

Paid Family and Medical Leave Rulemaking
Phase 3
First Draft

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**Chapter 192-500 WAC
Definitions**

NEW SECTION

WAC 192-500-050 De facto parent.

A "de facto parent" is limited to those adults who have fully and completely undertaken a permanent, unequivocal, committed, and responsible parental role in a child's life where the natural or legal parent consented to and fostered the parent-like relationship.

NEW SECTION

WAC 192-500-060 In loco parentis.

An individual stands "in loco parentis" when the individual acts in place of a parent, intentionally takes over parental duties, and is responsible for exercising day-to-day care and control fulfilling the child's physical and psychological needs.

NEW SECTION

WAC 192-500-070 Claim year.

- (1) "Claim year" is the fifty-two week period following:
- (a) The date of the birth or placement of a child; or
 - (b) The date of the filing of a complete and timely application for all other qualifying events.
- (2) For applications that are backdated, the claim year is the fifty-two week period from the effective date.
- (3) An employee may only have one valid claim year at a time.

NEW SECTION

WAC 192-500-080 Qualifying event.

A "qualifying event" is:

- (1) For family leave, events described in RCW 50A.04.010(9).
- (2) For medical leave, events described in RCW 50A.04.010(14).

NEW SECTION

WAC 192-500-090 Health Care Provider.

"Health care provider" means:

(1) A physician or an osteopathic physician who is licensed to practice medicine or surgery, as appropriate, by the state in which the physician practices;

(2) Nurse practitioners, nurse-midwives, midwives, clinical social workers, physician assistants, podiatrists, dentists, clinical psychologists, optometrists, and physical therapists licensed to practice under state law and who are performing within the scope of their practice as defined under state law by the state in which they practice;

(3) A health care provider listed above who practices in a country other than the United States, who is authorized to practice in accordance with the law of that country, and who is performing within the scope of the health care provider's practice as defined under such law; or

(4) Any other provider permitted to certify the existence of a serious health condition under the federal family and medical leave act of 1993 (Act Feb. 5, 1993, P.L. 103-3, 107 Stat. 6, as it existed on October 19, 2017).

Chapter 192-600 WAC
Employee notice to employer

NEW SECTION

WAC 192-600-005 As soon as is practicable.

For the purposes of this chapter, "as soon as is practicable" means as soon as both possible and practical, taking into account all of the facts and circumstances in the individual case. When an employee becomes aware of a need for paid family or medical leave less than thirty days in advance, it should be practicable for the employee to provide notice of the qualifying event either the same day or the next business day. In all cases, however, the determination of when an employee could practicably provide notice must take into account the individual facts and circumstances.

NEW SECTION

WAC 192-600-010 Content of employee notice for paid family or medical leave.

An employee must provide written notice to make the employer aware that the employee may need paid family or medical leave. The notice must contain at least the anticipated timing and duration of the leave. Written notice includes handwritten, typed, and all forms of written electronic communications, such as text messages and email.

NEW SECTION

WAC 192-600-015 When must an employee provide notice to the employer for foreseeable paid family or medical leave?

(1) (a) An employee must provide the employer at least thirty days' written notice before paid family or medical leave is to begin if the need for the leave is foreseeable based on an expected birth, placement of a child, or planned medical treatment for a serious health condition.

(b) An employee must provide the employer written notice as soon as is practicable when thirty days' notice is not possible, such as because of a lack of knowledge of approximately when leave will be required to begin, a change in circumstances, or a medical emergency.

(2) An employee must provide the employer written notice as soon as is practicable for foreseeable leave due to a qualifying

military exigency, regardless of how far in advance such leave is foreseeable.

(3) Whether paid family or medical leave is to be continuous or is to be taken intermittently or on a reduced schedule basis, written notice need only be given one time, but the employee must inform the employer as soon as is practicable if dates of the scheduled leave change, are extended, or were initially unknown.

NEW SECTION

WAC 192-600-020 When must an employee provide notice for unforeseeable paid family or medical leave?

(1) When the approximate timing of the need for leave is not foreseeable, an employee must provide written notice to the employer as soon as is practicable under the facts and circumstances of the particular case.

(2) If the employee is unable to provide notice personally, written notice may be given by another responsible party, such as the employee's spouse, neighbor, or coworker.

Example 1: An employee's spouse is in a car accident and is taken to the emergency room. The employee would not be required to leave the spouse in the emergency room in order to report the absence while the spouse is receiving emergency treatment. The employee would be expected to provide written notice, such as an e-mail, to the employer as soon as is practicable.

