

Chapter 192-530 WAC
VOLUNTARY PLANS

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WAC

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WAC 192-530-010 What are the employer application requirements for voluntary plans? (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 nonrefundable. If the voluntary plan is denied, a new application fee is required with each additional application.

(2) Voluntary plans will take effect on the first day of the quarter immediately following the approval of the plan.

[Statutory Authority: RCW 50A.04.215. WSR 18-12-032, § 192-530-010, filed 5/29/18, effective 6/29/18.]

WAC 192-530-020 Voluntary plans—Employer plan requirements.

(1) An employer's voluntary plan must:

(a) Allow the employee to take at least the same duration of leave from work as the state plan;

(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.

(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.

(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 child. The weekly benefit amount is \$750. The employer decides to pay the employee \$1,500 weekly over 6 weeks. In addition, the employer and the employee agree that the employee will return to work after 6 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.

(4) A two hundred fifty dollar fee will be required for every new application or nonstatutorily required amendment filed by an employer seeking approval for a voluntary plan.

(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 30th each year. The employer is responsible for paying the premiums due to the state plan in accordance with WAC 192-510-060.

[Statutory Authority: RCW 50A.04.215. WSR 18-12-032, § 192-530-020, filed 5/29/18, effective 6/29/18.]

WAC 192-530-030 Voluntary plans—Employee eligibility criteria.

(1) To qualify for an employer's approved voluntary plan, an employee must have been:

(a) In employment for at least eight hundred twenty hours during the qualifying period and in employment with that employer for at least three hundred forty hours; or

(b) Covered by an approved voluntary plan through their most recent previous employer in the employee's qualifying period.

(2) An employer may waive the requirements of subsection (1) of this section, in whole or in part, to allow an employee to be eligible for benefits through the voluntary plan.

(3) 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.

(4) When an employee files a claim for benefits, an employer will access the employee's weekly benefit amount and typical workweek hours 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.

(5) 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.

[Statutory Authority: RCW 50A.04.215. WSR 19-23-090, § 192-530-030, filed 11/19/19, effective 12/20/19; WSR 18-12-032, § 192-530-030, filed 5/29/18, effective 6/29/18.]

WAC 192-530-035 When must an employer with a voluntary plan provide benefit payments? An employer with an approved voluntary plan must send the first benefit payment to the employee within thirty calendar days of the first day of leave, or the receipt of a properly completed application for benefits, whichever is later. Subsequent payments must be sent on the established regular pay schedule at no longer than monthly intervals. Failure to adhere to these requirements may result in the termination of the voluntary plan by the department.

[Statutory Authority: RCW 50A.04.215. WSR 18-22-080, § 192-530-035, filed 11/2/18, effective 12/3/18.]

WAC 192-530-040 Voluntary plans—Notice requirements under RCW 50A.20.020. (1) The department will provide a notice that meets the requirements of RCW 50A.20.020 to employers with approved voluntary plans if requested.

(2) Employers may create their own notices that meet the requirements of RCW 50A.20.020. 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.

[Statutory Authority: RCW 50A.05.60 [50A.05.060] and 50A.25.030. WSR 20-01-087, § 192-530-040, filed 12/12/19, effective 1/12/20. Statutory Authority: RCW 50A.04.215. WSR 18-12-032, § 192-530-040, filed 5/29/18, effective 6/29/18.]

WAC 192-530-050 Avoiding a duplication of benefits under state and approved voluntary plans. (1) Employees cannot collect benefits from both the state plan and an approved 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; and
(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.

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

(3) If the employee is covered by more than one plan, whether state, voluntary, or a combination of either, the employee is considered covered by the employer for which the employee worked the most hours during the qualifying period.

(a) If the employee worked an equal number of hours for more than one employer during the qualifying period, then the employee is considered covered by the employer for which the employee worked the most hours since the qualifying period.

(b) If the employee worked an equal number of hours for more than one employer since the qualifying period, then the employee is considered covered by the employer for which the employee has an earlier start date.

[Statutory Authority: RCW 50A.04.215. WSR 19-23-090, § 192-530-050, filed 11/19/19, effective 12/20/19; WSR 18-12-032, § 192-530-050, filed 5/29/18, effective 6/29/18.]

WAC 192-530-060 How can approved voluntary plans end and what happens when they do? (1) An approved voluntary plan ends when either the employer withdraws the plan or the agency terminates the plan for good cause. When a voluntary plan ends either through termination or withdrawal the following requirements must be satisfied:

(a) Benefits and benefit eligibility under a voluntary plan must be maintained for all employees covered by that plan until the effective date of termination or withdrawal.

(b) On the effective date of a voluntary plan termination or withdrawal, employees currently taking family or medical leave under this chapter are entitled to employment restoration under RCW 50A.30.010 until the leave ends.

(c) Employers must notify employees of any plan withdrawal or termination within five business days of notification by the department of the effective date of the termination or withdrawal.

