

Paid Family and Medical Leave Rulemaking
Phase 2
Draft Version 1

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Chapter 192-01 WAC
Employment Security Rule Governance

NEW SECTION

WAC 192-01-001 Rule Governance Statement.

The employment security department operates several distinct programs through the Washington Administrative Code. The unemployment insurance program is governed by WAC 192-04 through 192-499. WAC 192-500 and thereafter exclusively governs the Paid Family and Medical Leave program.

**Chapter 192-500 WAC
Definitions**

NEW SECTION

WAC 192-500-010 Willful.

"Willful" and "willfully" means a knowing and intentional act or omission, unless otherwise defined in Title 50A RCW.

NEW SECTION

WAC 192-500-020 Employer.

An "employer" is a person or entity that meets the criteria of RCW 50A.04.010(6). For the purposes of paid family and medical leave, the term "employer" is used for both "employer" and "employer agent."

NEW SECTION

WAC 192-500-025 Employer agent.

- (1) An "employer agent" is a designated representative that is authorized to conduct business on behalf of the employer.
- (2) In order to represent an employer before the department, the employer or employer agent must submit a signed power of attorney form to the department.
- (3) The employer is responsible for all acts taken or failures to act by the employer agent on the employer's behalf.

NEW SECTION

WAC 192-500-030 Calendar quarter.

"Calendar quarter" means the period of three consecutive calendar months ending on March 31st, June 30th, September 30th, or December 31st.

NEW SECTION

WAC 192-500-035 Terms meaning deliver.

- (1) The terms "mail," "provide," "file," "submit," and "send" are interchangeable unless otherwise stated and mean:
 - (a) To transmit, deliver, or distribute by email or other electronic services; or

(b) To send or deliver by means of the postal service or other delivery service.

(2) This definition does not apply to appeals filed under Title 50A RCW.

NEW SECTION

WAC 192-500-040 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 family or medical leave determinations related to the state plan 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 family or medical leave determinations related to a voluntary plan include:

(a) The employer or former employer; and

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

(4) Other interested parties in a determination related to a small business assistance grant include the employer requesting the grant.

NEW SECTION

WAC 192-500-045 Aggrieved person.

An "aggrieved person" is any interested party who receives an adverse decision from:

(1) The department for which the department has provided notice of appeal;

(2) The office of administrative hearings; or

(3) The commissioner's review office.

Chapter 192-530 WAC
Voluntary Plans

NEW SECTION

WAC 192-530-035 When must an employer with a voluntary plan provide benefit payments?

An employer with an approved voluntary plan must send the first benefit payment to the employee within fourteen calendar days of the first day of leave, or the receipt of a properly completed application for benefits, whichever is later. Subsequent payments must be sent at least biweekly thereafter. Failure to adhere to these requirements may result in the termination of the voluntary plan by the commissioner.

**Chapter 192-540 WAC
Employer Responsibilities**

NEW SECTION

WAC 192-540-010 When must an employer send notice to employees who may need paid family and medical leave?

(1) Employers must send a written notice of employee rights to any employee when an employer becomes aware that the employee is taking family leave, medical leave, or a combination of both for a duration of at least seven consecutive days of work. The employer must use a notice provided by the department.

(2) The notice must be sent to the employee by the fifth business day after the employee's seventh consecutive missed day of work due to family or medical leave, or by the fifth business day after the employer becomes aware that the employee's absence is due to family or medical leave, whichever is later.

NEW SECTION

WAC 192-540-020 What are the employer requirements for posting notice in a work place?

(1) Employers must post and keep posted a notice regarding pertinent provisions of Title 50A RCW and filing of complaints in a common area, such as a break room or other area where such notices are customarily posted. The notice must contain, but is not limited to, the following:

- (a) Information on how an employee may file a claim;
- (b) Information regarding an employee filing a complaint against an employer with the department;
- (c) Responsibilities for premium payments; and
- (d) The minimum and maximum provisions available for paid family or medical leave, including:
 - (i) Weekly benefit amount;
 - (ii) Maximum weeks available under paid family or medical leave; and
 - (iii) How long the benefit is available after they apply.

(2) Employers must use a standard notice that the department makes available or a notice developed by the employer. The notice developed by the employer must:

- (a) Be submitted and approved by the department; and
- (b) Contain information including rights to the paid family and medical leave program as provided by the state or the

employer's approved voluntary plan, as well as the complaint process.

