

Title 192 WAC

EMPLOYMENT SECURITY DEPARTMENT

Chapters

- 192-04 **Practice and procedure.**
- 192-100 **General terms defined.**
- 192-110 **Applying for unemployment benefits.**
- 192-130 **Employer notices.**
- 192-140 **Reporting requirements to receive benefits.**
- 192-150 **Job separations.**
- 192-170 **Availability for work.**
- 192-180 **Job search requirements.**
- 192-190 **Deductions from unemployment benefits.**
- 192-200 **School or training.**
- 192-210 **Special category occupations.**
- 192-230 **Recovery of overpayments.**
- 192-250 **Shared work program.**
- 192-270 **Training benefits for dislocated workers.**
- 192-300 **Registering for unemployment insurance taxes.**
- 192-310 **Reporting of wages and taxes due.**
- 192-320 **Experience rating and benefit charging.**
- 192-330 **Collections and refunds.**
- 192-340 **Audits and technical assistance.**
- 192-350 **Transfer of business.**

DISPOSITION OF CHAPTERS FORMERLY CODIFIED IN THIS TITLE

**Chapter 192-12
SUBSTANTIVE RULES**

- 192-12-142 Claims, appeals, petitions—Filing not to be refused. [Order 2-72, § 192-12-142, filed 7/6/72.] Repealed by 10-11-046, filed 5/12/10, effective 6/12/10. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010.
- 192-12-151 Benefit payments—Not a determination of allowance. [Statutory Authority: RCW 50.12.010 and 50.12.040. 84-13-050 (Order 4-84), § 192-12-151, filed 6/18/84.] Repealed by 10-11-046, filed 5/12/10, effective 6/12/10. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010.
- 192-12-153 Payment of benefits—Initial allowance—Employer appeal. [Order 2-72, § 192-12-153, filed 7/6/72; General Order 2, § 192-12-153, filed 12/9/70.] Repealed by 10-11-046, filed 5/12/10, effective 6/12/10. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010.
- 192-12-154 Payment of benefits by appeals tribunal—Claimant appeal. [Order 2-72, § 192-12-154, filed 7/6/72; General Order 2, § 192-12-154, filed 12/9/70.] Repealed by 10-11-046, filed 5/12/10, effective 6/12/10. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010.
- 192-12-155 Payment of benefits by commissioner—Petition to court. [Order 2-72, § 192-12-155, filed 7/6/72; General Order 2, § 192-12-155, filed 12/9/70.] Repealed by 10-11-046, filed 5/12/10, effective 6/12/10. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010.
- 192-12-156 Overpayment of benefits—Credit to employers' account. [Order 2-72, § 192-12-156, filed 7/6/72; General Order 2, § 192-12-156, filed 12/9/70.] Repealed by 10-16-038, filed 7/26/10, effective 8/26/10. Statutory Authority: RCW 50.12.010 and 50.12.040. Later promulgation, see WAC 192-320-085.
- 192-12-160 Withdrawals from trust fund. [Regulation 17, filed 12/1/65, effective 1/1/66; Regulation 17, adopted 6/10/53, effective 6/20/53.] Repealed by 10-11-046, filed 5/12/10, effective 6/12/10. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010.
- 192-12-170 Unemployment compensation administration fund. [Regulation 18, adopted 6/10/53, effective 6/20/53.] Repealed by 10-11-046, filed 5/12/10, effective 6/12/10.

- 192-12-173 Federal programs—Maintenance of regulations and guidelines. [Order 2-72, § 192-12-173, filed 7/6/72.] Repealed by 10-11-046, filed 5/12/10, effective 6/12/10. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010.
- 192-12-365 Interpretive regulation—Definition of suitable work as it applies to agricultural labor. [Statutory Authority: RCW 50.12.010 and 50.12.040. 90-08-028, § 192-12-365, filed 3/29/90, effective 4/29/90.] Repealed by 10-11-046, filed 5/12/10, effective 6/12/10. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010.

**Chapter 192-16
INTERPRETATIVE REGULATIONS OF THE COMMISSIONER OF THE EMPLOYMENT SECURITY DEPARTMENT**

- 192-16-004 Interpretive regulation—Benefit year—Further defining initial separation from employment—RCW 50.04.030. [Statutory Authority: RCW 50.12.010 and 50.12.040. 90-17-104, § 192-16-004, filed 8/21/90, effective 8/21/90.] Repealed by 10-11-046, filed 5/12/10, effective 6/12/10. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010.
- 192-16-005 Interpretative regulations—Applications for initial determinations—Backdating—RCW 50.04.030. [Order 2-77, § 192-16-005, filed 9/2/77.] Repealed by 10-11-046, filed 5/12/10, effective 6/12/10. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010.
- 192-16-009 Disqualification for leaving work voluntarily—Meaning of good cause for claims with an effective date prior to January 4, 2004—RCW 50.20.050(1). [Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. 05-01-076, § 192-16-009, filed 12/9/04, effective 1/9/05. Statutory Authority: RCW 50.12.010 and 50.12.040. 82-17-052 (Order 6-82), § 192-16-009, filed 8/17/82; 80-10-052 (Order 4-80), § 192-16-009, filed 8/6/80; Order 2-77, § 192-16-009, filed 9/2/77.] Repealed by 10-11-046, filed 5/12/10, effective 6/12/10. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010.
- 192-16-015 Leaving work for marital or domestic reasons—RCW 50.20.050 (1)(d). [Statutory Authority: RCW 50.12.-010, 50.12.040, 50.12.042. 05-01-076, § 192-16-015, filed 12/9/04, effective 1/9/05. Statutory Authority: RCW 50.12.010 and 50.12.040. 80-10-052 (Order 4-80), § 192-16-015, filed 8/6/80; Order 2-77, § 192-16-015, filed 9/2/77.] Repealed by 10-11-046, filed 5/12/10, effective 6/12/10. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010.
- 192-16-016 Satisfying disqualification under RCW 50.20.050 (1)(d) when separation is for reasons of marital status and marriage occurs after date of separation. [Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. 05-01-076, § 192-16-016, filed 12/9/04, effective 1/9/05. Statutory Authority: RCW 50.12.010 and 50.12.040. 82-17-052 (Order 6-82), § 192-16-016, filed 8/17/82.] Repealed by 10-11-046, filed 5/12/10, effective 6/12/10. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010.
- 192-16-025 Lump sum retirement payment. [Statutory Authority: RCW 50.12.010, 50.12.040 and 50.20.010. 95-09-085, § 192-16-025, filed 4/19/95, effective 5/20/95. Statutory Authority: RCW 50.12.010 and 50.12.040. 80-10-052 (Order 4-80), § 192-16-025, filed 8/6/80.] Repealed by 10-11-046, filed 5/12/10, effective 6/12/10. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010.
- 192-16-030 Interpretive regulation—Computation of pension deductions under RCW 50.04.323. [Statutory Authority: RCW 50.12.010 and 50.12.040. 81-13-016 (Order 2-81), § 192-16-030, filed 6/11/81.] Repealed by 10-11-046, filed 5/12/10, effective 6/12/10. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010.
- 192-16-050 Diversion of unemployment benefits to satisfy child support obligations. [Statutory Authority: RCW 50.12.-010, 50.12.040 and 50.20.010. 95-09-085, § 192-16-050, filed 4/19/95, effective 5/20/95. Statutory Authority: Chapter 50.40 RCW and 1982 1st ex. s. c 18. 82-13-057 (Order 3-82), § 192-16-050, filed 6/14/82.] Repealed by 10-11-046, filed 5/12/10, effective 6/12/10. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010.
- 192-16-055 Interpretive regulations—Special coverage provisions—Bona fide notification of intent for substitute teacher—RCW 50.44.050(1). [Statutory Authority: RCW 50.12.010 and 50.12.040. 82-17-052 (Order 6-

82), § 192-16-055, filed 8/17/82.] Repealed by 10-11-046, filed 5/12/10, effective 6/12/10. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010.

Chapter 192-17

STATE ENVIRONMENTAL POLICY ACT—INTERPRETATION

192-17-010 Exemption from provisions of WAC 197-10-800. [Order 1-76, § 192-17-010, filed 4/12/76.] Repealed by 10-11-046, filed 5/12/10, effective 6/12/10. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010.

Chapter 192-23

BENEFIT PAYMENT REGULATIONS

192-23-001 Failure to respond to request for information results in a presumption of disqualifying information. [Statutory Authority: RCW 50.12.010 and 50.12.040. 84-13-050 (Order 4-84), § 192-23-001, filed 6/18/84.] Repealed by 10-11-046, filed 5/12/10, effective 6/12/10. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010.

192-23-011 Failure to provide details of employment. [Statutory Authority: RCW 50.12.010 and 50.12.040. 87-12-021 (Order 2-87), § 192-23-011, filed 5/28/87, effective 8/30/87; 84-13-050 (Order 4-84), § 192-23-011, filed 6/18/84.] Repealed by 10-11-046, filed 5/12/10, effective 6/12/10. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010.

192-23-012 Failure to provide details on holiday and/or vacation pay. [Statutory Authority: RCW 50.12.010 and 50.12.040. 87-12-021 (Order 2-87), § 192-23-012, filed 5/28/87, effective 8/30/87; 84-13-050 (Order 4-84), § 192-23-012, filed 6/18/84.] Repealed by 10-11-046, filed 5/12/10, effective 6/12/10. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010.

192-23-051 Failure to provide details on separation from employment. [Statutory Authority: RCW 50.12.010 and 50.12.040. 87-12-021 (Order 2-87), § 192-23-051, filed 5/28/87, effective 8/30/87; 84-13-050 (Order 4-84), § 192-23-051, filed 6/18/84.] Repealed by 10-11-046, filed 5/12/10, effective 6/12/10. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010.

192-23-052 Failure to respond to a request for information regarding voluntary quit. [Statutory Authority: RCW 50.12.010 and 50.12.040. 84-13-050 (Order 4-84), § 192-23-052, filed 6/18/84.] Repealed by 10-11-046, filed 5/12/10, effective 6/12/10. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010.

192-23-081 Failure to provide details on a refusal of an offer of work. [Statutory Authority: RCW 50.12.010 and 50.12.040. 84-13-050 (Order 4-84), § 192-23-081, filed 6/18/84.] Repealed by 10-11-046, filed 5/12/10, effective 6/12/10. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010.

192-23-082 Failure to respond to a request for information regarding failure to apply for work. [Statutory Authority: RCW 50.12.010 and 50.12.040. 84-13-050 (Order 4-84), § 192-23-082, filed 6/18/84.] Repealed by 10-11-046, filed 5/12/10, effective 6/12/10. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010.

192-23-091 Failure to respond to a request for information regarding labor dispute. [Statutory Authority: RCW 50.12.010 and 50.12.040. 84-13-050 (Order 4-84), § 192-23-091, filed 6/18/84.] Repealed by 10-11-046, filed 5/12/10, effective 6/12/10. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010.

192-23-113 Failure to respond to a request to provide information regarding athletic employment. [Statutory Authority: RCW 50.12.010 and 50.12.040. 84-13-050 (Order 4-84), § 192-23-113, filed 6/18/84.] Repealed by 10-11-046, filed 5/12/10, effective 6/12/10. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010.

192-23-301 Failure to respond to a request for information regarding reasonable assurance of return to work. [Statutory Authority: RCW 50.12.010 and 50.12.040. 84-13-050 (Order 4-84), § 192-23-301, filed 6/18/84.] Repealed by 10-11-046, filed 5/12/10, effective 6/12/10. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010.

192-23-320 Failure to respond to a request for documentation of a systematic and sustained work search. [Statutory Authority: RCW 50.12.010 and 50.12.040. 94-22-043, § 192-23-320, filed 10/28/94, effective 11/28/94; 84-13-050 (Order 4-84), § 192-23-320, filed 6/18/84.] Repealed by 10-11-046, filed 5/12/10, effective 6/12/10. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010.

192-23-350 Failure to respond to a request for pension information. [Statutory Authority: RCW 50.12.010 and 50.12.040. 84-13-050 (Order 4-84), § 192-23-350, filed 6/18/84.] Repealed by 10-11-046, filed 5/12/10, effective 6/12/10. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010.

192-23-900 Claimant liable for repayment of overpayments caused by conditional payment. [Statutory Authority: RCW 50.12.010 and 50.12.040. 84-13-050 (Order 4-84), § 192-23-900, filed 6/18/84.] Repealed by 10-11-046, filed 5/12/10, effective 6/12/10. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010.

Chapter 192-04 WAC

PRACTICE AND PROCEDURE

WAC

192-04-040 Interested parties.
 192-04-060 Appeals—Petitions for hearing—Petitions for review—Time limitation.
 192-04-063 Aggrieved party.
 192-04-170 Decision of commissioner—Petition for review—Filing—Reply.
 192-04-175 Advisement order.
 192-04-190 Petition for reconsideration—Filing—Consideration—Disposition—Judicial review.

WAC 192-04-040 Interested parties. In all cases adjudicated under Title 50 RCW the employment security department is an interested party.

(1) Other interested parties in benefit appeals are:

(a) The claimant;

(b) Any employer entitled to notice under WAC 192-130-060; and

(c) An interested employer as defined in WAC 192-220-060 in cases involving the recovery of benefits.

(2) Other interested parties in tax appeals are employers whose contributions, experience rating, benefit charges, or rate of contribution are affected by:

(a) An assessment for contributions;

(b) A denial of a claim for refund of contributions, interest, penalties;

(c) A denial of a request for relief of benefit charges made to their account; or

(d) Their determined or redetermined rate of contribution.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 10-20-082, § 192-04-040, filed 9/29/10, effective 10/30/10. Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. 05-01-076, § 192-04-040, filed 12/9/04, effective 1/9/05. Statutory Authority: RCW 50.12.010 and 50.12.040. 89-20-064 (Order 4-89), § 192-04-040, filed 10/4/89, effective 10/9/89.]

WAC 192-04-060 Appeals—Petitions for hearing—Petitions for review—Time limitation. (1) Appeals and petitions for hearing. Any interested party who is aggrieved by any decision of the department set forth in WAC 192-04-050 or for which the department has provided notice of appeal or petition for hearing rights may file a written appeal or petition for hearing by mailing it or sending it by fax to the address or fax number indicated on the determination notice or other appealable document.

The appeal or petition for hearing must be filed within thirty days of the date the decision is delivered or mailed, whichever is the earlier. The appeal and/or petition for hearing shall be filed in accordance with the provisions of RCW 50.32.025.

(2) **Petitions for review.** Any interested party other than the department who is aggrieved by a decision of the office of administrative hearings, other than an order approving a withdrawal of appeal, an order approving a withdrawal of a petition for hearing, a consent order, or an interim order, may file a written petition for review in accordance with the provisions of WAC 192-04-170. The petition for review must be filed within thirty days of the date of delivery or mailing of the decision of the office of administrative hearings, whichever is the earlier. The petition for review shall be filed in accordance with the provisions of RCW 50.32.025.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 10-20-082, § 192-04-060, filed 9/29/10, effective 10/30/10. Statutory Authority: RCW 50.20.010 and 50.12.040. 99-15-069, § 192-04-060, filed 7/19/99, effective 8/19/99. Statutory Authority: RCW 50.12.010, [50.12.]040 and RCW 34.05.310 et seq. 95-18-055, § 192-04-060, filed 8/31/95, effective 10/1/95. Statutory Authority: RCW 50.12.010 and 50.12.040. 89-24-030, § 192-04-060, filed 11/30/89, effective 1/1/90.]

WAC 192-04-063 Aggrieved party. An aggrieved party is:

(1) A claimant or an employer who receives an adverse decision of the department set forth in WAC 192-04-050 or for which the department has provided notice of appeal or petition for review rights; or

(2) The department, a claimant, or an employer who receives an adverse decision of the office of administrative hearings.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 10-20-082, § 192-04-063, filed 9/29/10, effective 10/30/10. Statutory Authority: RCW 50.12.010, [50.12.]040 and RCW 34.05.310 et seq. 95-18-055, § 192-04-063, filed 8/31/95, effective 10/1/95.]

WAC 192-04-170 Decision of commissioner—Petition for review—Filing—Reply. (1) The written petition for review shall be filed by mailing it to the Agency Records Center, Employment Security Department, Post Office Box 9555, Olympia, WA 98507-9555, within thirty days of the date of mailing or delivery of the decision of the office of administrative hearings, whichever is the earlier.

(2) Any written argument in support of the petition for review must be attached to the petition for review and be filed at the same time. The commissioner's review office will acknowledge receipt of the petition for review by assigning a review number to the case, entering the review number on the face of the petition for review, and setting forth the acknowledgment date on the petition for review. The commissioner's review office will also mail copies of the acknowledged petition for review and attached argument in support thereof to the petitioning party, nonpetitioning party and their representatives of record, if any.

(3) Any reply to the petition for review and any argument in support thereof by the nonpetitioning party shall be mailed to the Commissioner's Review Office, Employment Security Department, Post Office Box 9555, Olympia, WA 98504-9555. The reply must be received by the commissioner's review office within fifteen days of the date of mailing of the acknowledged petition for review. An informational copy shall be mailed by the nonpetitioning party to all other parties of record and their representatives, if any.

(4) The petition for review and argument in support thereof and the reply to the petition for review and argument in support thereof shall:

(a) Be captioned as such, set forth the docket number of the decision of the office of administrative hearings, and be signed by the party submitting it or by his or her representative.

(b) Be legible, reproducible and five pages or less.

(5) Arrangements for representation and requests for copies of the hearing record and exhibits will not extend the period for the filing of a petition for review, argument in support thereof, or a reply to the petition for review.

(6) Any argument in support of the petition for review or in reply thereto not submitted in accordance with the provisions of this regulation shall not be considered in the disposition of the case absent a showing that failure to comply with these provisions was beyond the reasonable control of the individual seeking relief.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 10-20-082, § 192-04-170, filed 9/29/10, effective 10/30/10. Statutory Authority: RCW 50.20.010 and 50.12.040. 99-08-073, § 192-04-170, filed 4/5/99, effective 5/6/99. Statutory Authority: RCW 50.12.010, [50.12.]040 and 34.05.310 et seq. 95-18-055, § 192-04-170, filed 8/31/95, effective 10/1/95. Statutory Authority: RCW 50.12.010 and 50.12.040. 89-24-030, § 192-04-170, filed 11/30/89, effective 1/1/90.]

WAC 192-04-175 Advisement order. (1) The commissioner's review office may prevent finality of any decision of the office of administrative hearings and take jurisdiction of the proceedings for review thereof by issuing an advisement order.

(2)(a) The commissioner may designate one or more individuals employed by the department to request an advisement order on decisions that the individual identifies as:

(i) Cases of first impression;

(ii) Cases that may impact significant numbers of other similarly situated cases;

(iii) Cases that involve United States Department of Labor conformity or compliance issues; or

(iv) Cases in which the interpretation of the law is clearly erroneous.

(b) Upon receipt of the request of the designated individual, the commissioner's review office shall determine if the request meets the criteria outlined in this subsection and shall notify the requestor in writing if the decision will not be taken under advisement and the reasons why.

(3) When the commissioner's review office determines subject matter review of any decision of the office of administrative hearings is warranted, it shall issue an advisement order which accepts review and mail a copy of the advisement order to the parties of record and their representatives within the same period allowed for the filing of a petition for review.

(4) The parties of record will be given fifteen days to submit argument in support of or in opposition to the decision of the office of administrative hearings. That argument from the parties of record must be hand delivered or mailed to the commissioner's review office and received by that office within fifteen days from the date of mailing of the order taking the decision of the office of administrative hearings under advisement.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 10-20-082, § 192-04-175, filed 9/29/10, effective 10/30/10. Statutory Authority: RCW 50.12.010, [50.12.]040 and RCW 34.05.310 et seq. 95-18-055, § 192-04-175, filed 8/31/95, effective 10/1/95.]

WAC 192-04-190 Petition for reconsideration—Filing—Consideration—Disposition—Judicial review. (1) A written petition for reconsideration and argument in support thereof may be filed within ten days of the date of mailing or delivery of the decision of the commissioner, whichever is the earlier. It shall be mailed to the Commissioner's Review Office, Employment Security Department, Post Office Box 9555, Olympia, WA 98507-9555, and to all other parties of record and their representatives.

(2) No matter will be reconsidered by the commissioner unless it clearly appears from the face of the petition for reconsideration and the argument submitted in support thereof that (a) there is obvious material, clerical error in the decision or (b) the petitioner, through no fault of his or her own, has been denied a reasonable opportunity to present argument or respond to argument pursuant to WAC 192-04-170.

(3) A petition for reconsideration shall be deemed to have been denied if, within twenty days from the date the petition for reconsideration is filed, the commissioner does not either (a) dispose of the petition for reconsideration or (b) mail or deliver to the parties a written notice specifying the date by which he or she will act on the petition for reconsideration. If no action is taken by the date specified in such written notice, the petition will be deemed to have been denied.

(4) A petition for reconsideration does not stay the effectiveness of the decision of the commissioner. The filing of a petition for reconsideration is not a prerequisite for filing a petition for judicial review. An order denying reconsideration or a written notice specifying the date upon which action will be taken on the petition for reconsideration is not subject to judicial review.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 10-20-082, § 192-04-190, filed 9/29/10, effective 10/30/10. Statutory Authority: RCW 50.20.010 and 50.12.040. 99-08-073, § 192-04-190, filed 4/5/99, effective 5/6/99; 89-24-030, § 192-04-190, filed 11/30/89, effective 1/1/90.]

Chapter 192-100 WAC GENERAL TERMS DEFINED

WAC

192-100-055	Nondisclosure and willful nondisclosure—RCW 50.20.160.
192-100-060	Labor dispute.
192-100-065	Preponderance of evidence defined.
192-100-070	Conditional payments.

WAC 192-100-055 Nondisclosure and willful nondisclosure—RCW 50.20.160. (1) "Nondisclosure" is not a synonym for fraud or misrepresentation. It refers to situations in which you have information or knowledge which you fail to disclose to the department inadvertently or through oversight. The department may redetermine an allowance of benefits resulting from nondisclosure at any time within two years following the benefit year in which the allowance was made.

(2) "Willful nondisclosure" means you fail to disclose information when you knew or should have known that it was

material. The department may redetermine an allowance of benefits resulting from willful nondisclosure at any time.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. 10-11-046, § 192-100-055, filed 5/12/10, effective 6/12/10.]

WAC 192-100-060 Labor dispute. A labor dispute means a deliberate action by two or more individuals or by an employer resulting in a strike or lockout where wages, hours, working conditions, or terms of employment are at issue.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. 10-11-046, § 192-100-060, filed 5/12/10, effective 6/12/10.]

WAC 192-100-065 Preponderance of evidence defined. "Preponderance of evidence" is that evidence which, when fairly considered, produces the stronger impression, has the greater weight, and is the more convincing as to its truth when weighted against the evidence in opposition thereto.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. 10-11-046, § 192-100-065, filed 5/12/10, effective 6/12/10.]

WAC 192-100-070 Conditional payments. (1) A conditional payment is payment issued to you after you have already received benefits but during a period in which the department questions your continued eligibility for benefits. Your right to retain such payment is conditioned on the department's finding that you were eligible for benefits during the week(s) in question.

(2) You are no longer considered to be in continued claim status if you have not claimed benefits (had a break in claim) for four weeks or longer.

(3) A conditional payment is not considered a "determination of allowance" as provided in RCW 50.20.160(3).

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. 10-11-046, § 192-100-070, filed 5/12/10, effective 6/12/10.]

Chapter 192-110 WAC

APPLYING FOR UNEMPLOYMENT BENEFITS

WAC

192-110-001	May the department refuse to accept my claim, appeal or petition?
192-110-050	How do I reopen my claim?
192-110-090	Prompt payment of benefits.
192-110-095	May I backdate my application for unemployment benefits (RCW 50.04.030)?
192-110-110	Establishing a new benefit year—RCW 50.04.030.
192-110-150	May I have an individual with power of attorney or other authorization file an initial or weekly claim for benefits, testify in my place, or otherwise certify on my behalf?

WAC 192-110-001 May the department refuse to accept my claim, appeal or petition? (1) Except as provided in subsection (2) of this section, no employee or agent of the department may refuse to accept your claim, a signed appeal, or a petition properly filed under WAC 192-04-170 relating to any program administered by this department regardless of the employee or agent's opinion concerning its merits.

(2) You must provide the department with your name and Social Security account number in order to file a claim for benefits.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 10-20-081, § 192-110-001, filed 9/29/10, effective 10/30/10.]

WAC 192-110-050 How do I reopen my claim? (1) If you do not file a claim for one or more weeks, you must reopen your claim.

(a) If it has been fewer than four weeks since you last claimed, you must reopen your claim by calling the unemployment claims telecenter and asking an agent to reopen your claim.

(b) If you have not claimed benefits for four or more weeks, you may reopen your claim on the internet or by calling the unemployment claims telecenter. However, you must do so **before** the last working day of the week (which is usually Friday). Otherwise you must call the unemployment claims telecenter and speak to an agent to reopen your claim.

(2) Your claim will be reopened effective on Sunday of the week in which you contact the department except that the effective date for any prior week claimed under WAC 192-140-005(4) will be Sunday of that week.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. 10-12-026, § 192-110-050, filed 5/24/10, effective 6/24/10. Statutory Authority: RCW 50.12.010 and 50.12.040. 07-22-055, § 192-110-050, filed 11/1/07, effective 12/2/07. Statutory Authority: RCW 50.20.010 and 50.12.040. 99-08-073, § 192-110-050, filed 4/5/99, effective 5/6/99.]

WAC 192-110-090 Prompt payment of benefits. The department will promptly issue payment once it determines that you are eligible for benefits.

(1) An appeal by an employer concerning your eligibility for benefits will not prevent payment.

(2) If benefits are allowed to you as the result of an appeal decision, the department will promptly pay benefits and a petition for the commissioner's review will not prevent payment.

(3) If benefits are allowed to you as the result of a commissioner's decision, the department will promptly pay benefits and the filing of a petition for judicial review will not prevent payment.

(4) If benefits are allowed to you as the result of a court decision, the department will promptly pay benefits. An appeal to a court of higher jurisdiction will not prevent payment.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. 10-11-046, § 192-110-090, filed 5/12/10, effective 6/12/10.]

WAC 192-110-095 May I backdate my application for unemployment benefits (RCW 50.04.030)? (1) **General rule.** A benefit year begins on Sunday of the calendar week in which you file your application for benefits. However, an application may be backdated for good cause or for the convenience of the department.

(2) **Definitions.** As used in this section:

(a) "Good cause" means factors that would prevent a reasonably prudent person in similar circumstances from filing an application for benefits. These include, but are not limited to, acting on advice directly from a department employee or its agent on whom a reasonable person would rely, incapacity due to illness or injury, or other serious factors.

(b) "For the convenience of the department" means those situations where it is difficult or impossible for the depart-

ment to accept a timely application. These include, but are not limited to, equipment breakdowns, lack of available staff to accept applications, or special handling requirements.

(3) **Limitations on good cause.**

(a) You must file your application for benefits during the first week in which those factors that constitute good cause are no longer present. The effective date will be Sunday of such week.

(b) Backdating will not be allowed if you claim good cause based on information from department staff or agents where you could reasonably be expected to question the accuracy of this information, and you knew or should have known of your redetermination or appeal rights and failed to exercise them.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. 10-11-046, § 192-110-095, filed 5/12/10, effective 6/12/10.]

WAC 192-110-110 Establishing a new benefit year—RCW 50.04.030. Once your current benefit year expires, you are not eligible for a new benefit year unless you have returned to work and earned at least six times the weekly benefit amount on your new claim.

Example: You separate from one job on December 29, 2008, and from a second job on February 7, 2009. You file an application for benefits effective February 8, 2009. When the benefit year ends, you must have earned six times your new weekly benefit amount since February 7, 2009, to be eligible for a new claim.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. 10-11-046, § 192-110-110, filed 5/12/10, effective 6/12/10.]

WAC 192-110-150 May I have an individual with power of attorney or other authorization file an initial or weekly claim for benefits, testify in my place, or otherwise certify on my behalf? No. RCW 9A.72.085 requires that an oath, certification, verification or declaration must be signed or sworn to by the person making it. (Exception: An estate executor or administrator may file a claim for the last completed calendar week prior to a claimant's death.)

(1) You are required to personally certify on your initial application for benefits and weekly claims that the information provided to the department is correct.

(2) An individual with power of attorney may not testify in your place in any adjudicative proceeding. Such individual may file an appeal on your behalf if he or she provides the department with a copy of the document granting him or her power of attorney. Such individual may also be called as a witness on your behalf or assist with the preparation of your case but you must provide sworn testimony in support of your appeal.

(3) An agent with power of attorney may not otherwise act on your behalf when statutes or regulations specifically or implicitly require your signature or personal certification.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. 10-11-046, § 192-110-150, filed 5/12/10, effective 6/12/10.]

Chapter 192-130 WAC EMPLOYER NOTICES

WAC
192-130-060

Notice to employer.

192-130-065 Mailing addresses for notice to employer.
 192-130-070 Mailing of eligibility determinations—RCW 50.20.180.

WAC 192-130-060 Notice to employer. (1) Whenever an individual files an initial application for unemployment benefits, a notice will be mailed to:

- (a) The claimant's last employer, and
- (b) Any prior employer where it has been less than ten weeks since the job separation or the individual has not earned at least ten times his or her weekly benefit amount since the job separation.

(2) Whenever an individual files an initial application for unemployment benefits and a benefit year is established, the department will mail a notice to all base year employers. This notice to base year employers will include information on wages reported and benefit charging related information and will request an employer response if the wage information is incorrect or if the employer wishes to request relief of benefit charging.

(3) Whenever an individual files an initial application for unemployment benefits, the department will mail a notice to any separating employer as provided in WAC 192-320-075. This notice will include information that the employer may be liable for all benefits paid on the claim as provided in RCW 50.29.021 (2)(c).

(4) Whenever an individual files an additional claim for benefits (reopens an existing claim after subsequent employment), the department will mail a notice to the last employer reported by the claimant and to any prior employer from whom the claimant has a potentially disqualifying separation who has not previously been notified.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. 10-11-046, § 192-130-060, filed 5/12/10, effective 6/12/10. Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. 05-01-076, § 192-130-060, filed 12/9/04, effective 1/9/05.]

WAC 192-130-065 Mailing addresses for notice to employer. The department will mail notices to employers required by RCW 50.20.150 and WAC 192-130-060 as follows:

(1) The department will mail the notice to the last employer of the claimant as follows:

(a) If the employer has notified the department that the employer is represented for unemployment insurance purposes by an employer representative or cost control firm, the department will mail the notice to the last employer directly to that firm; or

(b) If an employer has provided the department with a mailing address, the department will mail the notice to the last employer directly to that address; or

(c) If the employer has not provided the department with a mailing address, the department will mail the notice to the last employer to the address provided by the claimant.

(2) The department will mail the notice to any base year employer who has reported wages to the department to the employer's mailing address of record provided by the employer for tax purposes.

(3) The notice to any other employer from whom the claimant has a potentially disqualifying separation (without sufficient subsequent employment to purge a separation dis-

qualification) will be mailed to the address provided by the claimant.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. 10-11-046, § 192-130-065, filed 5/12/10, effective 6/12/10. Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. 05-01-076, § 192-130-065, filed 12/9/04, effective 1/9/05.]

WAC 192-130-070 Mailing of eligibility determinations—RCW 50.20.180. (1) The department will mail an eligibility decision based on a job separation issue to the following:

(a) The last employer, if the claimant was separated from employment for reasons other than lack of work;

(b) A previous employer from whom the claimant has a potentially disqualifying separation as provided in WAC 192-130-060 if the claimant was separated from employment for reasons other than lack of work;

(c) To any employer since the beginning of the claimant's base year who provides information that the claimant was discharged for gross misconduct connected with the work, or whose wage credits are deleted from the claimant's record as a result of the claimant's gross misconduct.

(2) The department will mail an eligibility decision based on an issue other than a separation from employment to an employer if the employer provides relevant information about the claimant's eligibility for a specific week.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. 10-11-046, § 192-130-070, filed 5/12/10, effective 6/12/10. Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. 05-01-076, § 192-130-070, filed 12/9/04, effective 1/9/05.]

Chapter 192-140 WAC

REPORTING REQUIREMENTS TO RECEIVE BENEFITS

WAC

192-140-005	Filing weekly claims for benefits.
192-140-010	Personal identification number.
192-140-035	What happens if I do not respond to a request for information?
192-140-040	What happens if I do not provide details about my employment when filing my weekly claim?
192-140-045	What happens if I do not respond to a request for information about a refusal of an offer of work?
192-140-050	What happens if I do not respond to a request for information about failure to apply for work?
192-140-055	What happens if I do not respond to a request for information about a labor dispute?
192-140-095	What happens if I do not respond to a request for details about my separation from work?
192-140-100	What happens if I do not respond to a request for information about a discharge from work?
192-140-105	What happens if I do not respond to a request for information about a voluntary quit from work?
192-140-130	What happens if I do not respond to a request for information about holiday or vacation pay?
192-140-135	What happens if I fail to respond to a request for information about athletic employment?
192-140-140	What happens if I fail to respond to a request for information about reasonable assurance to return to work in educational employment?
192-140-145	What happens if I do not respond to a request for pension information?

WAC 192-140-005 Filing weekly claims for benefits.

(1) **How do I file my weekly claim for benefits?** You may file your claim by calling the department's unemployment information and weekly claims line, using the department's internet web site, or filing a paper claim.

(2) **When do I file my claim?** You must file a claim for every week for which you want to be paid or have counted as your waiting week. Every week begins at 12:01 a.m. on Sunday and ends at midnight on Saturday. You must file your claim *after* the end of the week(s) you are claiming.

(a) File your telephone or internet claim after 12:01 a.m. Sunday, but before 5:00 p.m. on Friday, following the week you are claiming. (In case of a legal holiday, file your claim before 5:00 p.m. on the last working day of the week.)

(b) If you file by paper, file your claim anytime Sunday through Saturday following the week you are claiming. If you file by mail, your claim is considered filed on the postmarked date. If you file by fax, your claim is considered filed on the date of receipt.

(3) **How often do I file my claim?** File your claim weekly. The department may approve other filing schedules in cases of emergency or in unusual circumstances.

(4) **What happens if I miss a week?** If you do not claim a week, you must reopen your claim. See WAC 192-110-050.

(a) If you have not yet received your first payment, you may claim benefits for one week prior to the week in which you contact the telecenter to reopen your claim.

(b) If you have received your first payment and not more than four consecutive weeks have elapsed since you last filed a claim, you may claim benefits for any of the four weeks prior to the week in which you contacted the telecenter to reopen your claim.

(c) Except as described in (a) and (b) of this subsection, we will consider unclaimed weeks late. The department will not pay you for these weeks unless you show good cause for not contacting the telecenter earlier to reopen your claim.

(5) **What information do I have to report?** Your claim must include:

(a) The Saturday date of the week you are claiming;

(b) Answers to the questions:

(i) The telecenter cannot process a claim filed by telephone or internet unless all questions are answered;

(ii) The department will process a claim filed in writing if at least one question is answered and other information required by this subsection (5) is provided, but your eligibility for benefits will be in question and you will be asked to provide complete information, which could result in a denial of benefits;

(c) Your personal identification number if filing by telephone or internet, or your signature if you filed your claim in writing;

(d) The amount and source of any pension you are receiving for the week claimed;

(e) Any holiday earnings received during the week claimed;

(f) Any vacation pay received during the week claimed, including the dates for which payment was received, if applicable; and

(g) Any earnings and the number of hours you worked during the week claimed.

(6) **What happens if I don't provide this information?**

The department cannot process a telephone or internet claim that does not meet the requirements of subsection (5) of this section and you will receive instructions to contact the unemployment claims telecenter. A written claim that does not

meet these requirements is incomplete and the department will return it to you with a request for additional information.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. 10-11-046, § 192-140-005, filed 5/12/10, effective 6/12/10. Statutory Authority: RCW 50.20.010 and 50.12.040. 99-08-073, § 192-140-005, filed 4/5/99, effective 5/6/99.]

WAC 192-140-010 Personal identification number.

(1) The first time you call the unemployment information and weekly claims line to obtain information about your claim or to file a weekly claim for benefits, you must set up a personal identification number (PIN). This number is your electronic signature on all claims filed by telephone and its use is equivalent to your signature on written forms.

(2) Security of the PIN is your responsibility. You are responsible for any payments made as a result of the use of this PIN unless you provide evidence showing that the individual using your PIN was not authorized to do so. Your PIN must be reset if you forget it or if someone else, including an employee of the department, learns your PIN. You are responsible for either contacting the unemployment claims telecenter to set up a new PIN or setting up a new PIN using the department's internet site.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. 10-11-046, § 192-140-010, filed 5/12/10, effective 6/12/10. Statutory Authority: RCW 50.20.010 and 50.12.040. 99-08-073, § 192-140-010, filed 4/5/99, effective 5/6/99.]

WAC 192-140-035 What happens if I do not respond to a request for information? (1) The department will presume that you are disqualified from benefits if you provide potentially disqualifying information, or fail to provide necessary information, and then do not respond to a request for specific information. The department will deny benefits under RCW 50.20.010.

(2) This denial is for an indefinite period of time and will continue until you provide the requested information.

(3) Once you provide the requested information, the department may issue a redetermination under RCW 50.20.-160. The department will issue a new decision allowing benefits if you provide enough information to establish your eligibility for benefits.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. 10-11-046, § 192-140-035, filed 5/12/10, effective 6/12/10.]

WAC 192-140-040 What happens if I do not provide details about my employment when filing my weekly claim? (1) The department will presume you are not unemployed under RCW 50.04.310 if you:

(a) Report that you had work and earnings for one or more weeks;

(b) Fail to provide employer name and address; and

(c) Do not respond to a request for information.

(2) Further, the department will presume you are not unemployed under RCW 50.04.310 if:

(a) You report that you will have earnings for a week not yet claimed;

(b) Subsequently claim benefits for the week without providing employer name and address and the amount of earnings; and

(c) Do not respond to a request for information.

(3) The department will deny benefits under this section based on RCW 50.20.010. This denial applies only to the week(s) in which work and earnings information is incomplete.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. 10-11-046, § 192-140-040, filed 5/12/10, effective 6/12/10.]

WAC 192-140-045 What happens if I do not respond to a request for information about a refusal of an offer of work? (1) If you do not respond to a request for information about a refusal of an offer of work, the department will presume you refused an offer of suitable work without good cause.

(2) The department will deny benefits under RCW 50.20.080. This denial will continue for seven weeks and until you earn seven times your weekly benefit amount in employment that is covered by Title 50 RCW.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. 10-11-046, § 192-140-045, filed 5/12/10, effective 6/12/10.]

WAC 192-140-050 What happens if I do not respond to a request for information about failure to apply for work? (1) The department will presume you failed to apply for suitable work without good cause if:

(a) You have been directed by the department to apply for work;

(b) The department is advised that you have failed to comply as directed; and

(c) You do not respond to a request for information.

(2) The department will deny benefits under RCW 50.20.080. This denial will continue for seven weeks and until you earn seven times your weekly benefit in employment that is covered by Title 50 RCW.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. 10-11-046, § 192-140-050, filed 5/12/10, effective 6/12/10.]

WAC 192-140-055 What happens if I do not respond to a request for information about a labor dispute? (1) The department will presume you are unemployed as a result of a labor dispute and directly interested in or participating in the dispute if you do not respond to a request for information about a labor dispute.

(2) The department will deny benefits under RCW 50.20.090. This denial will continue until you provide the requested information.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. 10-11-046, § 192-140-055, filed 5/12/10, effective 6/12/10.]

WAC 192-140-095 What happens if I do not respond to a request for details about my separation from work? (1) If you report work and earnings in one week and during the week following you do not report work and earnings, you must provide details about your separation from work.

(2) The department will presume you have voluntarily quit work without good cause under RCW 50.20.050 unless you provide:

(a) Complete employer information, including:

(i) Name of employer;

(ii) Complete address of employer;

(iii) Hours worked and earnings if not previously reported; and

(iv) Last day worked.

(b) Details about the reasons for separation from work.

(3) A separation from employment occurs whenever the employer-employee relationship is severed. For purposes of this section, a separation occurs when:

(a) You are not scheduled to work for a period of one week or more; or

(b) You have a week with no earnings following a week in which you had earnings.

(4) The department will deny benefits under RCW 50.20.050. This denial will continue for seven weeks and until you earn seven times your weekly benefit in employment that is covered by Title 50 RCW.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. 10-11-046, § 192-140-095, filed 5/12/10, effective 6/12/10.]

WAC 192-140-100 What happens if I do not respond to a request for information about a discharge from work? (1) If you do not respond to a request for information about a discharge from work and if you:

(a) Have not given the department enough information to identify or contact the employer, the department will presume the employer discharged you for misconduct connected with your work. The department will deny benefits under RCW 50.20.066.

(b) Have given the department enough information to contact the employer, the department will not deny benefits unless a preponderance of evidence shows that you were discharged for misconduct connected with your work or the separation was for another disqualifying reason.

(2) If benefits are denied due to misconduct, the denial is for an indefinite period of time and will continue for ten weeks and until you earn ten times your weekly benefit amount in employment that is covered by Title 50 RCW.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. 10-11-046, § 192-140-100, filed 5/12/10, effective 6/12/10. Statutory Authority: RCW 50.12.010 and 50.12.040. 07-22-055, § 192-140-100, filed 11/1/07, effective 12/2/07. Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. 05-01-076, § 192-140-100, filed 12/9/04, effective 1/9/05.]

WAC 192-140-105 What happens if I do not respond to a request for information about a voluntary quit from work? (1) If you do not respond to a request for information about a voluntary quit from work the department will presume you have voluntarily quit work without good cause under RCW 50.20.050, unless available evidence shows that your separation from work was for another reason.

(2) If benefits are denied as a voluntary quit, the denial will continue for seven weeks and until you earn seven times your weekly benefit in employment that is covered by Title 50 RCW.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. 10-11-046, § 192-140-105, filed 5/12/10, effective 6/12/10.]

WAC 192-140-130 What happens if I do not respond to a request for information about holiday or vacation pay? (1) The department will presume you are not unemployed as provided in RCW 50.04.310 if you report that you received holiday or vacation pay and the amount paid, and do

not respond to a request for specific information about the holiday or vacation pay.

(2) If you report that you will have holiday or vacation pay for a week not yet claimed and subsequently claim benefits for the week without providing employer name and address and the amount of payment, and do not respond to a request for information, the department will presume you are not unemployed as provided in RCW 50.04.310.

(3) The department will deny benefits under RCW 50.20.010. This denial applies only to the week(s) in which holiday or vacation pay information is incomplete.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. 10-11-046, § 192-140-130, filed 5/12/10, effective 6/12/10.]

WAC 192-140-135 What happens if I fail to respond to a request for information about athletic employment?

(1) If your eligibility for benefits is based on employment as a participant in sports or athletic events and you do not respond to a request for information, the department will presume you have reasonable assurance of performing similar services in the upcoming season.

(2) The department will deny benefits under RCW 50.20.113. This denial applies to the entire period between sporting seasons.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. 10-11-046, § 192-140-135, filed 5/12/10, effective 6/12/10.]

WAC 192-140-140 What happens if I fail to respond to a request for information about reasonable assurance to return to work in educational employment?

(1) If your eligibility for benefits is based on services to an educational institution, your employer has provided information that you have reasonable assurance of returning to work after the school holiday or break, and you do not respond to a request for information about reasonable assurance, the department will presume that such assurance exists.

(2) The department will deny benefits under RCW 50.44.050. This denial applies to the period between academic years or terms, and during holiday or vacation periods.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. 10-11-046, § 192-140-140, filed 5/12/10, effective 6/12/10.]

WAC 192-140-145 What happens if I do not respond to a request for pension information?

(1) The department will presume you are receiving a pension in an amount greater than your weekly benefit amount and contributed to only by a base period employer if:

(a) You report that you have applied for a retirement pension or your pension has changed since your last claim; and

(b) You do not respond to the question concerning pension information when filing your weekly claim.

(2) The department will deny benefits under RCW 50.04.323. This denial will continue until you provide the information showing that you are not ineligible for benefits under RCW 50.04.323.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. 10-11-046, § 192-140-145, filed 5/12/10, effective 6/12/10.]

Chapter 192-150 WAC

JOB SEPARATIONS

WAC

192-150-145	Change in working conditions covered by RCW 50.20.050 (2)(b)(v) through (x).
192-150-150	When is a separation considered a refusal of new work?
192-150-225	Examples of flagrant and wanton misconduct.
192-150-230	What happens if I am discharged prior to the effective date of my resignation?

WAC 192-150-145 Change in working conditions covered by RCW 50.20.050 (2)(b)(v) through (x).

(1) If you quit work due to a change in working conditions that meets the requirements of RCW 50.20.050 (2)(b)(v) through (x), the department will not deny benefits solely on the basis that you continued working for a brief period of time following the change. However, you must demonstrate to the department that the change in working conditions was the motivating factor for quitting work.

(2) "Brief period of time" means the amount of time a reasonably prudent person would have continued working after the change in circumstances.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. 10-11-046, § 192-150-145, filed 5/12/10, effective 6/12/10.]

WAC 192-150-150 When is a separation considered a refusal of new work?

(1) Section 3304 (a)(5) of the Federal Unemployment Tax Act and RCW 50.20.110 state that you cannot be denied benefits if you refuse to accept new work when the wages, hours, or other working conditions are substantially less favorable than those prevailing for similar work in your local labor market.

(2) For purposes of this chapter, "new work" includes an offer by your present employer of:

(a) Different duties than those you agreed to perform in your current employment contract or agreement; or

(b) Different terms or conditions of employment from those in the existing contract or agreement.

(3) When you resign rather than accept changes in working conditions that are different from those under which you had been working, the department will decide whether you left work voluntarily or refused an offer of new work.

(a) If the changes in working conditions are not substantial, the department will consider you to have voluntarily quit work.

(b) If there is a substantial change in working conditions so as to constitute an offer of new work and the change is not authorized or implied by the original employment agreement, the department will treat the separation as a layoff due to lack of work and adjudicate the refusal of new work under RCW 50.20.080.

(i) If the change in working conditions is a reduction in your pay or hours of ten percent or less, the department will presume the change is not substantial. You can overcome this presumption by providing additional information to the department showing the job was not suitable under RCW 50.20.110.

(ii) If you continue working after your working conditions have changed, but later quit work because of these changes, the department will presume you voluntarily left work for personal reasons. This does not apply when:

(A) You give notice of your intent to quit but continue to work during an agreed upon notice period; or

(B) You continue working during an employer-provided grievance or arbitration period in response to the change in working conditions.

(iii) This subsection does not apply when the change in working conditions was caused by your own misconduct. The department will treat your refusal of the new working conditions as a separation from work under RCW 50.20.050 or 50.20.066.

(c) If the department decides you were separated due to a layoff but you refused an offer of new work, the department will issue a written decision even if you do not claim benefits for the week in which the refusal occurred. The employer offering the new work is an interested party to the work refusal decision.

(4) For purposes of this section, the following definitions apply:

(a) "Conditions of work" includes fringe benefits such as life and health insurance; paid sick, vacation, and annual leave; provisions for leaves of absence and holiday leave; pensions, annuities and retirement provisions; and severance pay. It also includes job security and reemployment rights; training and promotion policies; wage guarantees; unionization; grievance procedures; work rules, including health and safety rules; medical and welfare programs; physical conditions such as heat, light and ventilation; shifts of employment; and permanency of work.

(b) "Prevailing" means the most typical or customary in a particular occupation for a given area. The department will decide if a wage rate is prevailing for your labor market area based on information provided by its labor market and economic analysis branch.

(c) "Similar work" means similarity of the operations performed, the skill, ability and knowledge required, and the responsibilities involved.

(d) "Substantial change in working conditions" means a material change that is significant in terms of amount, degree, or impact as opposed to a change that is relatively minor or trivial. A change in working conditions is not substantial if the conditions prevailing after the change are those generally prevailing for other workers performing the same or similar work in your local labor market area.

(e) "Substantially less favorable" means the work is materially reduced below the standard under which the majority of individuals in your occupation and local labor market area customarily work.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. 10-11-046, § 192-150-150, filed 5/12/10, effective 6/12/10. Statutory Authority: RCW 50.12.010 and 50.12.040. 07-22-055, § 192-150-150, filed 11/1/07, effective 12/2/07. Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. 05-01-076, § 192-150-150, filed 12/9/04, effective 1/9/05.]

WAC 192-150-225 Examples of flagrant and wanton misconduct. (1) Examples of behaviors that may constitute flagrant and wanton conduct resulting in a finding of gross misconduct include, but are not limited to:

(a) A medical provider under the influence of illegal narcotics while at work;

(b) A health care worker who steals money or valuables from patients;

(c) A commercial truck driver under the influence of alcohol while operating the employer's vehicle;

(d) A school employee convicted of conduct that requires the individual to register as a sex offender;

(e) An attorney convicted of conduct that results in being disbarred or suspended from the practice of law; or

(f) A department store employee who secretly films or photographs customers in the store's fitting rooms.

(2) These behaviors are examples only and do not require the department to find gross misconduct in similar situations.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. 10-11-046, § 192-150-225, filed 5/12/10, effective 6/12/10.]

WAC 192-150-230 What happens if I am discharged prior to the effective date of my resignation? (1) Except as provided in subsection (2) of this section, if you notify your employer that you are resigning from your job and the employer discharges you prior to the end of the notice period, the separation is treated as a discharge. The department will not deny benefits unless the employer can show that you were discharged for misconduct.

(2) If your employer pays you through the notice period but requires no work, the separation is treated as a quit. The separation date is the last day of the notice period. Payment for the notice period is deductible from benefits as payment in lieu of notice.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. 10-11-046, § 192-150-230, filed 5/12/10, effective 6/12/10.]

Chapter 192-170 WAC

AVAILABILITY FOR WORK

WAC

192-170-010	Availability for work—RCW 50.20.010.
192-170-065	Suitable work factors—Agricultural labor—RCW 50.04.150 and 50.20.100.
192-170-080	Leave of absence.
192-170-090	Incarceration.
192-170-100	AmeriCorps and AmeriCorps VISTA volunteers.

WAC 192-170-010 Availability for work—RCW 50.20.010. (1) In general, the department will consider you available for work if you:

(a) Are willing to work full-time, part-time, and accept temporary work during all of the usual hours and days of the week customary for your occupation.

(i) You are not required to be available for part-time or temporary work if it would substantially interfere with your return to your regular occupation.

(ii) The requirement to be available for full-time work does not apply under the circumstances described in WAC 192-170-050 (1)(b) or 192-170-070;

(b) Are capable of accepting and reporting for any suitable work within the labor market in which you are seeking work;

(c) Do not impose conditions that substantially reduce or limit your opportunity to return to work at the earliest possible time;

(d) Are available for work during the hours customary for your trade or occupation; and

(e) Are physically present in your normal labor market area, unless you are actively seeking and willing to accept work outside your normal labor market.

(2) You are not considered available for work if you fail or refuse to seek work as required in a directive issued by the department under WAC 192-180-010.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. 10-11-046, § 192-170-010, filed 5/12/10, effective 6/12/10.]

WAC 192-170-065 Suitable work factors—Agricultural labor—RCW 50.04.150 and 50.20.100. When deciding whether agricultural labor is suitable work for you, the department will consider the degree of risk involved to your health, safety, and morals, your physical fitness, your skill level, your length of unemployment and prospects for work in your customary occupation, the distance of the available work from your residence, and other factors pertinent to your ability to perform the work.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. 10-11-046, § 192-170-065, filed 5/12/10, effective 6/12/10.]

WAC 192-170-080 Leave of absence. (1) A leave of absence is an absence from work mutually and voluntarily agreed upon by you and your employer or a collective bargaining agent, or leave to which you are entitled under federal or state law, where the employer-employee relationship is continued and you will be reinstated in the same or similar job when the leave expires.

(a) If you are on a leave of absence, you are not unemployed and thus not eligible for benefits.

(b) If you choose not to return to work when the leave of absence ends, the separation is treated as a voluntary quit. The separation date will be the first working day after the leave expires.

(c) If no job is available with the employer when the leave of absence ends, the separation is treated as a layoff due to a lack of work.

(d) If you have been on medical leave and are released for work by your medical provider, but your employer refuses to permit you to return to work, you are considered to be laid off due to a lack of work and potentially eligible for benefits.

(2) A leave of absence does not exist if the employer offers you only a preference for rehire or a promise of a job if work exists at the end of the leave. An employee-initiated leave that only provides fringe benefits during the leave or preferential status for reemployment is not a leave of absence but a voluntary quit.

(3) A temporary or indefinite disciplinary suspension from work by the employer is not a leave of absence. The department will treat this as a suspension.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. 10-11-046, § 192-170-080, filed 5/12/10, effective 6/12/10.]

WAC 192-170-090 Incarceration. (1) If you were previously warned that your continued employment was in jeopardy because of poor attendance, and you engage in illegal activities where you are aware there is a clear possibility of arrest and detention, misconduct may be established under RCW 50.04.294 (2)(d) or (e).

(2) If you are jailed but later released without having been charged with or convicted of a crime, the separation is not considered misconduct except as provided in subsection (3) of this section.

(3) If your employer discharges you for absenteeism or job abandonment because you failed without good cause to notify the employer of your incarceration or anticipated release date, such failure may be considered misconduct.

(4) You will be considered unavailable for work during any days in which you are incarcerated unless those days are not part of your regular work week based on your occupation. Example: You are sentenced to a specific time in custody but allowed to serve your time on weekends. If weekends are not part of your regular work week, you will be considered available for work.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. 10-11-046, § 192-170-090, filed 5/12/10, effective 6/12/10.]

WAC 192-170-100 AmeriCorps and AmeriCorps VISTA volunteers. (1) AmeriCorps volunteers enroll with nonprofit organizations to provide services within the state. They may enroll in full-time or part-time programs. If you enroll in a part-time program, you can seek and accept other work. You are potentially eligible for benefits if you are immediately available for and seeking full-time work.

(2) AmeriCorps VISTA (volunteers in service to America) volunteers are assigned to public or private organizations to work towards meeting community needs. The contract requires they be available for service each day and evening of the week. AmeriCorps VISTA volunteers are not available for work. You are not eligible for benefits while under contract, even if you received benefits prior to enrollment in service.

(3) Stipends received as an AmeriCorps or AmeriCorps VISTA volunteer are not covered employment. They may not be used to requalify for benefits after a denial for a quit, discharge, or job refusal.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. 10-11-046, § 192-170-100, filed 5/12/10, effective 6/12/10.]

Chapter 192-180 WAC JOB SEARCH REQUIREMENTS

WAC

192-180-010	Job search requirements—Directives—RCW 50.20.010 (1)(c) and 50.20.240.
192-180-013	What are the job search requirements for individuals who work less than full time?
192-180-015	Tracking job search activities—RCW 50.20.240.
192-180-025	Job search review interviews.

WAC 192-180-010 Job search requirements—Directives—RCW 50.20.010 (1)(c) and 50.20.240. (1) **Do I have to look for work?** You must be actively seeking work unless you are:

(a) Attached to an employer as defined in WAC 192-180-005(1); or

(b) Participating in a training program approved by the commissioner.

(2) **When should I start my job search?** You must look for work every week that you file a claim for benefits, unless you are exempt under subsection (1) of this section.

(3) What are my weekly job search requirements?

(a) At a minimum, you must:

(i) Make job search contacts with at least three employers each week; or

(ii) Participate in three approved in-person job search activities at the WorkSource office or local employment center, or any combination of employer contacts or in-person job search activities for a total of three.

(b) Based on your individual circumstances, such as your occupation, experience, or labor market area, the department may issue you a directive requiring more than three employer contacts or job search activities each week.

(c) If you are a member of a referral union you must be registered with your union, eligible for and actively seeking dispatch, and comply with your union's dispatch or referral requirements (see WAC 192-210-120). Your benefits may be denied for any weeks in which you fail to meet these requirements and you may be directed to seek work outside of your union.

(4) **What is a "job search contact"?** A job search contact is a contact with an employer to inquire about or apply for a job. You may use job search methods that are customary for your occupation and labor market area, including in-person, telephone, internet, or telefax contacts. The work applied for must be suitable (see RCW 50.20.100) unless you choose to look for work in a lower skill area. A contact does not count if it is made with an employer whom you know is not hiring, or if the department decides the contact is designed in whole or in part to avoid meeting the job search requirements. Simply posting your resume on-line (for example, Monster.com or Craigslist) does not constitute a job search contact for purposes of this section; an application or contact with an employer for a specific job must be submitted to count as one of the required weekly job search contacts.

(5) **What is an "in-person job search activity"?** This is an activity provided through the WorkSource office or local employment center that will assist you in your reemployment efforts. It includes, but is not limited to, job search workshops, training classes, or other facilitated services provided by WorkSource staff and approved by the local WorkSource administrator. For claimants residing in Washington state, an in-person job search activity must be documented in the department's services, knowledge and information exchange system (SKIIES) to qualify. For interstate claimants, the activity must be documented in the one-stop system in the state in which you reside.

(6) **What is a directive?** A directive is a written notice from the department telling you that specific methods of job search are required in order to meet the job search requirements. A written directive need not have been issued to deny benefits for failure to meet the job search requirements in subsection (3) of this section.

(7) **When is a directive issued?** The department can issue a directive to clarify or to increase the job search requirements you must meet. Examples include, but are not limited to, cases in which you need to:

(a) Increase the number of employer contacts each week;

(b) Change your method of looking for work (such as from resumes to in-person contacts);

(c) Expand the geographic area in which you look for work; or

(d) Look for work in a secondary occupation.

(8) **When is the directive effective?** The directive is effective when it is given in writing by the department. It stays in effect until a new written directive is given, or it is rescinded in writing.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. 10-11-046, § 192-180-010, filed 5/12/10, effective 6/12/10. Statutory Authority: RCW 50.12.010 and 50.12.040. 07-22-055, § 192-180-010, filed 11/1/07, effective 12/2/07. Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.-042. 05-01-076, § 192-180-010, filed 12/9/04, effective 1/9/05. Statutory Authority: RCW 50.12.010 and 50.12.040. 99-13-002, § 192-180-010, filed 6/3/99, effective 7/4/99.]

WAC 192-180-013 What are the job search requirements for individuals who work less than full time? (1) "Partially unemployed" workers are those individuals:

(a) Who were hired to work full time;

(b) Whose weekly hours of work have been temporarily reduced by their employer by no more than sixty percent;

(c) Who earn less than one and one-third times their weekly benefit amount plus five dollars during a week; and

(d) Who are expected to return to full time work for their employer within four months.

The department considers these workers to be employer attached and they are not required to register for or seek work. They must be available for all work offered by their regular employer.

(2) **"Part time" workers** are individuals who normally work less than full time, or who take a job that is less than full time. To be eligible for benefits, these individuals must be available for and actively seeking full time work and the department may review their job search at any time. If they get a part time job, they must continue to look for full time work or we will deny their benefits under RCW 50.20.010 (1)(c). This definition of "part time" workers means individuals who work part time but do not meet the requirements of RCW 50.20.119.

(3) **"Part time eligible" workers** are individuals who have worked no more than seventeen hours in any week of their base year. They are eligible for benefits under RCW 50.20.119. These individuals may look for work of seventeen or fewer hours per week and the department may review their job search at any time. Once an individual gets a job for seventeen or fewer hours per week, he or she is employer attached and no longer required to look for work.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. 10-11-046, § 192-180-013, filed 5/12/10, effective 6/12/10. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.12.042. 05-19-018, § 192-180-013, filed 9/9/05, effective 10/10/05.]

WAC 192-180-015 Tracking job search activities—RCW 50.20.240. (1) Do I need to keep track of my job search activities? You must keep a record or log of your job search contacts and the in-person job search activities you receive through the WorkSource office or local employment center unless you are:

(a) A member of a full referral union;

(b) Allowed benefits because you left work to protect yourself or a member of your immediate family from domestic violence or stalking as provided in RCW 50.20.050 (2)(b)(iv); or

(c) Exempt from job search requirements under WAC 192-180-010(1).

(2) **What information do I need to keep in the log?** Your job search log must contain at least the following information:

(a) For in-person or telephone job search contacts, record the date contact was made; the employer's name, address and telephone number; how contact was made (in-person, telephone, etc.); the name or position of the person you contacted; and the type of work you applied for. If application was made on-line, by newspaper or other means in which there is no direct employer contact, include date, web address, or newspaper name or address, the job applied for, such as a job reference number, or attach a copy of the job announcement or a confirmation notice received after your application was submitted;

(b) For in-person job search activities at the WorkSource office or local reemployment center, record the date contact was made; and a description of the services you received or the activities in which you participated.

(3) **Is there a specific form I must use?** The department will supply you with a form (EMS 10313) to use in tracking your job search activities. You may use your own form or tracking method as long as you record all information required by this section.

(4) **How long should I keep my log?** Keep your log for at least sixty days after the end of your benefit year or thirty days after receiving your final payment on any extension of benefits, whichever is later.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. 10-11-046, § 192-180-015, filed 5/12/10, effective 6/12/10. Statutory Authority: RCW 50.12.010 and 50.12.040. 07-22-055, § 192-180-015, filed 11/1/07, effective 12/2/07. Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.-042. 05-01-076, § 192-180-015, filed 12/9/04, effective 1/9/05. Statutory Authority: RCW 50.12.010 and 50.12.040. 99-13-002, § 192-180-015, filed 6/3/99, effective 7/4/99.]

WAC 192-180-025 Job search review interviews. (1) What is a job search review (JSR) interview? The JSR is an interview between you and a representative of the WorkSource office or local employment center. Its purpose is to review your job search documentation, identify any barriers to your reemployment, develop a plan for resolving barriers that may be identified, and provide advice on how to improve your job search efforts. For interstate claimants, this interview may be conducted by telephone or by the local employment center in a contracted state.

(2) **Will my job search activities be reviewed?** Yes, you must bring your job search log to the interview. The interviewer will review your log with you and discuss areas in which your job search can be improved. The employer contacts and job search activities included in your log will be verified at random. The interviewer may further verify any reported contacts at his or her discretion.

(3) **How many weeks will be reviewed?** The interviewer will review at least one week of your job search documentation at the initial interview. If the job search documentation is unsatisfactory, the department will reschedule you for a second interview in which we will review your documentation for all weeks claimed.

(4) **What happens if I don't attend the initial JSR interview?** If you fail to attend the initial JSR interview and you have an:

(a) **Excused absence**, WorkSource staff will reschedule you for a review of one week of your job search documentation.

You may be excused from attending the initial JSR interview only for the following reasons:

- (i) Jury duty;
- (ii) National Guard duty;
- (iii) Natural disaster or acts of nature; or
- (iv) Verifiable employment or a job interview.

(b) **Unexcused absence**, the following will apply:

(i) The department will schedule you for an interview in which we will review your job search activities for all weeks claimed; and

(ii) The department will deny your benefits for the week of the initial interview unless you can show good cause for not attending. (See WAC 192-180-030.)

(5) **What does "all weeks" mean?** For purposes of this section, "all weeks" means the latest of the following:

(a) Weeks claimed since you filed your application for benefits; or

(b) Weeks claimed since your last JSR interview, if applicable.

(6) **Do I need to bring anything else to the JSR interview?** You must be prepared to present proof of your identity during the JSR interview. Acceptable documents are:

(a) State or government issued driver's license or identification card with photo;

(b) U.S. passport (expired or unexpired);

(c) Permanent resident card or alien registration receipt card (Form I-551);

(d) Unexpired employment authorization document, with photo;

(e) School identification card with photo;

(f) Voter's registration card;

(g) U.S. military identification card or draft record;

(h) Military dependent's identification card;

(i) U.S. Coast Guard merchant mariner card; or

(j) Native American tribal document.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. 10-11-046, § 192-180-025, filed 5/12/10, effective 6/12/10. Statutory Authority: RCW 50.12.010 and 50.12.040. 07-22-055, § 192-180-025, filed 11/1/07, effective 12/2/07. Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. 05-01-076, § 192-180-025, filed 12/9/04, effective 1/9/05. Statutory Authority: RCW 50.12.010 and 50.12.040. 99-13-002, § 192-180-025, filed 6/3/99, effective 7/4/99.]

Chapter 192-190 WAC

DEDUCTIONS FROM UNEMPLOYMENT BENEFITS

WAC

192-190-010	Income tax withholding.
192-190-015	Deductions for child support—RCW 50.40.050.
192-190-020	Are lump sum retirement payments deductible from my benefits (RCW 50.04.323)?
192-190-025	How is the pension deduction calculated?
192-190-030	Is reimbursement of expenses deductible from my benefits?
192-190-035	Vacation or holiday pay.
192-190-040	Back pay and settlements.
192-190-045	Severance pay.
192-190-050	Termination pay.
192-190-055	Payment in lieu of notice.

192-190-060	Bonuses.
192-190-065	Tips.
192-190-070	Jury duty—RCW 50.20.117.
192-190-075	Sick leave pay.
192-190-080	Disability payments.
192-190-085	Work study.
192-190-090	National Guard pay.
192-190-100	AmeriCorps stipends.

WAC 192-190-010 Income tax withholding. (1) You may request to have federal income tax withheld from your benefits. If you choose to do so, the department will deduct the withholding at the percentage specified in 26 U.S.C. Section 3402 (p)(2). You may cancel this withholding at any time.

(2) Benefits deducted for income tax purposes are considered paid to you. If you are paid benefits to which you are not entitled, the amount withheld for income tax will be included in the overpayment.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. 10-11-046, § 192-190-010, filed 5/12/10, effective 6/12/10.]

WAC 192-190-015 Deductions for child support—RCW 50.40.050. (1) After being properly notified by a child support agency, the department will withhold a portion of your benefits to send to the agency to satisfy child support obligations.

(2) **Notification.** The child support agency is responsible for notifying you of the order to deduct child support from your unemployment benefits.

(3) **Overpayments.** Benefits deducted to satisfy child support obligations are considered paid to you. If you receive benefits to which you are not entitled, the amount deducted to satisfy child support obligations will be included in the overpayment.

(4) **Benefits withheld in error.** The child support agency is responsible for reimbursing you if the amount deducted from your benefits is greater than you are required to pay to satisfy your child support obligations. If an amount less than you are required to pay is deducted from your benefits, the department will deduct the additional amount from future benefit weeks.

(5) **Appeals.**

(a) You must file your appeal concerning the validity of the child support order, the total amount due, or the amount to be deducted from your benefits, with the child support agency.

(b) You may file your appeal concerning the department's authority to deduct child support from your benefits, the weeks for which the deduction is made, and the accuracy of the amount deducted with the department in the same manner as eligibility decisions are appealed. You may file your appeal based on the department's notice to you that child support obligations have been or will be deducted from your benefits. All laws and rules pertaining to benefit appeals apply to appeals under this subsection.

(6) **Effective date of deduction.** The department will not deduct child support obligations from benefits paid for weeks prior to the date on which notification is served on you by the child support agency.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. 10-11-046, § 192-190-015, filed 5/12/10, effective 6/12/10.]

WAC 192-190-020 Are lump sum retirement payments deductible from my benefits (RCW 50.04.323)? Lump sum retirement benefits are deductible from benefits as provided in this section.

(1) Lump sum retirement payments are prorated over the individual's life expectancy as determined by Title I in Regulation 1.72-9 of the Internal Revenue Code. The percentage contributed by the employer to the retirement will be prorated over the individual's life expectancy to determine the amount deducted from benefits.

(2) After a job separation, the withdrawal of only the funds and applicable interest contributed by the individual to a retirement pension is not deductible from benefits.

(3) The transfer or rollover of a lump sum retirement payment within sixty days of receipt to another long-term retirement plan, such as an individual retirement account (IRA), or 401K is not deductible from benefits.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. 10-11-046, § 192-190-020, filed 5/12/10, effective 6/12/10.]

WAC 192-190-025 How is the pension deduction calculated? (1) The share contributed by the employer to the pension is deductible from benefits. The amount of the deduction equals the percentage of the contribution(s) made by the base year employer as of the last pay period in the base year in which the contribution(s) was made. The department will prorate the employer's share to a weekly amount.

(a) The department will presume the services you provided to the employer in the base year affected eligibility for or increased the pension amount unless you provide verification from the employer or the pension fund administrator showing otherwise.

(b) The department will presume you made no contribution to the pension unless you provide evidence satisfactory to the department that such a contribution was made.

(2) A disability pension based entirely on the percentage of disability is not deductible. For example, disability payments paid by the Veterans Administration (VA) based on extent of injury are not deductible.

(3) Retirement benefits paid by the Social Security Administration are not deductible from benefits.

(4) For purposes of this section, "pension" includes retirement benefits or retired pay, annuity, or other similar periodic payment.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. 10-11-046, § 192-190-025, filed 5/12/10, effective 6/12/10.]

WAC 192-190-030 Is reimbursement of expenses deductible from my benefits? (1) Moneys paid to you as reimbursement for expenses are not deductible from benefits. However, there must be a reasonable relationship between the amount paid and the actual expenses incurred. If the amount paid is greater than actual expenses, the entire amount must be reported to the department as remuneration and may be deducted from your weekly benefit amount.

(2) **Examples:**

(a) A volunteer firefighter is paid twenty-five dollars for each fire call. The amount is considered reimbursement for the costs associated with responding to the fire call, such as travel expenses. You are not required to report the reimbursement to the department when filing your claim.

(b) A volunteer firefighter is paid fifty dollars per week even if he or she has no fire calls during that week. The amount is considered remuneration because there is no relationship between the payment and the costs associated with service as a firefighter. You must report the payments to the department when filing your claim.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. 10-11-046, § 192-190-030, filed 5/12/10, effective 6/12/10.]

WAC 192-190-035 Vacation or holiday pay. (1) You must report vacation and holiday pay when filing your claim for benefits.

(2) If vacation or holiday pay is assigned to a specific time period by your employer or as part of a collective bargaining agreement, the department will deduct it from your benefits.

(3) If you receive a cash out of accrued vacation leave, it is not deductible from benefits.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. 10-11-046, § 192-190-035, filed 5/12/10, effective 6/12/10.]

WAC 192-190-040 Back pay and settlements. (1) "Back pay" means wages paid to a worker for a prior pay period. An employer may award back pay to a separated or suspended employee for a specific period of time.

If you received benefits for any weeks for which back pay is awarded, you must report the amount of the back pay to the department.

(a) If the employer does not deduct the amount owed before giving you the award, you will receive an overpayment notice and must pay the amount owed to the department.

(b) If the employer deducts the amount of benefits owed before giving you the back pay award, the employer must pay the amount owed to the department.

(2) A back pay award may not be used to purge a disqualifying separation.

A lump sum payment of worker's compensation benefits does not constitute a back pay award for purposes of RCW 50.20.160.

(3) A "settlement" is the resolution of a dispute or lawsuit under specific terms, often financial. The department will treat a settlement due to loss of wages the same as a back pay award.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. 10-11-046, § 192-190-040, filed 5/12/10, effective 6/12/10.]

WAC 192-190-045 Severance pay. When payment for your separation from work is assigned to any period before the date of separation, it is considered severance pay. Severance pay is not deductible from benefits.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. 10-11-046, § 192-190-045, filed 5/12/10, effective 6/12/10.]

WAC 192-190-050 Termination pay. (1) Termination pay is the same as earnings and is deductible from benefits. It means payments that are assigned to and have a connection with the period following the last day you worked but before you are separated from employment. The payments may be connected to a specific period of time by collective bargain-

ing agreement, individual contract or hiring agreement, customary trade practice, or your request.

(2) Your employer may place conditions for receiving payments, such as requiring that you be available for work during the payment period as needed or stopping payment before the payment period ends if you get another job.

Example 1: The employer provides a job security plan which pays full salary and benefits for five months after the layoff date. The employees are on-call to work as needed for the employer. These payments are deductible because the payments are conditioned on your agreement to remain on-call.

Example 2: An employment contract provides for payments for up to two years following layoff, based on years of service. Fringe benefits continue during the period and accrued vacation time may be used to extend the length of the payments. Payments are deductible because there is a clear connection between the payments and the time period following the last day of work based on the continuation of fringe benefits such as vacation leave.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. 10-11-046, § 192-190-050, filed 5/12/10, effective 6/12/10.]

WAC 192-190-055 Payment in lieu of notice. (1) If you have a contract or hiring agreement that requires the employer to give you advance notice of termination, and the employer fails to do so, the payments you receive from the employer for wages or salary you would have earned during the notice period are deductible from benefits.

(2) If you give notice to the employer to quit work, and the employer discharges you before the end of the notice period, any wages paid to you through the end of the notice period are deductible from benefits.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. 10-11-046, § 192-190-055, filed 5/12/10, effective 6/12/10.]

WAC 192-190-060 Bonuses. (1) If a bonus is attributable to work you performed during a week in which you claimed benefits, the amount paid is deductible from benefits.

Example: You work twenty hours a week and receive partial unemployment benefits. Based on productivity for that week, your employer awards a fifty dollar cash bonus to workers. The fifty dollars is deductible from benefits.

(2) If a bonus is not attributable to work you performed during a week claimed, it is not deductible from benefits.

Example: You work eight months for an employer and are then laid off. At the end of the year, your employer pays each worker a bonus of one hundred dollars for each month worked during the calendar year. You receive eight hundred dollars based on your eight months of work. Because the bonus is attributable to work performed before you separated from your job, it is not deductible from benefits.

(3) A bonus includes, but is not limited to, cash payments and other things of value that are over and above the employment contract or hiring agreement.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. 10-11-046, § 192-190-060, filed 5/12/10, effective 6/12/10.]

WAC 192-190-065 Tips. Tips are considered earnings and must be reported each week you claim benefits. They are deductible from benefits.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. 10-11-046, § 192-190-065, filed 5/12/10, effective 6/12/10.]

WAC 192-190-070 Jury duty—RCW 50.20.117. (1) Payment received because you are on-call or reporting as a prospective juror, or serving on a jury, is earnings and deductible from benefits.

(2) Payment received as reimbursement of expenses for travel, meals, and other costs associated with jury duty is not deductible from benefits.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. 10-11-046, § 192-190-070, filed 5/12/10, effective 6/12/10.]

WAC 192-190-075 Sick leave pay. (1) You must report sick leave pay when filing your claim for benefits.

(a) If sick leave pay is assigned to a specific time period by your employer or as part of a collective bargaining agreement, it is deductible from benefits.

(b) If you receive a cash out of accrued sick leave, it is not deductible from benefits.

(2) If your benefits are reduced because you reported sick leave pay, they will not be further reduced because you were not able to work on the day(s) for which you were on paid sick leave.

Example: You are sick for three days during a week. You receive sick leave pay for two of those days. Your benefits will be reduced for those two days by the amount of sick leave paid to you. Your benefits will be reduced by one-seventh under RCW 50.20.130 for the third day because you were not able to work.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. 10-11-046, § 192-190-075, filed 5/12/10, effective 6/12/10.]

WAC 192-190-080 Disability payments. (1) Disability payments paid to you by an insurance company based on premiums paid by the employer are not earnings and are not deductible from benefits.

(2) Disability payments paid to you from a trust fund paid solely by the employer's contributions are earnings and are deductible from benefits.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. 10-11-046, § 192-190-080, filed 5/12/10, effective 6/12/10.]

WAC 192-190-085 Work study. (1) The Higher Education Act (Public Law 102-325, Title IV) prohibits the deduction of federal financial aid, including work study, from benefits. If the financial aid award includes both federal and state moneys, it is not deductible from benefits.

(2) Earnings from work programs that require services in exchange for student financial aid are deductible from benefits unless Title IV funds are included in the award.

(3) Federally subsidized programs, such as the Workforce Investment Act, do not include Title IV funds. Students provide services to an employer who reports income for tax purposes. These earnings are deductible from benefits.

(4) Other forms of financial aid, such as grants or loans, which do not require the performance of services, are not deductible from benefits.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. 10-11-046, § 192-190-085, filed 5/12/10, effective 6/12/10.]

WAC 192-190-090 National Guard pay. You must report earnings if you are in the National Guard or military reserve and are on active duty more than seventy-two consecutive hours. Earnings for active duty that exceeds seventy-two consecutive hours are deductible from benefits.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. 10-11-046, § 192-190-090, filed 5/12/10, effective 6/12/10.]

WAC 192-190-100 AmeriCorps stipends. (1) Stipends received for participation as an AmeriCorps volunteer are considered payment for services and are deductible from benefits. Moneys received for education-related expenses, such as tuition and books, are not deductible from benefits.

(2) If you work a part-time job, your earnings from the part-time job are deductible from benefits. See also WAC 192-170-100.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. 10-11-046, § 192-190-100, filed 5/12/10, effective 6/12/10.]

Chapter 192-200 WAC SCHOOL OR TRAINING

WAC

192-200-005	Disqualification of students—RCW 50.20.095.
192-200-030	May I receive unemployment benefits while I am in training?

WAC 192-200-005 Disqualification of students—RCW 50.20.095. (1) **General rule.** If you are registered in a course of study that provides scholastic instruction of twelve or more credit hours per week, you are disqualified from receiving benefits or credit for your waiting week.

(2) **Period of disqualification.** The disqualification starts with the week the instruction begins or the week you left employment to return to school, whichever is earlier. The disqualification ends at midnight on Saturday of the week prior to the first full week in which you are no longer registered for twelve or more hours of instruction. You must certify to the department that you are not currently registered for twelve or more credit hours and will not be registered for twelve or more credit hours for at least sixty days. If you begin classes within sixty days, all benefits paid since the date of your certification will be considered an overpayment. This overpayment is subject to recovery under RCW 50.20.190. If you are registered for classes that begin more than sixty days in the future, you will not be disqualified under this subsection.

(3) **Disqualification not applicable.** The disqualification does not apply if you:

- Are in approved training under RCW 50.20.043;
- Are in an approved self-employment assistance program under RCW 50.20.250; or
- Show by a preponderance of the evidence that your student status does not significantly interfere with your actual availability for work when you apply.

(4) **Definitions.** As used in this section:

(a) "School" includes primary schools, secondary schools, and institutions of higher education as defined in RCW 50.44.037;

(b) "Scholastic instruction" includes all teaching or opportunity for learning subjects other than those of a strictly vocational nature. Subjects of a vocational nature are those embraced in the definition of "training" contained in WAC 192-200-010.

(c) "Twelve or more hours per week" means 12 or more credit hours per week or its equivalent.

(5) **Students.** Students who claim benefits are subject to all of the provisions of Title 50 RCW including:

(a) RCW 50.20.050 dealing with those who leave work voluntarily without good cause;

(b) RCW 50.20.010 (1)(c) requiring claimants to be able and available for and actively seeking work; and

(c) RCW 50.20.240 requiring claimants to provide evidence of their job search activities as requested by the department.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. 10-11-046, § 192-200-005, filed 5/12/10, effective 6/12/10. Statutory Authority: RCW 50.12.010, 50.12.040, 50.20.010, 50.20.250(7) and 50.20.012. 07-23-129, § 192-200-005, filed 11/21/07, effective 1/1/08. Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. 05-01-076, § 192-200-005, filed 12/9/04, effective 1/9/05.]

WAC 192-200-030 May I receive unemployment benefits while I am in training? (1) To be eligible for unemployment benefits while in training, you must meet the following criteria:

(a) The training must be full-time as defined by the training facility but subject to the discretion of the commissioner, including skills training classes designated as full-time by the local WorkSource administrator; and

(b) You must be making satisfactory progress in training. Except as provided in (c) of this subsection, "satisfactory progress" is defined in WAC 192-270-065; or

(c) If you are enrolled in an approved self-employment assistance program under RCW 50.20.250, "satisfactory progress" means you are attending classes and participating in other activities related to setting up a business within the time frames outlined in your approved training plan.

(d) The certification that you are making satisfactory progress in full-time training must be signed by the registrar or equivalent person designated by the training facility.

(2) You must notify the department if you discontinue or suspend training, change your course of study, or reduce enrollment to less than full-time.

(3) If your enrollment drops below full-time or you are not making satisfactory progress, you may be required to show that you are meeting the availability for work and job search requirements of RCW 50.20.010 (1)(c) and 50.20.240, and the provisions of RCW 50.20.080 regarding failure to apply for, or refusal to accept suitable work.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. 10-11-046, § 192-200-030, filed 5/12/10, effective 6/12/10. Statutory Authority: RCW 50.12.010, 50.12.040, 50.20.010, 50.20.250(7) and 50.20.012. 07-23-129, § 192-200-030, filed 11/21/07, effective 1/1/08. Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. 05-01-076, § 192-200-030, filed 12/9/04, effective 1/9/05.]

Chapter 192-210 WAC

SPECIAL CATEGORY OCCUPATIONS

WAC

192-210-001	Which educational employees are subject to RCW 50.44.050?
192-210-045	When does reasonable assurance apply if I work for more than one school?
192-210-050	Reasonable assurance for substitute teachers—RCW 50.44.050(1).
192-210-200	Professional athletes—RCW 50.20.113.

WAC 192-210-001 Which educational employees are subject to RCW 50.44.050? (1) Except as provided in subsection (2) of this section, the provisions of RCW 50.44.050 apply to services performed in the employ of an educational institution or institution of higher education operated by:

- The state;
- A political subdivision of the state;
- A nonprofit organization or unit; or
- An Indian tribe.

(2)(a) The provisions of RCW 50.44.050 do not apply if you are employed by a subsidiary business or organization owned or operated by an educational institution when:

- The primary purpose of the subsidiary business or organization is other than educational;
- You are not employed in the role of faculty, research or principal administrative staff; and
- Your regular employment does not depend on the school's academic calendar.

(b) All three criteria must be met in order for your services to be exempt from the provisions of RCW 50.44.050. For example:

(i) You work for Pack Forest (operated by the University of Washington, College of Forest Resources) or one of the extension programs operated by Washington State University. You are not employed in the role of faculty, research or principal administrative staff and your regular employment does not depend on the school's academic calendar. However, the primary purpose of each of these entities is educational. Employment for these entities is subject to the provisions of RCW 50.44.050 regardless of the nature of your employment.

(ii) You work for a radio station that is wholly owned and operated by a college. The primary purpose of the business is other than educational, you are not employed in the role of faculty, research, or principal administrative staff, and your regular employment does not depend on the school's academic calendar. You are not subject to the restrictions of RCW 50.44.050.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. 10-11-046, § 192-210-001, filed 5/12/10, effective 6/12/10.]

WAC 192-210-045 When does reasonable assurance apply if I work for more than one school? (1) RCW 50.44.-050 prevents the payment of benefits when "any and all" school wages for "any and all" schools for **any** week of unemployment fall between two successive academic terms or during holiday or vacation break periods.

(2) If you receive reasonable assurance for the following academic term from any school, the wages from all schools for whom you worked during the preceding academic term or break will be restricted.

Example: You worked for ABC and XYZ schools during spring 2009. You received reasonable assurance of returning to work during the fall 2009 term from ABC School but not from XYZ School. The wages from both schools must be restricted during the period between academic terms or breaks.

(3) The period during which wages will be restricted begins during the first full week in which any school for which you worked during the preceding academic term is on break and continues through the last full week in which all schools for which you worked during the preceding academic term have resumed a term of instruction.

Example: You worked for ABC and XYZ schools during the 2008-2009 academic year. Summer is not part of the academic year for either school. ABC School's summer break begins June 15, 2009, and ends September 2, 2009. XYZ School's break begins June 22, 2009, and ends September 9, 2009. Your school wages must be restricted from June 14, 2009, through September 5, 2009.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. 10-11-046, § 192-210-045, filed 5/12/10, effective 6/12/10.]

WAC 192-210-050 Reasonable assurance for substitute teachers—RCW 50.44.050(1). When deciding whether a substitute teacher has reasonable assurance of returning to work, the department will consider, but is not limited to, the following factors:

- (1) Number of full-time teaching positions;
- (2) Student enrollment;
- (3) Number of schools;
- (4) Size of substitute teacher list at the beginning, during, and end of the academic year or term;
- (5) School district priorities that affect the assignment of substitute teachers; and
- (6) The average number of substitute teachers assigned each day.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. 10-11-046, § 192-210-050, filed 5/12/10, effective 6/12/10.]

WAC 192-210-200 Professional athletes—RCW 50.20.113. (1) A professional athlete is not eligible for benefits during the period between two successive sports seasons when substantially all of his or her base period wages were earned through participation in professional sports or athletic events and the individual has reasonable assurance of returning to professional sports during the next season.

(2) Definitions: For purposes of this section:

- (a) "Substantially all" means ninety percent of the individual's base period wages were earned in professional sports.
 - (b) "Professional athlete" includes:
 - (i) A regular player or team player;
 - (ii) An alternate player;
 - (iii) An individual in training to become a regular player or team player; and
 - (iv) An individual who, although not performing active sports, is retained as a player or team member while recuperating from illness or disability.

"Professional athlete" does not include ancillary personnel such as managers, coaches, and trainers involved with the team or sporting event.

- (3) Reasonable assurance exists when the individual has:
 - (a) A written or verbal multiyear contract which extends into the subsequent season; or
 - (b) Offered to work and the employer has expressed interest in hiring the athlete for the next season; or
 - (c) Expressed a readiness and intent to participate in the sport for the next season.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. 10-11-046, § 192-210-200, filed 5/12/10, effective 6/12/10.]

Chapter 192-230 WAC RECOVERY OF OVERPAYMENTS

WAC

192-230-020 How are cash payments and offsets applied to my overpayment?

WAC 192-230-020 How are cash payments and offsets applied to my overpayment? (1) If the department has assessed more than one overpayment against you, we will first apply payments against any overpayment involving fraud. If there are multiple overpayments involving fraud, we will apply payments in order beginning with the oldest benefit year. If none of the overpayments involve fraud, we will apply payments in order beginning with the oldest benefit year.

(2) Within the priority established in subsection (1) of this section, the department will apply cash payments to the outstanding balance in the following order:

- (a) Court costs.
- (b) Interest.
- (c) Penalties based on fraud.
- (d) Overpaid benefits.
- (e) Surcharge assessed under RCW 40.14.027.

(3) The department will only apply offsets to the overpaid benefits. Court costs, fraud penalties, interest, and surcharges cannot be offset; they must be repaid.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. 10-11-046, § 192-230-020, filed 5/12/10, effective 6/12/10; 07-23-128, § 192-230-020, filed 11/21/07, effective 1/1/08.]

Chapter 192-250 WAC SHARED WORK PROGRAM

WAC

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

WAC 192-250-045 Who is not eligible for participation in the shared work program? (1) The following employees are not eligible for participation in the shared work program:

(a) Employees paid on any basis other than hourly wage. This includes, but is not limited to, employees paid on a piece rate, mileage rate, job rate, salary, or commission basis. The commissioner may waive this provision for employees paid on a piece rate basis if an hourly rate of pay can be established.

(b) Officers of the corporation that is applying for participation.

(2) The following businesses are not eligible for participation in the shared work program:

(a) Businesses with a tax rate of 5.4 percent or more, not including the social cost factor rate and taxes under RCW 50.24.010 and 50.24.014.

(b) Nonqualified employers, meaning employers who have reported no payroll for four consecutive quarters.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. 10-11-046, § 192-250-045, filed 5/12/10, effective 6/12/10. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.60.901. 09-13-057, § 192-250-045, filed 6/12/09, effective 7/13/09; 06-22-004, § 192-250-045, filed 10/19/06, effective 11/19/06.]

Chapter 192-270 WAC
TRAINING BENEFITS FOR DISLOCATED WORKERS

WAC

192-270-010	Employment separations for dislocated workers—RCW 50.22.155.
192-270-015	Dislocated workers—Unlikely to return to employment—RCW 50.22.155 (2)(a) and 50.04.075.
192-270-017	Military veterans—RCW 50.22.155 (2)(b)(ii).
192-270-018	Members of the Washington National Guard—RCW 50.22.155 (2)(b)(iii).
192-270-019	Disabled individuals—RCW 50.22.155 (2)(b)(iv).
192-270-047	Incomplete applications.
192-270-050	Criteria for approving training plans.

