

PRELIMINARY Significant Analysis
Title 50A RCW
Paid Medical and Family Leave

Contact email:
paidleave@esd.wa.gov

Contents

Introduction	3
Chapter 1: Describe the proposed rules, including a brief history of the issue, and explain why the proposed rules are needed.....	4
Chapter 2: Is a Significant Analysis required for these rules?	5
Rules requiring a significant analysis.	5
Rules not requiring a significant analysis.....	5
Chapter 3: Clearly state in detail the general goals and specific objectives of the statute that the rules implement.....	6
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.	7
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.	8
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. .	9
Chapter 7: Conflicts with Federal or State law	10
Chapter 8: Performance impositions on private vs. public sectors.....	11
Chapter 9: Conflicts with Federal or State regulatory bodies	12
Chapter 10: Coordination with Federal, State, or local laws.....	13

Introduction

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.

In 2019, the Employment Security Department (department) began collecting premiums and quarterly reporting for employers. In 2020, the department started accepting applications for the benefit portion of the program. The law requires the state to develop rules as we continue to administer the program.

These rules are being developed by the department and are filed in general rulemaking processes in accordance to Title 34 RCW. This filing contains a rule related to who may file on behalf of a deceased claimant and for which weeks such individuals would be able to file.

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

AMENDATORY SECTION

WAC 192-800-150 Can an employee designate a representative to act on their behalf? (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 an attorney-in-fact under 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) A person meeting the requirements under subsection (1) of this section may file an initial application and weekly claims up to and including the week in which the employee died subject to WAC 192-620-010.

(3) If an employee has been approved for benefit payments and the employee dies, an estate executor or administrator may file a weekly claim for the week in which the employee died.

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

The proposed amendment clarifies which parties are eligible to apply for and claim benefits on behalf of an employee who passes away during a week for which the employee was eligible to

receive paid family or medical leave benefits. The proposed amendment is needed to formalize a departmental procedure and is interpretive in the administration of Title 50A RCW.

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

Rules requiring a significant analysis.

None

Rules not requiring a significant analysis.

WAC Section	Section Title	Exempting reason	Exempting statute
192-800-150	Can an employee designate a representative to act on their behalf?	Procedural Interpretive	RCW 34.05.328(5)(c)(i) RCW 34.05.328(5)(c)(ii)

RCW 34.05.328(5)(c)(iii) defines a significant legislative rule:

A "significant legislative rule" is a rule other than a procedural or interpretive rule that (A) adopts substantive provisions of law pursuant to delegated legislative authority, the violation of which subjects a violator of such rule to a penalty or sanction; (B) establishes, alters, or revokes any qualification or standard for the issuance, suspension, or revocation of a license or permit; or (C) adopts a new, or makes significant amendments to, a policy or regulatory program.

Procedural and interpretive rules are specifically excluded from the definition of a significant legislative rule and are defined in RCW 34.05.328(5)(c)(i):

A "procedural rule" is a rule that adopts, amends, or repeals (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

and RCW 34.05.328(5)(c)(ii):

(ii) An "interpretive rule" is a rule, the violation of which does not subject a person to a penalty or sanction, that sets forth the agency's interpretation of statutory provisions it administers.

The proposed rule does not require a Significant Analysis because it is procedural and interpretive under the above provisions of the Administrative Procedure Act, chapter 34.05 RCW.

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

Title 50A RCW requires the department to create rules to administer the Paid Family and Medical Leave program. This rule clarifies which parties are eligible to apply for and claim benefits on behalf of an employee who passes away during a week for which the employee was eligible to receive paid family or medical leave benefits.

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.

The rule is needed to formalize a departmental procedure. The rule is also interpretive and is needed to administer the provisions of the Paid Family and Medical Leave program under Title 50A RCW. If the rule is not adopted, there will be no clarification for individuals who wish to file applications and/or claims on behalf of employees who pass away.

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 rule does not impose any additional requirements or costs on businesses. The revisions are procedural and interpretive and allow specified parties to file applications and/or claims on behalf of a deceased employee. The benefit of the rule is to provide guidance for individuals filing applications or claims on behalf of an employee who has passed away.

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.

No alternative versions of the rule were considered. The rule being adopted will achieve the general goals and objectives of administering Title 50A RCW by clarifying requirements for submitting applications and/or claims on behalf of an employee who passes away.

Chapter 7: Conflicts with Federal or State law

The rule analyzed in this Significant Analysis does not 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

The rule analyzed in this Significant Analysis does not 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 rule analyzed in this Significant Analysis.