

Significance Analysis  
Title 50A RCW  
Paid Medical and Family Leave  
Phase One

Prepared by

Matthew Buelow  
Policy and Rules Director

Jason Barrett  
Lead Policy Analyst

Christina Streuli  
Rules Coordinator

Contact email:  
[paidleave@esd.wa.gov](mailto:paidleave@esd.wa.gov)

## Contents

Introduction .....	4
Chapter 1: Describe the proposed rules, including a brief history of the issue, and explain why the proposed rules are needed. ....	5
Chapter 2: Is a Significant Analysis required for these rules?.....	17
Rules requiring a significant analysis. ....	17
Rules not requiring a significant analysis.....	17
<b>Chapter 3:</b> Clearly state in detail the general goals and specific objectives of the statute that the rules implement.....	21
WAC 192-530-010: What are the employer application requirements for voluntary plans?; WAC 192-530-030: Voluntary plans – employee eligibility criteria .....	21
<b>Chapter 4:</b> 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. ....	22
WAC 192-530-010: What are the employer application requirements for voluntary plans? .....	22
WAC 192-530-030: Voluntary plans – employee eligibility criteria .....	22
<b>Chapter 5:</b> 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. ....	23
Methodology.....	23
Survey development .....	23
Overall survey results.....	28
WAC 192-530-010: What are the employer application requirements for voluntary plans? .....	29
Costs.....	29
Benefits .....	30
Summary .....	31
WAC 192-530-030: Voluntary plans – employee eligibility criteria.....	31
Costs.....	31
Benefits .....	34
Summary .....	35
<b>Chapter 6:</b> 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 state previously. .	36
WAC 192-530-010: What are the employer application requirements for voluntary plans? .....	36
Alternatives .....	36

Summary .....	36
WAC 192-530-030: Voluntary plans – employee eligibility criteria .....	36
Alternatives .....	36
Summary .....	37
<b>Chapter 7: Conflicts with Federal or State law .....</b>	<b>38</b>
<b>Chapter 8: Performance impositions on private vs. public sectors .....</b>	<b>39</b>
<b>Chapter 9: Conflicts with Federal or State regulatory bodies .....</b>	<b>40</b>
<b>Chapter 10: Coordination with Federal, State, or local laws .....</b>	<b>41</b>

## Introduction

In 2017, the Washington State Legislature passed Substitute Senate Bill 5975 relating to paid family and medical leave. Substitute Senate Bill 5975 was codified as Title 50A RCW.

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.

The legislation requires the state to develop rules implementing the program.

These rules are being developed by the Employment Security Department and will be filed in multiple phases. This filing comprises rules developed in phase one, which covers regulations related to voluntary plans, collective bargaining agreements, and premium assessment.

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

**WAC 192-510-010(1):** *Self-employed persons as defined in RCW 50A.04.105(1) and federally recognized tribes as defined in RCW 50A.04.110 may elect coverage under Title 50A RCW.*

This rule is simply a re-statement of statute for additional clarity – self-employed persons and federally recognized tribes may opt into the PFML program per Title 50A.RCW. This rule potentially affects all self-employed persons, tribal governments, and employees of tribal governments in the State of Washington.

**WAC 192-510-010(2):** *Notice of election of coverage must be submitted to the department online or in another format approved by the department.*

This rule clarifies how self-employed persons, and federally recognized tribes, may choose to opt into the PFML program. We are proposing this rule because we are required to do so by statute. This rule potentially affects all self-employed persons, tribal governments, and employees of tribal governments in the State of Washington.

**WAC 192-510-010(3):** *Elective coverage begins on the first day of the calendar quarter immediately following the notice of election.*

This rule clarifies when self-employed persons, and employees of federally recognized tribes, are eligible for benefits after having opted into the PFML program. We are proposing this rule to streamline the administration of the program and record keeping of those electing coverage. This rule potentially affects all self-employed persons, tribal governments, and employees of tribal governments in the State of Washington.

**WAC 192-510-010(4):** *A period of coverage is defined as:*

- (a) Three calendar years following the first day of elective coverage or any gap in coverage.*
- (b) Each subsequent calendar year*

This rule clarifies the duration of coverage for self-employed persons, and employees of federally recognized tribes, who opt into the PFML program. We are proposing this rule because we are required to do so by statute. This rule potentially affects all self-employed persons, tribal governments, and employees of tribal governments in the State of Washington.

**WAC 192-510-010(5):** *Any self-employed person or federally recognized tribe may file a notice of withdrawal within 30 days after the end of each period of coverage.*

This rule clarifies when self-employed persons and federally recognized tribes who have previously opted into the PFML program may withdraw from coverage. We are proposing this rule because we are required to do so by statute. This rule potentially affects all self-employed persons, tribal governments, and employees of tribal governments in the State of Washington.

**WAC 192-510-010(6):** *A notice of withdrawal from coverage must be submitted to the department online or in another format approved by the department*

This rule clarifies the process whereby self-employed persons and federally recognized tribes who have previously opted into the PFML program may withdraw from coverage. We are proposing this rule because we are required to do so by statute. This rule potentially affects all self-employed persons, tribal governments, and employees of tribal governments in the State of Washington.

**WAC 192-510-010(7):** *Any levy resulting from the department's cancellation of coverage is in addition to the due and unpaid premiums and interest for the remainder of the period of coverage.*

This rule clarifies how penalties may be assessed for self-employed persons, and federally recognized tribal governments, whose coverage under the PFML program has been cancelled by the Employment Security Department. We are proposing this rule because we are required to do so by statute. This rule affects any self-employed individual, tribal government, and employee of tribal governments who have previously opted into the PFML program and whose coverage has been cancelled by the Employment Security Department.

**WAC 192-510-020(1):** *Federally recognized tribes electing coverage are employers as defined in RCW 50A.04.010 and are subject to all rights and responsibilities under Title 50A RCW*

This rule clarifies the role of federally recognized tribes as employers per RCW 50A.04.010. We are proposing this rule because we are required to do so by statute. This rule affects all tribal governments, and employees of tribal governments in the State of Washington.

**WAC 192-510-020(2):** *Employees of federally recognized tribes that elect coverage are employees as defined in RCW 50A.04.010 and are subject to all the rights and responsibilities under Title 50A RCW*

This rule clarifies the role of employees of federally recognized tribes as employees for the purposes of the PFML program. We are proposing this rule because we are required to do so by statute. This rule affects all employees of federal recognized tribal governments in the State of Washington.

**WAC 192-510-030(1):** *The department will use the self-employed person's reported income and divide it by the state's minimum wage to presume the number of hours worked.*

*Example: For this example, the state's minimum wage is \$12.00 per hour. The self-employed person electing coverage reports \$10,000 of income in a quarter. The department will divide \$10,000 by \$12.00 and presume the self-employed person worked 833 hours in that quarter*

This rule clarifies how self-employed individuals hours worked will be determined for the purposes of PFML benefit eligibility. We are proposing this rule because we need a means of establishing the number of hours a self-employed person works for the purposes of establishing benefits eligibility. This rule potentially affects all self-employed persons in the State of Washington.

**WAC 192-510-030(2):** *The self-employed person may overcome the presumption of hours by providing sufficient documentation to the department, including, but not limited to, personal logs or contracts.*

This rule provides an alternate way for self-employed persons to establish the number of hours worked for the purposes of PFML benefit eligibility. We are proposing this rule to allow for greater flexibility in the determination of hours among self-employed persons. This rule potentially affects all self-employed persons in the State of Washington.

**WAC 192-510-030(3):** *The department may require copies of tax returns, bank records, or any other documentation deemed necessary by the department to verify or determine the self-employed person's hours and wages.*

This rule provides an alternate way for the Employment Security Department to establish the quarterly hours worked by self-employed individuals for the purposes of PFML benefit eligibility. We are proposing this rule to allow for greater flexibility in the determination of hours among self-employed persons. This rule potentially affects all self-employed persons in the State of Washington.

**WAC 192-510-040(1):** *To assess premiums and determine eligibility for small business assistance grants, the department must determine the size of each applicable employer. The department will only count the number of in-state employees as defined in RCW 50.A.04.010(4) when calculating employer size.*

This rule clarifies how the size of the employer will be determined for the purposes of premium assessment and small business assistance grants. We are proposing this rule because we are required to do so by statute. This rule affects all employers in the State of Washington.

**WAC 192-510-040(2):** *If the department determines that the employer's status has changed as it relates to premium liability, the department will notify the employer. This notification will include the following information:*

*(a) If the employer was determined to have 50 or more employees for the preceding calendar year, and the employer is then determined to have fewer than 50 employees for the subsequent calendar year, the employer will not be required to pay the employer portion of the premium for the next calendar year; or*

*(b) If the employer was determined to have fewer than 50 employees for the preceding calendar year, and the employer is then determined to have 50 or more employees for the subsequent calendar year, the employer will be required to pay the employer portion of the premium for the next calendar year.*

*Example: On September 30, 2018, a business is determined to have had 53 employees on average during the previous four completed quarters, which covers July 1, 2017, through June 30, 2018. The employer is liable for the employer portion of premiums for 2019. On September 30, 2019, the business is determined to have had 48 employees on average during the previous four completed quarters, which covers July 1, 2018, through June, 30, 2019. The employer is no longer liable for the employer share of premiums for 2020.*

This rule clarifies how premiums will be assessed for employers who cross the 50 worker threshold for determining small business status across time. This rule also provides clarification on how employers will be notified of their size. We are proposing this rule because we are required to do so by statute. This rule affects any employer who crosses the 50 worker threshold from one year to the next.

