



PROPOSED RULE MAKING

CR-102 (December 2017) (Implements RCW 34.05.320)

Do NOT use for expedited rule making

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FILED

DATE: December 20, 2021

TIME: 5:21 PM

WSR 22-01-191

Agency: Employment Security Department

☒ Original Notice

☐ Supplemental Notice to WSR _____

☐ Continuance of WSR _____

☒ Preproposal Statement of Inquiry was filed as WSR 20-13-041 ; or

☐ Expedited Rule Making--Proposed notice was filed as WSR _____; or

☐ Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or

☐ Proposal is exempt under RCW _____.

Title of rule and other identifying information: (describe subject)

WAC 192-110-015 Applications by standby workers—RCW 50.20.010

WAC 192-110-095 May I backdate my application for unemployment benefits (RCW 50.04.030)?

WAC 192-140-090 What happens if I do not schedule or report for reemployment services as provided in RCW 50.20.010(1)(e)?

WAC 192-150-055 Leaving work because of illness or disability—General rules and definitions—RCW 50.20.050(1)(b)(ii) and (2)(b)(ii)

WAC 192-180-005 Registration for work—RCW 50.20.010(1) and 50.20.230

WAC 192-180-025 Job search reviews

WAC 192-180-040 Directive to attend job search workshop or training course—RCW 50.20.044

WAC 192-270-065 Certification of satisfactory progress

WAC 192-310-030 What are the report and tax payment penalties and charges (RCW 50.12.220)?

WAC 192-250-020 What are the criteria for having shared work plan approved?

WAC 192-250-045 Who is not eligible for participation in the shared work program?

WAC 192-320-078 Catastrophic occurrence

WAC 192-320-082 How will the department determine good cause exists for failing to respond timely or adequately—RCW 50.29.021(5)?

WAC 192-140-098 What happens if the department suspects my claim is fraudulent?

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
January 27, 2022	9 am	Zoom Meeting ID: 861 9814 1778 Passcode: 307198 Call in: (253) 215-8782	Join Zoom Meeting: https://us02web.zoom.us/j/86198141778?pwd=NmRQZnNXcUR0M0JydVNxMVJzemgrZz09

Date of intended adoption: January 31, 2022 (Note: This is NOT the effective date)

Submit written comments to:

Name: Joshua Dye

Address: P.O. Box 9046, Olympia, WA 98507-9046

Email: rules@esd.wa.gov

Fax: 844-652-7096

Other:

By (date) January 6, 2021

Assistance for persons with disabilities:

Contact Teresa Eckstein

Phone: 360-507-9890

Fax: 360-586-4600

TTY: Relay 711

Email: teckstein@esd.wa.gov

Other:

By (date) January 20, 2022

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The Employment Security Department is engaging in rulemaking regarding whether certain emergency rules adopted during the COVID-19 response should be made permanent. The emergency rules cover registration for work, certification of satisfactory progress for training programs, penalty waivers, updates to certain definitions, WorkSource closures, shared work, standby status, and suspected fraudulent claims.

Reasons supporting proposal: In February of 2020, Governor Inslee proclaimed a State of Emergency in Washington in response to COVID-19. The Department filed a series of emergency rules to support the state's emergency response. The Department is now seeking input from the public regarding which of those emergency rules should be made permanent to continue supporting Washington workers and businesses.

Statutory authority for adoption: RCW 50.12.010 and RCW 50.12.040 provide general rulemaking authority to the Employment Security Department. RCW 50.04.030 allows the Commissioner to backdate an initial application for good cause. Under RCW 50.20.010(1)(a), an individual is required to register and report for work at an employment office as the Commissioner may prescribe, except that the Commissioner may by regulation waive those requirements in situations that are inconsistent with the purpose of the Employment Security Act. RCW 50.20.010(1)(e) requires an individual to participate in reemployment services unless the Commissioner determines there is justifiable cause for the claimant's failure to participate in such services. Under RCW 50.20.050(1)(b)(ii) and (2)(b)(ii), it is good cause to leave work voluntarily if the separation was necessary because of the illness or disability of a member of the claimant or the claimant's immediate family. RCW 50.20.240 requires the Department to implement job search monitoring. Under RCW 50.20.010(1)(c), an individual must be actively seeking work. Under RCW 50.20.044, if an otherwise eligible individual fails without good cause, as determined by the Commissioner under rules prescribed by the Commissioner, to attend a job search workshop or a training or retraining course when directed by the department and such workshop or course is available at public expense, such individual shall not be eligible for benefits with respect to any week in which such failure occurred. Under RCW 50.22.155(2)(d), in order for a claimant to continue their eligibility for training benefits, they must make satisfactory progress in the training as defined by the commissioner and certified by the educational institution. RCW 50.12.220 authorizes the Commissioner to waive penalties for good cause if the failure to file timely, complete, or correctly formatted reports or pay timely contributions was not due to the employer's fault. Under RCW 50.60.030, the Commissioner shall approve a shared work compensation plan if certain criteria are met; the Commissioner may also take into account any other factors which may be pertinent. Certain contribution paying base year employers may receive relief of benefit charges under RCW 50.29.021(3)(a)(iii) if the benefit charges result from payment to an individual who is unemployed as a result of closure of the employer's worksite for reasons directly attributable to a catastrophic occurrence. RCW 50.29.021(5) authorizes the Commissioner to determine whether an employer has good cause for failing to respond timely or adequately to a written request of the department for information relating to claims. RCW 50.20.010 addresses the availability requirements for certain individuals under quarantine or isolation. Under RCW 50.20.050(3), it is good cause to quit if during a public health emergency, the claimant worked at a health care facility, was directly involved in the delivery of health services, and left work for the period of quarantine because of exposure to or contracting the disease that is the subject of the declaration of the public health emergency. RCW 50.20.010 sets forth benefit eligibility conditions. RCW 50.20.160 establishes the circumstances in which the Department may issue a redetermination, including in the case of fraud. Under RCW 50.20.170, benefits shall be paid through employment offices in accordance with such regulations as the commissioner may prescribe. RCW 50.20.190 requires individuals to repay benefits they are paid to which they are not entitled. Under RCW 50.22.155(2)(b)(iv), the Department has authority to waive training program deadlines established under RCW 50.22.155(2)(b)(i) and (ii) for reasons deemed by the Commissioner to be good cause.