WAC 192-270-010 Employment separations for dislocated workers—RCW 50.22.155. To be eligible for training benefits as a dislocated worker, you must have been terminated or received a notice of termination from your employer. Training benefits are not available if you left work voluntarily as provided in RCW 50.20.050, regardless of whether you had good cause for leaving, or if you are disqualified from benefits for work-related misconduct under RCW 50.20.060 or 50.20.066, and have not requalified for benefits.

When deciding whether your separation from employment makes you eligible for training benefits, the department will look at the last job you held for a period of at least seven weeks in employment covered by Title 50 RCW or the comparable laws of another state.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. 10-13-038, § 192-270-010, filed 6/8/10, effective 7/9/10. Statutory Authority: RCW 50.12.010, 50.20.010, and 50.22.150(10). 01-11-085, § 192-270-010, filed 5/16/01, effective 6/16/01.]

WAC 192-270-015 Dislocated workers—Unlikely to return to employment—RCW 50.22.155 (2)(a) and 50.04.075. Except as provided in RCW 50.22.155(6), the term "unlikely to return to employment" means, but is not limited to, situations where:

- (1) You have:
 - (a) Become unemployed due to a permanent plant closure;
 - (b) Received a federal WARN act notice; or
 - (c) Received a notice of indefinite layoff as a result of a permanent reduction of operations at your place of employment; and
- (2) Suitable work for individuals with your skills is in diminishing demand within your labor market.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. 10-13-038, § 192-270-015, filed 6/8/10, effective 7/9/10. Statutory Authority:

RCW 50.12.010, 50.20.010, and 50.22.150(10). 01-11-085, § 192-270-015, filed 5/16/01, effective 6/16/01.]

WAC 192-270-017 Military veterans—RCW 50.22.155 (2)(b)(ii). (1) The term "during the twelve-month period" means the individual served in the United States military or Washington National Guard at any point during the twelve-month period prior to application date.

(2) The term "application date" means the date on which the individual filed an initial application for unemployment benefits.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. 10-13-038, § 192-270-017, filed 6/8/10, effective 7/9/10.]

WAC 192-270-018 Members of the Washington National Guard—RCW 50.22.155 (2)(b)(iii). The term "currently serving" does not include reserve members of the Washington National Guard.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. 10-13-038, § 192-270-018, filed 6/8/10, effective 7/9/10.]

WAC 192-270-019 Disabled individuals—RCW 50.22.155 (2)(b)(iv). (1) For purposes of this section:

(a) "Injury" means a trauma to the integrity or function of a tissue or organ and the resulting physical conditions;

(b) "Illness" means a condition marked by an obvious deviation from the normal healthy state, characterized by sickness, disease, or other disorder. Alcohol abuse, drug abuse, antisocial behavior, or criminal history alone, or your commitment to a treatment facility, is insufficient by itself to show "illness" within the meaning of this section.

(2) Verification of your injury or illness may, at the department's discretion, require verification from a physician.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. 10-13-038, § 192-270-019, filed 6/8/10, effective 7/9/10.]

WAC 192-270-047 Incomplete applications. An application that is incomplete will be returned to you for completion. The filing of an incomplete application does not extend the time frames under WAC 192-270-035 for filing a completed application for training benefits.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. 10-13-038, § 192-270-047, filed 6/8/10, effective 7/9/10.]

WAC 192-270-050 Criteria for approving training plans. (1) The department will consider the following factors when reviewing your application for training benefits:

- (a) Whether you have a current benefit year as required by RCW 50.22.010(9);
- (b) Your plan for completion of the training including, but not limited to, the financial resources you intend to use to complete your training when training benefits run out;
- (c) Whether you have the qualifications and aptitudes to successfully complete the training;
- (d) For each of the following categories of workers:

(i) **Dislocated workers under RCW 50.22.155 (2)(a):** Whether suitable employment is available in the labor market in which you currently reside and whether the training is likely to enhance your marketable skills and earning power, based on an assessment of what your earning power would be

if training were not provided. If you were originally determined to be a dislocated worker, but moved from the area where your skills were declining to an area where your skills are in demand, you are not eligible for training benefits.

(ii) **Low income workers under RCW 50.22.155 (2)(b)(i):** Whether vocational training is likely to enhance your earning potential. This consists of training for a career in a demand occupation that will help you obtain and maintain stable, quality employment.

(iii) **For military veterans, current members of the Washington National Guard, and disabled individuals under RCW 50.22.155 (2)(b)(ii), (iii) and (iv):** Whether training is needed to assist you in finding suitable work in your labor market.

(e) Whether the training relates to a high demand occupation.

(i) For claims with an effective date prior to April 5, 2009, "high demand" means that the number of job openings in the labor market for the occupation or with that skill set exceeds the supply of qualified workers.

(ii) For claims with an effective date on or after April 5, 2009, "high demand" means an occupation with a substantial number of current or projected employment opportunities;

(f) Whether the training is likely to enhance your marketable skills and earning power, based on an assessment of what your employment prospects would be if training were not approved; and

(g) Whether the educational institution and training program meet the performance criteria established by the workforce training and education coordinating board.

(2) Academic training may be approved if it meets the criteria of subsection (1) and it meets specific requirements for certification, licensing, or specific skills necessary for the occupation.

(3) The department may approve educational training that has been identified as necessary by the training facility as a prerequisite to a vocational training program that meets the criteria of subsection (1).

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. 10-13-038, § 192-270-050, filed 6/8/10, effective 7/9/10. Statutory Authority: RCW 50.12.010, 50.20.010, and 50.22.150(10). 01-11-085, § 192-270-050, filed 5/16/01, effective 6/16/01.]

Chapter 192-300 WAC

REGISTERING FOR UNEMPLOYMENT INSURANCE TAXES

WAC

192-300-090	When does an employer become inactive or reactivated for purposes of unemployment insurance and how does this affect coverage of corporate officers?
192-300-100	Does the exception from "employment" for immediate family members apply to farms owned by corporations, limited liability companies (LLCs), or partnerships under RCW 50.04.150?
192-300-190	Are owners of entities covered for unemployment insurance purposes?

WAC 192-300-090 When does an employer become inactive or reactivated for purposes of unemployment insurance and how does this affect coverage of corporate officers? (1) An employer that has no employees or covered

corporate officers for eight consecutive quarters shall automatically be considered to be an inactive employer.

(2) An active employer may change to inactive status if the employer notifies the department that it is no longer an active employer, has no employees at that time or for the foreseeable future, and has not elected coverage under RCW 50.24.160. The employer shall be considered inactive as of the effective date of the notice unless it is a corporation that has not exempted all its paid corporate officers. If the employer is a corporation and has not exempted all its paid corporate officers, it shall continue to be considered an active employer until the end of the calendar year. If it has no employees and has not elected coverage under RCW 50.24.160, the corporation shall no longer be considered an employer as of January 1st of the following calendar year.

Example A: Employer A (not a corporation) notifies the department that, as of June 30th, it no longer considers itself an active employer, has no employees at that time or for the foreseeable future, and has not elected coverage for otherwise exempt workers. The department will notify Employer A that it is considered inactive and Employer A will not have to file reports for the quarter ending September 30th and beyond.

Example B: Employer Corporation B notifies the department that, as of June 30th, it no longer considers itself an active employer, has no employees at that time or for the foreseeable future, and has not elected coverage for otherwise exempt workers. If the corporation is dissolving or is no longer in business or has exempted all its paid corporate officers from coverage, the department will notify it that the corporation is considered inactive and that it will not have to file reports for the quarter ending September 30th and beyond. If the corporation is continuing as a corporation in which all personal services are performed by bona fide corporate officers and has not exempted all its paid corporate officers, the corporation shall continue to be considered an active employer until December 31st and must report quarterly and pay taxes on nonexempt corporate officers. As of the following January 1st, it will no longer be considered an employer.

(3) A corporation in which all personal services are performed only by bona fide corporate officers, that has no employees throughout a calendar year, and that has not elected coverage for corporate officers under RCW 50.24.-160 shall not be covered for corporate officers for that year regardless of whether it has notified the department that it is no longer an active employer.

Example C: Employer Corporation C is an active employer with employees in year 1 and must file quarterly reports. It has not elected coverage for corporate officers, but has not exempted them either, so Employer Corporation C must cover corporate officers in year 1. Throughout year 2, Employer Corporation C no longer has any employees and all personal services are performed by bona fide corporate officers, but fails to notify the department of the change. Employer Corporation C should submit quarterly "no payroll" reports. Because there are no employees in year 2, the corporate officers are no longer considered covered.

(4) An employer that had no employees and was not previously active in the calendar year and reactivates because it has employees or elects coverage under RCW 50.24.160 shall be considered an active employer as of the date it has employees or elects coverage. If the employer is a corpora-

tion, once it hires employees, it becomes an employer, so it must register and paid corporate officers become covered unless the corporation exempts them within thirty days. If the corporation does not exempt all of its paid corporate officers, the corporate officers that have not been exempted shall be reported and covered as of the date the employer became an active employer.

Example D: Employer D (not a corporation) had registered in a previous year with the department, but had no employees and was in inactive status as of January 1st. It hires employees for the first time that year on April 1st, notifies the department, and is restored to active status at that time. Employer D does not need to report to the department for the first quarter of the year because it was not an active employer at that time. Employer D must report and pay taxes beginning with the quarter ending June 30th.

Example E: Employer Corporation E is a corporation that had been an active employer in previous years, but had no employees and was in inactive status as of January 1st. Employer Corporation E did not previously exempt its corporate officers from coverage, nor did it elect coverage for the officers, but because it was inactive and had no employees, it does not need to report or pay taxes on the corporate officers for the first quarter of the year. Employer Corporation E hires employees for the first time that year on April 1st, notifies the department, is restored to active status at that time, and does not exempt its paid corporate officers within thirty days of April 1st. Employer Corporation E must report and pay taxes on both employees and on corporate officers beginning with the quarter ending June 30th.

(5) An employer that had been in active status during the calendar year, became inactive, and then returns to active status during the same calendar year shall be considered in active status for the entire time since it first became active in that calendar year. If the employer is a corporation that has not exempted all of its paid corporate officers, the corporate officers that have not been exempted shall be reported and covered for the entire time since the corporation first became active in that calendar year.

Example F: Employer F changed from active status to inactive status and back to active status within the same calendar year. Employer F will be treated as if it had been in active status for the entire time since it first became active that year.

[Statutory Authority: RCW 50.12.010, 50.12.040, 10-23-064, § 192-300-090, filed 11/12/10, effective 12/13/10.]

WAC 192-300-100 Does the exception from "employment" for immediate family members apply to farms owned by corporations, limited liability companies (LLCs), or partnerships under RCW 50.04.150? The exemption in RCW 50.04.150 for family members employed on "corporate farms" applies regardless of the structure of the legal entity, including to a spouse or domestic partner or unmarried child under eighteen of a corporate officer, limited liability company (LLC) member, or partner operating the farm.

[Statutory Authority: RCW 50.12.010, 50.12.040, 10-23-064, § 192-300-100, filed 11/12/10, effective 12/13/10. Statutory Authority: Chapters 34.05, 50.12 RCW and RCW 50.04.150, 99-20-127, § 192-300-100, filed 10/6/99, effective 11/6/99.]

WAC 192-300-190 Are owners of entities covered for unemployment insurance purposes? Businesses identified in RCW 50.04.080 and 50.04.090 include business entities such as limited liability companies, limited liability partnerships, etc. There is no employer-employee relationship in the services provided to the business by the owners, as defined in RCW 50.04.100. Therefore, owners, such as "members" of a limited liability company, partners of a partnership, or owners of a sole proprietorship are not covered for unemployment insurance purposes.

[Statutory Authority: RCW 50.12.010, 50.12.040, 10-23-064, § 192-300-190, filed 11/12/10, effective 12/13/10; 00-05-067, § 192-300-190, filed 2/15/00, effective 3/17/00.]

Chapter 192-310 WAC

REPORTING OF WAGES AND TAXES DUE

WAC

192-310-010	What reports are required from an employer? (RCW 50.12.070.)
192-310-020	When are tax payments by employers due? (RCW 50.24.010.)
192-310-025	How are payments applied?
192-310-030	What are the report and tax payment penalties and charges? (RCW 50.12.220.)
192-310-040	How should employers report hours worked? (RCW 50.12.070.)
192-310-050	What records must every employer keep? (RCW 50.12.070.)
192-310-055	What additional records must farm operators or farm labor contractors keep? (RCW 50.04.155 and 50.12.070.)
192-310-160	How may corporations exempt corporate officers from unemployment insurance coverage?
192-310-190	When is a corporate officer with ten percent ownership considered unemployed?

WAC 192-310-010 What reports are required from an employer? (RCW 50.12.070.) (1) Master business application.

Every person or unit with one or more individuals performing services for it in the state of Washington must file a master business application with the department of licensing.

(2) Employer registration:

(a) Every employer shall register with the department and obtain an employment security account number. Registration shall include the names, Social Security numbers, mailing addresses, telephone numbers, and the effective dates in that role of natural persons who are spouses or domestic partners of owners and owners, partners, members, or corporate officers of an employer. Registration of corporations shall include the percentage of stock ownership for each corporate officer, delineated as zero percent, less than ten percent, or ten percent or more, and the family relationship of corporate officers to other corporate officers who own ten percent or more. Every employer shall report changes in owners, partners, members, corporate officers, and percentage of ownership of the outstanding stock of the corporation by corporate officers. The report of changes is due each calendar quarter at the same time that the quarterly tax and wage report is due.

(b) A nonprofit corporation that is an employer shall register with the department, but is not required to provide names, Social Security numbers, mailing addresses, or telephone numbers for corporate officers who receive no com-

pensation from the nonprofit corporation with respect to their services for the nonprofit corporation.

(c) For purposes of this subsection:

(i) "Owner" means the owner of an employer operated as a sole proprietorship;

(ii) "Partner" means a general partner of an employer organized as a partnership, other than limited partners of a limited partnership who are not also general partners of the partnership;

(iii) "Member" means a member of an employer organized as a limited liability company, other than members who, pursuant to applicable law or the terms of the limited liability company's operating agreement or other governing documents, have no right to participate in the management of the limited liability company; and

(iv) "Corporate officer" means an officer described in the bylaws or appointed or elected by the board of directors in accordance with the bylaws or articles or certificates of incorporation of an employer organized as a for-profit or nonprofit corporation.

(3) Quarterly tax and wage reports:

(a) Tax report. Each calendar quarter, every employer must file a tax report with the commissioner. The report must list the total wages paid to every employee during that quarter.

(b) Report of employees' wages. Each calendar quarter, every employer must file a report of employees' wages with the commissioner. This report must list each employee by full name, Social Security number, and total hours worked and wages paid during that quarter.

(i) Social Security numbers are required for persons working in the United States;

(ii) If an individual has a Social Security card, he or she must present the card to the employer at the time of hire or shortly after that. This does not apply to agricultural workers who, under federal rules, may show their Social Security card on the first day they are paid;

(iii) If the individual does not have a Social Security card, Internal Revenue Service rules allow an employer to hire the individual with the clear understanding that the individual will apply for a Social Security number within seven calendar days of starting work for the employer. The individual must give the employer a document showing he or she has applied for a Social Security card. When the card is received, the individual must give the employer a copy of the card itself. An employer should keep copies of the document(s) for his or her records; and

(iv) If the employee does not show his or her Social Security card or application for a card within seven days and the employer continues to employ the worker, the employer does not meet the reporting requirements of this section. The department will not allow waiver of the incomplete report penalty (see WAC 192-310-030).

(c) Format. Employers must file the quarterly tax and wage reports in one of the following formats:

(i) Electronically, using the current version of employer account management services (EAMS), *UIFastTax*, *UIWebTax*, or ICESA Washington; or

(ii) Paper forms supplied by the department (or an approved version of those forms). Agency forms include

"drop-out ink" that cannot be copied. Therefore, photocopies are considered incorrectly formatted reports and forms.

(d) Due dates. The quarterly tax and wage reports are due by the last day of the month following the end of the calendar quarter being reported. Calendar quarters end on March 31, June 30, September 30 and December 31 of each year. So, reports are due by April 30, July 31, October 31, and January 31, in that order. If these dates fall on a Saturday, Sunday, or a legal holiday, the reports will be due on the next business day. Reports submitted by mail will be considered filed on the postmarked date. The commissioner must approve exceptions to the time and method of filing in advance.

(e) Termination of business. Each employer who stops doing business or whose account is closed by the department must immediately file:

(i) A tax report for the current calendar quarter which covers tax payments due on the date the account is closed; and

(ii) A report of employees' wages for the current calendar quarter which includes all wages paid as of the date the account is closed.

[Statutory Authority: RCW 50.12.010, 50.12.040, 10-23-064, § 192-310-010, filed 11/12/10, effective 12/13/10; 07-23-127, § 192-310-010, filed 11/21/07, effective 1/1/08. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.12.042, 05-19-017, § 192-310-010, filed 9/9/05, effective 10/10/05; 04-23-058, § 192-310-010, filed 11/15/04, effective 12/16/04. Statutory Authority: RCW 50.12.070, 98-14-068, § 192-310-010, filed 6/30/98, effective 7/31/98.]

WAC 192-310-020 When are tax payments by employers due? (RCW 50.24.010.)

(1) Taxes must be paid each quarter. Each quarterly payment must include the taxes owed on all wages paid during that calendar quarter. Payments are due to the department by the last day of the month following the end of the calendar quarter for which taxes are due. Payments made by mail are considered paid on the post-marked date. If the last day of the month falls on a Saturday, Sunday, or a legal holiday, the tax payment must be received or postmarked on the next business day.

(2) Tax payments are due immediately when an employer goes out of business or the account is closed by the department. Taxes not paid immediately are delinquent. However, interest will not be added until the first day of the second month following the end of the calendar quarter for which the taxes are owed.

