

Concise Explanatory Statement

Paid Family and Medical Leave

Rulemaking

WAC 192-630-015

Public Hearing: May 6, 2020

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I. Introduction

The Employment Security Department (department) is developing rules to implement, clarify, and enforce Title 50A RCW. This document will serve as the Concise Explanatory Statement (CES) for this rulemaking, which covers the topic of the notification an employer receives when the department makes a determination on an employee's initial application for benefits.

An informal public meeting was 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 May 6, 2020. The formal CR102 hearing was held on May 6, 2020 by conference call.

II. Rules Summary and Agency Reasons for Adoption

AMENDATORY SECTION

WAC 192-630-015 How will a determination be made about an employee's eligibility for benefits? (1)

When the department has issued a notice under WAC 192-630-005 the department will not make a determination on whether an employee qualifies for paid family or medical leave until all interested parties have had an opportunity to provide information about the question of eligibility by the due date indicated on the notice.

(2) If new facts are discovered before the determination is made, the department will provide interested parties with an opportunity to respond to the new information.

(3) After the department makes a determination, it will inform all interested parties ~~((will be provided with a copy of that determination))~~ whether it has approved or denied the employee's application.

(4) If the department receives new and relevant information after a determination is made:

- (a) The information will be considered by the department;
- (b) Interested parties will be given an opportunity to respond, if necessary; and
- (c) The department may make a new determination based on the newly provided information.

Agency reason for adoption: In its original form, this rule required the department to send an exact copy of the determination that an employee receives on an initial application for benefits to the employer. This raised concerns over the employee's privacy and the potential risks of proactively sharing certain information with employers. This amendment limits the information the employer receives to notification that the department has either approved or denied the application.

III. Changes to Rules

None.

IV. Public Comment and Responses

Below is delineation of all comments received during the formal comment period on the proposed rules. All comments are either copied directly from the original written source (online portal post, email, hearing transcript, etc.) or paraphrased from the original verbal source (phone call, comment received at a presentation, etc.).

#	Source	Name	Comment	Response
1	Portal	N/A	Current employer notifications are sent via USPS. While many of us are staying at home and teleworking, this is not a realistic means of communication. Email notification or online reporting would be ideal.	The department is looking to improve methods of communication with employers in light of the changes to the workplace caused by COVID-19. As technological improvements to the program are implemented, we will seek to communicate with employers electronically whenever possible.
2	Portal	Carolyn Calderon	I follow suit with the many other employers when it relates to communication from and with the state with respect to WAPFML. For WAC 192-630-015, related to employer communication I would like to recommend that the statement that has been removed should be retained. From an employer standpoint, it is very frustrating the lack of communication an employer receives. This places us in a bad spot with our employees and we can't make logical decisions related to our employee's leaves. This is especially important related to those employees who don't qualify for FMLA or are needing baby bonding time. A portal or additional communication needs to be considered. The sooner the better. Thank you for considering my input.	The department recognizes the frustration expressed by employers regarding what information is shared regarding an employee's use of paid family or medical leave. While statute does in many ways restrict the information we are permitted to share, we are constantly looking for ways to reduce employer confusion. In many circumstances, we are simply unable to furnish private information regarding an employee's application. We strongly encourage communication between the employer and the employee whenever possible to ensure that both parties have the information they need to take full advantage of the benefits offered by this program.
3	Portal	N/A	Regarding: AMENDATORY SECTION (Amending WSR 19-13-001, filed 6/5/19, effective 7/6/19) WAC 192-630-015 The lack of information provided to an employer is significant. An employee's intent to take a leave is	The department recognizes the frustration expressed by employers regarding what information is shared regarding an employee's use of paid family or medical leave. While statute does in many ways restrict the information we are permitted to share, we are constantly looking for ways to reduce employer confusion. In many

			<p>provided to the employer but more often than not does not match the approval. We need to understand both the dates of approval, benefit amount being paid weekly and how many hours an employee is eligible for. Additionally, electronic information is highly necessary as an employer who is moving to a paperless environment. Based on the current law, the employer is responsible for ensuring that benefits are applied correctly, but are not provided with the information to do so. For example, when an employee is tells us they are taking 12 weeks off for pregnancy and bonding. However the employee applies for leave for a full year so we are unsure how many weeks are approved for the employee (assuming they file weekly reports). The letter provided tells us simply the employee is approved for the full year. This does not provide the information required to effectively process the leave of absence. An employer needs to know when benefits are exhausted/used.</p> <p>Regarding AMENDATORY SECTION (Amending WSR 19-23-090, filed 11/19/19, effective 12/20/19) WAC 192-800-150</p> <p>I would make the recommendation for the state to develop a power of attorney agreement that the claimant can use to designate an authorized individual.</p>	<p>circumstances, we are simply unable to furnish private information regarding an employee's application. We strongly encourage communication between the employer and the employee whenever possible to ensure that both parties have the information they need to take full advantage of the benefits offered by this program.</p> <p>A designated representative form may be obtained by contacting our Customer Care Team at (833) 717-2273.</p>
4	Hearing	Kaileah Baldwin Marti Cardi La Tanya Charles Colleen Connors Jessica Cromer Jenny Haykyn Rachel Paber Ali Schassma	Department communication with employers is inadequate. More information, such as the reason for leave and information regarding the weekly application, is necessary for employers to	The department recognizes the frustration expressed by employers regarding what information is shared regarding an employee's use of paid family or medical leave. While statute does in many ways restrict the information we are permitted to share, we are constantly looking for ways to reduce employer confusion. In many

		Jordan Silver Patricia (last name not given)	manage their leave. Electronic communication is requested.	<p>circumstances, we are simply unable to furnish private information regarding an employee's application. We strongly encourage communication between the employer and the employee whenever possible to ensure that both parties have the information they need to take full advantage of the benefits offered by this program.</p> <p>The department is looking to improve methods of communication with employers in light of the changes to the workplace caused by COVID-19. As technological improvements to the program are implemented, we will seek to communicate with employers electronically whenever possible.</p>
5		Jennifer Doyle	I would like to comment/recommend that employees and employers are also sent notification when an employee has exhausted their PFML leave benefit for their claim year.	The Department will consider this recommendation in conjunction with ensuring privacy rights.