



Concise Explanatory Statement

Expanding Good Cause for Voluntarily Quitting Employment

Introduction

Pursuant to RCW 34.05.325(6), the Employment Security Department (Department) hereby provides the Department’s reasons for adopting the rules, a description of the variances between the proposed rules and the final rules, and a summary of comments received regarding the proposed rules and responses to the comments

Reasons for adopting the rule

This rulemaking will update WAC 192-150-055 to reflect portions of Engrossed Substitute House Bill 1106 (2023), which, among other things, expanded good cause for voluntarily quitting a job due to death, illness, or disability. Specifically, this rulemaking will change “immediate family” to “family member” effective September 3, 2023, and will require that, to establish good cause for leaving work voluntarily because of illness or disability of the claimant; the illness, disability, or death of a family member; or due to inaccessible care for a child or vulnerable adult, a claimant must request changes in working conditions, changes to work schedule, or a leave of absence.

Variance between proposed rule and final rule

There is no variance between the proposed and the final rule.

Summary of comments to proposed rules and agency response

Public Comment	Agency Response
<p>Zahoomi, LLC</p> <p>The proposed rulemaking for WAC 192-150-055 adds in its definition of "Illness":</p> <p>(xii) "Illness" includes a request from a medical professional, local health official, or the Secretary of Health to be isolated or quarantined as a consequence of an infection from a disease that is the subject of a public health emergency, <u>even if you or your family member have not been actually diagnosed with the disease that is the subject of a public health emergency.</u></p> <p>Small businesses already struggle with excessive absences of employees who feel empowered to call out for any reason whatsoever without needing any legitimate excuse if their absence is less than three days. That has made conducting</p>	<p>This comment addresses part of the rule that is not involved in this rulemaking. The change suggested by the commenter is outside the scope of this rulemaking.</p>

commerce in our beautiful state extremely burdensome because there is insufficient coverage. We experience this as stores closing early, opening late, or not opening at all because of a shortage of adequate coverage.

This definition of illness adds an additional layer of potential injury because employees will be able to collect unemployment without being diagnosed with any actual disease. It is one thing for the Governor to order all stores closed because of a public health emergency, but it is altogether different for someone to decide to self-quarantine. I suggest amending the language to state that the claimant is requested to be isolated or quarantined by the medical professional:

(xii) "Illness" includes a request from a medical professional, local health official, or the Secretary of Health that you quarantine or isolate as a consequence of an infection from a disease that is the subject of a public health emergency.

Gerrie Chiarella, Owner/Operator, Maid Brigade of Clark County

This house rule is a travesty. What that heck is WA's Paid Family and Medical Leave for? I think the goal hear seems to be to break small employers! The governor should not have the right to unilaterally make these types of decisions. If someone voluntarily resigns the position that they applied for and agreed to the terms of employment, why should the employer have to pay for unemployment benefits when something happens that they have to voluntarily resign. I understand hardships, this is where family bands together to help. Everything is being laid at the feet of employers to fix all of the problems that are associated with society, and the government is forcing this mindset. I think this House Rule should be overturned, save the tax payers money and stop all of these needless bureaucratic house rules. I am hoping a Governor will be elected in that undoes the majority of what Inslee has put in place so that our state can be one

The commenter suggests overturning ESHB 1106, which this rulemaking implements. Overturning a statutory change is outside the scope of rulemaking and beyond the Department's authority.

that people and businesses can afford to live and thrive in. The direction things are headed is making it a hostile state for both. Mimicking California's way is not a good way. How about some original minded thinkers instead of hopping on CA's idea train? Where's the incentive to work? You are creating a communist welfare state. It is very sad to see.

Julia Gorton, Senior Director of State Government Affairs, Washington Hospitality Association

On behalf of the Washington Hospitality Association, representing thousands of local restaurant and lodging establishments across the state, submit the below comments related to proposed WAC 192-150-055 to implement ESHB 1106, expanding reasons for good cause quit for voluntarily leaving employment.

We are opposed to proposed WAC 192-150-055 (2)(d)(ii), which greatly expands the definition of family member beyond the legislative directive:

(ii) "Family member" means your child, grandchild, grandparent, parent, sibling, or spouse, *and also includes any individual who regularly resides in your home or with whom you are in a relationship that creates an expectation that you care for the person, and that individual depends on you for care. "Family member" includes any individual who regularly resides in your home, except that it does not include an individual who simply resides in your home with no expectation that you care for the individual.* (Bold and italics added).

As an alternative, we suggest the Department consider other options:

- "Family member" means your child, grandchild grandparent, parent, sibling or spouse.
- "Family member" means your child, grandchild, grandparent, parent, sibling, or spouse, *and also includes any individual who regularly resides in your home or*

The commenter suggests that the proposed rule's expanded definition of family member exceeds the Legislature's intent by expanding family member beyond "a group of individuals related by blood, marriage, or adoption." However, the Legislature indicated its intent to expand the definition of family member by removing "immediate" as a modifier of "family member" in RCW 50.20.050(2)(b)(ii). The commenter's suggested alternative rule language removes relationships that are not based on blood, marriage, or adoption but that create an expectation of care from the proposed rule. The Department maintains that such relationships should be included in the definition of family member to be inclusive of a wide variety of family structures. To narrow the definition from the proposed rule language as suggested by the commenter would likely be contrary to the Legislature's intent.

The commenter notes that the Legislature could have included the definitions of family members in ESHB 1106 that it included in ESSB 5097, but because it did not, the Legislature must not have intended those definitions to apply to ESHB 1106. The Department responds that its rule needs to be updated to provide clarity for claimants and employers as to who is included in the definition of "family member." In assessing what would be appropriate definitions, the Department considered that consistency between the Department's programs and an inclusive approach to availability of benefits have been priorities of the Legislature and would support adoption of the proposed rule changes.

The commenter also expresses concerns about

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The Washington Hospitality Association engaged with policy makers as well as with the department in negotiations on ESHB 1106 to carefully craft the language as passed by the Legislature and signed into law. Those policy negotiations did not include an expanded definition of family member, and to enter it into the policy now is not appropriate.

The proposed language mirrors language from ESSB 5097 (2021), which expanded the eligibility for Paid Family and Medical Leave, which is now codified in RCW 50A.05.010 (11):

"Family member" means a child, grandchild, grandparent, parent, sibling, or spouse of an employee, and also includes any individual who regularly resides in the employee's home or where the relationship creates an expectation that the employee care for the person, and that individual depends on the employee for care. "Family member" includes any individual who regularly resides in the employee's home, except that it does not include an individual who simply resides in the same home with no expectation that the employee care for the individual.

This language was also thoughtfully negotiated and applies to a different program. Importantly, this portion of the Paid Family and Medical Leave program is funded completely by worker premiums. An additional consideration is that the Department did not have the directive from the Legislature to expand the family member definition under PFML until ESSB 5097 passed with the above authorizing language. The same authorizing language does not exist in ESHB 1106. Because ESHB 1106 was passed after ESSB 5097, the Legislature certainly could have referenced 50A.05.010(11) or included it in the statute if it

administration of the Paid Family Medical Leave program in that insufficient audits or controls are in place to determine who is a "family member." Unemployment insurance claim adjudication uses self-attestation to determine whether a claimant had to leave employment due to the death, illness, or disability of a family member. In contrast to the Paid Family Medical Leave program, employers actively participate in the unemployment insurance claim adjudication process for job separations, which provides employers with an opportunity to dispute the familial relationship during adjudication.

was their intent to expand “family member” beyond “a group of individuals related by blood, marriage, or adoption.”

Since ESSB 5097 has passed with an expanded definition of “family member”, there has not been sufficient audit or controls put in place. Rather, program administrators ask claimants to sign an affidavit suggesting the relationship meets the standards of the law. We do not believe this is an appropriate control measure, particularly given the level of fraud the Department has had to defend against in recent years.

Because ESHB 1106 did not authorize an expanded definition of “family member”, nor was it considered in policy negotiations among stakeholders and because the appropriate controls do not exist to adequately demonstrate a relationship “creates and expectation of care”, we ask the Department not include this definition in the final rules.

**Katie Beeson, Director of Government Affairs,
Washington Food Industry Association**

On behalf of the Washington Food Industry Association, representing neighborhood grocers, convenience stores and suppliers across Washington State, we would like to submit the below comments related to proposed WAC 192-150-055 to implement ESHB 1106, expanding reasons for good cause quit for voluntarily leaving employment.

We are opposed to proposed WAC 192-150-055 (2)(d)(ii), which greatly expands the definition of family member beyond the legislative directive: (ii) "Family member" means your child, grandchild, grandparent, parent, sibling, or spouse, *and also includes any individual who regularly resides in your home or with whom you are in a relationship that creates an expectation that you care for the person, and that individual depends on you for care. "Family member" includes any individual who regularly resides in your home, except that it does not include an individual who simply resides in your home with no expectation that you care for the*

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The commenter notes that the Legislature could have included the definitions of family members in ESHB 1106 that it included in ESSB 5097, but because it did not, the Legislature must not have intended those definitions to apply to ESHB 1106. The Department responds that its rule

individual. (Bold and italics added).

As an alternative, we suggest the Department consider other options:

- “Family member” means your child, grandchild, grandparent, parent, sibling or spouse.
- "Family member" means your child, grandchild, grandparent, parent, sibling, or spouse, ***and also includes any individual who regularly resides in your home or with whom you are in a relationship that creates an expectation that you care for the person, and that individual depends on you for care. "Family member" includes any individual who regularly resides in your home, except that it does not include an individual who simply resides in your home with no expectation that you care for the individual.***

The Washington Food Industry Association opposed ESHB 1106. However, we worked closely with lawmakers in the final stages of negotiations on the bill to ensure the language had the least amount of impact possible for our members. We were particularly supportive of expanding the language of family member to be more inclusive. Unfortunately, the language proposed goes beyond the intent of the original bill language.