(2) **Withdrawal.** Employers have the right to withdraw a voluntary plan under RCW 50A.30.010 and as provided herein:

(a) If an employer chooses to withdraw a voluntary plan due to a legally required increase in the benefit amounts or any change in the rate of employee premiums, the employer must provide notice to the department at least thirty days prior to the date the change goes into effect, stating the reason for the withdrawal. The plan will be considered withdrawn on the date of the change. Within thirty days of the effective date of withdrawal, the employer must remit to the department any employee wages withheld for the purpose of paying paid family or medical leave benefits that were not used to pay paid family or medical leave benefits.

(b) If the employer chooses to withdraw a voluntary plan for any other reason, the employer must provide notice to the department at least thirty days prior to the end of a calendar quarter. The plan will be considered withdrawn on the first day of the calendar quarter following the properly provided notice. If notice is provided less than thirty days prior to the end of a quarter, the plan will be considered withdrawn on the first day of the second calendar quarter following notice of the withdrawal. Within thirty days of the effective date of withdrawal, the employer must remit to the department any employee wages withheld for the purpose of paying paid family or medical leave benefits that were not used to pay paid family or medical leave benefits.

(c) On the effective date of a voluntary plan withdrawal, for employees currently receiving paid family or medical leave benefits under the voluntary plan, the employer will have the option to:

(i) Continue to pay benefits under the terms of the voluntary plan until the total amount of the benefit is paid or the duration of leave ends, whichever happens first; or

(ii) Immediately pay the employee the maximum remaining amount of benefits available to the employee under the terms of the voluntary plan, regardless of the duration of leave that is actually taken.

(d) Any benefit payments made by an employer to an employee on leave at the time of a voluntary plan withdrawal under (b) of this

subsection will be deducted from any moneys owed to the department as described in (a) of this subsection.

(3) **Termination.** The department may terminate an employer's voluntary plan for good cause as defined under WAC 192-530-070 and as provided herein:

(a) If the department terminates an employer's voluntary plan, the department will notify the employer of the effective date of and reason for the termination. 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 any contributions held in trust as required by RCW 50A.30.050, 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 is due immediately. Any balance owed will begin accruing interest on the thirtieth calendar day after the date of the invoice.

(b) On the effective date of a voluntary plan termination, employees currently receiving paid family or medical leave benefits under the voluntary plan are, if otherwise eligible under the state plan, immediately entitled to benefits from the state plan.

[Statutory Authority: RCW 50A.05.060. WSR 21-04-067, § 192-530-060, filed 1/29/21, effective 3/1/21. Statutory Authority: RCW 50A.04.215. WSR 19-23-090, § 192-530-060, filed 11/19/19, effective 12/20/19; WSR 18-22-080, § 192-530-060, filed 11/2/18, effective 12/3/18; WSR 18-12-032, § 192-530-060, filed 5/29/18, effective 6/29/18.]

WAC 192-530-070 What is good cause for terminating an approved voluntary plan? The department may terminate a voluntary plan if there is a risk that benefits will not be paid or for other good cause shown. Good cause for terminating a voluntary plan includes, but is not limited to, an employer's failure to:

- (1) Pay timely and accurate paid family or medical leave benefits;
- (2) Provide leave for a qualified event;
- (3) Protect the employment and employment benefits of an employee when required;
- (4) Provide complete quarterly reports;
- (5) Report to the department any amendments made to the voluntary plan;
- (6) Adhere to the approved voluntary plan; or
- (7) Adhere to the requirements of Title 50A RCW or chapter 192-500 WAC and thereafter (chapters 192-500 through 192-899 WAC).

[Statutory Authority: RCW 50A.05.060. WSR 21-04-067, § 192-530-070, filed 1/29/21, effective 3/1/21. Statutory Authority: RCW 50A.04.215. WSR 18-22-080, § 192-530-070, filed 11/2/18, effective 12/3/18.]

WAC 192-530-090 Can an employer with an approved voluntary plan make deductions from a benefit payment? Employers are permitted, with express written agreement from the employee, to make deductions from voluntary plan benefit payments including, but not limited to, health insurance premium payments, retirement contributions, applicable federal taxes, or other purposes, unless prohibited by law.

[Statutory Authority: RCW 50A.04.215. WSR 19-23-090, § 192-530-090, filed 11/19/19, effective 12/20/19.]

WAC 192-530-100 Are voluntary plans required to pay pandemic leave assistance benefits? (1) Voluntary plans are not required to pay pandemic leave assistance benefits to employees.

(2) Employees eligible for pandemic leave assistance who work for an employer with an approved voluntary plan may apply to the state for benefits.

[Statutory Authority: RCW 50A.05.060, 50A.25.030, 50A.05.010 and 2021 c 109 § 5. WSR 21-16-062, § 192-530-100, filed 7/29/21, effective 8/1/21.]