**WAC 192-510-050:** *An employer who has not been in business in Washington long enough to report four calendar quarters by September 30 will have its size calculated after the second quarter of reporting is due by averaging the number of employees reported over the quarters for which reporting exists. Premium assessment based on this determination will begin on this reporting date. This size determination remains in effect until the following September 30 pursuant to RCW 50A.04.115(8)(c).*

This rule clarifies how we will determine employer size for the purposes of premium assessment and small business assistance grants among newly established employers. We are proposing this rule because we are required to do so by statute. This rule will potentially affect all newly established employers in the state, as well as any workers employed by such employers.

**WAC 192-510-060(1):** *Premiums must be paid quarterly. Each payment must include the premiums owed on all wages subject to premiums during that calendar quarter. Payments are due to the department by the last day of the month following the end of the calendar quarter for which premiums are being paid*

This rule establishes a quarterly premium remittance cadence and establishes a due date for premium remittances. We are proposing this rule because a well-defined remittance cadence is essential to the administration of the PFML program. Further, we are proposing a quarterly cadence because it is consistent with the reporting cadence of the Unemployment Insurance program. By setting up PFML remittance payments on the same cadence as UI reporting requirements, we hope to minimize any confusion the addition of new statutory requirements may cause to employers. This rule affects all employers in the State of Washington.

**WAC 192-510-060(2):** *Payments made by mail are considered paid on the postmarked date. If the last day of the month falls on a Saturday, Sunday, or a legal holiday, the premium payment must be postmarked by the next business day*

This rule establishes a payment remittance-by-mail deadline. We are proposing this rule because it helps to clarify when premiums must be remitted to the PFML program account. We hope that this rule helps to clarify when payments are considered on time and reduce the informational burden these new statutory requirements place on employers. This rule affects all employers in the State of Washington.

**WAC 192-510-060(3):** *Premium payments are due within 10 calendar days when a business is dissolved or the account is closed by the department. Premiums not paid timely are delinquent and subject to interest under RCW 50A.04.140.*

This rule establishes a due date for premium remittances in the event that a business is dissolved or the account is closed by the Employment Security Department. We are proposing this rule because we are required to do so by statute. This rule will affect all employers who dissolve their businesses or see their PFML accounts closed by the Employment Security Department.

**WAC 192-510-070(1):** *An employee's work is localized in Washington and subject to reporting requirements and premiums when the work is localized in Washington. An employee's work is considered localized in Washington when:*

- (a) All of the employee's work is performed entirely within Washington, or;*
- (b) Most of the employee's services are performed within Washington, but some of the work which is temporary or transitory in nature, or consists of isolated transactions is performed outside of Washington*

This rule clarifies when an employee is considered to be localized in the State of Washington for the purposes of PFML reporting requirements, premium withholdings, and benefits eligibility. We are proposing this rule because we are required to do so by statute.

**WAC 192-510-070(2):** *Services that are not localized in Washington will be subject to reporting requirements and premiums when:*

- (a) The services are not localized in any state, but some of the services are performed in Washington, and;*
  - (i) The base of operations of the employee is in Washington, or if there is no base of operations, then the place from which such services are directed or controlled is in Washington, or;*
  - (ii) The base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in Washington.*

*Example: A storm hits Washington. An employer in Oregon dispatches an employee who typically lives and works in Oregon to help with repair work. The employee works temporarily in Washington for the employer for one week, and then returns to work in Oregon for the employer. The employment is localized within Oregon and is not subject to premium assessment.*

This rule clarifies when an employee is considered to be localized in the State of Washington for the purposes of PFML reporting requirements, premium withholdings, and benefits eligibility. We are proposing this rule because we are required to do so by statute.

**WAC 192-510-080(1):** *An employer and employee may be eligible for a conditional waiver of premium payments by satisfying the requirements of RCW 50A.04.120*

This rule simply restates the premises of RCW 50A.04.120 for additional clarity. We are proposing this rule for the added clarity it provides. This rule potentially affects all employers who hire non-localized workers. This rule will also affect all employees who are either non-localized or independent contractors.

**WAC 192-510-080(2):** *A conditional premium waiver is not required for work that is not subject to premiums under WAC 192-500-320 or fails to meet the definition of employment in RCW 50A.04.010(7)(a).*

This rule clarifies when an employer is not required to request a conditional premium waiver. Specifically, workers who are not localized within Washington state and workers who do not meet the definition of employee per RCW 50A.04.010(7)(a) do not require a conditional premium waiver to exempt employers from withholding premium payments. We are proposing this rule because we are required to do so by statute. This rule will affect all employers who hire non-localized workers. This rule will also affect all employees who are either non-localized or independent contractors.

**WAC 192-510-080(3):** *Any conditional premium waiver request must be submitted to the department online or in another format approved by the department.*

This rule clarifies how employers may request conditional premium waiver requests for eligible non-permanent workers. We are proposing this rule because we are required to do so by law. This rule will potentially affect all employers who hire eligible non-permanent workers, as well as the eligible non-permanent workers themselves.

**WAC 192-510-080(4):** *As a condition to granting the conditional premium waiver, the employer will file quarterly reports to verify that employees still qualify for the conditional premium waiver.*

This rule clarifies the statutory requirement that employers who receive a conditional premium waiver for a particular worker are required to file quarterly reports to ensure the worker is eligible for the waiver. We are proposing this rule because we are required to do so by statute. This rule will potentially affect all employers who hire eligible non-permanent workers, as well as the eligible non-permanent workers themselves.

**WAC 192-510-080(5):** *Once an employee works 820 hours in a qualifying period localized in Washington for an employer, the conditional premium waiver expires.*

This rule clarifies the statutorily determined expiration of conditional premium waivers in the event that a worker exceeds the 820 hours threshold in a qualifying period. We are proposing this rule because we are required to do so by statute. This rule will affect any employer or employee who has been granted a conditional premium waiver which exceeds the 820 hour threshold in a qualifying period.

**WAC 192-510-080(6):** *The department may require the employer to submit additional documentation as necessary.*

This rule clarifies the conditions under which conditional premium waivers may be granted, as well as the terms of their expiration. We are proposing this rule because we are required to do so by statute. This rule will potentially affect all employers who request conditional premium waivers on eligible non-localized employees.

**WAC 192-510-080(7):** *If the employee exceeds the eight hundred and twenty hours or more in a qualifying period, the conditional waiver expires and the employer and employee will be responsible for their shares of all premiums that would have been paid during the qualifying period in which the employee exceeded the eight hundred and twenty hours had the waiver not been granted. Upon payment of the missed premiums, the employee will be credited for the hours worked and will be eligible for benefits under this chapter as if the premiums were originally paid.*

*Example: A storm hits Washington. An employer in Oregon hires a new employee who lives in Oregon to help with repair work. The employee only works in Washington for the employer for one week and is then laid off. The employer could request a conditional premium waiver for this employee.*

This rule clarifies the statutorily determined back-payment requirements in the event of the expiration of a conditional premium waiver. Note that these back-payment requirements are explicitly referenced in statute. We are proposing this rule because we are required to do so by statute. This rule will affect all employers and workers for whom a conditional premium waiver is deemed expired.

**WAC 192-520-010(1):** *The rights and responsibilities under Title 50A RCW do not apply to parties covered by collective bargaining agreements in effect before October 19<sup>th</sup>, 2017, unless and until the agreements expire, are reopened, or are renegotiated.*

This rule simply restates statute. This rule clarifies the statutory mandate that any provisions of RCW 50A do not apply to parties covered by collective bargaining agreements in effect prior to October 19<sup>th</sup> 2017 until those agreements reach expiration or are renegotiated. We are proposing this rule because

we are required to do so by statute. This rule will affect all employers who operate under a collective bargaining agreement in effect prior to October 19 2017, and employees working for such employers.

**WAC 192-520-010(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.*

This rule establishes that employers operating under a collective bargaining agreement in effect prior to October 19 2017, must notify ESD immediately upon the expiration or renegotiation of the collective bargaining agreement. We are proposing this rule to expedite the transition to PFML participation among employers who were previously exempted due to the presence of a legacy collective bargaining agreement. We have a legislative mandate to impose this rule per RCW 50A.04.235. This rule will affect all employers and employees who, on January 1, 2019, operate under a collective bargaining agreement in effect prior to October 19, 2017.

**WAC 192-520-010(3):** *An employer must file quarterly reports once a collective bargaining agreement expires, is reopened, or is renegotiated.*

This rule simply re-states statute for added clarity. We are proposing this rule for the additional clarity it provides. This rule will affect all employers, and employees, whose collective bargaining agreement (in effect prior to October 19<sup>th</sup>, 2017) expires or is re-negotiated or reopened.

**WAC 192-520-010(4):** *To be eligible for benefits, an employee must have worked at least 820 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, 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.*

This rule requires employers whose collective bargaining agreements (in effect prior to October 19, 2017) expire or are re-negotiated or reopened to report qualifying employees' wages and hours prior to the expiration, re-negotiation, or reopening of a collective bargaining agreement for the purposes of establishing benefits eligibility. We are proposing this rule as a means to establish eligibility among employees whose collective bargaining agreements (established prior to October 19<sup>th</sup>, 2017) expire, are re-negotiated, or are reopened. We have a statutory mandate to impose this rule. This rule will affect all employers who operate under a collective bargaining agreement in effect prior to October 19, 2017.