(3) Employers can be audited to determine if a proper notice with pertinent information is displayed.

(4) Failure to post this notice may result in a civil penalty of one hundred dollars for each instance in which the department determines the employer has willfully failed to comply with this requirement. The department will deposit any penalties collected in accordance with this section into the paid family and medical leave enforcement account.

NEW SECTION

WAC 192-540-030 What are employers required to report to the department?

(1) Each calendar quarter, every employer subject to the rights and responsibilities of Title 50A RCW must file a complete report with the department. The report must include each employee's:

- (a) Full name;
- (b) Social Security number;
- (c) Address of physical workplace;
- (d) Job title;
- (e) Start date;
- (f) Wages paid during that quarter; and
- (g) Total hours worked.

(2) If an employee does not have a Social Security number but does have an individual taxpayer identification number (ITIN), the ITIN qualifies as a Social Security number. If the employee later obtains a Social Security number, the employer should use the Social Security number when filing the report of the employee's wages.

NEW SECTION

WAC 192-540-040 When are employers required to submit quarterly reports to the department?

The quarterly reports referenced in WAC 192-540-030 are due by the last day of the month following the end of the calendar quarter being reported. If a reporting date falls on a Saturday, Sunday, or a legal holiday, the reports will be due on the next business day. Reports submitted by mail will be considered filed on the postmarked date. The commissioner must approve exceptions to the time and method of filing in advance.

**Chapter 192-550 WAC
Penalties and Audits**

NEW SECTION

WAC 192-550-010 What happens if an employer fails to submit required reports?

(1) An employer who willfully fails to file a complete and timely report under WAC 192-540-030 and 192-540-040 is subject to penalties under RCW 50A.04.090.

(2) The department will send a warning letter for an employer's first incomplete report. For a second or subsequent occurrence within five years of the date of the last occurrence, the department will assess penalties under the following schedule:

- (a) 2nd occurrence \$75.00
- (b) 3rd occurrence \$150.00
- (c) 4th and subsequent \$250.00
occurrences

(3) After five years without a warning letter or occurrence, prior occurrences will not count and the employer shall receive a warning letter instead of a penalty on the next occurrence.

NEW SECTION

WAC 192-550-020 What happens if an employer knowingly fails to remit required payments?

(1) An employer who knowingly fails to remit payment for premiums in full when due is subject to penalties under RCW 50A.04.090 in addition to accruing interest under WAC 192-550-040.

(2) The total amount of the penalty will be equal to the entire balance of premiums willfully not remitted and any interest accrued on those delinquent premiums.

Example: If an employer owes \$300 in premium payments and \$20 in interest, the penalty for knowingly failing to remit payment will equal \$320, for a sum total due and owing of \$640.

NEW SECTION

WAC 192-550-030 How will the department calculate interest on delinquent payments?

(1) The department will issue a notice to employers whose payments are delinquent. The notice will include the total amount due for all applicable premiums, penalties, and interest under Title 50A RCW.

(2) When an employer fails to remit payment by the due date, the remaining unpaid balance shall accrue interest at a rate of one percent, compounded monthly, until payment is received in full.

NEW SECTION

WAC 192-550-040 Can employer interest be waived?

(1) An employer may submit to the department an interest waiver request that includes all relevant facts, including all available proof, as to why it is requesting a waiver under RCW 50A.04.140.

(2) At its discretion, the department may waive interest if it finds that the interest was caused by the department's own error or the department's inability to decide the issue.

NEW SECTION

WAC 192-550-050 Audit Procedures.

(1) The department may inspect and audit employer files and records as needed to ensure compliance with Title 50A RCW. Audits may take place at the discretion of the department.

(2) Employers must provide all requested information to the department within ten business days or a time frame agreed to by the department.

(3) If the department discovers violations for the time frame being audited, the department may expand the audit to include prior and subsequent quarters, up to the most recently completed calendar quarter.

NEW SECTION

WAC 192-550-080 What happens if an employer fails to provide requested information to department for an audit?

Employers must provide all requested documentation as it pertains to the paid family and medical leave program. If an employer fails or refuses to provide necessary payroll or other wage information during an audit, the department may determine payroll and wage information for the purposes of premium assessment based on information otherwise available to the department. This may include information from the same employer, similar employers, labor market information, information

provided to other state or local agencies, or the best information otherwise available to the department.

**Chapter 192-560 WAC
Small Business Assistance**

NEW SECTION

WAC 192-560-010 Which businesses are eligible for small business assistance grants?

