-510-010 Election, withdrawal, and cancellation of coverage.
- WAC 192-510-065 When can an employer deduct premiums from employees?
- WAC 192-510-085 How will the department assess premiums when a conditional premium waiver expires?

WAC192-500 Definitions

- WAC 192-500-050 De facto parent.
- WAC 192-500-060 In loco parentis.
- WAC 192-500-070 Claim year.
- WAC 192-500-080 Qualifying event.
- WAC 192-500-090 Health care provider.
- WAC 192-500-100 Salaried employee.

WAC192-600 Employee Notice to Employer

- WAC 192-600-005 When must an employee provide notice to the employer for foreseeable leave?
- WAC 192-600-010 When must an employee provide notice for unforeseeable leave?
- WAC 192-600-015 What does "as soon as is practicable" mean for this chapter?
- WAC 192-600-020 What must an employee's notice for leave to an employer include?
- WAC 192-600-025 What happens if an employee fails to provide proper notice?

WAC192-610 Initial Application for Benefits

- WAC 192-610-005 How does an employee apply for benefits?
- WAC 192-610-010 What information is an employee required to provide to the department when applying for benefits?
- WAC 192-610-015 When will the employee be required to provide documentation or certification to the department?
- 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?
- WAC 192-610-025 Documenting the birth or placement of a child for family leave.
- WAC 192-610-030 Documenting a military exigency for family leave.
- WAC 192-610-035 Documenting a family relationship.
- WAC 192-610-040 Can an employee backdate an application or a weekly claim for benefits?
- WAC 192-610-045 May the department refuse to accept an employee's application, appeal, or petition?
- WAC 192-610-050 How are typical workweek hours determined?
- WAC 192-610-055 What is an employee's maximum benefit length?
- WAC 192-610-060 Will the employer be notified if an employee files an application for benefits?
- WAC 192-800-003 Designating an authorized representative.

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
March 13, 2019	9:00 a.m.	640 Woodland Square Loop SE, Lacey WA 98503	Meeting will be in the Park Place conference room
March 18, 2019	9:00 a.m.	DoubleTree by Hilton 322 N. Spokane Falls Court, Spokane, WA 99201	Spokane Falls Ballroom
Date of intended adoption: <u>March 22 2019</u> (Note: This is NOT the effective date)			
Submit written comments to: Name: Christina Streuli Address: Employment Security Department, PO Box 9046, Olympia, WA 98507-9046 Email: cstreuli@esd.wa.gov Fax: Other: Online portal: https://www.peakdemocracy.com/portals/289/forum_home?phase=open By (date) <u>March 18, 2019</u>			
Assistance for persons with disabilities: Contact <u>Teresa Eckstein, State EO Officer</u> Phone: (360) 902-9354 Fax: TTY: 711 Email: TEckstein@esd.wa.gov Other: By (date) <u>March 18 2019</u>			
Purpose of the proposal and its anticipated effects, including any changes in existing rules: These rules are being developed by the Employment Security Department and will be filed in multiple phases. This filing comprises rules developed in phase three, which includes clarifications around initial applications for benefits, conditional waiver expirations, employee notice to employers, and procedure for employees to designate an authorized representative.			
Reasons supporting proposal: The rules will assist in meeting the requirements to implement certain policies related to benefit payments to Washington employees by January 1, 2020 as mandated by Title 50A RCW, Family and Medical Leave.			
Statutory authority for adoption: RCW 50A.04.215			
Statute being implemented: 50A.04.010, 50A.04.020, 50A.04.030, 50A.04.035, 50A.04.040, 50A.04.050, 50A.04.080, 50A.04.115, 50A.04.120, 50A.04.195,			
Is rule necessary because of a: <div style="display: flex; justify-content: space-between;"> <div> Federal Law? Federal Court Decision? State Court Decision? </div> <div> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No </div> </div> If yes, CITATION:			
Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:			
Name of proponent: (person or organization) Employment Security Department, Paid Family and Medical Leave Division <div style="text-align: right;"> <input type="checkbox"/> Private <input type="checkbox"/> Public <input checked="" type="checkbox"/> Governmental </div>			

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Christina Streuli	Lacey, WA	360-791-6710
Implementation:	Matt Buelow	Lacey, WA	360-742-7311
Enforcement:	Matt Buelow	Lacey, WA	360-742-7311

Is a school district fiscal impact statement required under RCW 28A.305.135?☐ Yes ☒ No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

Name:

Address:

Phone:

Fax:

TTY:

Email:

Other:

Is a cost-benefit analysis required under RCW 34.05.328?☒ Yes: A preliminary cost-benefit analysis may be obtained by contacting:

Name: Christina Streuli

Address: Employment Security Department PO Box 9046 Olympia, WA 98507-9046

Phone: 360-791-6710

Fax:

TTY: Teresa Eckstein, State EO Officer, (360) 902-9354, 711, TEckstein@esd.wa.gov

Email: cstreuli@esd.wa.gov

Other:

☐ No: Please explain:**Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:**

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). Please check the box for any applicable exemption(s):

☐ This rule proposal, or portions of the proposal, is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

☐ This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by RCW 34.05.313 before filing the notice of this proposed rule.

☐ This rule proposal, or portions of the proposal, is exempt under the provisions of RCW 15.65.570(2) because it was adopted by a referendum.