**WAC 192-520-010(5):** *Employees not covered by a collective bargaining agreement are subject to the rights and responsibilities of Title 50A RCW. Employers are also subject to the rights and responsibilities of Title 50A RCW for employees not covered by a collective bargaining agreement, regardless of whether the employer is party to a collective bargaining agreement covering other employees.*

This rule simply clarifies the statutory requirement that employers and employees who are not covered by a collective bargaining agreement negotiated prior to October 19, 2017 are subject to all the rights and responsibilities of Title 50A RCW. We are proposing this rule because it clarifies a statutory requirement. This rule will affect all employers, and employees, not covered by a collective bargaining agreement negotiated prior to October 19, 2017.

**WAC 192-520-010(6):** *Employers party to multiple collective bargaining agreements among different bargaining units are subject to the rights and responsibilities of Title 50A RCW as they pertain to the bargaining units whose collective bargaining agreement has been expired, been reopened, or renegotiated, on or after October 19, 2017.*

This rule simply clarifies the statutory requirement that employers and employees covered by a collective bargaining agreement negotiated on or after October 19, 2017 are subject to all the rights and responsibilities of Title 50A RCW. We are proposing this rule because it clarifies a statutory requirement. This rule will affect all employers, and employees covered by a collective bargaining agreement negotiated on, or before, October 19, 2017.

**WAC 192-530-010(1):** *A voluntary plan application must be submitted to the department online or in another format approved by the department. Incomplete applications will not be reviewed. Voluntary plan application fees are due at the time the application is submitted to the department. The fee is non-refundable. If the voluntary plan is denied, a new application fee is required with each application.*

This rule clarifies how applications for voluntary plans must be submitted for approval. We are proposing this rule because it is necessary to administer the application process and review of proposals for voluntary plans. This rule will affect all employers who file an application for a voluntary plan.

**WAC 192-530-010(2):** *Voluntary plans will take effect on the first day of the quarter immediately following the approval of the plan.*

This rule establishes when voluntary plans may take effect. We are proposing this rule in order to facilitate an orderly transition from the state plan to voluntary plans. We are also proposing this rule in order to maintain a uniform cadence for reporting requirements for all employers. This rule will affect all employers with an approved voluntary plan as well as all employees working for said employers.

**WAC 192-530-020(1):** *An employer's voluntary plan must:*

- (a) Allow the employee to take the same duration of leave from work as the state plan; and*
- (b) Pay at least equivalent total monetary benefits as the state plan.*
- (c) Not withhold an amount from an employee's wages that is higher than what would be withheld under the state plan for the same period of time; and*
- (d) Offer leave for at least the same reasons as the state plan.*

This rule restates the statutory requirement that the rights and responsibilities under a voluntary plan must be at least as generous as those provided under the State plan. We are proposing this rule because we are required to do so by statute. This rule will affect all employers with an approved voluntary plan as well as all employees working for said employers.

**WAC 192-530-020(2):** *An employer with an approved voluntary plan may, at its discretion, use an accelerated payment schedule. The total monetary benefit must be equal to or greater than what the employee would have received under the state plan.*

- (a) If the employer chooses to use an accelerated payment schedule, the total monetary benefit must be paid to the employee over a length of time that is no less than one-half of what would have been provided under the state plan.*

- (b) Whether an employer elects to use an accelerated payment schedule has no impact on the length of job-protected leave to which the employee is entitled.*
- (c) If an employer chooses to utilize an accelerated payment schedule and the employee agrees to return to work earlier than required, the employer cannot require the employee to repay benefits as a result of returning to work earlier.*

This rule clarifies the conditions under which an employer with a voluntary plan may elect to use a statutorily allowed accelerated payment schedule. We are proposing this rule because we are required to do so by statute. This rule will potentially affect all employers with voluntary plans as well as all workers who elect to avail themselves of the accelerated payment schedules allowed under the auspices of voluntary plans.

**WAC 192-530-020(3):** *Employees covered by a voluntary plan are entitled to at least the same length of job-protected leave to which they would be entitled under the state plan. An employer and an employee may enter into an agreement wherein the employee returns to work at an earlier date.*

*Example: An employee elects to take 12 weeks of leave for the birth of a new child. The weekly benefit amount is \$750. The employer decides to pay the employee \$1,500 weekly over six weeks. In addition, the employer and the employee agree that the employee will return to work after six weeks. In this example, the employee would still have been permitted to take the full 12 weeks of leave if the employee had decided to do so.*

This rule clarifies the conditions under which an employee may take advantage of any accelerated payment schedule offered by an employer with a voluntary plan. We are proposing this rule because we are required to do so by statute. This rule will affect all employers with voluntary plans who elect to adopt an accelerated payment schedule as well as all workers employed by said employers who elect to avail themselves of benefits on an accelerated schedule.

**WAC 192-530-020(4):** *A \$250 fee will be required for every new application or non-statutorily required amendment filed by an employer seeking approval for a voluntary plan.*

This rule clarifies the circumstances under which an application fee for a voluntary plan must be submitted to the Employment Security Department. We are proposing this rule because we are required to do so by statute. This rule will affect all employers who apply for a voluntary plan, or who make non-statutorily required amendments to existing voluntary plans.

**WAC 192-530-020(5):** *If an employer elects to have a voluntary plan for either family leave or medical leave, but not both, the employer is responsible for withholding the employee share of the premium for the portion that is covered by the state plan. The department will post the rates for family and medical leave for the following calendar year to its website by November 30 each year and the employer is responsible for paying the premiums due to the state plan in accordance with WAC 192-510-060.*

This rule clarifies how employers who elect to implement a voluntary plan for family leave, or medical leave, but not both must comply with withholding requirements. We are proposing this rule because we are required to do so by statute. This rule will affect any employer who elects to implement either a voluntary family leave, or a voluntary medical leave program (but not both) as well as any worker employed by said employers.

**WAC 192-530-030(1):** *To qualify for an employer's approved voluntary plan, an employee must have been:*

- (a) In employment for at least 820 hours during the qualifying period and in employment with that employer for at least 340 hours; or*
- (b) Covered by an approved voluntary plan through their previous employer.*

This rule clarifies the statutorily determined conditions whereby an employee working for an employer with an approved voluntary plan may not be denied benefits. We are proposing this rule because we are required to do so by statute. This rule will affect all employers with an approved voluntary plan as well as all employees working for said employers.

**WAC 192-530-030(2):** *Employees working for an employer with a voluntary plan who have not yet met eligibility requirements for that plan are eligible for benefits under the state plan so long as all other requirements are met.*

This rule clarifies when newly hired employees of an employer with an approved voluntary plan are eligible for benefits under the state plan. We are proposing this rule because we are required to do so by statute. This rule will affect all newly hired employees of an employer with an approved voluntary plan.

**WAC 192-530-030(3):** *When an employee files a claim for benefits, an employer will access the employee's weekly benefit amount information online, or in another format approved by the department, and ensure the employee qualifies for at least an equivalent benefit amount from its voluntary plan.*

This rule establishes a mechanism whereby employers with a voluntary plan must check with ESD prior to determining the terms of PFML benefits to ensure that benefits allocated under the voluntary plan are at least as generous as those offered under the state plan. We are proposing this rule as a safeguard to ensure that the statutory requirement that voluntary plans be at least as generous as the state plan are adequately met. This rule will affect all employers with a voluntary plan.

**WAC 192-530-030(4):** *Upon hiring an employee previously covered under a state plan, the employer with an existing voluntary plan must report to the department online, or in another format approved by the department the new employee's status for the voluntary plan after the employee becomes eligible for that plan.*

This rule establishes a mechanism whereby employers with a voluntary plan must notify ESD whenever a newly hired employee reaches the 340 hour threshold for benefits eligibility under the voluntary plan. We are proposing this rule because we need to be informed when an employee is no longer eligible for benefits under the state plan because he/she is no longer covered under a voluntary plan. This rule will affect all employers with a voluntary plan, as well as all employees working for said employers.

**WAC 192-530-040(1):** *The department will provide a notice which meets the requirements of RCW 50A.04.075 to employers with approved voluntary plans if requested.*

This rule clarifies that employers may request signage detailing employee's rights under an approved voluntary plan from the Employment Security Department should they choose to do so. We are proposing this rule because we are required to do so by statute. This rule will affect any employer with

an approved voluntary plan who wishes to be supplied statutorily required signage by the Employment Security Department.

**WAC 192-530-040(2):** *Employers may create their own notices that meet the requirements of RCW 50A.04.075. Each employer must provide a copy of its voluntary plan notice to the department for approval. The notice must be submitted online or in another format approved by the department and must contain at least the same information as the state notice.*

This rule clarifies the statutory requirement that employers post signage detailing employee's rights under an approved voluntary plan and that such signage must obtain the approval of the Employment Security Department. We are proposing this rule because we are required to do so by statute. This rule will affect any employer with an approved voluntary plan.

**WAC 192-530-050(1):** *Employees cannot collect benefits from both the state plan and a voluntary plan for the same period. To ensure compliance, employers with an approved voluntary plan must report:*

- (a) All information required of employers by the state plan;*
- (b) Weekly benefit and leave duration information for any employee who takes leave under that plan for reasons that would have qualified for leave under the state plan; and*
- (c) Report premiums, if any, withheld from employee wages.*

This rule clarifies the reporting requirements imposed on employers with approved voluntary plan. We have a statutory right to impose this rule per RCW 50A.04.665. We are proposing this rule because we need an effective way to monitor compliance with Title 50A RCW among employers with voluntary plans. This rule will affect all employers who operate an approved voluntary plan.

