

Concise Explanatory Statement

Paid Family and Medical Leave

Phase Five

Chapter 192-520 WAC • Chapter 192-540 WAC • Chapter 192-610 WAC • Chapter 192-640 WAC
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I. Introduction

In 2017, the Washington State Legislature passed Substitute Senate Bill 5975 relating to Paid Family and Medical Leave. The bill was signed on July 5, 2017 and codified as Title 50A RCW.

The Employment Security Department (department) is developing rules to implement, clarify, and enforce this law. Multiple phases of rulemaking will occur around this law. This document will serve as the Concise Explanatory Statement (CES) for Phase Five of rulemaking, which covers the following topics:

- Collective Bargaining Agreements
- Employer Responsibilities
- Initial Application for Benefits
- Overpayment of Benefits
- Collection and Recovery of Overpayments
- Employment Restoration
- Practice and Procedure

Three informal public meetings were held to gather public comment on draft rules. Informal feedback was accepted on the draft rules through our online portal, by phone, in-person, and by email until the filing of the CR102. After the CR102 was filed, formal comments were accepted until 5 p.m. on July 26, 2019. The formal CR102 hearings were held on July 24, 2019 in Lacey, Washington, and on July 26, 2019 in Spokane, Washington.

II. Rules Summary and Agency Reasons for Adoption

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 ~~((renegotiated, or expiring))~~ 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.
- ~~(4) ((5))~~ 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.
- ~~(5) ((6))~~ 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 by submitting required information to the department.

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WAC 192-540-040 How should employers report employee hours ~~((worked))~~ for each calendar quarter?

Each calendar quarter, employers must report to the department the wages paid and the associated ~~((number of))~~ 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(~~(1)~~) and RCW 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. 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 was amended for a correction to what employers must report, adding that wages paid and the associated hours should be reported to the department each quarter. 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 192-610-065 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.

Title 50A RCW provides the opportunities for an employee to claim for paid family and medical leave benefits. This rule provides clarity that the department will provide information and guidance to an employee in relation to paid family and medical leave benefits.

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.

Statute provides an employee rights and responsibilities for the paid family and medical leave program. The department determined a rule was necessary to identify the process of how the department will provide information about these rights and responsibilities to an employee.

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.

Title 50A RCW refers to "overpayments" and "equity and good conscience" in procedures the agency must follow for overpayments but does not provide a definition for the terminology. To properly identify

overpayments and determine equity and good conscience, the department determined definitions were necessary.

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.

Statute requires the department to issue overpayment assessments. This rule clarifies the process in which the department issues the overpayment assessment and the responsibilities of the employee.

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.

Title 50A RCW allows the department to waive an overpayment in certain circumstances. The department determined the need to further clarify the procedures in which overpayments would be waived.

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.

As stated above, the statute allows for waivers to overpayments for equity and good conscience but does not provide a definition of certain key terms. In WAC 192-640-005, the department provides a definition for equity and good conscience. This rule further clarifies the procedures for how that definition will be applied to overpayment waiver decisions.

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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.

Title 50A requires an overpayment assessment by the department to employees at fault for the overpayment. The department determined a rule is necessary to clarify what the department will consider to be fault regarding overpayments.

WAC 192-640-030 Will the employee be notified of the right to appeal the overpayment?

(1) 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:

- (a) The reason for the overpayment;
- (b) The amount of the overpayment;
- (c) The finding of fault; and
- (d) 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).

Statute states that an overpayment assessment constitutes a determination of the department and is thus appealable. This rule clarifies that any notification of an overpayment assessment will contain a notice of appeal rights.

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.

Title 50A RCW provides for the department to collect monies owed as a result of an overpayment assessment. This rule provides the process in which the department will do so.

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 subsections (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 week(s) will be canceled and the amount will be restored to the employee's overpayment balance.*

Similar to other programs operated by the department, an employee may be permitted to repay an overpayment through future benefit payments rather than a lump sum or periodic payments to the department. The department determined a rule is necessary to clarify this process.

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 determine whether a negotiated settlement is acceptable.

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.

Title 50A RCW provides for job restoration under certain circumstances. The statute refers to equivalent position and employment benefits which the department determined needed definitions. This rule provides those definitions and clarifies the criteria for this entitlement.

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 subsections (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. This rule also specifies that a notice must be provided to the employee in circumstances where the employer elects 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 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 employer restoration than is required for other purposes in Title 50A RCW. This rule clarifies the calculation 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.

Title 50A RCW requires penalties for any employer who does not remit premiums owed to the department. The department decided operationally to use Unified Business Identifier numbers as a way to assign a unique identification to a business. This rule clarifies that penalties would apply to employers that fail to remit premiums when due to the department.

III. Changes to rules

None.