☒ This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(3). Check all that apply:

☒ RCW 34.05.310 (4)(b)
(Internal government operations)

☒ RCW 34.05.310 (4)(e)
(Dictated by statute)

☐ RCW 34.05.310 (4)(c)
(Incorporation by reference)

☐ RCW 34.05.310 (4)(f)
(Set or adjust fees)

☐ RCW 34.05.310 (4)(d)
(Correct or clarify language)

☐ RCW 34.05.310 (4)(g)
((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit)

☒ This rule proposal, or portions of the proposal, is exempt under RCW 34.05.328(5)(c)(i), 34.05.328(5)(c)(ii), and 34.05.328(5)(c)(iii)(C).

Explanation of exemptions, if necessary: Statute provides an exemption for interpretive and procedural rules. RCW 34.05.328(5)(c)(iii)(C) outlines conditions which must be met for a rule to require analysis. Portions of the proposal do not meet these requirements

COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES

If the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

☐ No Briefly summarize the agency's analysis showing how costs were calculated. _____

☒ Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert statement here:

Small Business Economic Impact Statement	Rules implementing Title 50A RCW – The Family and Medical Leave Program Chapter 192-500, 510, 600, 610, 800 WAC
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1. Provide a brief description of the requirements of the proposed rules

In 2017, the Washington State Legislature passed Substitute Senate Bill 5975 relating to paid family and medical leave. 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 legislature requires the state to develop rules implementing the program.

These rules are being developed by the Employment Security Department and will be filed in multiple phases. This filing comprises rules developed in phase three, which includes clarifications around initial applications for benefits, conditional waiver expirations, employee notice to employers, and procedure for employees to designate an authorized representative.

2. Costs to businesses to comply with the proposed rules

The majority of phase three rules do not require a calculation of cost for compliance.¹ The following rule was a candidate for this analysis:

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?

Total estimated cost to health services businesses: between \$2,244,376 and \$8,977,505.²

However, while this rule does impose a cost, it does not meet the threshold for imposing more than a minor cost on businesses in the affected industry (health care). The minor cost threshold defined in RCW 19.85.020 is a cost per business less than three-tenths of one percent of annual revenue or income. Per RCW 19.85.030, rules not imposing more than minor costs do not require a small business economic impact statement.

Using the most recent annual data (2017) available from Department of Revenue (table below), income-per-business in the health care industry is \$2,142,028. Three-tenths of one percent of total business income per business is \$6,429.

The estimated cost-per-business of compliance with this rule is between \$104 and \$416, well under the threshold of \$6,429. Therefore, a small business economic impact statement is not required.

¹ See chapter 2 of the Significance Analysis for a complete list of rules that do and do not require cost analysis in the Small Business Economic Impact Statement or the Significance Analysis.

² See chapter 5 of the Significance Analysis for full details on the costs imposed on health care provider businesses for complying with WAC 192-610-020.

NAICS	Total Income	Units
621	\$22,445,686,287	20,589
622	\$21,156,772,879	129
623	\$2,637,653,786	859
Total Health Services Businesses	\$46,240,112,952	21,577

3. Impact on sales or revenue

Any impact on sales or revenue is assumed to be a result of the passage of SSB 5975 by the state legislature rather than the result of agency rulemaking pertaining to its implementation.

4. Cost of compliance for small businesses vs. ten percent of largest businesses

As WAC 192-610-020 is well under the minor cost threshold set by RCW 19.85.020 (see section 2 above), analysis of a potential disproportionate impact on small businesses is not required.

5. Steps taken to reduce costs on small businesses

In creating WAC 192-610-020, the department attempted to reduce costs to health care provider businesses by requiring certifications of serious health conditions by health care providers to include the minimally-necessary information to determine eligibility for medical leave or leave to care for a family member with a serious health condition.

6. How did agency involve small businesses?

As part of its rulemaking process, the Employment Security Department consulted the Paid Family and Medical Leave Advisory Committee, which consists of advocates for both employer and employee interests. The team of advocates for employers represents business interests in the state, including those of small businesses. These advocates were integral in the development of both the law and the rules governing it.

In addition, several public meetings were held prior to filing the Notice of Proposed Rules. An informal “listening session” was held where any member of the public, including small businesses owners and stakeholders, could voice their opinions on what should be covered by rule in each phase. The department also hosted two “pre-102 meetings” where representatives of the department presented drafts of rules and opened the floor for public comment.

All stakeholders, including small business representatives, were also allowed to post comments in response to agency draft rules online through a civic engagement portal.

7. List of industries affected

Title 50A RCW generally applies to all employers in Washington State, apart from the federal government. The candidate rule for small business impact analysis (WAC 192-610-020) affects the health services industry, NAICS codes 621, 622, 623.

8. Number of jobs lost/created

Any jobs lost or created are assumed to be a result of the passage of SSB 5975 by the state legislature rather than the result of agency rulemaking pertaining to its implementation.

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

Name: Christina Streuli

Address: Employment Security Department PO Box 9046, Olympia WA 98507-9046

Phone: 360-791-6710

Fax:

TTY: Teresa Eckstein, State EO Officer, (360) 902-9354, 711, TEckstein@esd.wa.gov

Email: cstreuli@esd.wa.gov

Other:

Date: 1/7/2019

Name: Matthew J. Buelow

Title: Policy and Rules Manager for Paid Family and Medical Leave

Signature:

