



# PROPOSED RULE MAKING

## CR-102 (December 2017) (Implements RCW 34.05.320)

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FILED

DATE: August 16, 2018

TIME: 5:15 PM

WSR 18-17-116

**Agency:** Employment Security Department

**Original Notice**

**Supplemental Notice to WSR** \_\_\_\_\_

**Continuance of WSR** \_\_\_\_\_

**Preproposal Statement of Inquiry was filed as WSR** 18-09-037 ; or

**Expedited Rule Making--Proposed notice was filed as WSR** \_\_\_\_\_; or

**Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or**

**Proposal is exempt under RCW** \_\_\_\_\_.

**Title of rule and other identifying information:** (describe subject)

Chapter 192-01 WAC Employment Security Rule Governance

- WAC 192-01-001 Rule governance statement.

Chapter 192-500 WAC Definitions

- WAC 192-500-010 Employer.
- WAC 192-500-015 Employer agent.
- WAC 192-500-020 Calendar quarter.
- WAC 192-500-025 Terms meaning deliver.
- WAC 192-500-030 Willful.
- WAC 192-500-035 Interested parties.
- WAC 192-500-040 Aggrieved person.

Chapter 192-510 WAC Assessing and Collecting Premiums

- WAC 192-510-045 How will the department assess the size of employers for calendar years 2019 and 2020?
- WAC 192-510-065 When can an employer deduct premiums from employees?
- WAC 192-510-066 How are premium payments applied?

Chapter 192-530 WAC Voluntary Plans

- WAC 192-530-035 When must an employer with a voluntary plan provide benefit payments?
- WAC 192-530-060 What happens at the end of a voluntary plan?
- WAC 192-530-070 What is good cause for terminating an approved voluntary plan?

Chapter 192-540 WAC Employer Responsibilities

- WAC 192-540-010 When must an employer send notice to employees who may need paid family and medical leave?
- WAC 192-540-020 What are the employer requirements for posting notice in a work place?
- WAC 192-540-025 Is notice required if an employer reduces the portion of employee premiums it is electing to pay?
- WAC 192-540-030 What are employers required to report to the department?
- WAC 192-540-040 How should employers report hours worked for each calendar quarter?
- WAC 192-540-050 When are employers required to submit quarterly reports to the department?

Chapter 192-550 WAC Penalties and Audits

- WAC 192-550-010 What happens if an employer fails to submit required reports?
- WAC 192-550-020 What happens if an employer willfully fails to remit required payments?
- WAC 192-550-030 How will the department calculate interest on delinquent payments?
- WAC 192-550-040 Can employer interest be waived?
- WAC 192-550-050 Audit procedures.
- WAC 192-550-080 What happens if an employer fails to provide requested information to the department for an audit?

Chapter 192-560 WAC Small Business Assistance

- WAC 192-560-010 Which businesses are eligible for small business assistance grants?
- WAC 192-560-020 What is the application process for a small business assistance grant?
- WAC 192-560-030 What are significant additional wage-related costs for the purposes of small business assistance grants?

Chapter 192-570 WAC Dispute Resolution

- WAC 192-570-010 Conference and conciliation.
- WAC 192-570-020 Complaints regarding unlawful acts.

Chapter 192-800 WAC Practice and Procedure

- WAC 192-800-002 Untimely appeals.

**Hearing location(s):**

Date:	Time:	Location: (be specific)	Comment:
October 24, 2018	9:00am	640 Woodland Square Loop SE, Lacey, WA 98503	Meeting will be held in the Park Place conference room.
October 29, 2018	9:00am	DoubleTree by Hilton Spokane City Center, 322 N Spokane Falls Court, Spokane, WA 99201	Meeting room will be posted on a sign in the lobby and listed on the hotel's daily event board. Event parking is \$8, metered street parking is also available.