[Statutory Authority: RCW 50.12.010, 50.12.040, 10-23-064, § 192-310-020, filed 11/12/10, effective 12/13/10; 07-23-127, § 192-310-020, filed 11/21/07, effective 1/1/08; 07-22-055, § 192-310-020, filed 11/1/07, effective 12/2/07; 98-14-068, § 192-310-020, filed 6/30/98, effective 7/31/98.]

WAC 192-310-025 How are payments applied?

(1) A payment received with a tax report will be applied to the quarter for which the report is filed. A payment exceeding the legal fees, penalties, interests and taxes due for that quarter will be applied to any other debt as provided in subsection (2). If no debt exists, a credit statement will be issued for any overpayments.

(2) If a payment is received separately from a tax report, the payment will be applied in the following order of priority. It will first be applied to the current quarter if a balance is owed for that quarter, then to the previous quarter if a balance

is owed for that quarter, then beginning with the oldest quarter in which a balance is owed:

- (a) Costs of audit and collection;
- (b) Penalties for willful misrepresentation of payroll;
- (c) Lien fees;
- (d) Warrant fees, surcharges, and fees for nonsufficient funds (NSF) on checks;
- (e) Penalties for knowingly failing to register with the department;
- (f) Penalties for late tax reports;
- (g) Penalties for incomplete reporting;
- (h) Penalties for reporting using incorrect format;
- (i) Penalties for failure to maintain records (RCW 50.12.070(3)) or other penalties not otherwise specified here;
- (j) Penalties for late tax payments;
- (k) Interest charges; and
- (l) Tax payments.

[Statutory Authority: RCW 50.12.010, 50.12.040, 10-23-064, § 192-310-025, filed 11/12/10, effective 12/13/10. Statutory Authority: RCW 50.12-010, 50.12.040, 50.12.042, 04-23-058, § 192-310-025, filed 11/15/04, effective 12/16/04. Statutory Authority: RCW 50.12.010 and 50.12.040, 98-14-068, § 192-310-025, filed 6/30/98, effective 7/31/98.]

WAC 192-310-030 What are the report and tax payment penalties and charges? (RCW 50.12.220.) (1) **Penalty for late tax reports.** An employer who does not file a tax report within the time frame required by WAC 192-310-010 (3)(d) must pay a penalty of twenty-five dollars for each violation, unless the penalty is waived by the department.

(2) **Definition of incomplete or incorrect format tax report.** An employer must file a tax report that is complete and in the format required by the commissioner.

(a) An "incomplete report" is any report filed by any employer or their agent where:

- (i) The entire wage report is not filed on time; or
- (ii) A required element is not reported (Social Security number, name, hours worked, or wages paid); or
- (iii) A significant number of employees are not reported;

or

(iv) A significant number of any given element is not reported, for example, missing Social Security numbers, names, hours, or wages; or

(v) Either the employer reference number or Unified Business Identifier (UBI) number is not included with the tax or wage report; or

(vi) The report includes duplicate Social Security numbers, or impossible Social Security numbers as shown by the Social Security Administration (such as 999-99-9991, 999-99-9992, etc.).

(b) An "incorrect format" means any report that is not filed in the format required by the commissioner under WAC 192-310-010 (3)(c). Agency forms include "drop-out ink" that cannot be copied. Therefore, photocopies are considered incorrectly formatted reports and forms.

(c) For purposes of this section, the term "significant" means an employer who has:

- (i) One employee and reports incomplete wage elements for the one employee; or
- (ii) Two to nineteen employees and reports incomplete wage elements for two or more employees; or

(iii) Twenty to forty-nine employees and reports incomplete wage elements for three or more employees; or

(iv) Fifty or more employees and reports incomplete wage elements for four or more employees.

(3) **Penalty for filing an incomplete or incorrect format tax report.** An employer who files an incomplete or incorrectly formatted tax and wage report will receive a warning letter for the first occurrence. For subsequent occurrences of either an incomplete or incorrectly formatted report within five years of the date of the last occurrence (whether or not the last occurrence was before the effective date of this amendatory section), the employer must pay a penalty as follows:

(a) When quarterly tax is due and an employer has submitted an incomplete report or filed the report in an incorrect format, the following schedule will apply after the initial warning letter: Ten percent of the quarterly contributions for each occurrence, up to a maximum of \$250.00, but not less than:

(i)	2nd occurrence	\$75.00
(ii)	3rd occurrence	\$150.00
(iii)	4th and subsequent occurrences	\$250.00

(b) When no quarterly tax is due and an employer has submitted an incomplete report or filed the report in an incorrect format, the following schedule will apply after the initial warning letter:

(i)	2nd occurrence	\$75.00
(ii)	3rd occurrence	\$150.00
(iii)	4th and subsequent occurrences	\$250.00

(c) After five years without an occurrence, prior occurrences will not count and the employer shall receive a warning letter instead of a penalty on the next occurrence.

(4) **Penalty for knowingly misrepresenting amount of payroll.** If an employer knowingly (on purpose) misrepresents to the department the amount of his or her payroll that is subject to unemployment taxes, the penalty is up to ten times, in the discretion of the department, the difference between the taxes paid, if any, and the amount of taxes the employer should have paid for the period. This penalty is in addition to the amount the employer should have paid. The employer must also pay the department for the reasonable expenses of auditing his or her books and collecting taxes and penalties due as provided in WAC 192-340-100.

(5) **Late tax payments.** All employers must file a tax report every quarter, including employers who have no payroll for a given quarter. If an employer does not report on time, it will be charged a late fee of \$25.00 for each report. If the payment is late, the employer will be charged interest at a rate of one percent of taxes due per month. A late payment penalty is also charged for overdue taxes:

(a) First month: Five percent of the total taxes due or \$10.00, whichever is greater;

(b) Second month: An additional five percent of total taxes due or \$10.00, whichever is greater; and

(c) Third month: An additional ten percent of total taxes due or \$10.00, whichever is greater.

(6) **Nonsufficient funds (NSF).** The department shall charge \$25.00 for checks dishonored by nonacceptance or

nonpayment. This is considered a commercial charge under the Uniform Commercial Code (RCW 62A.3-515).

(7) **Waivers of late filing and late payment penalties.** The department may, for good cause, waive penalties for late filing of a report and late payment of taxes that are due with a report. The commissioner must decide if the failure to file reports or pay taxes on time was not the employer's fault.

(a) The department may waive late penalties when there are circumstances beyond the control of the employer. These circumstances include, but may not be limited to, the following:

(i) The return was filed on time with payment but inadvertently mailed to another agency;

(ii) The delinquency was caused by an employee of the department, such as providing incorrect information to the employer, when the source can be identified;

(iii) The delinquency was caused by the death or serious illness, before the filing deadline, of the employer, a member of the employer's immediate family, the employer's accountant, or a member of the accountant's immediate family;

(iv) The delinquency was caused by the unavoidable absence of the employer or key employee before the filing deadline. "Unavoidable absence" does not include absences because of business trips, vacations, personnel turnover, or terminations;

(v) The delinquency was caused by the accidental destruction of the employer's place of business or business records;

(vi) The delinquency was caused by fraud, embezzlement, theft, or conversion by the employer's employee or other persons contracted with the employer, which the employer could not have immediately detect or prevent. The employer must have had reasonable safeguards or internal controls in place; or

(vii) The employer, before the filing deadline, requested proper forms from the department's central office or a district tax office, and the forms were not supplied in enough time to allow the completed report to be filed and paid before the due date. The request must have been timely, which means at least three days before the filing deadline.

(b) The department may waive late penalties if it finds the employer to be out of compliance during an employer-requested audit, but the department decides the employer made a good faith effort to comply with all applicable laws and rules;

(c) The department may waive late penalties for failure to file a "no payroll" report for one quarter if a new business initially registered that it would have employees that quarter, but then delayed hiring its first employees until after that quarter; and

(d) The department will not waive late penalties if the employer has been late with filing or with payment in any of the last eight consecutive quarters immediately preceding the quarter for which a waiver is requested. If an employer has been in business for fewer than the eight preceding quarters, then all preceding quarters must have been filed and paid on time and a one-time only waiver may be granted.

(8) **Incomplete reports or incorrect format penalty waivers.** For good cause, the department may waive penalties or not count occurrences for incomplete reports or reports in an incorrect format when the employer can demonstrate

that the incomplete or incorrectly formatted report was not due to the fault of the employer.

(9) **Missing and impossible Social Security numbers.** When a Social Security number is impossible or missing, the department may waive penalties for incomplete reports only once for each worker and only when:

(a) The report was incomplete because it included impossible Social Security numbers, but the employer can show that the impossible Social Security numbers were provided to the employer by the employees; or

(b) The report was incomplete because of missing Social Security numbers, but the employer can show that the employee did not work for the employer after failing to provide a valid Social Security card or application for Social Security number within seven days of employment.

(10) **Penalty waiver requests.**

(a) An employer must request a waiver of penalties in writing, include all relevant facts, attach available proof, and file the request with a tax office. In all cases the burden of proving the facts is on the employer.

(b) At its discretion, the department may waive penalties on its own motion without requiring a request from the employer if it finds that the penalty was caused by the department's own error or for other good cause.

(11) **Extensions.** The department, for good cause, may extend the due date for filing a report. If granted, the employer must make a deposit with the department in an amount equal to the estimated tax due for the reporting period or periods. This deposit will be applied to the employer's debt. The amount of the deposit must be approved by the department.

[Statutory Authority: RCW 50.12.010, 50.12.040, 10-23-064, § 192-310-030, filed 11/12/10, effective 12/13/10; 07-23-127, § 192-310-030, filed 11/21/07, effective 1/1/08. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.12.042, 05-19-017, § 192-310-030, filed 9/9/05, effective 10/10/05; 04-23-058, § 192-310-030, filed 11/15/04, effective 12/16/04. Statutory Authority: RCW 50.12.010 and 50.12.040, 98-14-068, § 192-310-030, filed 6/30/98, effective 7/31/98.]

WAC 192-310-040 How should employers report hours worked? (RCW 50.12.070.) This section defines the hours that employers must include on the quarterly tax and wage report.

(1) **Vacation pay.** Report the number of hours an employee is on paid leave. Do not report payments made in place of vacation time as hours worked.

(2) **Sick leave pay.** As provided in RCW 50.04.330(1), any payments made to an employee under a qualified plan for sickness or accident disability, insurance or annuities, medical or hospitalization expenses in connection with sickness or accident disability, death or retirement are not considered wages or compensation. Do not report these as hours or wages. For payments under a nonqualified plan, report both wages and hours.

(3) **Overtime.** Report the number of hours actually worked for which overtime pay or compensatory time is provided, without regard to the amount of wages or compensation paid.

(4) **Commissioned or piecework employees.** Report the actual number of hours worked by employees paid by commission or by piecework. If there are no reliable time keeping records, report a full-time commissioned or piece-

work employee for forty hours worked for each week in which any of their duties were performed.

(5) **Wages in lieu of notice.** When an employee is paid wages in lieu of notice of termination, report the actual number of hours for which they were paid. Wages in lieu of notice of termination pays the employee whose services have been terminated by the employer for the amount of wages they would have earned during the notice period.

(6) **Employees on salary.** If a salaried employee works other than the regular forty-hour week, report the actual number of hours worked. If there are no reliable time keeping records, report forty hours for each week in which a full-time salaried employee worked.

(7) **Faculty employees.** Faculty members of community and technical colleges must teach at least fifteen classroom or laboratory hours to be considered full-time. A teaching load of less than fifteen hours of instruction is considered part-time.

(a) If there is no reliable hourly information, report the hours of instruction as part-time based on fifteen credits as a full-time teaching load and thirty-five hours as full-time employment for a week. For example, an instructor teaches twelve credits per week. Twelve divided by fifteen equals eighty percent. Thirty-five hours times eighty percent equals twenty-eight hours. The employer should report the twenty-eight hours to the department on the employer's quarterly tax and wage report.

(b) Any part-time salaried instructor who does not establish a valid claim because of this formula may provide the department with evidence of hours worked that exceeds the hours reported by the employer.

(8) **Severance pay.** Do not report additional hours for severance pay. Report only the dollar amount paid to the employee. Severance pay is taxable because it is based on past service and compensates the employee upon job separation.

(9) **Payment in kind.** Report the actual hours worked for performing services which are compensated only by payment in kind.

(10) **Bonuses, tips and other gratuities.** Do not report additional hours for bonuses, tips or other gratuities if they are received by an employee who is working regular hours if bonuses, tips and gratuities are the only sources of compensation.

(11) **Fractions of hours.** If the employee's total number of hours for the quarter results in a fraction amount, round the total to the next higher whole number.

(12) **Practice, preparation, and rehearsal time.** If an employee who is part of a performing group is paid for a performance, but is also required by the employer to attend practice, preparation, and rehearsal on an organized group basis, report the hours spent in the required practice, preparation, and rehearsal as well as the performance.

(13) **On-call and standby hours.** Do not report hours if an employee is paid for a shift of on-call or standby hours in which the employee was not actually called in and did not perform services. If the employee was called in or performed services, report the hours actually worked. If the employer has no records of the number of hours actually worked, report the duration of the shift up to eight hours per day.

[Statutory Authority: RCW 50.12.010, 50.12.040, 10-23-064, § 192-310-040, filed 11/12/10, effective 12/13/10; 07-23-127, § 192-310-040, filed 11/21/07, effective 1/1/08. Statutory Authority: Chapters 34.05 and 50.12 RCW, RCW 50.12.070 and 50.04.330(1), 99-20-141, § 192-310-040, filed 10/6/99, effective 11/6/99.]

WAC 192-310-050 What records must every employer keep? (RCW 50.12.070.) The commissioner requires every employer to keep true and accurate business, financial, and employment records which are deemed necessary for the effective administration of chapter 50.12 RCW.

(1) **Employment records.** Every employer shall with respect to each worker, make, keep, and preserve original records containing all of the following information for four calendar years following the calendar year in which employment occurred:

- (a) The name of each worker;
- (b) The Social Security number of each worker;
- (c) The beginning date of employment for each worker and, if applicable, the separation date of employment of each worker;
- (d) The basis upon which wages and/or remuneration are paid to each worker;
- (e) The location where such services were performed;
- (f) A summary time record for each worker showing the calendar day or days of the week work was performed and the actual number of hours worked each day;
- (g) The workers' total gross pay period earnings;
- (h) The specific sums withheld from the earnings of each worker, and the purpose of each sum withheld to equate to net pay; and
- (i) The cause for any discharge where a worker was separated from the job due to discharge; or the cause of any quit where a worker quit the job if the cause for the quit is known.

(2) **Business, financial records, and record retention.** Every employer shall make, keep, and preserve business and financial records containing the following information for four calendar years following the calendar year in which employment occurred:

- (a) Payroll and accounting records, including payroll ledgers, all check registers and canceled checks covering both payroll and general disbursements, general and subsidiary ledgers, disbursement and petty cash records, and profit and loss statements or financial statements;
- (b) Quarterly and annual tax reports, including W-2, W-3, 1099, 1096, and FUTA (940) forms;
- (c) Quarterly reports to the employment security department and the department of labor and industries;
- (d) For independent contractors and subcontractors, business license numbers and registration numbers and copies of contract agreements and invoices; and
- (e) For years prior to 2009 for corporations that did not voluntarily elect to cover corporate officers for unemployment insurance, copies of written notifications to corporate officers that they were ineligible for unemployment insurance benefits.

(3) Employers who pay their workers by check are required to keep and preserve all check registers and bank statements. Employers who pay their workers by cash are required to keep and preserve records of these cash transactions which provide a detailed record of wages paid to each worker.

(4) Penalties for failure to keep and preserve records shall be determined under RCW 50.12.070(3).

[Statutory Authority: RCW 50.12.010, 50.12.040, 10-23-064, § 192-310-050, filed 11/12/10, effective 12/13/10. Statutory Authority: Chapters 34.05 and 50.12 RCW, 00-01-164, § 192-310-050, filed 12/21/99, effective 1/21/00. Formerly WAC 192-12-050 (part).]

WAC 192-310-055 What additional records must farm operators or farm labor contractors keep? (RCW 50.04.155 and 50.12.070.) (1) Farm operators and farm labor contractors must keep the records required under WAC 192-310-050.

(2) Farm operators who contract with a crew leader or a farm labor contractor must keep original records containing the following information:

- (a) The beginning and ending dates of the contract;
- (b) The types of services performed;
- (c) The number of persons performing such services;
- (d) The name of the contractor or crew leader; and
- (e) Evidence the farm labor contractor is licensed as required by chapter 19.30 RCW.

[Statutory Authority: RCW 50.12.010, 50.12.040, 10-23-064, § 192-310-055, filed 11/12/10, effective 12/13/10; 07-22-055, § 192-310-055, filed 11/1/07, effective 12/2/07. Statutory Authority: Chapters 34.05 and 50.12 RCW, 00-01-166, § 192-310-055, filed 12/21/99, effective 1/21/00. Formerly WAC 192-12-050 (part).]

WAC 192-310-160 How may corporations exempt corporate officers from unemployment insurance coverage? (1) Subject to RCW 50.04.165 and the other requirements of this section, a corporation may exempt one or more corporate officers from coverage by notifying the department on a form approved by the department. The form must be signed by each exempted officer. Unless the corporate officer exempted is the only officer of the corporation, the form must also be signed by another corporate officer verifying the decision to be exempt from coverage.

(2) The election to exempt corporate officers is effective immediately if made within thirty days of when the corporation first registers with the department as an employer under RCW 50.12.070 or within thirty days of when the corporation changes its status with the department from inactive to active employer. If the election to exempt corporate officers is made after that, the exemption is effective on January 1 of the following calendar year. The corporation must send written notice to the department by January 15 for the exemption to be effective on January 1 of that year. The exemption is not effective until filed with the department and will not be applied retroactively, except for the period from January 1 to January 15 if the notice is sent by January 15. A corporation is not eligible for refund or credit for periods before the effective date of the exemption.