IV. Public Comment and Responses

	Source of Formal Comment	WAC	Comment	Agency Response
1	Portal		<i>My question concerns an employee who may request FMLA for a medical leave and use their own PTO / Sick time while they are out, not filing a claim with WA State Paid Leave, since they are not allowed to receive both their own PTO / Sick and the WA State Paid Leave. Subsequently, the employee needs another medical leave, and is now out of FMLA protection and does not have any more PTO / Sick time, but instead files a claim with WA State Paid Leave. Based on the guidance we have received, benefits must continue for the duration of the WA State Paid Leave. In this scenario, the employee is getting TWO 12 week protected leaves, one under FMLA and one under WA State paid leave. Is that right?</i>	It is important to note that the paid family medical leave program provides leave related to a typical work week. There are some scenarios where an employee can have protected leave that exceeds 12 times that employee's typical workweek. For Paid Family and Medical Leave, the employee would still need to meet the requirements of 50A.04.025 (6)(a). It is also important to note that the employee would be reducing the available hours of leave in their qualifying period by exhausting any FMLA in which they qualify.
2	Portal		<i>I work for a small non-profit/church. Our two employees that will have to pay will never use this benefit. One has another full time job and I am on medicare. If I need time off, the church covers me. It seems like we should be able to opt-out if we want. Please consider giving churches this option. Thank you,</i>	Exemptions to Paid Family and Medical Leave were intentionally listed or excluded by the legislature. The department will not exempt certain employers without the explicit authority provided by the legislature.
3	Portal	WAC 192-540-040(5)	<i>Comment on Phase 5 Rules from Northwest Justice Project These comments particularly consider the effects of the proposed rules on our client community of low-wage workers and farmworkers who often are not English proficient. WAC 192-540-040(5) Employer reporting requirement for commissioned or piecework employees. Employers are required by law to keep records of hours worked for</i>	Title 50A RCW does not allow for information on hours worked to be collected from employees as part of the quarterly reporting process. Employees will be able to request a redetermination for the calculation of their typical

Commented [MB(1)]: All of these below are one comment from the portal. I broke it apart for ease of addressing each comment.

			<p><i>employees who are paid by piecework. Many agricultural workers who work at piece rate do so during harvest season. Especially because agricultural workers are exempt from overtime protections, workweek hours during the harvest are commonly longer than 40 hours. The “40-hour default” rule could easily disqualify eligible workers whose employers have failed to meet their legal recordkeeping obligations under WAC 296-131-015 (agricultural paystub requirements). Employers for non-agricultural piecework employees are also required to track hours to ensure compliance with minimum wage standards. See WAC 296-126-021(3).</i></p> <p><i>To ensure this section does not exclude eligible employees from PFML, this section should read: “Report the actual number of hours worked by employees paid by commission or by piecework. If there are no reliable time keeping records, If the employer has not kept reliable time keeping records, then the Department should accept the actual hours reported by the employee based on the employee’s own records or best recollection of hours worked. If the employee cannot provide records or their best recollection, report a full-time commissioned or piecework employee at forty hours worked for each week in which any of their duties were performed.”</i></p>	<p>workweek hours and weekly benefit amount if they are able to provide documentation substantiating the claim.</p>
		<p>WAC 192-610-066 (2)</p>	<p><i>WAC 192-610-066 (2) Making employees aware of rights and responsibilities</i></p> <p><i>Many low-wage workers, and particularly farmworkers, do not have regular access to computers or the internet and will be dependent on access to a hard copy of the guide in order to access the basic information on the laws, rules and procedures for the paid family and medical leave program.</i></p> <p><i>This section should be amended to indicate the following: “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 as well as a hard copy of the informational employee guide in the employee’s language.”</i></p> <p><i>If not this, at minimum the department must advise employees of their right to request a hard copy in their language.</i></p>	<p>WAC 192-610-066(1) contains the following: “A copy of the guide will be available to the public at no charge when requested.”</p>

		WAC 192-610-066 (6)	<p><i>WAC 192-610-066 (6) Making employees aware of rights and responsibilities</i></p> <p><i>Many low-wage workers, and particularly farmworkers, do not have regular access to computers or the internet and will be dependent on access to a hard copy of the guide in order to access the basic information on the laws, rules and procedures for the paid family and medical leave program. Many are also limited English proficient, and will not be able to understand the guide unless it is provided in their own language.</i></p> <p><i>For these reasons, the following should be added to this section: "All employees who have been provided the employee guide in a language they are able to read and in a format they can access, whether online or hard copy, are presumed to understand the employee guide..."</i></p>	The department will abide all legal requirements regarding the publication of materials in languages other than English.
		WAC 192-640-015(7)	<p><i>WAC 192-640-015(7) Time to submit waiver application for overpayment</i></p> <p><i>This section should be amended to replace "ten working days" with "30 days." The ten-day minimum for completion of a waiver application and documents is unnecessarily short and will unduly burden employees who continue to deal with a health condition, are caring for a young baby/child, or are LEP or low-literacy. Ten days is inadequate to gather necessary documentation and respond completely to a notice in general, particularly given the likely circumstances causing the employee to be on leave. Employees who speak a language other than English or who have low or no literacy will need to seek assistance to understand and complete a waiver application. In addition, many agricultural workers are migrants and may need additional time to receive a notice of overpayment and submit an application due to their migration and lack of permanent address. A reasonable time for employees to complete an application is 30 days.</i></p>	The department reserves the right to extend the deadline where appropriate. Ten days is the minimum duration, not the maximum.
		WAC 192-640-020(1)	<p><i>WAC 192-640-020(1) Waiver of overpayment for equity and good conscience</i></p> <p><i>This section should be amended to replace "seventy percent" with "one hundred percent." The department should presume repayment would leave the employee unable to provide basic needs if total household resources in relation to household size do not exceed one hundred</i></p>	70 percent of LLSIL is consistent with other programmatic definitions of a low-income individual, including that found in the Workforce Innovation and Opportunity Act.

			<i>percent of the Lower Living Standard Income Level (LLSIL). This is more reasonable and reflective of the cost of living in Washington State</i>	
		WAC 192-640-025(2)	<i>WAC 192-640-025(2) "At fault" standard for overpayment This section should be amended as follows to avoid punishing an employee who did not have actual knowledge of an improper payment. "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.</i>	The suggested language already matches current language.