# Rule Review Items – September 10, 2024

# Item #1 – Family Member Definition

**Staff note**: Engrossed Substitute Senate Bill ([ESSB 5793](https://app.leg.wa.gov/billsummary?BillNumber=5793&Year=2023&Initiative=false)), Chapter 356, Laws of 2024, passed during the 2024 legislative session, effective January 1, 2025. Section 1 of this bill amends RCW 49.46.210(1)(b)(iii) to clarify an employee is authorized to use paid sick leave when the employee’s place of business or an employee’s child’s school or place of care has been closed by order of a public official for any health-related reason or after the declaration of an emergency by a local or state government or agency, or federal government. Section 1 also amends RCW 49.46.210(2) to expand the definition of a family member to include any individual who regularly resides in the employee’s home or where the relationship creates an expectation the employee cares for the person and that individual depends on the employee for care, except it does not include an individual who simply resides in the same home with no expectation the employee cares for the individual. The definition of a child was also expanded to include a child’s spouse and registered domestic partner.

*Note: The family member definition in ESSB 5793 does not include a minor/dependent child or a parent-in-law as currently provided in WAC 357-01-172 (see highlighted blue text below).* *However, a minor/dependent child and parent-in-law will remain in the expanded definition of family member for WAC 357-31-130 since they are already included in who the employer must allow an employee to use their accrued sick leave for. In other words, removing them for this purpose would be taking away from the current state.*

A policy decision was made to expand the definition of a family member for all sick leave reasons provided in WAC 357-31-130, not just limiting to ones included in RCW 49.46.210, and also apply these changes to both overtime-eligible and overtime-exempt employees to allow for equal treatment of all employees.

At the August rules meeting, we requested feedback from HR Professionals on the following implementation options:

* **Option 1**: Expand the definitions of family member and child in the Definitions Chapter, chapter 357-01 WAC; and
* **Option 2:** Expand the definitions of family member and child in WAC 357-31-130, When must an employer allow an employee to use their accrued sick leave?

The reason why we asked for feedback on the implementation options is because HR Professionals would be the ones helping their non-represented employees with leave questions (including who employees can take their leave for and for what reasons). The two options have the exact same outcome; both options expand the definition of family member for all sick leave reasons provided in WAC 357-31-120 and apply to overtime-exempt employees.

We received feedback from 27 stakeholders, with 21 of them recommending option 1.

We are proposing to:

* Amend WAC 357-01-072 to expand the definition of child for the purpose of using accrued sick leave under WAC 357-31-130 to include a child’s spouse or child’s registered domestic partner.
* Amend WAC 357-01-172 to expand the definition of family member for the purpose of using accrued sick leave under WAC 357-31-130 to include 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 does not include an individual who simply resides in the same home with no expectation that the employee cares for the individual for the purposes of WAC 357-31-130.
* Amend WAC 357-31-130(5) to align with the changes made to RCW 49.46.210(1)(b)(iii).

Lead: Inna Livingston

**AMENDATORY SECTION**

**WAC 357-01-072 Child.**

A biological, adopted, foster child, stepchild, legal ward, or a child of a person standing *in loco parentis*, a child of a legal guardian, or a child of a de facto parent, regardless of age or dependency status. For the purpose of using accrued sick leave under WAC 357-31-130, child also includes a child’s spouse or child’s registered domestic partner.

**AMENDATORY SECTION**

**WAC 357-01-172 Family members.**

1. Individuals considered to be members of the family are parent, sibling, parent-in-law, spouse, registered domestic partner, grandparent, grandchild, minor/dependent child, and child.
2. For the purpose of domestic violence, sexual assault, or stalking provisions within Title 357 WAC, in addition to subsection (1) of this section, family member also includes a domestic partner as defined in RCW [26.60.020](http://app.leg.wa.gov/RCW/default.aspx?cite=26.60.020) or a person with whom the employee has a dating relationship as defined in RCW [49.76.020](http://app.leg.wa.gov/RCW/default.aspx?cite=49.76.020).