**WAC 192-530-050(2):** *Upon request, the department will provide weekly benefit, typical workweek hours, and leave duration information to any employer with an approved voluntary plan who requests it for an employee who wishes to take leave under that plan.*

This rule establishes a mechanism whereby employers with approved voluntary plans may compare benefits levels vis a vis the state plan. We are proposing this rule because it provides a means for employers with approved voluntary plans to verify that their plans are in accordance with state law. This rule will potentially affect all employers with approved voluntary plans.

**WAC 192-530-060(1):** *If the employer chooses to withdraw from a voluntary plan, the employer must notify the department at least 30 calendar days before the withdrawal. Notification of withdrawal shall be submitted to the department online or in another format approved by the department.*

This rule clarifies the process whereby employers who choose to withdraw from a voluntary plan may do so. We are proposing this rule because we are required to do so by statute. This rule will affect any employer who elects to withdraw from a voluntary plan as well as all workers employed by said employers.

**WAC 192-530-060(2):** *If the department has terminated an employer's participation in a voluntary plan, the department will calculate the amount owed by the employer and send an invoice for payment. The amount due will consist of all moneys in the plan, including premiums paid by the employer, premiums paid by the employees, moneys owed to the voluntary plan by the employer but not yet paid to the plan,*

*and any interest accrued on all these moneys. The amount will be due immediately. Any balance owed will not start collecting interest until 30 calendar days after the date of the invoice.*

This rule clarifies how employers who elect to withdraw from a voluntary plan will be billed for collection of premium withholdings in their now defunct voluntary plan PFML accounts. We are proposing this rule because we are required to do so by statute. This rule will affect any employer who chooses to withdraw from an approved voluntary plan.

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

Rules requiring a significant analysis.

WAC Section	Section Title	Reason a Significance Analysis is Needed
WAC 192-530-010(2)	What are the employer application requirements for voluntary plans?	This rule imposes a go-live date on employers who elect to implement an approved voluntary plan (and their employees) that is not implemented by statute.
WAC 192-530-030(3)	Voluntary plans – employee eligibility criteria	This rule imposes a non-statutory administrative burden on employers with approved voluntary plans.
WAC 192-530-030(4)	Voluntary plans – employee eligibility criteria	This rule imposes a non-statutory administrative burden on employers with approved voluntary plans.

Rules not requiring a significant analysis.

The following rules do not require a Significance Analysis because they either:

- a) Adopt or incorporate by reference without material change federal statutes or regulations, Washington State statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule (RCW 34.05.328(5)(c)(ii))
- b) Are not “significant legislative rules” insofar as the proposed rule does not make significant amendments to a policy or regulatory program (RCW 34.05.328(5)(c)(ii)(C)).

WAC Section	Section Title	Justification for “Non-Significance”
WAC 192-510-010(1)	Election, withdrawal, and cancellation of coverage	RCW 34.05.328(5)(c)(ii) and/or RCW 34.05.328(5)(c)(iii)
WAC 192-510-010(2)	Election, withdrawal, and cancellation of coverage	RCW 34.05.328(5)(c)(ii) and/or RCW 34.05.328(5)(c)(iii)
WAC 192-510-010(3)	Election, withdrawal, and cancellation of coverage	RCW 34.05.328(5)(c)(ii) and/or RCW 34.05.328(5)(c)(iii)

WAC 192-510-010(4)	Election, withdrawal, and cancellation of coverage	RCW 34.05.328(5)(c)(ii) and/or RCW 34.05.328(5)(c)(iii)
WAC 192-510-010(5)	Election, withdrawal, and cancellation of coverage	RCW 34.05.328(5)(c)(ii) and/or RCW 34.05.328(5)(c)(iii)
WAC 192-510-010(6)	Election, withdrawal, and cancellation of coverage	RCW 34.05.328(5)(c)(ii) and/or RCW 34.05.328(5)(c)(iii)
WAC 192-510-010(7)	Election, withdrawal, and cancellation of coverage	RCW 34.05.328(5)(c)(ii) and/or RCW 34.05.328(5)(c)(iii)
WAC 192-510-020(1)	Election of coverage for federally recognized tribes	RCW 34.05.328(5)(c)(ii) and/or RCW 34.05.328(5)(c)(iii)
WAC 192-510-020(2)	Election of coverage for federally recognized tribes	RCW 34.05.328(5)(c)(ii) and/or RCW 34.05.328(5)(c)(iii)
WAC 192-510-030(1)	How will the department determine the wages earned and hours worked for self-employed persons electing coverage?	RCW 34.05.328(5)(c)(ii) and/or RCW 34.05.328(5)(c)(iii)
WAC 192-510-030(2)	How will the department determine the wages earned and hours worked for self-employed persons electing coverage?	RCW 34.05.328(5)(c)(ii) and/or RCW 34.05.328(5)(c)(iii)
WAC 192-510-030(3)	How will the department determine the wages earned and hours worked for self-employed persons electing coverage?	RCW 34.05.328(5)(c)(ii) and/or RCW 34.05.328(5)(c)(iii)
WAC 192-510-040(1)	How will the department determine the wages earned and hours worked for self-employed persons electing coverage?	RCW 34.05.328(5)(c)(ii) and/or RCW 34.05.328(5)(c)(iii)
WAC 192-510-040(2)	How will the department determine the wages earned and hours worked for self-employed persons electing coverage?	RCW 34.05.328(5)(c)(ii) and/or RCW 34.05.328(5)(c)(iii)
WAC 192-510-050	How will the department assess the size of new employers?	RCW 34.05.328(5)(c)(ii) and/or RCW 34.05.328(5)(c)(iii)
WAC 192-510-060(1)	When are employer premium payments due?	RCW 34.05.328(5)(c)(ii) and/or RCW 34.05.328(5)(c)(iii)
WAC 192-510-060(2)	When are employer premium payments due?	RCW 34.05.328(5)(c)(ii) and/or RCW 34.05.328(5)(c)(iii)
WAC 192-510-060(3)	When are employer premium payments due?	RCW 34.05.328(5)(c)(ii) and/or RCW 34.05.328(5)(c)(iii)

WAC 192-510-070(1)	What is “localization” and how does it affect conditional waivers?	RCW 34.05.328(5)(c)(ii) and/or RCW 34.05.328(5)(c)(iii)
WAC 192-510-070(2)	What is “localization” and how does it affect conditional waivers?	RCW 34.05.328(5)(c)(ii) and/or RCW 34.05.328(5)(c)(iii)
WAC 192-510-080(1)	What are the requirements to be eligible for a conditional premium waiver?	RCW 34.05.328(5)(c)(ii) and/or RCW 34.05.328(5)(c)(iii)
WAC 192-510-080(2)	What are the requirements to be eligible for a conditional premium waiver?	RCW 34.05.328(5)(c)(ii) and/or RCW 34.05.328(5)(c)(iii)
WAC 192-510-080(3)	What are the requirements to be eligible for a conditional premium waiver?	RCW 34.05.328(5)(c)(ii) and/or RCW 34.05.328(5)(c)(iii)
WAC 192-510-080(4)	What are the requirements to be eligible for a conditional premium waiver?	RCW 34.05.328(5)(c)(ii) and/or RCW 34.05.328(5)(c)(iii)
WAC 192-510-080(5)	What are the requirements to be eligible for a conditional premium waiver?	RCW 34.05.328(5)(c)(ii) and/or RCW 34.05.328(5)(c)(iii)
WAC 192-510-080(6)	What are the requirements to be eligible for a conditional premium waiver?	RCW 34.05.328(5)(c)(ii) and/or RCW 34.05.328(5)(c)(iii)
WAC 192-510-080(7)	What are the requirements to be eligible for a conditional premium waiver?	RCW 34.05.328(5)(c)(ii) and/or RCW 34.05.328(5)(c)(iii)
WAC 192-520-010(1)	Parties to collective bargaining agreements	RCW 34.05.328(5)(c)(ii) and/or RCW 34.05.328(5)(c)(iii)
WAC 192-520-010(2)	Parties to collective bargaining agreements	RCW 34.05.328(5)(c)(ii) and/or RCW 34.05.328(5)(c)(iii)
WAC 192-520-010(3)	Parties to collective bargaining agreements	RCW 34.05.328(5)(c)(ii) and/or RCW 34.05.328(5)(c)(iii)
WAC 192-520-010(4)	Parties to collective bargaining agreements	RCW 34.05.328(5)(c)(ii) and/or RCW 34.05.328(5)(c)(iii)
WAC 192-520-010(5)	Parties to collective bargaining agreements	RCW 34.05.328(5)(c)(ii) and/or RCW 34.05.328(5)(c)(iii)
WAC 192-520-010(6)	Parties to collective bargaining agreements	RCW 34.05.328(5)(c)(ii) and/or RCW 34.05.328(5)(c)(iii)
WAC 192-530-010(1)	What are the employer application requirements for voluntary plans?	RCW 34.05.328(5)(c)(ii) and/or RCW 34.05.328(5)(c)(iii)
WAC 192-530-020(1)	Voluntary plans – employer plan requirements	RCW 34.05.328(5)(c)(ii) and/or RCW 34.05.328(5)(c)(iii)
WAC 192-530-020(2)	Voluntary plans – employer plan requirements	RCW 34.05.328(5)(c)(ii) and/or RCW 34.05.328(5)(c)(iii)