The language proposed by our team and our colleagues’ mirrors language from ESSB 5097 (2021), which expanded the eligibility for Paid Family and Medical Leave, which is now codified in RCW 50A.05.010 (11):

"Family member" means a child, grandchild, grandparent, parent, sibling, or spouse of an employee, and also includes any individual who regularly resides in the employee's home or where the relationship creates an expectation that the employee care for the person, and that individual depends on the employee for care. "Family member" includes any individual who regularly resides in the employee's home, except that it does not include an individual who simply resides in the same home with no expectation that the employee care for the individual.

This language was also thoughtfully negotiated and applies to a different program. Importantly,

needs to be updated to provide clarity for claimants and employers as to who is included in the definition of “family member.” In assessing what would be appropriate definitions, the Department considered that consistency between the Department’s programs and an inclusive approach to availability of benefits have been priorities of the Legislature and would support adoption of the proposed rule changes.

The commenter also expresses concerns about administration of the Paid Family Medical Leave program in that insufficient audits or controls are in place to determine who is a “family member.” Unemployment insurance claim adjudication uses self-attestation to determine whether a claimant had to leave employment due to the death, illness, or disability of a family member. In contrast to the Paid Family Medical Leave program, employers actively participate in the unemployment insurance claim adjudication process for job separations, which provides employers with an opportunity to dispute the familial relationship during adjudication.

this portion of the Paid Family and Medical Leave program is funded completely by worker premiums. An additional consideration is that the Department did not have the directive from the Legislature to expand the family member definition under PFML until ESSB 5097 passed with the above authorizing language. The same authorizing language does not exist in ESHB 1106.

Additionally, since ESSB 5097 has passed with an expanded definition of “family member”, there has not been sufficient audit or controls put in place. This is concerning given the levels of fraud the department has been exposed to in recent years.

Because ESHB 1106 did not authorize an expanded definition of “family member”, nor was it considered in policy negotiations among stakeholders and because the appropriate controls do not exist to adequately demonstrate a relationship “creates and expectation of care”, we ask the Department not include this definition in the final rules.

Max Martin, Director of Government Affairs, Associated Builders and Contractors Western Washington

The Associated Builders and Contractors of Western Washington submit the below comments related to proposed WAC 192-150-055 to implement ESHB 1106, expanding reasons for good cause quit for voluntarily leaving employment.

We oppose WAC 192-150-055 (2)(d)(ii). This section excessively broadens the scope of 'family member' beyond what was originally intended by legislative guidelines. The current definition includes not only immediate family members like children, grandparents, parents, siblings, or spouses, but also any individual living regularly in your household or those you have a caring relationship with, who rely on you for support. However, it excludes individuals who live in the same household without any caregiving

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expectations.

We recommend the Department to consider alternative definitions:

Defining "Family member" as only immediate family members: child, grandchild, grandparent, parent, sibling, or spouse.

Keeping the broader definition but clarifying the inclusion and exclusion criteria for who constitutes a "family member".

During the development of ESHB 1106, stakeholders actively participated in discussions with policymakers and the Department, aiming to precisely shape the language that was ultimately passed by the Legislature and enacted. These discussions did not encompass an extended definition of 'family member', thus its current inclusion is inappropriate.

We note that the proposed definition is similar to that in ESSB 5097 (2021), concerning Paid Family and Medical Leave, now part of RCW 50A.05.010 (11). The definition in ESSB 5097 was also a result of meticulous negotiations and applies to a separate program entirely funded by employee premiums. ESSB 5097's passage included specific legislative direction to broaden the 'family member' definition under PFML, a directive absent in ESHB 1106. Had the Legislature intended to extend the 'family member' definition in ESHB 1106 to match that of PFML, it would have been explicitly referenced or included.

Since the passage of ESSB 5097 with its expanded 'family member' definition, we observe a lack of thorough auditing or control measures. Program administrators currently rely on affidavits from claimants to verify the relationship meets legal standards, a method we find inadequate, especially considering the Department's recent struggles with fraud.

Therefore, given that ESHB 1106 neither authorized an expanded 'family member' definition nor included it in stakeholder negotiations, and considering the lack of robust controls to verify a 'care expectation' relationship, we urge the Department not to adopt this

have included the definitions of family members in ESHB 1106 that it included in ESSB 5097, but because it did not, the Legislature must not have intended those definitions to apply to ESHB 1106. The Department responds that its rule needs to be updated to provide clarity for claimants and employers as to who is included in the definition of "family member." In assessing what would be appropriate definitions, the Department considered that consistency between the Department's programs and an inclusive approach to availability of benefits have been priorities of the Legislature and would support adoption of the proposed rule changes.

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