(3) For the purpose of using accrued sick leave under WAC 357-31-130, in addition to subsection (1) of this section “family member” 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 does not include an individual who simply resides in the same home with no expectation that the employee cares for the individual.

**AMENDATORY SECTION**

**WAC 357-31-130 When must an employer allow an employee to use their accrued sick leave?**

The employer may require medical verification or certification of the reason for sick leave use in accordance with the employer's leave policy and in compliance with chapter 296-128 WAC.

Employers **must** allow the use of accrued sick leave under the following conditions:

(1) An employee's mental or physical illness, disability, injury or health condition that has incapacitated the employee from performing required duties; to accommodate the employee's need for medical diagnosis, care or treatment of a mental or physical illness, injury or health condition; or an employee's need for preventive medical care.

(2) By reason of exposure of the employee to a contagious disease when the employee's presence at work would jeopardize the health of others.

(3) When a high-risk employee seeks an accommodation to protect themselves from the risk of exposure to an infectious or contagious disease and the employer determines no other accommodation is reasonable besides the use of leave.

(4) To allow an employee to provide care for a child who has been exposed to a contagious disease and is required to quarantine; or when a household or family member needs additional care, not covered by subsection (6) of this section, who has been exposed to a contagious disease and is required to quarantine.

(5) When the employee's place of business has been closed by order of a public official for any health-related reason, or when an employee's child's school or place of care has been closed for such health-related reason~~.~~ or after the declaration of an emergency by a local or state government or agency, or by the federal government.

(6) To allow an employee to provide care for a family member with a mental or physical illness, injury or health condition; care of a family member who needs medical diagnosis, care or treatment of a mental or physical illness, injury or health condition; or care for a family member who needs preventive medical care.

(7) For family care emergencies per WAC 357-31-290, 357-31-295, 357-31-300 and 357-31-305.

(8) When an employee is required to be absent from work to care for members of the employee's household or relatives of the employee or relatives of the employee's spouse/registered domestic partner who experience an illness or injury, not including situations covered by subsection (6) of this section.

(a) The employer must approve up to five days of accumulated sick leave each occurrence. Employers may approve more than five days.

(b) For purposes of this subsection, "relatives" is limited to spouse, registered domestic partner, child, grandchild, grandparent or parent.

(9) When requested as a supplemental benefit while receiving a partial wage replacement for paid family and/or medical leave under Title 50A RCW as provided in WAC 357-31-248. Leave taken under this subsection may be subject to verification that the employee has been approved to receive benefits for paid family and/or medical leave under Title 50A RCW.

(10) If the employee or the employee's family member, as defined in chapter 357-01 WAC, is a victim of domestic violence, sexual assault or stalking as defined in RCW 49.76.020. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730.

(11) In accordance with WAC 357-31-373, for an employee to be with a spouse or registered domestic partner who is a member of the armed forces of the United States, National Guard, or reserves after the military spouse or registered domestic partner has been notified of an impending call or order to active duty, before deployment, or when the military spouse or registered domestic partner is on leave from deployment.

(12) When an employee requests to use sick leave for the purpose of parental leave to bond with a newborn, adoptive or foster child for a period up to 18 weeks. Sick leave for this purpose must be taken during the first year following the child's birth or placement.

(13) If the employee requests to use sick leave when granted a temporary leave of absence for legislative service in accordance with WAC 357-31-374(2).

**REFERENCE ONLY**

**RCW**[**49.46.210**](http://app.leg.wa.gov/RCW/default.aspx?cite=49.46.210) **Paid sick leave—Authorized purposes—Limitations. *(Effective January 1, 2025.)***

(1) Beginning January 1, 2018, except as provided in RCW [**49.46.180**](http://app.leg.wa.gov/RCW/default.aspx?cite=49.46.180), every employer shall provide each of its employees paid sick leave as follows:

(a) An employee shall accrue at least one hour of paid sick leave for every forty hours worked as an employee. An employer may provide paid sick leave in advance of accrual provided that such front-loading meets or exceeds the requirements of this section for accrual, use, and carryover of paid sick leave.