Example 2: An employee is in a car accident and is taken to the emergency room for emergency surgery. The employee's spouse may provide written notice on behalf of the employee as soon as is practicable.

NEW SECTION

WAC 192-600-025 Employee failure to provide proper notice.

If the department determines that the employee failed to provide proper notice to the employer, the employee's benefits will be denied for a period of time equal to the number of days that notice was insufficient.

Example: If an employee should have provided 30 days' notice for a qualifying event the employee was aware of 60 days in advance, but instead the employee provided notice 15 days prior to the

scheduled leave, the department will deny paid family or medical leave benefits by 15 days.

Chapter 192-610 WAC
Initial application for benefits

NEW SECTION

WAC 192-610-005 How does an employee apply for paid family or medical leave benefits?

- (1) An employee may apply for paid family or medical leave benefits under the state plan by:
 - (a) Using the department's online services;
 - (b) Contacting the paid family and medical leave claims center by telephone; or
 - (c) If the employee has a physical or sensory disability or has a circumstance that makes applying by internet or telephone unreasonable, the commissioner may authorize alternative formats.
- (2) An employee who works for an employer with an approved voluntary plan must follow the guidelines of the approved plan.

NEW SECTION

WAC 192-610-010 What information is an employee required to provide to the department when applying for paid family or medical leave benefits?

- (1) When an employee submits an application for paid family or medical leave benefits, the employee will need to provide information sufficient to the department to determine eligibility for benefits. This information will include, but is not limited to, information identifying the employee, the type and anticipated duration of leave, as well as certification or documentation to validate the qualifying event.
- (2) If the employee is in a claim year and has a need for successive periods of paid family or medical leave benefits beyond what was originally approved, or the employee needs paid family or medical leave benefits for a new qualifying event, the employee must reapply to determine if they are eligible.

NEW SECTION

WAC 192-610-015 When will the employee be required to provide documentation or certification to the department for paid family or medical leave benefits?

(1) Any time an employee applies for paid family or medical leave benefits, the application must be supported by documentation or certification as required in WACs 192-610-020, 192-610-025-, and 192-610-030.

(2) If an employee does not provide sufficient documentation or certification substantiating the eligibility for paid family or medical leave benefits, the department will deny benefits until such time as sufficient documentation or certification is provided.

(3) An employee may be required to provide other documentation or certification to substantiate the eligibility for paid family or medical leave benefits if:

- (a) The employee requests an extension of the leave originally planned;
- (b) Circumstances of the serious health condition change;
- (c) Information is provided to the department that the employee may no longer be eligible for paid family or medical leave benefits; or
- (d) The department questions the eligibility of the qualifying event.

NEW SECTION

WAC 192-610-020 What is required on the certification for medical leave or family leave to care for a family member who has a serious health condition?

When leave is taken because of an employee's own serious health condition or the serious health condition of a family member, certification from a health care provider will be required. Certification may include information such as:

- (1) The name, address, telephone number, and contact information of the health care provider and type of medical practice;
- (2) The approximate date on which the serious health condition started;
- (3) The anticipated duration of leave;
- (4) For medical leave, information from the health care provider that the employee has a serious

health condition and is unable to perform the employee's regular or customary work as well as any other restrictions; and

- (5) For family leave, information sufficient to establish that the family member has a serious health condition.

NEW SECTION

WAC 192-610-025 Documenting the birth or placement of a child for family leave.

When family leave is taken to bond with the employee's child after birth or placement, the department may request a copy of the child's birth certificate, certification from a health care provider, court documents to show proof of placement, or other reasonable documentation to substantiate the qualifying event.

NEW SECTION

WAC 192-610-030 Documenting a military exigency for family leave.

When family leave is taken because of a qualifying military exigency, the employee will be required to provide documents such as:

- (1) Active duty orders;
- (2) A statement to show why the leave is necessary;
- (3) The approximate dates in which leave will be needed; or
- (4) Other information to substantiate the qualifying event.

NEW SECTION

WAC 192-610-035 Documenting the family relationship.

The department may request reasonable documentation from the employee, such as a birth certificate, marriage certificate, or court document, to establish the familial relationship for the purposes of benefit eligibility.

NEW SECTION

WAC 192-610-040 Can an employee backdate an application for paid family or medical leave benefits?

(1) Generally, paid family or medical leave benefits are payable on or after the date the employee applies for benefits. An application may be backdated for good cause or for the convenience of the department.

(2) The burden of proof is on the employee to provide all pertinent facts and evidence to the department to determine good cause. The evidence must show that the factors prevented the employee from applying for benefits when the qualifying event occurred and any subsequent duration in which the employee did not apply for benefits. This evidence may include, but is not limited to, medical certification from a health care provider, evidence of a natural disaster, or other information required by the department.

(3) For the purpose of this section:

(a) "Good cause" means factors that prevented an employee from applying for paid family or medical leave benefits prior to or at the time of the need for paid leave such as a serious health condition, a period of incapacity, or a natural disaster.

(b) "For the convenience of the department" means for the purpose of program administration or situations when accepting timely applications was difficult or impossible. These include, but are not limited to, equipment breakdown or lack of available staff.

(4) An employee, or a person who can act on the behalf of the employee, who wants to backdate an application must apply for benefits during the first week in which the factors that constitute good cause no longer exist.

NEW SECTION

WAC 192-610-045 May the department refuse to accept an employee's application, appeal, or petition?

No employee or agent of the department may refuse to accept a properly-filed application or claim for paid family or medical leave benefits, a signed appeal, or a petition for review by the commissioner related to any program administered by this department regardless of the employee or agent's opinion concerning its merits.

NEW SECTION

WAC 192-610-050 How is my weekly benefit calculated?

When a valid claim year is established, the weekly benefit amount is determined using the following process:

(1) Establish the employee's average weekly wage by averaging the total gross wages earned in the employee's two highest-paid quarters in the qualifying period.

(2) If the employee's average weekly wage is less than fifty percent of the state's average weekly wage on the date the calculation is made, the benefit amount is ninety percent of the employee's average weekly wage, rounded down to the nearest dollar, subject to the current minimum benefit amount determined by the commissioner pursuant to RCW 50A.04.020(5)(b).

(3) If the employee's average weekly wage is more than fifty percent of the state's average weekly wage on the date the calculation is made, take ninety percent of the dollar amount that is less than fifty percent of the state's average weekly wage up to a maximum of ninety percent of the state's average weekly wage and add it to the amount that is fifty percent of the employee's average weekly wage that is above fifty percent of the state's average weekly wage. That amount is the employee's weekly benefit, rounded down to the nearest dollar, subject to the current maximum benefit amount determined by the commissioner pursuant to RCW 50A.04.020(5)(a).

Example 1

For this example, the state's average weekly wage is \$1,400.

An employee's average weekly wage is \$600. Since this amount is less than half of the state's average weekly wage, the employee receives 90% of their weekly wage.

The weekly benefit in example 1 is \$540.

Example 2

For this example, the state's average weekly wage is \$1,400.

An employee's average weekly wage is \$950. Since this number is more than half of the state's average weekly wage, calculate the first and second numbers, then add them together.

The first number is equal to 90% of the employee's total average weekly wage with a cap of half the state's average weekly wage. 90% of \$950 is \$855. Since \$855 is higher than \$700, the first number is \$700.

The second number is equal to 50% of the amount of the employee's average weekly wage that is higher than half the state's average weekly wage. The amount of the employee's average weekly wage that is higher than half the state's average weekly wage is \$250 ($\$950 - \700). 50% of this amount makes the second number \$125.

Add the two numbers together. The weekly benefit in example 2 is \$825.

NEW SECTION

WAC 192-610-055 How are typical workweek hours determined?

(1) For hourly employees, typical workweek hours are determined by dividing the sum of all hours reported in the qualifying period by fifty-two.

(2) For full-time salaried employees, the number of hours worked in a week are assumed to be forty, regardless of how many hours were actually worked. Typical workweek hours are determined by multiplying the number of weeks in the qualifying period the employee held the salaried position by forty, and then dividing that amount by fifty-two.

NEW SECTION

WAC 192-610-060 What is an employee's benefit length?

(1) The maximum duration of paid family leave may not exceed twelve times the typical workweek hours during a claim year.

(2) The maximum duration of paid medical leave may not exceed twelve times the typical workweek hours during a claim year. This leave may be extended an additional two times the typical workweek hours during a claim year if the employee experiences a

serious health condition with a pregnancy that results in a period of incapacity.

(3) An employee is not entitled to paid family or medical leave benefits under this chapter that exceeds a combined total of sixteen times the typical workweek hours during a claim year. The combined total of family and medical leave may be extended to eighteen times the typical workweek hours during a claim year if the employee experiences a serious health condition with a pregnancy that results in a period of incapacity.

NEW SECTION

WAC 192-610-065 Will the employer be notified if an employee files an application for paid family or medical leave benefits?

(1) The department will send a notice to the employee's current or most recent employer(s) when an employee files an application for paid family or medical leave benefits.

(2) Any employer who receives such a notice must respond to the department as indicated on the notice. If the employer does not reply within the provided time frame, the department will determine eligibility without input from the employer.