**Date of intended adoption:** 10-29-18 (Note: This is **NOT** the **effective** date)

**Submit written comments to:**

Name: Christina Streuli  
 Address: Employment Security Department PO Box 9046, Olympia, WA 98507-9046  
 Email: [cstreuli@esd.wa.gov](mailto:cstreuli@esd.wa.gov)  
 Fax:  
 Other: Online portal: [https://www.opentownhall.com/portals/289/forum\\_home](https://www.opentownhall.com/portals/289/forum_home)

By (date) October 29, 2018

**Assistance for persons with disabilities:**

Contact Teresa Eckstein, State EO Officer  
 Phone: (360) 902-9354  
 Fax:  
 TTY: 711  
 Email: [TEckstein@esd.wa.gov](mailto:TEckstein@esd.wa.gov)  
 Other:  
 By (date) October 23, 2018

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** The proposal will further define Paid Family and Medical Leave requirements for premium assessment, voluntary plans, employer responsibilities, penalties and audits, small business assistance grants, dispute resolution, and appeals. The proposal will also add a rule governance statement to clarify what chapters in title 192 WAC apply to the Paid Family and Medical Leave Program.

**Reasons supporting proposal:** The rules will assist in meeting the requirements to implement the collection of premiums and accept voluntary plans from Washington employers by January 1, 2019, as mandated by Title 50A RCW, Family and Medical Leave. Additionally, the rules will provide guidance for employees and employers regarding operations and requirements for the new Paid Family and Medical Leave program.

**Statutory authority for adoption:** RCW 50A.04.215

**Statute being implemented:** RCWs 50A.04.010, 50A.04.070, 50A.04.075, 50A.04.080, 50A.04.085, 50A.04.090, 50A.04.095, 50A.04.100, 50A.04.135, 50A.04.140, 50A.04.180, 50A.04.195, 50A.04.230, 50A.04.505, 50A.04.520, 50A.04.600, 50A.04.605, 50A.04.610, 50A.04.615, 50A.04.620, 50A.04.650, 50A.04.625, 50A.04.630, 50A.04.635, 50A.04.650, 50A.04.655, 50A.04.660, and 50A.04.665.

**Is rule necessary because of a:**

Federal Law?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Federal Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
State Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

If yes, CITATION:

**Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:**

**Name of proponent:** (person or organization) Employment Security Department, Paid Family and Medical Leave Division  Private  
 Public  
 Governmental

**Name of agency personnel responsible for:**

	Name	Office Location	Phone
Drafting:	Christina Streuli	Lacey, WA	360-791-6710
Implementation:	Matt Buelow	Lacey, WA	360-742-7311
Enforcement:	Matt Buelow	Lacey, WA	360-742-7311

**Is a school district fiscal impact statement required under RCW 28A.305.135?**  Yes  No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

Name:

Address:

Phone:

Fax:

TTY:

Email:

Other:

**Is a cost-benefit analysis required under RCW 34.05.328?**

Yes: A preliminary cost-benefit analysis may be obtained by contacting:

Name: Christina Streuli

Address: Employment Security Department PO Box 9046 Olympia, WA 98507-9046

Phone: 360-791-6710

Fax:

TTY: Teresa Eckstein, State EO Officer, (360) 902-9354, 711, TEckstein@esd.wa.gov

Email: cstreuli@esd.wa.gov

Other:

No: Please explain:

**Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:**

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by RCW 34.05.313 before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of RCW 15.65.570(2) because it was adopted by a referendum.

- This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(3). Check all that apply:
- |   |  |
|---|--|
| <input type="checkbox"/> RCW 34.05.310 (4)(b)<br>(Internal government operations) | <input type="checkbox"/> RCW 34.05.310 (4)(e)<br>(Dictated by statute)   |
| <input type="checkbox"/> RCW 34.05.310 (4)(c)<br>(Incorporation by reference)     | <input type="checkbox"/> RCW 34.05.310 (4)(f)<br>(Set or adjust fees)  |
| <input type="checkbox"/> RCW 34.05.310 (4)(d)<br>(Correct or clarify language)    | <input type="checkbox"/> RCW 34.05.310 (4)(g)<br>((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit) |
- This rule proposal, or portions of the proposal, is exempt under RCW 34.05.328(5)(c)(ii) and 34.05.328(5)(c)(iii)(C).  
 Explanation of exemptions, if necessary: RCW 34.05.328(5)(c)(ii) creates an exemption for interpretive rules. This exemption applies to portions of the proposal. RCW 34.05.328(5)(c)(iii)(C) outlines conditions which must be met for a rule to require analysis. Portions of the proposal do not meet these requirements.

**COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES**

If the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

- No Briefly summarize the agency's analysis showing how costs were calculated. \_\_\_\_\_
- Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert statement here:

<b>Small Business Economic Impact Statement August 17, 2018</b>	<b>Rules implementing Title 50A RCW – The Family and Medical Leave Program Chapters 192-540-020, 192-540-030, and 192-560-020 WAC</b>
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**1. Provide a brief description of the requirements of the proposed rules**

In 2017, the Washington State Legislature passed Substitute Senate Bill 5975 establishing the Paid Family and Medical Leave Act. Substitute Senate Bill 5975 was codified as Title 50A RCW.

The Paid Family and Medical Leave (PFML) insurance program provides for at least partial wage replacement when a qualified employee takes leave for an approved reason related to family or medical leave. The statute requires the Employment Security Department (department) to develop rules implementing the program, which are being promulgated in multiple phases. This filing comprises rules developed in phase two, which primarily covers regulations related to employer responsibilities, penalties, and small business grants.

The rules in phase two provide guidance to employers and the community on several topics. At a high-level, the rules contain guidance on:

- The responsibilities with which employers must comply such as providing notices to employees who may need the program and what must be reported to the department each quarter;
- The process for performing an audit and accessing certain penalties;
- The components of conference and conciliation and dispute resolution between employers and the department;
- The procedures for applying for small business assistance grants;
- Various definitions needed to clarify phrases used in the rules; and
- Other areas related to PFML.

Rules in this phase also offer additional clarity on the voluntary plan framework and on premium assessment. The majority of rules on these topics were finalized in phase one of the PFML rulemaking.

## 2. Costs to businesses to comply with the proposed rules

The majority of phase two rules do not require a calculation of cost for compliance.<sup>1</sup> The following rules do require this analysis:

### WAC 192-540-020: What are the employer requirements for posting notice in a work place?<sup>2</sup>

This rule requires employers to post a standard notice in a common work area that informs employees of certain employee rights under the PFML program. This rule implements RCW [50A.04.075](#) and provides additional guidance and clarity for employers.

#### Opportunity cost breakdown for small businesses

Median hourly pay rate to complete the task	\$20 per hour
Median hours required to complete the task	1 hour
<b>Opportunity cost for each small business</b>	\$20.00, one-time cost
<b>Estimated opportunity cost to all small businesses</b>	\$6,265,960.00, one-time cost

### WAC 192-540-030: What are employers required to report to the department?<sup>3</sup>

This rule requires employers to submit quarterly reports to the department containing certain information related to employees. The rule implements RCW [50A.04.080](#). Instructions on when reports must be filed are contained in WAC 195-540-050, and WAC 192-540-040 addresses how hours are to be included in the report.

#### Opportunity cost breakdown for small businesses

Median hourly pay rate to complete the task	\$29 per hour
Median hours required to complete the task	5 hours
Number of reports that must be submitted	4 annually, on a quarterly basis
<b>Opportunity cost for each small business</b>	\$580.00, annually
<b>Estimated opportunity cost to all small businesses</b>	\$181,712,840.00, annually

### WAC 192-560-020: What is the application process for a small business assistance grant?<sup>4</sup>

Small businesses are eligible to apply for assistance grants to help offset the cost of an employee taking PFML. The rule establishes application contents and various eligibility and exclusion criteria. The rule implements RCW [50A.04.230](#) and provides additional guidance for small businesses on how to submit grant applications.

#### Opportunity cost breakdown for small businesses

Median hourly pay rate to complete the task	\$25 per hour
Median hours required to complete the task	10 hours

<sup>1</sup> See chapter 5 of the Significance Analysis for a complete list of rules that do and do not require cost analysis in the Small Business Economic Impact Study or the Significance Analysis.

<sup>2</sup> See chapter 5 of the Significance Analysis for full details on the costs imposed on businesses for complying with WAC 192-540-020.

<sup>3</sup> See chapter 5 of the Significance Analysis for full details on the costs imposed on businesses for complying with WAC 192-540-030.

<sup>4</sup> See chapter 5 of the Significance Analysis for full details on the costs imposed on businesses for complying with WAC 192-560-020.

<b>Opportunity cost for each small business<sup>5</sup></b>	\$78,324,500, annually
<b>Estimated opportunity cost to all small businesses</b>	\$250, for every grant submitted

### 3. Impact on sales or revenue

Any impact on sales or revenue is assumed to be a result of the passage of SSB 5975 by the state legislature rather than the result of agency rulemaking pertaining to its implementation.

### 4. Cost of compliance for small businesses vs. ten percent of largest businesses

Large businesses, defined as the top ten percent of businesses in the state by employment, will experience no economic impact due to the phase two PFML rules. The cost of administering the PFML rules will be spread across a large number of employees and is marginal – it is contained in the existing business cost structure.

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

This rule imposes a possible disproportionate impact on small business employers. The event of an employer posting a standard notice in a common work area does take an amount of employee time, paper (if the notice is not printed by the department), ink, and staples, glue, tacks etc. Because the impact to large businesses is considered marginal and included in existing business cost structure, the impact to small businesses could be disproportional if such a business cost structure is not already in place.

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

This rule imposes a possible disproportionate impact on small business employers. The report required by this rule is an accounting, human resources, and administrative management activity that occurs quarterly throughout the calendar year. Businesses will need to prepare, create, and submit reports that did not exist before the passage of the PFML Act. Most businesses, large and small, will be required to submit this report. However, because the impact to large businesses is considered marginal and included in existing business cost structure, the impact to small businesses could be disproportional if such business cost structure is not already in place.

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

This rule imposes economic cost on those businesses that apply for small business assistance grants. The rule establishes application content and various eligibility and exclusion criteria. Receiving an assistance grant reduces the cost of participating in the PFML program and therefore it is assumed that every small business in the state will submit at least one grant application per year. Only small businesses are eligible for these grants; large businesses do not qualify. Therefore, the rule disproportionately effects small businesses.

### 5. Steps taken to reduce costs on small businesses

RCW 19.85.030(2) lists several options for agencies to consider when attempting to reduce the impact of proposed rules on small businesses. These options were considered by agency staff and ultimately deemed unfeasible based on the nature of the rules in question.

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

The requirement to post a notice for employees to view is a statutory requirement in RCW [50A.04.075](#). The statute and rule allow employers to use a notice provided by the department in lieu of creating one. If an employer chooses to create a notice, the rule provides guidance on what must be included. Because the posting of a notice is a statutory requirement and because all employers can choose to use a notice developed by the department, no specific steps were taken to reduce costs.

<sup>5</sup> Small businesses may be eligible to submit more than one grant application per year. Therefore, this estimate is the lowest threshold of economic impact, assuming every small business submits one grant application per year.

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

Statute requires employers to make and furnish reports and information to the department. RCW [50A.04.080](#). The rule provides additional guidance related to the frequency of those reports and must be included. The department considered all possible data fields employers could be required to provide and settled on those required by the rule because of the need to receive enough information to match the information provided by employers with the information provided by employees when such employees seek to open a claim for benefits. To properly determine if an employee is eligible for benefits the department must have enough information to determine hours worked, location of the work, and other elements. The department considered several other data elements but ultimately deemed them too onerous on employers. The data elements required by the rule are the minimum requirements needed to properly administer the program, ensure the integrity of the system, and limit fraudulent activity.

Similarly, the department cannot require fewer data elements from small businesses than it would from large businesses because of the need to properly match employer information with employee information when an application for benefits is made.

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

Because WAC 192-540-030 is dependent on a small business employer opting into a non-required component of the law, no specific steps were taken to reduce costs. While it is estimated that the rule will impose a \$250 opportunity cost to employers, receiving an assistance grant reduces the overall cost of participation. If an application is approved, the employer will experience a financial gain.

## **6. How did the agency involve small businesses?**

For the rules considered by this impact study, three surveys were used to gather data from small businesses. The survey sample frame contained 101,398 Washington State Unemployment Insurance covered small businesses that had an email address.

Three cohorts are used, one for each of the three rules that require an impact statement, each of equal size. The three files are uploaded to a “collector” in Survey Monkey and then sent out for response via the Survey Monkey system. The results from this survey created the data presented in the impact study.

Additionally, the department appointed an Advisory Committee consisting of advocates for both employer and employee interests, as required in RCW 50A.04.200. The team of advocates for employer interests represents several businesses in the state, including small businesses. These advocates were integral in the development of both the law and the rules governing it.

Lastly, through the standard rulemaking process, several public meetings were held prior to filing the Notice of Proposed Rules. Two informal “listening sessions” were held where any member of the public, including small businesses owners and stakeholders, could voice their opinions on what should be covered by rule in each phase. The department also hosted two “stakeholder meetings” where representatives of the department presented drafts of rules and opened the floor for public comment. All stakeholders, including small business representatives, were also allowed to post comments in response to agency draft rules online through a civic engagement portal.

## **7. List of industries affected**

Title 50A RCW generally applies to all employers in Washington State, apart from the federal government.

2-digit NAICS	Industry sectors	Total Establishments	Total Employment
<b>Total</b>	<b>Total</b>	<b>243,084</b>	<b>3,225,703</b>
11	Agriculture, forestry, fishing and hunting	7,415	89,295
21	Mining	172	2,350
22	Utilities	591	18,747
23	Construction	25,033	180,526
31, 32, 33	Manufacturing	7,698	293,807
42	Wholesale trade	14,199	130,050
44, 45	Retail trade	20,550	368,567
48, 49	Transportation and warehousing	5,633	124,044
51	Information	4,441	128,611
52	Finance and insurance	8,885	93,768
53	Real estate and rental and leasing	8,344	51,941
54	Professional and technical services	25,655	199,303
55	Management of companies and enterprises	716	43,711
56	Administrative and waste services	12,502	161,480
61	Educational services	3,843	283,651
62	Healthcare and social assistance	55,341	460,623
71	Arts, entertainment and recreation	3,104	70,512
72	Accommodation and food services	17,094	267,382
81	Other services, except public administration	19,739	96,565
92	Public administration	2,129	160,770

Source: Employment Security Department

### 8. Number of jobs lost/created

Any jobs lost or created are assumed to be a result of the passage of SSB 5975 by the state legislature rather than the result of agency rulemaking pertaining to its implementation.

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

Name: Christina Streuli

Address: Employment Security Department PO Box 9046, Olympia, WA 98507-9046

Phone: 360-791-6710

Fax:

TTY: Teresa Eckstein, State EO Officer, (360) 902-9354, 711, TEckstein@esd.wa.gov

Email: cstreuli@esd.wa.gov

Other:

**Date:** August 16, 2018

**Name:** Susan G. LeVine

**Title:** Commissioner

**Signature:**