(b) An employee is authorized to use paid sick leave for the following reasons:

(i) An absence resulting from an employee's mental or physical illness, injury, or health condition; to accommodate the employee's need for medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or an employee's need for preventive medical care;

(ii) To allow the employee to provide care for a family member with a mental or physical illness, injury, or health condition; care of a family member who needs medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or care for a family member who needs preventive medical care; and

(iii) When the employee's place of business has been closed by order of a public official for any health-related reason, or when an employee's child's school or place of care has been closed for such a health-related reason or after the declaration of an emergency by a local or state government or agency, or by the federal government.

(c) An employee is authorized to use paid sick leave for absences that qualify for leave under the domestic violence leave act, chapter [**49.76**](http://app.leg.wa.gov/RCW/default.aspx?cite=49.76) RCW.

(d) An employee is entitled to use accrued paid sick leave beginning on the ninetieth calendar day after the commencement of his or her employment.

(e) Employers are not prevented from providing more generous paid sick leave policies or permitting use of paid sick leave for additional purposes.

(f) An employer may require employees to give reasonable notice of an absence from work, so long as such notice does not interfere with an employee's lawful use of paid sick leave.

(g) For absences exceeding three days, an employer may require verification that an employee's use of paid sick leave is for an authorized purpose. If an employer requires verification, verification must be provided to the employer within a reasonable time period during or after the leave. An employer's requirements for verification may not result in an unreasonable burden or expense on the employee and may not exceed privacy or verification requirements otherwise established by law.

(h) An employer may not require, as a condition of an employee taking paid sick leave, that the employee search for or find a replacement worker to cover the hours during which the employee is on paid sick leave.

(i) For each hour of paid sick leave used, an employee shall be paid the greater of the minimum hourly wage rate established in this chapter or his or her normal hourly compensation. The employer is responsible for providing regular notification to employees about the amount of paid sick leave available to the employee.

(j) Except as provided in (l) of this subsection, accrued and unused paid sick leave carries over to the following year, but an employer is not required to allow an employee to carry over paid sick leave in excess of 40 hours.

(k) Except as provided in (l) of this subsection, an employer is not required to provide financial or other reimbursement for accrued and unused paid sick leave to any employee upon the employee's termination, resignation, retirement, or other separation from employment. When there is a separation from employment and the employee is rehired within 12 months of separation by the same employer, whether at the same or a different business location of the employer, previously accrued unused paid sick leave shall be reinstated and the previous period of employment shall be counted for purposes of determining the employee's eligibility to use paid sick leave under (d) of this subsection. For purposes of this subsection (1)(k), "previously accrued and unused paid sick leave" does not include sick leave paid out to a construction worker under (l) of this subsection.

(l)(i) A construction industry employer must pay a construction worker, who has not met the 90th day eligibility under (d) of this subsection at the time of separation, the balance of the worker's accrued and unused paid sick leave at the end of the established pay period following the worker's separation pursuant to RCW [**49.48.010**](http://app.leg.wa.gov/RCW/default.aspx?cite=49.48.010)(2).

(ii) The definitions in this subsection (1)(l)(ii) apply throughout this subsection (1)(l) unless the context clearly requires otherwise.

(A) "Construction worker" means a worker who performed service, maintenance, or construction work on a jobsite, in the field or in a fabrication shop using the tools of the worker's trade or craft.

(B) "Construction industry employer" means an employer in the industry described in North American industry classification system industry code 23, except for residential building construction code 2361.

(2) The definitions in this subsection apply throughout this section, except for subsection (5) of this section:

(a) "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.

(b) "Child" means a biological, adopted, or foster child, a stepchild, a child's spouse, or a child to whom the employee stands in loco parentis, is a legal guardian, or is a de facto parent, regardless of age or dependency status.