Statute being implemented: RCW 50.20.010(1)(a), (e) (exceptions from participating in reemployment services and justifiable cause for failing to schedule or participate in reemployment services); RCW 50.04.030 (backdate application); RCW 50.20.050(1)(b)(ii), (2)(b)(ii) (leaving work due to an illness or disability); RCW 50.20.044 (ineligibility for benefits for failure to attend a job search workshop or training unless an individual establishes good cause, as determined by the commissioner under rules prescribed by the commissioner); RCW 50.20.240 (job search monitoring); RCW 50.20.010(1)(c) (claimants required to actively seek work); RCW 50.22.155(2)(d) (training benefits eligibility requirement to make satisfactory progress in training as defined by the commissioner) RCW 50.12.220 (waiver of penalties for late reports or contributions); RCW 50.60.030 (criteria for approving a shared work compensation plan); RCW 50.22.155 (training benefits timeline); RCW 50.29.021(3)(a)(iii) (relief of benefit charges when charges result from payment to an individual who is unemployed due to a catastrophic occurrence that closes the employer's worksite); RCW 50.29.021(5) (good cause for an employer to fail to respond timely or adequately); RCW 50.20.010(1)(c)(ii), (5)(a) (benefit eligibility requirements for individuals under quarantine or isolation); RCW 50.20.050(3) (good cause for claimant who worked at a health care facility to leave work for period of quarantine); RCW 50.20.010 (benefit eligibility conditions); RCW 50.20.160 (redetermination); RCW 50.20.170 (payment of benefits); RCW 50.20.190 (recovery of benefit overpayments); RCW 50.22.155(2)(b)(iv) (waiver of certain training benefit program deadlines for reasons deemed by the commissioner to be good cause).

Is rule necessary because of a:			
Federal Law?		☐ Yes	☒ No
Federal Court Decision?		☐ Yes	☒ No
State Court Decision?		☐ Yes	☒ No
If yes, CITATION:			
Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: None			
Name of proponent: (person or organization) Employment Security Department		☐ Private ☐ Public ☒ Governmental	
Name of agency personnel responsible for:			
	Name	Office Location	Phone
Drafting:	Scott Michael	Olympia, WA	360-890-3448
Implementation:	Julie Lord	Olympia, WA	360-902-9579
Enforcement:	Julie Lord	Olympia, WA	360-902-9579
Is a school district fiscal impact statement required under RCW 28A.305.135?			☐ Yes ☒ No
If yes, insert statement here:			
The public may obtain a copy of the school district fiscal impact statement by contacting: Name: Address: Phone: Fax: TTY: Email: Other:			
Is a cost-benefit analysis required under RCW 34.05.328?			
☒ Yes: A preliminary cost-benefit analysis may be obtained by contacting: Name: Joshua Dye Address: P.O. Box 9046, Olympia, WA 98507-9046 Phone: 360-890-3472 Fax: 844-652-7096 TTY: Relay 711 Email: rules@esd.wa.gov Other: https://esd.wa.gov/newsroom/ui-rule-making/			
☐ No: Please explain:			
Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:			
This rule proposal, or portions of the proposal, may be exempt from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). Please check the box for any applicable exemption(s):			
☐ This rule proposal, or portions of the proposal, is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.			
Citation and description:			
☐ This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by RCW 34.05.313 before filing the notice of this proposed rule.			
☐ This rule proposal, or portions of the proposal, is exempt under the provisions of RCW 15.65.570(2) because it was adopted by a referendum.			

- ☐ This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(3). Check all that apply:
- | | |
|---|--|
| ☐ RCW 34.05.310 (4)(b)
(Internal government operations) | ☐ RCW 34.05.310 (4)(e)
(Dictated by statute) |
| ☐ RCW 34.05.310 (4)(c)
(Incorporation by reference) | ☐ RCW 34.05.310 (4)(f)
(Set or adjust fees) |
| ☐ RCW 34.05.310 (4)(d)
(Correct or clarify language) | ☐ RCW 34.05.310 (4)(g)
((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit) |

☐ This rule proposal, or portions of the proposal, is exempt under RCW ____.

Explanation of exemptions, if necessary:

COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES

If the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

☒ No Briefly summarize the agency's analysis showing how costs were calculated.

The proposed rules and amendments do not create additional tax burdens on employers of any size. The rulemaking provides flexibility for both employers and claimants in the case of a declared health emergency.

☐ Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

Date: December 20, 2021

Name: Dan Zeitlin

Title: Employment System Policy Director

Signature:

