

September 2022

**Long-Term Services and Supports Trust/WA Cares Fund
Implementation of Substitute House Bill (SHB) 1732,
Engrossed Substitute House Bill (ESHB) 1733, and Phase 3**

INTRODUCTION

As required under RCW 34.05.328, the Leave and Care Division of the Employment Security Department (department) is placing into the rulemaking file an implementation plan regarding amendments to Title 192 WAC to improve program operations and clarify program requirements. The new and amended rules implement Substitute House Bill (SHB) 1732 (Chapter 1, Laws of 2022), Engrossed Substitute House Bill (ESHB) 1733 (Chapter 2, Laws of 2022), and the third phase of the department's initial program implementation. The rules provide guidance to employees and employers regarding voluntary exemptions from the Long-Term Services and Supports Trust program, referred to as the WA Cares Fund program. The rules outline application and qualification requirements for voluntary exemptions and include four new types of exemptions added by ESHB 1733. The rules also implement provisions of ESHB 1733 which require three of the new voluntary exemptions to be discontinued by the individual within a specific time period when conditions qualifying them for the exemption are no longer met. The rules outline notification requirements and penalties for failing to provide required notifications to discontinue an exemption. The rules also delay the date self-employed individuals may elect coverage, make a reference correction to how the department will determine wages earned and hours worked for self-employed individuals, and address employer audit procedures that align with employer audit procedures for the Paid Family and Medical Leave program.

Rulemaking history:

CR-101 filed for Phase 3: November 2, 2021 as WSR # 21-22-107

CR-101 filed for SHB 1732 and ESHB 1733: March 30, 2022 as WSR # 22-08-039

CR-102 filed (combining SHB 1732, ESHB 1733, and Phase 3): August 3, 2022 as WSR # 22-16-111

Stakeholder meeting: July 18, 2022

Public rulemaking hearing: September 6, 2022

CR-103 filed as WSR # 22-20-044 and rules adopted: September 28, 2022

Rules effective: October 29, 2022

New and amended rules include:

WAC 192-905-005 Eligibility requirements for an employee to receive a permanent exemption from the long-term services and supports trust program.

WAC 192-905-006 Eligibility requirements for an employee to receive a conditional exemption from the long-term services and supports trust program.

WAC 192-905-007 Notification requirements and penalties for discontinuing conditional exemptions.

WAC 192-905-010 How and when can an employee apply for an exemption from the long-term services and supports trust program?

WAC 192-910-015 What are the employer's responsibilities for premium deductions?

WAC 192-915-005 Election of coverage for self-employed persons.

WAC 192-915-015 How will the department determine the wages earned and hours worked for self-employed persons electing coverage?

WAC 192-930-005 Audit procedures.

WAC 192-930-010 What happens if an employer fails to provide requested information to the department for an audit?

WAC 192-520-010 Parties to collective bargaining agreements.

WAC 192-610-025 Birth, placement, or death of a child and required documentation.

PLAN TO IMPLEMENT AND ENFORCE THE RULE

The department will integrate the new and amended rules into operational policy and discuss the rules with staff members. The content of the rules will also be integrated into the program's technological functions, to the extent possible, to implement the changes, automate processes, and simplify the customer experience.

PLAN TO INFORM AND EDUCATE AFFECTED PERSONS ABOUT THE RULE

Information regarding the new and amended rules will be posted on the department's website and included in all relevant online literature. Customer service staff members will be trained on the subject matter of the rules and will be available by phone and email to answer customer questions. Emails are sent to all mailing list subscribers summarizing the rulemaking processes and providing updates on any rules. Additional information, including the final text of the amendments, will be available on the program's rulemaking website. In addition, the department is committed to making the exemption application process efficient and effective for workers, which includes refining application processes to assist when there may be a language barrier or there is difficulty accessing technology to apply. The department has staff dedicated to processing and approving exemption applications and will process applications as expeditiously as possible. The department is also committed to working with stakeholders to identify ways to streamline the application process within the authority granted under RCW 50B.04.055.

PLAN TO PROMOTE AND ASSIST VOLUNTARY COMPLIANCE

The plan to promote and assist voluntary compliance will be identical to the plan to inform and educate affected persons about the rules.

PLAN TO EVALUATE WHETHER THE RULES ACHIEVE THE PURPOSE FOR WHICH THEY WERE ADOPTED

The department will consider feedback from customers and the stakeholder community to gauge the effectiveness and understanding of the changes to the rules.