(c) "Grandchild" means a child of the employee's child.

(d) "Grandparent" means a parent of the employee's parent.

(e) "Parent" means the biological, adoptive, de facto, or foster parent, stepparent, or legal guardian of an employee or the employee's spouse, or an individual who stood in loco parentis to an employee when the employee was a child.

(f) "Spouse" means a husband or wife, as the case may be, or state registered domestic partner.

(3) An employer may not adopt or enforce any policy that counts the use of paid sick leave time as an absence that may lead to or result in discipline against the employee.

(4) An employer may not discriminate or retaliate against an employee for his or her exercise of any rights under this chapter including the use of paid sick leave.

(5)(a) The definitions in this subsection apply to this subsection:

(i) "Average hourly compensation" means a driver's compensation during passenger platform time from, or facilitated by, the transportation network company, during the 365 days immediately prior to the day that paid sick time is used, divided by the total hours of passenger platform time worked by the driver on that transportation network company's driver platform during that period. "Average hourly compensation" does not include tips.

(ii) "Driver," "driver platform," "passenger platform time," and "transportation network company" have the meanings provided in RCW [**49.46.300**](http://app.leg.wa.gov/RCW/default.aspx?cite=49.46.300).

(iii) "Earned paid sick time" is the time provided by a transportation network company to a driver as calculated under this subsection. For each hour of earned paid sick time used by a driver, the transportation network company shall compensate the driver at a rate equal to the driver's average hourly compensation.

(iv) For purposes of drivers, the following definitions apply:

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

(B) "Child" means a biological, adopted, or foster child, a stepchild, a child's spouse, or a child to whom the driver stands in loco parentis, is a legal guardian, or is a de facto parent, regardless of age or dependency status.

(C) "Grandchild" means a child of the driver's child.

(D) "Grandparent" means a parent of the driver's parent.

(E) "Parent" means the biological, adoptive, de facto, or foster parent, stepparent, or legal guardian of a driver or the driver's spouse, or an individual who stood in loco parentis to a driver when the driver was a child.

(F) "Spouse" means a husband or wife, as the case may be, or state registered domestic partner.

(b) Beginning January 1, 2023, a transportation network company must provide to each driver operating on its driver platform compensation for earned paid sick time as required by this subsection and subject to the provisions of this subsection. A driver shall accrue one hour of earned paid sick time for every 40 hours of passenger platform time worked.

(c) A driver is entitled to use accrued earned paid sick time upon recording 90 hours of passenger platform time on the transportation network company's driver platform.

(d) For each hour of earned paid sick time used, a driver shall be paid the driver's average hourly compensation.

(e) A transportation network company shall establish an accessible system for drivers to request and use earned paid sick time. The system must be available to drivers via smartphone application and online web portal.

(f) A driver may carry over up to 40 hours of unused earned paid sick time to the next calendar year. If a driver carries over unused earned paid sick time to the following year, accrual of earned paid sick time in the subsequent year must be in addition to the hours accrued in the previous year and carried over.

(g) A driver is entitled to use accrued earned paid sick time if the driver has used the transportation network company's platform as a driver within 90 calendar days preceding the driver's request to use earned paid sick time.

(h) A driver is entitled to use earned paid sick time for the following reasons:

(i) An absence resulting from the driver's mental or physical illness, injury, or health condition; to accommodate the driver's need for medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or an employee's need for preventive medical care;

(ii) To allow the driver to provide care for a family member with a mental or physical illness, injury, or health condition; care of a family member who needs medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or care for a family member who needs preventive medical care;

(iii) When the driver's child's school or place of care has been closed by order of a public official for any health-related reason or has been closed after the declaration of an emergency by a local or state government or agency, or by the federal government;

(iv) For absences for which an employee would be entitled for leave under RCW [**49.76.030**](http://app.leg.wa.gov/RCW/default.aspx?cite=49.76.030); and

(v) During a deactivation or other status that prevents the driver from performing network services on the transportation network company's platform, unless the deactivation or status is due to a verified allegation of sexual assault or physical assault perpetrated by the driver.

