

Paid Family and Medical Leave

**Implementation of Substitute Senate Bill (SSB) 5286,
SSB 5586, and public records amendments**

November 2023

REASONS FOR ADOPTING THE RULE

Rulemaking history:

CR-101 filed: May 17, 2023, WSR # 23-11-082

Stakeholder meeting: August 31, 2023

CR-102 filed: September 19, 2023, WSR # 23-19-086

Public rulemaking hearing: October 26, 2023

CR-103 filed and rules adopted: November 14, 2023, WSR # 23-23-095

Rules effective: January 1, 2024

This Concise Explanatory Statement is regarding adoption of the following amended rules and repealed rule:

AMENDATORY SECTION

WAC 192-500-035 Interested parties. (1) In all determinations, cases, and appeals adjudicated under Title 50A RCW the employment security department is an "interested party."

(2) Other interested parties in paid family or medical leave determinations related to the state plan, complaints under chapter 50A.40 RCW, and appeals include:

(a) The employee or former employee; and

(b) An employer or former employer of that employee that is required to provide information to the department related to the determination or appeal in question.

(3) Other interested parties in paid family or medical leave determinations related to an approved voluntary plan include:

(a) The employer or former employer; and

(b) An employee or former employee.

(4) The department may designate an employee or employer as an interested party in other determinations made by the department.

(5) For the purposes of RCW 50A.25.040(3), an employer from whom leave is being taken is considered an interested party.

Reason for rule: The adopted amendments implement Substitute Senate Bill (SSB) 5586 and clarify that employee information for the purposes of RCW 50A.25.040(3), which was added by SSB 5586, is available to an employer from whom leave is being taken.

AMENDATORY SECTION

WAC 192-510-090 How will the department determine the premium rate for each calendar year? (1)

For calendar years 2021 ((and thereafter)), 2022, and 2023, the total premium rate shall be based on the family and medical leave insurance account balance ratio as of September 30th of the previous year.

~~((2))~~ (a) The commissioner shall calculate the account balance ratio by dividing the balance of the family and medical leave insurance account by total covered wages paid by employers and those electing coverage.

~~((3))~~ (b) For the purposes of this section, "total covered wages" is defined as the total amount of wages paid to employees that are subject to the paid family and medical leave premium from July 1st of the previous calendar year to June 30th of the current calendar year as reported by employers.

(2) For calendar years 2024 and thereafter, the total premium rate shall be based on the calculation specified in RCW 50A.10.030.

(3) For the purposes of the calculation described in subsection (2) of this section, a small business grant paid to an employer as specified by chapter 50A.24 RCW shall be considered a benefit paid.

Reason for rule: The adopted amendments implement SSB 5286 and establish how the department must annually calculate the PFML premium rate for employers and employees. The amendments clarify that there's a difference in premium rate calculation for 2024 and thereafter.

AMENDATORY SECTION

WAC 192-810-010 Definitions. (1) The definitions set forth in RCW 42.56.010 and WAC 192-02-020

apply to this chapter unless the context clearly ~~((requires))~~ indicates otherwise.

~~(2) ("Public records officer" means the departmental employee responsible for responses to requests for public records or that person's designee.~~

~~(3) "Department" means the employment security department.~~

~~(4))~~ An employer's "own records" as used in RCW 50A.25.040 means records and information provided to the department by the employer or the employer's predecessor in interest.

Reason for rule: The adopted amendments refer to agency rules in WAC 192-02-020 and eliminate redundancy. One subsection was kept because it is specific to PFML.

REPEALER

~~**WAC 192-810-020 Purpose.** The purpose of this chapter is to provide rules for the paid family and medical leave program in implementing chapter 42.56 RCW relating to public records and chapter 50A.25 RCW relating to records and information deemed private and confidential by the paid family and medical leave program.~~

Reason for rule: The repealed rule eliminates redundancy because the purpose is already addressed in agency rules under WAC 192-02-010.

AMENDATORY SECTION

WAC 192-810-030 How do individuals and entities request records from the department? (1) The department will manage ~~((all))~~ records requests ~~((consistent with the provisions of chapter 42.56 RCW))~~ as outlined in chapter 192-02 WAC.

~~(2) ((Requests for public records shall be submitted to the public records officer. Contact the public records officer at:~~

~~Public Records Officer~~

~~P.O. Box 9046~~

~~Olympia, WA 98507-9046~~

~~Phone: 1-844-766-8930~~

~~Email: Recordsdisclosure@esd.wa.gov~~

~~(3))~~ If an individual requests records or information concerning that individual held by the department under RCW 50A.25.040, those records must be released only to the requesting individual.

~~((4))~~ (3) If an individual submits a records request and asks that the requested records be sent to a third party directly, the individual must follow the provisions of RCW 50A.25.040.

Reason for rule: The adopted amendments refer to agency rules in Chapter 192-02 WAC and eliminate redundant information regarding how to request records. The information that isn't changed or eliminated in this rule is specific to PFML privacy provisions in RCW 50A.25.040.

VARIANCE BETWEEN PROPOSED RULE AND FINAL RULE

No changes were made between the proposed rules and the final, adopted rules.

SUMMARY OF COMMENTS TO PROPOSED RULES AND AGENCY RESPONSE

No comments were received on any of the proposed rules.