WAC 192-530-020(3)	Voluntary plans – employer plan requirements	RCW 34.05.328(5)(c)(ii) and/or RCW 34.05.328(5)(c)(iii)
WAC 192-530-020(4)	Voluntary plans – employer plan requirements	RCW 34.05.328(5)(c)(ii) and/or RCW 34.05.328(5)(c)(iii)
WAC 192-530-020(5)	Voluntary plans – employer plan requirements	RCW 34.05.328(5)(c)(ii) and/or RCW 34.05.328(5)(c)(iii)
WAC 192-530-030(1)	Voluntary plans – employee eligibility criteria	RCW 34.05.328(5)(c)(ii) and/or RCW 34.05.328(5)(c)(iii)
WAC 192-530-030(2)	Voluntary plans – employee eligibility criteria	RCW 34.05.328(5)(c)(ii) and/or RCW 34.05.328(5)(c)(iii)
WAC 192-530-040(1)	Voluntary plans – notice requirements under RCW 50A.04.075	RCW 34.05.328(5)(c)(ii) and/or RCW 34.05.328(5)(c)(iii)
WAC 192-530-040(2)	Voluntary plans – notice requirements under RCW 50A.04.075	RCW 34.05.328(5)(c)(ii) and/or RCW 34.05.328(5)(c)(iii)
WAC 192-530-050(1)	Avoiding a duplication of benefits under state and voluntary plans	RCW 34.05.328(5)(c)(ii) and/or RCW 34.05.328(5)(c)(iii)
WAC 192-530-050(2)	Avoiding duplication of benefits under state and voluntary plans	RCW 34.05.328(5)(c)(ii) and/or RCW 34.05.328(5)(c)(iii)
WAC 192-530-060(1)	What happens at the end of a voluntary plan?	RCW 34.05.328(5)(c)(ii) and/or RCW 34.05.328(5)(c)(iii)
WAC 192-530-060(2)	What happens at the end of a voluntary plan?	RCW 34.05.328(5)(c)(ii) and/or RCW 34.05.328(5)(c)(iii)

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

WAC 192-530-010: What are the employer application requirements for voluntary plans?; WAC 192-530-030: Voluntary plans – employee eligibility criteria

### *Summary*

The general goal of Chapter 50A.04.600 RCW is to establish requirements for an employer who wishes to implement a self-administered voluntary plan. By statute, a voluntary plan must offer at least the same dollar benefit as the state plan would offer that same employee. However, the statute is silent on how a voluntary plan employer would obtain the information necessary to verify whether they are in compliance with this section of the law. The law is also silent on developing a communication method between a voluntary plan employer and the state with regard to employees who were previously covered by the state plan and then become eligible for coverage under a voluntary plan.

### *Objectives*

WAC 192-530-030, in part, creates a method wherein a voluntary plan employer may obtain this information from the state. Through reports filed by previous employers, the state will be able to determine what weekly benefit the employee would receive under the state plan. The voluntary plan employer will then be able to verify that the benefit received under the voluntary plan is equal to or greater than that benefit.

WAC 192-530-030 also requires employers with a voluntary plan to notify the department when an employee who had previously been covered by the state plan becomes eligible for coverage under a voluntary plan so that the state will no longer assess premiums or distribute benefits for that employee.

**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.

**WAC 192-530-010:** What are the employer application requirements for voluntary plans?

The department has determined that this rule is necessary to provide an effective date for each requested and approved voluntary plan. The statute does not provide a timeframe in which voluntary plans must take effect. The department discussed various effective dates with the stakeholder community including monthly and yearly effective dates, but general consensus between both the business and labor communities was that a quarterly approach allowed employers and employees the flexibility to become covered by the plan quickly enough to ensure coverage, but not so quickly that it was not operationally plausible.

The alternative to rulemaking on the timeframes of effective dates for voluntary plans is to not rulemake on this topic at all and to either place the requirement in the department policies and procedures or have all voluntary plans effective immediately upon approval. The department deemed the effective dates of voluntary plans to be a substantive pieces of program architecture that should go through the rulemaking process to ensure the public's voice was heard in order to craft the best solution.

**WAC 192-530-030:** Voluntary plans – employee eligibility criteria

The department has determined that this rule is necessary to prevent harmful costs on voluntary plan employers and the potential for incorrect benefit determinations.

Chapter 50A.04.020 RCW requires that the employee's typical workweek hours and previous wage data be used to determine the weekly benefit amount. Since the state is in possession of this data, no additional research is required for an employee covered by the state plan. However, since employers do not readily have access to this data, an employer with a voluntary plan risks providing an incorrect benefit amount to an employee who takes leave. WAC 192-530-030 mitigates this risk by providing a conduit for voluntary plan employers to obtain this information in a manner that maximizes accuracy and employee privacy.

Chapter 50A.04.610 RCW requires an employee employed by an employer with an approved voluntary plan to have worked 340 hours for that employer before the employee becomes eligible for coverage under that plan. Until that time, assuming the employee meets eligibility requirements, is covered by the state plan. As written, the statute does little to mitigate the risk of incorrect premium assessment and/or unnecessary benefit distribution for an employee who was previously covered by the state plan and then becomes eligible for coverage by the voluntary plan.

**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.

#### Methodology

To determine the total cost WAC 192-530-010 and WAC 192-530-030, a survey was distributed to a sampling of state employers that gauged interest in establishing a voluntary plan. The survey asked those considering a plan to estimate the amount of time and cost of verifying a claimant's data to determine compliance with the law. The survey also asked respondents to estimate costs associated with the quarterly schedule for the effective date of a new voluntary plan.

#### Survey development

Among all employers with an e-mail address listed in the department's records, the department chose a sampling strategy that would better allow for the collection of information pertinent to voluntary plans. In particular, the assumption was made that larger employers are more likely to implement a voluntary plan than are their smaller counterparts. An oversample of larger employers would, in principal, provide more information regarding the costs and benefits of the proposed rules. With this in mind, two samples were selected using the probability proportional to size (PPS) sampling methodology. PPS is a probability sample wherein larger employers have a greater chance of selection in the final sample.

Both samples consist of 20,000 unique employers. Because it is well-known that voluntary online surveys suffer from low response rates, a sufficiently large sample size was selected to produce an appropriate amount of usable data.

Both samples are representative of the state population in terms of both industry- and geographic-distributions. Figure 1 presents a visual representation of the industry (2-digit NAICS) classifications of employers selected into the first sample.

Distribution of Sampled Employers by 2 digit NAICS Sector - Total Count

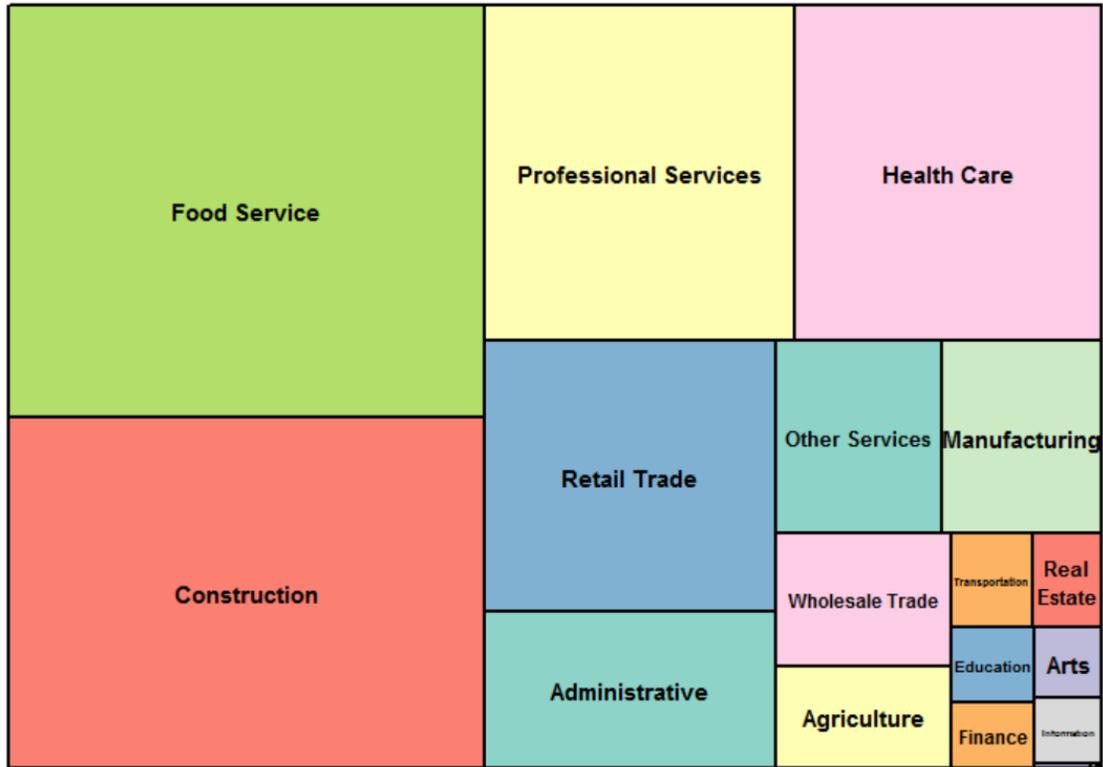


Figure 1: Distribution of Employers by 2-digit NAICS – Sample 1

While the food service and construction sectors dominate in terms of the number of establishments sampled, when weighted by employer size (i.e. number of workers) the distribution is somewhat different. Figure 2 provides a visual demonstration of the industry-level distribution of the total number of workers employed by sampled employers.

Distribution of Sampled Employers by 2 digit NAICS Sector - Weighted by Employer Size

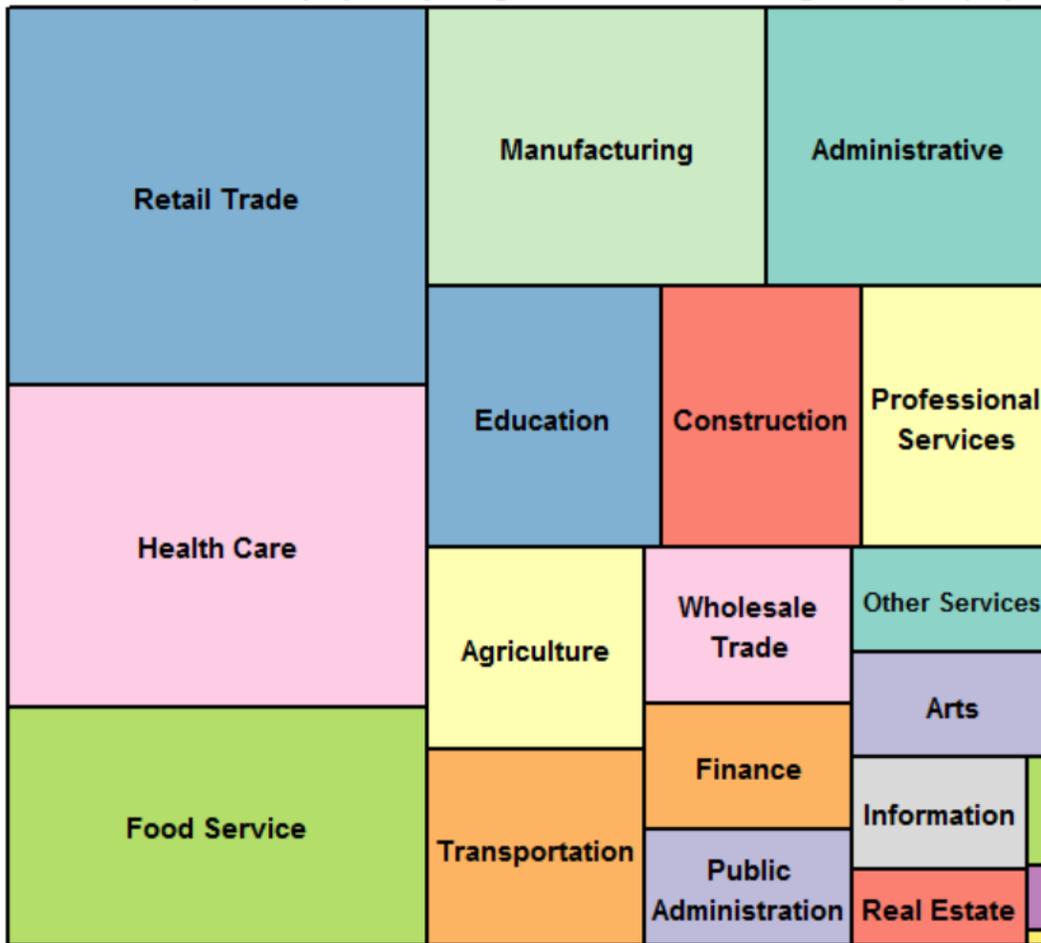


Figure 2: Distribution of Workers Employed by Sampled Employers by 2-digit NAICS – Sample 1

Further levels of disaggregation are possible. The department collects industry-level information down to the six-digit level. Figure 3 provides a visual display of the distribution of sampled employers (Sample #1) at the six-digit level.





**Figure 4: Within Industry Variation (Employer Size) of Sampled Employers – Sample 1**

In addition to representing a diverse group of industries, and employer sizes, sample 1 also includes employers from all 39 counties in Washington State. Figure 5 provides a visual representation of the geographic distribution of employers selected for inclusion into sample 1. Note that just over 2,000 employers were designated as “multi-county”. Because these employers are not situated in a single county, they are excluded from Figure 5. Consequently, the sum of the numbers presented in Figure 5 does not add up to 20,000.

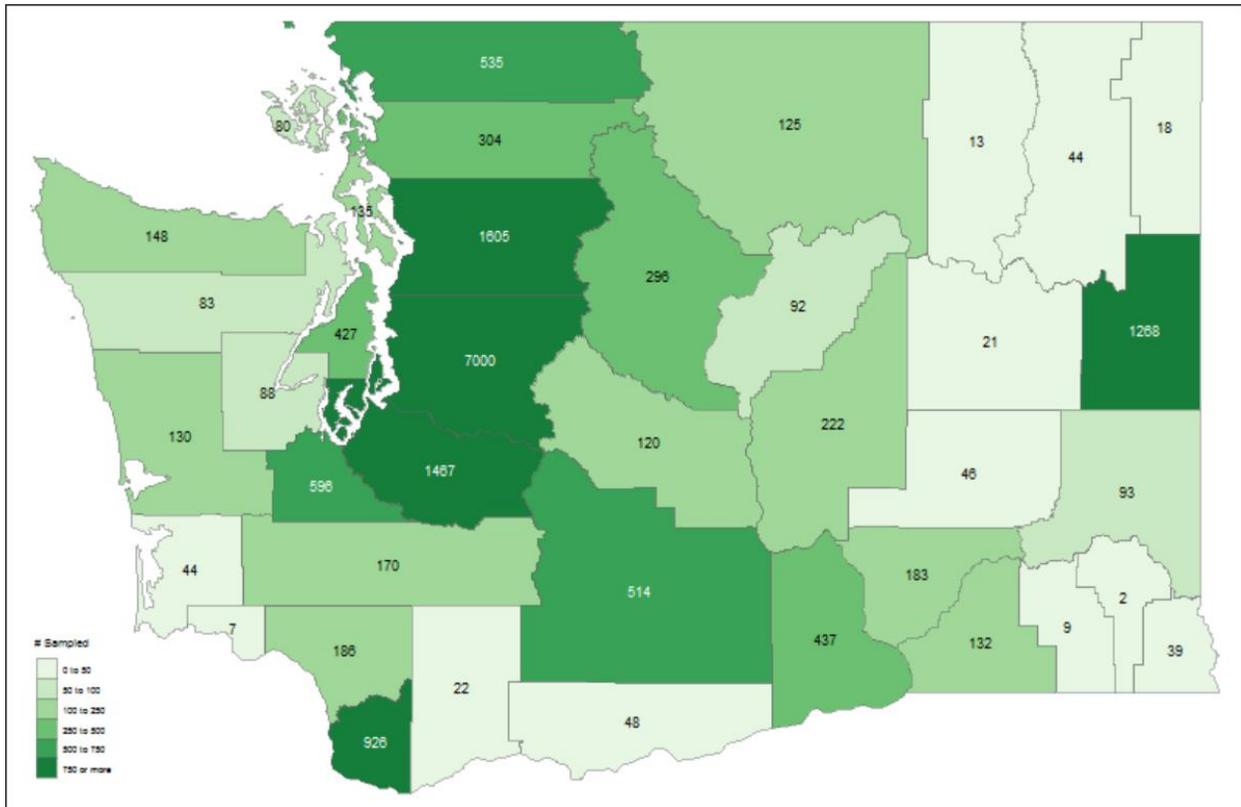


Figure 5: Geographic Distribution of Sampled Employers – Sample 1

### Overall survey results

This section will illustrate some of the broad data points that were used to determine assumptions in other analyses. Specific questions related to each rule will be included in that rule’s section below.

#### Interest in Voluntary Plans – Dichotomous

Interest in Voluntary Plans - Dichotomous	Count	Percentage
No - I'm not interested in a voluntary plan	523	69.50%
Yes - I'm at least somewhat interested in a voluntary plan	229	30.50%
<b>Total</b>	<b>752</b>	<b>100%</b>

#### Interest in Voluntary Plans – Likert Scale

Response	Count	Percentage
----------	-------	------------

1 - Not Very Likely To Apply For Voluntary Plan	23	9.80%
2	24	10.30%
3	86	36.80%
4	51	21.80%
5 – Already Planning on Applying for Voluntary Plan	50	21.40%
<b>Total</b>	<b>234</b>	<b>100.10%</b>

The department made several assumptions about the likelihood that employers who responded to the scale of interest question would apply for a voluntary plan. The department assumed that:

- 10 percent of employers who replied 1 on the Likert scale will apply for a voluntary plan;
- 25 percent of employers who replied 2 on the Likert scale will apply for a voluntary plan;
- 50 percent of employers who replied 3 on the Likert scale will apply for a voluntary plan;
- 75 percent of employers who replied 4 on the Likert scale will apply for a voluntary plan; and
- 100 percent of employers who replied 5 on the Likert scale will apply for a voluntary plan.

Based on the survey responses and extrapolating that out the population at large, the department estimates 40 percent of employers within the state will elect to implement a voluntary plan (take-up rate).

WAC 192-530-010: What are the employer application requirements for voluntary plans?