(i) If a driver does not record any passenger platform time in a transportation network company's driver platform for 365 or more consecutive days, any unused earned paid sick time accrued up to that point with that transportation network company is no longer valid or recognized.

(j) Drivers may use accrued days of earned paid sick time in increments of a minimum of four or more hours. Drivers are entitled to request four or more hours of earned paid sick time for immediate use, including consecutive days of use. Drivers are not entitled to use more than eight hours of earned paid sick time within a single calendar day.

(k) A transportation network company shall compensate a driver for requested hours or days of earned paid sick time no later than 14 calendar days or the next regularly scheduled date of compensation following the requested hours or days of earned paid sick time.

(l) A transportation network company shall not request or require reasonable verification of a driver's qualifying illness except as would be permitted to be requested of an employee under subsection (1)(g) of this section. If a transportation network company requires verification pursuant to this subsection, the transportation network company must compensate the driver for the requested hours or days of earned paid sick time no later than the driver's next regularly scheduled date of compensation after satisfactory verification is provided.

(m) If a driver accepts an offer of prearranged services for compensation from a transportation network company during the four-hour period or periods for which the driver requested earned paid sick time, a transportation network company may determine that the driver did not use earned paid sick time for an authorized purpose.

(n) A transportation network company shall provide each driver with:

(i) Written notification of the current rate of average hourly compensation while a passenger is in the vehicle during the most recent calendar month for use of earned paid sick time;

(ii) An updated amount of accrued earned paid sick time since the last notification;

(iii) Reduced earned paid sick time since the last notification;

(iv) Any unused earned paid sick time available for use; and

(v) Any amount that the transportation network company may subtract from the driver's compensation for earned paid sick time. The transportation network company shall provide this information to the driver no less than monthly. The transportation network company may choose a reasonable system for providing this notification, including but not limited to: A pay stub; a weekly summary of compensation information; or an online system where drivers can access their own earned paid sick time information. A transportation network company is not required to provide this information to a driver if the driver has not worked any days since the last notification.

(o) A transportation network company may not adopt or enforce any policy that counts the use of earned paid sick time as an absence that may lead to or result in any action that adversely affects the driver's use of the transportation network.

(p) A transportation network company may not take any action against a driver that adversely affects the driver's use of the transportation network due to his or her exercise of any rights under this subsection including the use of earned paid sick time.

(q) The department may adopt rules to implement this subsection.

[ [2024 c 356 s 1](https://lawfilesext.leg.wa.gov/biennium/2023-24/Pdf/Bills/Session%20Laws/Senate/5793-S.SL.pdf?cite=2024%20c%20356%20s%201); [2024 c 39 s 1](https://lawfilesext.leg.wa.gov/biennium/2023-24/Pdf/Bills/Session%20Laws/Senate/5979.SL.pdf?cite=2024%20c%2039%20s%201); [2023 c 267 s 1](https://lawfilesext.leg.wa.gov/biennium/2023-24/Pdf/Bills/Session%20Laws/Senate/5111-S.SL.pdf?cite=2023%20c%20267%20s%201); [2022 c 281 s 6](https://lawfilesext.leg.wa.gov/biennium/2021-22/Pdf/Bills/Session%20Laws/House/2076-S.SL.pdf?cite=2022%20c%20281%20s%206); [2019 c 236 s 3](https://lawfilesext.leg.wa.gov/biennium/2019-20/Pdf/Bills/Session%20Laws/Senate/5233.SL.pdf?cite=2019%20c%20236%20s%203); [2017 c 2 s 5](https://leg.wa.gov/CodeReviser/documents/sessionlaw/2017pam1.pdf?cite=2017%20c%202%20s%205) (Initiative Measure No. 1433, approved November 8, 2016).]