Employers determined to have one hundred fifty or fewer employees in the state that are assessed the employer portion of the premium are eligible to apply for grants.

NEW SECTION

WAC 192-560-020 What is the application process for a small business assistance grant?

- (1) Applications for small business assistance grants must be submitted online or in another format approved by the department. To be approved, an application must contain:
 - (a) The name and social security number of the employee taking leave;
 - (b) The amount and type of grant being requested;
 - (c) An explanation summarizing any personnel or significant additional wage-related costs that were taken because of an employee taking leave.
 - (d) Written documentation, including, but not limited to, personnel records related to the hiring of a new temporary employee, wage reports, and signed statements, showing the temporary worker hired or significant additional wage-related costs incurred are due to an employee's use of leave.
- (3) Incomplete applications will not be reviewed and will not count against an employer's limit of ten applications per year under RCW 50A.04.230(4).
- (4) The department may deny the application if it determines that the documentation submitted is insufficient to prove that the temporary worker hired or significant additional wage-related costs incurred are due to an employee's use of leave.
 - (a) If a grant application is denied, the application will count against an employer's limit of ten applications per year under RCW 50A.04.230(4).
 - (b) If a grant application is denied, the decision may be appealed.
- (5) An employer with fewer than fifty employees who receives a grant under this section will be assessed all premiums,

including the employer portion, under Title 50A RCW for three years following the date of receipt of the grant.

NEW SECTION

WAC 192-560-030 What are significant additional wage-related costs for the purposes of small business assistance grants?

Significant additional wage-related costs can include:

- 1) Paying additional wages to an existing employee;
- 2) Outsourcing costs;
- 3) Certification;
- 4) Equipment purchases; or
- 5) Other costs approved by the department.

Chapter 192-570 WAC

Dispute Resolution

NEW SECTION

WAC 192-570-010 Conference and conciliation.

(1) (a) The department will engage employers in conference and conciliation when the employer fails to make all required:

- (i) Premium payments;
- (ii) Payments on penalties assessed by the department for the failure to submit required reports; or
- (iii) Payments on penalties assessed by the department for violations related to voluntary plans.

(b) "Conference and conciliation" for the purpose of this chapter means to encourage an amicable resolution of disputes between the employer and the department prior to the issuance of a warning letter.

(2) The department will promptly attempt to contact the employer to engage in conference and conciliation when appropriate under subsection (1) of this section. If the department does not receive a response from the employer, the department will attempt the contact again, for a total of two attempts. A warning letter will be issued if no contact with the employer can be made.

(3) (a) Through conference and conciliation employers will be given an opportunity to provide information and to explain their reasons for failing to meet the department's requirements in subsection (1) of this section. The department will not issue a warning letter if:

- (i) The employer provides good cause;
- (ii) The department determines that the good cause provided prevented compliance; and
- (iii) The parties agree to an approved repayment schedule.

(b) "Good cause" for the purpose of this section means:

- (i) Death or serious illness of the employer;
- (ii) Destruction of the employer's place of business or business records not caused by, or at the direction of, the employer or the employer's agent; or
- (iii) Fraud or theft against the employer.

(4) The burden of proof is at all times on the employer to provide all pertinent facts and evidence or documentation for the department to determine good cause.

(5) Conference and conciliation is only available to employers who meet the requirements of RCW 50A.04.080, 50A.04.090, and 50A.04.655. Those employers who do not meet these requirements will be issued a warning letter without entering conference and

conciliation. Penalties and interest will be assessed thereafter under Title 50A RCW and the rules adopted pursuant thereto.

(6) The department will issue a warning letter when:

(a) The employer does not comply with the approved repayment schedule; or

(b) A resolution is not reached through conference and conciliation.

NEW SECTION

WAC 192-570-020 Discrimination complaints.

(1) It is unlawful for an employer to discriminate against any employee under RCW 50A.04.085. When the department receives notification from any party that discrimination may have occurred the department will investigate the allegation and issue a determination.

(2) If the department determines that discrimination may have occurred, a determination will be sent within five business days to all interested parties as well as the office of administrative hearings for a formal hearing.

(3) Nothing in the chapter shall be construed to prohibit a private right of action under all applicable laws.

Chapter 192-800 WAC
Practice and Procedure

NEW SECTION

WAC 192-800-002 Untimely appeals.

Late appeals will be sent to the office of administrative hearings who will then determine if the appellant had good cause to file a late appeal.