### Costs

Using an estimated take up rate of 40%, several assumptions were made to estimate the costs imposed by this rule. First and most prominent, because Title 50A RCW is silent on the effective date of voluntary plans, the department assumed that absent the rule, all voluntary plans would be effective the date they were submitted and approved. Because of this assumption, the estimated costs show the difference between employers' voluntary plans taking effect immediately versus taking effect the following quarter.

Based on this assumption, the below table shows the number of forgone benefits that would have been attributable to voluntary plans under WAC 192-530-010(2) had the plans taken effect immediately. The table shows a total of \$11.6 million in benefits employees will not receive due to the WACs requirements that plans take effect the following quarter after approval.

### Estimate of Forgone Benefits attributable to Voluntary Plans Imposed by Rule

Forgone benefits by payment size	Forgone benefits
Employers intending to pay \$700/wk in benefits (excess loss over projected median weekly benefit)	\$41,210.72
Employers intending to pay \$800/wk in benefits (excess loss over projected median weekly benefit)	\$673,157.84
Employers intending to pay the Statewide median wage (808.85)/wk in benefits (excess loss over median weekly benefit)	\$7,568,704.50

Employers intending to pay \$1,000/wk in benefits (excess loss over median weekly benefit)	<b>\$1,366,624.56</b>
Employers intending to pay \$1,500/wk in benefits (excess loss over median weekly benefit)	<b>\$1,948,763.04</b>
<b>Total Estimated Foregone Benefits Attributable to WAC 192-530-010(2)</b>	<b>\$11,598,460.66</b>

To accurately estimate total cost impacts to employers, the department also estimated opportunity costs imposed on employers due to the rule. The table below shows roughly \$1.4 million is estimated opportunity costs.

### **Estimated Opportunity Costs Imposed on Employer Due to WAC 192-530-010(2)**

Estimated Opportunity Costs by size	Estimated cost
Employers claiming a \$50/wk opportunity cost of lost labor	<b>\$755.07</b>
Employers claiming a \$100/wk opportunity cost of lost labor	<b>\$24,162.38</b>
Employers claiming a \$114.22/wk opportunity cost of lost labor (mean observed opportunity cost)	<b>\$75,895.24</b>
Employers claiming a \$250/wk opportunity cost of lost labor	<b>\$45,304.46</b>
Employers claiming a \$500/wk opportunity cost of lost labor	<b>\$203,870.07</b>
Employers claiming an opportunity cost of lost labor commensurate with the statewide median wage	<b>\$232,081.92</b>
Employers claiming a \$1000/wk opportunity cost of lost labor	<b>\$588,957.99</b>
Employers claiming a \$2000/wk opportunity cost of lost labor	<b>\$241,623.79</b>
<b>Total Estimated Opportunity Costs of lost labor imposed by rule</b>	<b>\$1,412,650.93</b>

Total Estimated Cost to Employee Benefits	<b>\$11,598,460.66</b>
Total Estimated Opportunity Costs	\$1,412,650.93
<b>Total Estimated Cost</b>	<b>\$13,011,111.59</b>

#### *Benefits*

The benefits of creating a target schedule for voluntary implementation affect both the department and employers.

An implementation schedule effectively creates a window each quarter for the department to approve voluntary plan applications in a timely manner. Quarterly deadlines will allow the department to manage its personnel more effectively by allowing for the assessment of workloads associating with voluntary plan application evaluation and manage those workloads accordingly. This will result in more efficiency and less waste.

A shorter effective date window might also result in incorrect premium assessment and collection in situations when the employer had not yet received notification of the approval of its plan, but would still be expected to begin collecting applicable premiums and distributing applicable benefits to employees.

### Summary

When an employer exercises its right under Title 50A RCW to implement a voluntary plan in lieu of allowing the state to manage the program on their behalf, that employer will subject itself to a delayed implementation of that plan. This delay is necessary for administrative purposes and to prevent confusion associated with an immediate implementation.

The state has determined that the benefits of WAC 192-530-010 do, in fact, exceed the costs associated with compliance.

The department also notes that voluntary plans are entirely optional, and employers in the state are under no obligation whatsoever to establish a voluntary plan.

### WAC 192-530-030: Voluntary plans – employee eligibility criteria

This rule establishes a mechanism whereby employers with a voluntary plan must notify ESD whenever a newly hired employee reaches the 340 hour threshold for benefits eligibility under the voluntary plan. We are proposing this rule because we need to be informed when an employee is no longer eligible for benefits under the state plan because he/she is no covered under a voluntary plan. This rule will affect all employers with a voluntary plan, as well as all employees working for said employers.

### Costs

Table 1. Total Estimated Time to Verify Beneficiary Claims on Voluntary Plans Due to the Implementation of WAC 192-530-030

	Minutes
<b>Vol. Plan Employers claiming it takes one minute to verify a claim</b>	98.61
<b>Vol. Plan Employers claiming it takes 5 minutes to verify a claim</b>	13,147.70
<b>Vol. Plan Employers claiming it takes 7 minutes to verify a claim</b>	2,991.10
<b>Vol. Plan Employers claiming it takes 8 minutes to verify a claim</b>	5,127.60
<b>Vol. Plan Employers claiming it takes 10 minutes to verify a claim</b>	195,572.02
<b>Vol. Plan Employers claiming it takes 15 minutes to verify a claim</b>	108,468.52
<b>Vol. Plan Employers claiming it takes 20 minutes to verify a claim</b>	621,228.78
<b>Vol. Plan Employers claiming it takes 25 minutes to verify a claim</b>	6,984.72
<b>Vol. Plan Employers claiming it takes 30 minutes to verify a claim</b>	295,823.23
<b>Vol. Plan Employers claiming it takes 45 minutes to verify a claim</b>	51,769.07
<b>Vol. Plan Employers claiming it takes 60 minutes to verify a claim</b>	147,911.62
<b>Vol. Plan Employers claiming it takes 90 minutes to verify a claim</b>	70,997.58
<b>Vol. Plan Employers claiming it takes 100 minutes to verify a claim</b>	18,078.09
<b>Vol. Plan Employers claiming it takes 180 minutes to verify a claim</b>	70,997.58
<b>Total Estimated Minutes to Verify Voluntary Plan Beneficiaries</b>	<b>1,609,196.20</b>

Table 2. Estimated Costs of Verification of Beneficiary Claims on Voluntary Plans Due to the Implementation of WAC 192-530-030

	Cost
Employers claiming a \$12/hr cost to verification	\$6,912.14
Employers claiming a \$13/hr cost to verification	\$2,995.33
Employers claiming a \$14/hr cost to verification	\$10,080.11
Employers claiming a \$15/hr cost to verification	\$5,184.03
Employers claiming a \$16/hr cost to verification	\$5,529.63
Employers claiming a \$17/hr cost to verification	\$3,672.13
Employers claiming a \$18/hr cost to verification	\$21,254.91
Employers claiming a \$20/hr cost to verification	\$40,321.09
Employers claiming a \$21/hr cost to verification	\$6,350.85
Employers claiming a \$22/hr cost to verification	\$18,374.98
Employers claiming a \$23/hr cost to verification	\$8,942.60
Employers claiming a \$24/hr cost to verification	\$10,368.37
Employers claiming a \$25/hr cost to verification	\$150,696.52
Employers claiming a \$26/hr cost to verification	\$10,109.02
Employers claiming a \$28/hr cost to verification	\$23,789.61
Employers claiming a \$30/hr cost to verification	\$31,104.96
Employers claiming a \$31/hr cost to verification	\$13,392.48
Employers claiming a \$34/hr cost to verification	\$7,414.48
Employers claiming a \$35/hr cost to verification	\$60,481.24
Employers claiming a \$36/hr cost to verification	\$14,385.92
Employers claiming a \$37/hr cost to verification	\$3,730.20
Employers claiming a \$38/hr cost to verification	\$11,492.02
Employers claiming a \$39/hr cost to verification	\$3,931.83
Employers claiming a \$40/hr cost to verification	\$17,856.71
Employers claiming a \$41/hr cost to verification	\$9,446.81
Employers claiming a \$42/hr cost to verification	\$7,862.53
Employers claiming a \$44/hr cost to verification	\$4,435.91
Employers claiming a \$45/hr cost to verification	\$4,536.73
Employers claiming a \$49/hr cost to verification	\$11,290.09
Employers claiming a \$50/hr cost to verification	\$42,481.44
Employers claiming a \$55/hr cost to verification	\$1,029.62
Employers claiming a \$57/hr cost to verification	\$5,746.52
Employers claiming a \$58/hr cost to verification	\$10,857.78
Employers claiming a \$60/hr cost to verification	\$26,785.07
Employers claiming a \$65/hr cost to verification	\$69,266.38
Employers claiming a \$75/hr cost to verification	\$17,280.76
Employers claiming a \$80/hr cost to verification	\$6,913.11
Employers claiming a \$100/hr cost to verification	\$8,641.38
Employers claiming a \$150/hr cost to verification	\$15,122.42
Total Estimated Cost to Verification	\$730,067.71

Table 3. Total Estimated Time To New Hire Eligibility in Voluntary Plan per WAC 192-530-030

<b>Vol. Plan Employers claiming it takes 3 minutes to report new hire eligibility</b>	<b>4,734.88</b>
Vol. Plan Employers claiming it takes 5 minutes to report new hire eligibility	8,510.41
Vol. Plan Employers claiming it takes 7 minutes to report new hire eligibility	5,632.34
Vol. Plan Employers claiming it takes 10 minutes to report new hire eligibility	154,734.72
Vol. Plan Employers claiming it takes 15 minutes to report new hire eligibility	162,471.45
Vol. Plan Employers claiming it takes 20 minutes to report new hire eligibility	185,681.66
Vol. Plan Employers claiming it takes 25 minutes to report new hire eligibility	1,044,459.34
Vol. Plan Employers claiming it takes 30 minutes to report new hire eligibility	863,419.72
Vol. Plan Employers claiming it takes 40 minutes to report new hire eligibility	30,946.94
Vol. Plan Employers claiming it takes 45 minutes to report new hire eligibility	71,023.24
Vol. Plan Employers claiming it takes 60 minutes to report new hire eligibility	408,499.65
Vol. Plan Employers claiming it takes 90 minutes to report new hire eligibility	100,268.10
Vol. Plan Employers claiming it takes 100 minutes to report new hire eligibility	34,041.64
Vol. Plan Employers claiming it takes 120 minutes to report new hire eligibility	155,972.60
Total Estimated Minutes to Report New Hire Eligibility	3,230,396.70

Table 4. Estimated Costs of Reporting New Hire Eligibility on Voluntary Plans Due to the Implementation of WAC 192-530-030

<b>Employers claiming a \$12/hr cost to reporting</b>	<b>\$11,254.70</b>
Employers claiming a \$13/hr cost to reporting	\$12,192.59
Employers claiming a \$14/hr cost to reporting	\$20,515.82
Employers claiming a \$15/hr cost to reporting	\$25,938.47
Employers claiming a \$16/hr cost to reporting	\$11,254.70
Employers claiming a \$17/hr cost to reporting	\$3,488.13
Employers claiming a \$18/hr cost to reporting	\$43,259.53
Employers claiming a \$19/hr cost to reporting	\$3,898.50
Employers claiming a \$20/hr cost to reporting	\$82,063.92
Employers claiming a \$21/hr cost to reporting	\$12,925.46
Employers claiming a \$22/hr cost to reporting	\$37,397.55
Employers claiming a \$23/hr cost to reporting	\$18,200.81
Employers claiming a \$24/hr cost to reporting	\$21,102.24
Employers claiming a \$25/hr cost to reporting	\$410,320.95
Employers claiming a \$26/hr cost to reporting	\$20,574.83
Employers claiming a \$27/hr cost to reporting	\$11,869.29
Employers claiming a \$28/hr cost to reporting	\$54,983.72
Employers claiming a \$29/hr cost to reporting	\$11,049.73
Employers claiming a \$30/hr cost to reporting	\$69,461.60

Employers claiming a \$31/hr cost to reporting	\$27,257.06
Employers claiming a \$32/hr cost to reporting	\$15,006.27
Employers claiming a \$34/hr cost to reporting	\$14,946.51
Employers claiming a \$35/hr cost to reporting	\$102,580.98
Employers claiming a \$36/hr cost to reporting	\$22,157.94
Employers claiming a \$38/hr cost to reporting	\$40,093.85
Employers claiming a \$39/hr cost to reporting	\$8,002.18
Employers claiming a \$40/hr cost to reporting	\$44,549.32
Employers claiming a \$41/hr cost to reporting	\$36,049.67
Employers claiming a \$44/hr cost to reporting	\$9,028.10
Employers claiming a \$45/hr cost to reporting	\$9,233.28
Employers claiming a \$46/hr cost to reporting	\$9,438.47
Employers claiming a \$49/hr cost to reporting	\$22,978.35
Employers claiming a \$50/hr cost to reporting	\$86,461.57
Employers claiming a \$55/hr cost to reporting	\$20,956.39
Employers claiming a \$57/hr cost to reporting	\$11,695.49
Employers claiming a \$58/hr cost to reporting	\$22,099.47
Employers claiming a \$60/hr cost to reporting	\$42,205.13
Employers claiming a \$75/hr cost to reporting	\$70,341.89
Employers claiming a \$80/hr cost to reporting	\$14,067.30
Employers claiming a \$100/hr cost to reporting	\$46,894.59
Employers claiming a \$150/hr cost to reporting	\$30,777.60
Total Estimated Cost to Reporting	\$1,588,573.96

Table 5. Total estimated cost of the Implementation of WAC 192-530-030

Total Estimated Cost to Verification	<b>\$730,067.71</b>
Total Estimated Cost to Reporting	\$1,588,573.96
Total Estimated Cost	\$2,318,641.67

### Benefits

The benefits of WAC 192-530-030 lie in ensuring compliance with the law, creating a conduit for accurate information exchange between the state and employers with voluntary plans, and avoiding unnecessary premium assessment and benefit distribution on behalf of the state.

#### 1.) Compliance with the law

Section 50A.04.600(5)(a) RCW states that the benefits under a voluntary plan “must be at least equivalent to the benefits the employees are entitled to as part of the state's family and medical leave program, including but not limited to the duration of leave.” By allowing access to certain datasets related to typical workweek hours and weekly benefit information, employers with a

voluntary plan will be able to verify that the benefits offered under its plan are in compliance with the law.

2.) Creating a conduit for accurate information exchange

By developing a conduit for employers to obtain the necessary information, the state can ensure that the needs of the employer are met by providing the necessary data. It can also ensure employee privacy by only supplying numerical information related to specific data points. This way, the state can avoid providing information to the employer that may go beyond what the employee wishes the employer to possess.

3.) Avoiding unnecessary premium assessment and benefit distribution

Until such time as an employee works the requisite 340 hours for an employer with a voluntary plan, that employee is still enrolled in the state plan (except when the employee was covered by a voluntary plan with the previous employer). This rule will minimize instances where the state assesses a premium for an employee covered by the state plan when, in fact, the employee is covered by a voluntary plan and is not subject to premium assessment by the state. The state will also not be liable to distribute monetary benefits to employees who mistakenly file a claim with the state when they should have filed with their employer. By informing the state that the employee is no longer covered by the state plan, the state will have the information necessary to deny the claim.

*Summary*

When an employer exercises its right under Title 50A RCW to implement a voluntary plan in lieu of allowing the state to manage the program on its behalf, that employer will necessarily subject itself to additional requirements and obligations.

The state has determined that, in order to ensure full compliance with the law and avoid unnecessary waste of taxpayer dollars by assessing premiums for and distributing benefits to employee covered by a voluntary plan, the benefits of WAC 192-530-030 do, in fact, exceed the costs associated with compliance.

The department also notes that voluntary plans are entirely optional, and employers in the state are under no obligation whatsoever to establish a voluntary plan.

**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 state previously.

WAC 192-530-010: What are the employer application requirements for voluntary plans?

#### Alternatives

Possible alternative	Burden
<b>Voluntary plans will become effective on a yearly basis</b>	Extensive wait times for employers and employees
<b>Voluntary plans will become effective immediately</b>	Administrative burden on department that created no time delay in effectiveness and premium assessment; administrative burden on employers to notify employees and begin assessment immediately

#### Summary

The rule being proposed is the least burdensome alternative for those required to comply that will still achieve the statutory general goals and specific objectives. This determination is due mainly to discussion the department had with stakeholders from the business and labor communities who both suggested and agreed to the quarterly effective dates.

Allowing voluntary plans to be effective the first day of the quarter immediately following approval gives businesses enough notice of the implementation to prepare their businesses accordingly, but does not provide so much time that there is significant lapse during which employers and employees are waiting for excessively long for implementation. The determination that quarterly effective dates are superior was a product of stakeholder engagement through the rulemaking process.

WAC 192-530-030: Voluntary plans – employee eligibility criteria

#### Alternatives

Possible alternative	Burden
<b>Employer may contact previous employers to obtain hours and wage information</b>	Additional administrative burden; privacy concerns; possible accuracy issues
<b>Employee will provide hours and wage information</b>	Employee may overstate their information to get more benefits

### Summary

The department has determined that the claim verification requirement of WAC 192-530-030, as currently written, represents the least burdensome regulation that ensures accuracy and privacy.

For the reporting requirement of WAC 192-530-030, no alternatives were considered, as the only other possible alternative is to not require notification which, as stated, creates an untenable burden for the department.

## Chapter 7: Conflicts with Federal or State law

None of the rules analyzed in this Significance Analysis requires any individual to violate Federal or State law.

## Chapter 8: Performance impositions on private vs. public sectors

By definition, WAC 192-510-030(2) and WAC 192-510-030(3) impose more stringent performance impositions on the private sector vis a vis the public sector. This is because all self-employed persons are employed in the private sector. We assert that these impositions are placed on self-employed persons to protect their own interests. These impositions allow self-employed persons who disagree with our baseline calculation of the number of hours worked in a qualifying period with a means to protest. The elimination of these impositions would not serve the interests of the self-employed and hence are, in our estimation, justified.

No other rules analyzed in this significance analysis intrinsically<sup>1</sup> impose more stringent performance requirements on the private sector than on the public sector.

---

<sup>1</sup> There is nothing in RCW 50A.04 that explicitly prevents a public sector entity from applying for an approved voluntary plan.

## Chapter 9: Conflicts with Federal or State regulatory bodies

None of the rules analyzed in this Significance Analysis differs from any applicable Federal or State statute.

## Chapter 10: Coordination with Federal, State, or local laws

There are no other Federal, State, or local laws applicable to the rules analyzed in this Significance Analysis.