(3) A public company as defined in RCW 23B.01.400 may exempt any bona fide corporate officer:

- (a) Who is voluntarily elected or voluntarily appointed under the articles of incorporation or bylaws of the corporation;
- (b) Who is a shareholder of the corporation;
- (c) Who exercises substantial control in the daily management of the corporation; and
- (d) Whose primary responsibilities do not include the performance of manual labor.

(4) A corporation that is not a public company may exempt eight or fewer bona fide corporate officers who voluntarily agree to be exempted from coverage and sign a form approved by the department verifying this. These corporate officers must be voluntarily elected or voluntarily appointed under the articles of incorporation or bylaws of the corporation and must exercise substantial control in the daily management of the corporation.

(5) A corporation that is not a public company may exempt any number of corporate officers if all exempted officers of the corporation are related by blood within the third degree or by marriage to a person related by blood within the third degree. If any of the corporate officers fail to qualify for this exemption because they are not related by blood or marriage as required, then none of the corporate officers may qualify under this subsection, although they may still qualify under subsection (4) of this section. This is an alternative and not an addition to exemptions under subsection (4) of this section.

For example, a husband and wife or a domestic partner, their biological or adopted children or stepchildren, grandchildren, and great grandchildren, their brothers and sisters, their nephews and nieces, and the spouses or domestic partners of any of these people could qualify for exemption as corporate officers under this section without being limited to eight individuals. However, if any of the corporate officers exempted do not meet this test, then this subsection does not apply.

(6) This section does not apply to officers of a corporation covered by chapter 50.44 RCW (some nonprofit or government organizations) or chapter 50.50 RCW (Indian tribes).

[Statutory Authority: RCW 50.12.010, 50.12.040, 10-23-064, § 192-310-160, filed 11/12/10, effective 12/13/10. Statutory Authority: RCW 50.12.-010, 50.12.040, and 34.05.120, 10-01-156, § 192-310-160, filed 12/22/09, effective 1/22/10. Statutory Authority: RCW 50.12.010 and 50.12.040, 09-07-010, § 192-310-160, filed 3/5/09, effective 4/5/09; 07-23-127, § 192-310-160, filed 11/21/07, effective 1/1/09.]

WAC 192-310-190 When is a corporate officer with ten percent ownership considered unemployed? (1) This section applies to:

- (a) A corporate officer who owns ten percent or more of the corporation; or
- (b) A corporate officer who is a family member of another corporate officer who owns ten percent or more of the corporation. For purposes of this section, a "family member" is a person related by blood or marriage or domestic partnership as parent, stepparent, grandparent, spouse or domestic partner, child, brother, sister, stepchild, adopted child, or grandchild.

(c) Percentage ownership of the corporation may be measured by the percentage owned of outstanding stock or shares of the corporation.

(2) A corporate officer whose claim for benefits is based on any wages with that corporation is not considered unemployed in any week during the individual's term of office, even if wages are not being paid at the time. The corporate officer is considered unemployed and potentially eligible for benefits if the corporation dissolves or if the officer perma-

nently resigns or is permanently removed as a corporate officer under the articles of incorporation or bylaws.

(3) For purposes of this section, "permanently" means for a period of indefinite duration, but expected to extend at least through the claimant's benefit year end date. If at any time during the benefit year the claimant resumes his or her position as an officer with the corporation, all benefits paid during that benefit year will be considered an overpayment and the claimant will be liable for repayment.

(4) A corporation must provide notice to the department in a format approved by the department when the ownership percentage of a corporate officer increases to become ten percent or more or decreases to become less than ten percent. The notice is due by the time the next quarterly tax and wage report is due from the corporation.

[Statutory Authority: RCW 50.12.010, 50.12.040, 10-23-064, § 192-310-190, filed 11/12/10, effective 12/13/10. Statutory Authority: RCW 50.12.-010, 50.12.040, and 34.05.120, 10-01-156, § 192-310-190, filed 12/22/09, effective 1/22/10. Statutory Authority: RCW 50.12.010 and 50.12.040, 07-23-127, § 192-310-190, filed 11/21/07, effective 1/1/08.]

Chapter 192-320 WAC

EXPERIENCE RATING AND BENEFIT CHARGING

WAC

192-320-005	What is "experience?" (RCW 50.29.021.)
192-320-035	How are unemployment insurance tax rates determined for employers who are delinquent on taxes or reports through rate year 2010?
192-320-036	How are unemployment insurance tax rates determined for employers who are delinquent on taxes or reports, beginning in rate year 2011?
192-320-065	How does an employer request relief of benefit charges? (RCW 50.29.021.)
192-320-070	What conditions apply for relief of benefit charges due to a voluntary quit? (RCW 50.29.021.)
192-320-085	When is an overpayment of benefits credited to an employer's account?

WAC 192-320-005 What is "experience?" (RCW 50.29.021.) As used in this chapter, the term "experience" includes matters that have a direct relation to the risk of unemployment. Any benefits paid that are based on wages paid by the employer and chargeable under RCW 50.29.021 are considered experience.

[Statutory Authority: RCW 50.12.010, 50.12.040, 10-23-064, § 192-320-005, filed 11/12/10, effective 12/13/10. Statutory Authority: RCW 50.12.-010, 50.12.040, and 50.12.042, 05-19-017, § 192-320-005, filed 9/9/05, effective 10/10/05.]

WAC 192-320-035 How are unemployment insurance tax rates determined for employers who are delinquent on taxes or reports through rate year 2010? For rate years through 2010:

(1) An employer that has not submitted by September 30 all reports, taxes, interest, and penalties required under Title 50 RCW for the period preceding July 1 of any year is not a "qualified employer."

(2) For purposes of this section, the department will disregard unpaid taxes, interest, and penalties if they constitute less than either one hundred dollars or one-half of one percent of the employer's total tax reported for the twelve-month period immediately preceding July 1. These minimum amounts only apply to taxes, interest, and penalties, not to failure to submit required reports.

(3)(a) This section does not apply if the otherwise qualified employer shows to the satisfaction of the commissioner that he or she acted in good faith and that application of the rate for delinquent taxes would be inequitable. This exception is to be narrowly construed to apply at the sole discretion of the commissioner, recognizing that the delinquent tax rate only applies after the employer has already received a grace period of not less than two months beyond the normal due date for reports and taxes due. The commissioner's decision shall be subject to review only under the arbitrary and capricious standard and shall be reversed in administrative proceedings only for manifest injustice based on clear and convincing evidence.

(b) Except for services under RCW 50.04.160 performed in domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, the commissioner will not find in the usual course of business that application of the rate for delinquent taxes would be inequitable:

(i) If the employer has been late with filing or with payment in more than one of the last eight consecutive quarters immediately preceding the applicable period;

(ii) If the delinquency was due to absences of key personnel and the absences were because of business trips, vacations, personnel turnover, or terminations;

(iii) If the delinquency was due to adjusting by more than two quarters the liable date when the employer first had employees; or

(iv) If the employer is a successor, the rate for delinquent taxes is based on the predecessor, and the successor could or should have determined the predecessor's tax status at the time of the transfer.

(c) Examples of when the commissioner may find that application of the rate for delinquent taxes would be inequitable include if the delinquency results from:

(i) An employer reducing its tax payment by the amount specified as a credit on the most recent account statement from the department, when the credit amount is later determined to be inaccurate;

(ii) Taxes due which are determined as the result of a voluntary audit;

(iii) Resolution of a pending appeal and any amounts due are paid within thirty days of the final resolution of the amount due or the department approves a deferred payment contract within thirty days of the final resolution of the amount due;

(iv) The serious illness or death of key personnel or their family that extends throughout the period in which the tax could have been paid prior to September 30 and no reasonable alternative personnel were available and any amounts due are paid no later than December 31 of such year; or

(v) An employee or other contracted person committing fraud, embezzlement, theft, or conversion, the employer could not immediately detect or prevent the wrongful act, the employer had reasonable safeguards or internal controls in place, the employer filed a police report, and any amounts due are paid within thirty days of when the employer could reasonably have discovered the illegal act.

(d) When determining whether an employer acted in good faith and that application of the rate for delinquent taxes would be inequitable, the following factors are considered

neutral and neither support nor preclude waiver of the rate for delinquent taxes:

(i) The harshness of the burden on the employer caused by application of the rate for delinquent taxes;

(ii) Lack of knowledge by the employer, bookkeepers, accountants, or other financial advisors about application of the law or the potential harshness of the rate;

(iii) Delay by the employer or its representative in opening mail or receiving other notice from the department; or

(iv) Error by a payroll, bookkeeping, or accounting service on behalf of an employer.

(4) The department shall provide notice to the employer or employer's agent that the employer may be subject to the higher rate for delinquent taxes if the employer does not comply with this section. Notice may be in the form of an insert or statement in July, August, or September billing statements or in a letter or notice of assessment. Evidence of the routine practice of the department in mailing notice in billing statements or in a notice of assessment shall be sufficient to establish that the department provided this notice. No notice need be provided to an employer that is not currently registered and active.

(5) An employer that is not a "qualified employer" because of failure to pay contributions when due shall be assigned an array calculation factor rate two-tenths higher than that in rate class 40, unless the department approves a deferred payment contract with the employer by September 30 of the previous rate year. If an employer with an approved deferred payment contract fails to make any one of the payments or fails to submit any tax report and payment in a timely manner, the employer's tax rate shall immediately revert to an array calculation factor rate two-tenths higher than in rate class 40.

(6) An employer that is not a "qualified employer" because of failure to pay contributions when due shall be assigned a social cost factor rate in rate class 40.

(7) Assignment of the rate for delinquent taxes is not considered a penalty which is subject to waiver under WAC 192-310-030.

(8) The amendments to this section effective July 26, 2009, apply only to tax rates assigned after that date.

[Statutory Authority: RCW 50.12.010, 50.12.040, 10-23-065, § 192-320-035, filed 11/12/10, effective 12/13/10. Statutory Authority: RCW 50.12.-010, 50.12.040, and 50.29.010, 09-24-009, § 192-320-035, filed 11/20/09, effective 12/21/09. Statutory Authority: RCW 50.12.010 and 50.12.040, 07-23-127, § 192-320-035, filed 11/21/07, effective 1/1/08.]

WAC 192-320-036 How are unemployment insurance tax rates determined for employers who are delinquent on taxes or reports, beginning in rate year 2011? (1) An employer that has not submitted by September 30th all reports, taxes, interest, and penalties required under Title 50 RCW for the period preceding July 1st of any year is not a "qualified employer."

(2) For purposes of this section, the department will disregard unpaid taxes, interest, and penalties if they constitute less than either one hundred dollars or one-half of one percent of the employer's total tax reported for the twelve-month period immediately preceding July 1st. These minimum amounts only apply to taxes, interest, and penalties, not failure to submit required reports.

(3)(a) This section does not apply if the otherwise qualified employer shows to the satisfaction of the commissioner that he or she acted in good faith and that application of the rate for delinquent taxes would be inequitable. This exception is to be narrowly construed to apply at the sole discretion of the commissioner, recognizing that the delinquent tax rate only applies after the employer has already received a grace period of not less than two months beyond the normal due date for reports and taxes due. The commissioner's decision shall be subject to review only under the arbitrary and capricious standard and shall be reversed in administrative proceedings only for manifest injustice based on clear and convincing evidence.

(b) The commissioner will not find in the usual course of business that application of the rate for delinquent taxes would be inequitable:

(i) If the employer has been late with filing or with payment in more than one of the last eight consecutive quarters immediately preceding the applicable period;

(ii) If the delinquency was due to absences of key personnel and the absences were because of business trips, vacations, personnel turnover, or terminations;

(iii) If the delinquency was due to adjusting by more than two quarters the liable date when the employer first had employees; or

(iv) If the employer is a successor, the rate for delinquent taxes is based on the predecessor, and the successor could or should have determined the predecessor's tax status at the time of the transfer.

The limitations in (b) of this subsection do not apply to services under RCW 50.04.160 performed in domestic service in a private home, local college club, or local chapter of a college fraternity or sorority.

(c) Examples of when the commissioner may find that application of the rate for delinquent taxes would be inequitable include if the delinquency results from:

(i) An employer reducing its tax payment by the amount specified as a credit on the most recent account statement from the department, when the credit amount is later determined to be inaccurate;

(ii) Taxes due which are determined as the result of a voluntary audit;

(iii) Resolution of a pending appeal and any amounts due are paid within thirty days of the final resolution of the amount due or the department approves a deferred payment contract within thirty days of the final resolution of the amount due;

(iv) The serious illness or death of key personnel or their family that extends throughout the period in which the tax could have been paid prior to September 30th and no reasonable alternative personnel were available and any amounts due are paid no later than December 31st of such year; or

(v) An employee or other contracted person committing fraud, embezzlement, theft, or conversion, the employer could not immediately detect or prevent the wrongful act, the employer had reasonable safeguards or internal controls in place, the employer filed a police report, and any amounts due are paid within thirty days of when the employer could reasonably have discovered the illegal act.

(d) When determining whether an employer acted in good faith and that application of the rate for delinquent taxes

would be inequitable, the following factors are considered neutral and neither support nor preclude waiver of the rate for delinquent taxes:

(i) The harshness of the burden on the employer caused by application of the rate for delinquent taxes;

(ii) Lack of knowledge by the employer, bookkeepers, accountants, or other financial advisors about application of the law or the potential harshness of the rate;

(iii) Delay by the employer or its representative in opening mail or receiving other notice from the department; or

(iv) Error by a payroll, bookkeeping, or accounting service on behalf of an employer.

(4) The department shall provide notice to the employer or employer's agent that the employer may be subject to the higher rate for delinquent taxes if the employer does not comply with this section. Notice may be in the form of an insert or statement in July, August, or September billing statements or in a letter or notice of assessment. Evidence of the routine practice of the department in mailing notice in billing statements or in a notice of assessment shall be sufficient to establish that the department provided this notice. No notice need be provided to an employer that is not currently registered and active.

(5)(a) An employer that is not a "qualified employer" because of failure to pay contributions when due shall be assigned the array calculation factor rate it would otherwise have had if it had not been delinquent, plus an additional one percent. If the employer fails to pay contributions when due for a second or more consecutive year, it shall be assigned the array calculation factor rate it would otherwise have had if it had not been delinquent, plus an additional two percent.

(b) If the employer fails to provide quarterly tax reports and the department cannot otherwise calculate what tax rate the employer would otherwise have had if it had not been delinquent, the department shall use the higher of the rate calculated under RCW 50.29.025 (2)(d) (NAICS rate with one percent minimum) or the last annual rate assigned to the employer.

(c) The higher rate for an employer in (a) of this subsection shall not apply if the employer enters a deferred payment contract approved by the agency by September 30th of the previous rate year.

(d) If, after September 30th of the previous rate year and within thirty days after the date the department sent its first subsequent tax rate notice to the employer, an employer in (a) of this subsection pays all amounts owed or enters a deferred payment contract approved by the agency, the additional rate shall be one-half percent less than it would otherwise have been in (a) of this subsection. "First subsequent tax rate notice to the employer" means the first notice to the employer assigning that specific delinquent tax rate, regardless of whether the notice is part of the department's annual tax rate run.

(e) If an employer with an approved deferred payment contract fails to make any one of the payments or fails to submit any tax report and payment in a timely manner, the employer's tax rate shall immediately revert to the rate in (a) of this subsection.

(6) An employer that is not a "qualified employer" because of failure to pay contributions when due shall be assigned a social cost factor rate in rate class 40. The tax rate

caps for "qualified employers" in RCW 50.29.025 shall not apply either to the calculation of the social cost factor rate in rate class 40 or to the sum of the array calculation factor rate and the graduated social cost factor rate for employers that are not "qualified employers."

(7) An employer that is not a "qualified employer" because it is a successor and its predecessor was not a "qualified employer" shall be assigned rates based on its successor status.

(8) Assignment of the rate for delinquent taxes is not considered a penalty that is subject to waiver under WAC 192-310-030.

[Statutory Authority: RCW 50.12.010, 50.12.040, 10-23-065, § 192-320-036, filed 11/12/10, effective 12/13/10.]

WAC 192-320-065 How does an employer request relief of benefit charges? (RCW 50.29.021.) For purposes of RCW 50.29.021, a contribution-paying base year employer may request relief from certain benefit charges which result from the payment of benefits to an individual. This section does not apply to local governments.

(1) **Employer added to a monetary determination as the result of a redetermination.** The employer's request for relief of benefit charges must be received or postmarked within thirty days of when the department mails the notification of redetermination (Notice to Base Year Employer - EMS 166).

(2) **Timely response.** The commissioner may consider a request for relief of benefit charges that has not been received or postmarked within thirty days as timely if the employer establishes good cause for the untimely response.

(3) **Additional information.**

(a) The employer shall provide the information requested by the department within thirty days of the mailing date of the department's request.

(b) It shall be the responsibility of the employer to provide all pertinent facts to the satisfaction of the department to make a determination of relief of benefits charges, or good cause for failure to respond in a timely manner.

(c) Failure to respond within thirty days will result in a denial of the employer's request for relief of benefit charges unless the employer establishes good cause for the untimely response.

(4) **Denial and appeal of request.** Any denial of a request for relief of benefit charges shall be in writing. The denial may be appealed under RCW 50.32.050.

[Statutory Authority: RCW 50.12.010, 50.12.040, 10-23-064, § 192-320-065, filed 11/12/10, effective 12/13/10; 10-16-038, § 192-320-065, filed 7/26/10, effective 8/26/10. Statutory Authority: Chapter 34.05 RCW and RCW 50.20.020(2), 00-01-167, § 192-320-065, filed 12/21/99, effective 1/21/00.]

WAC 192-320-070 What conditions apply for relief of benefit charges due to a voluntary quit? (RCW 50.29.021.) (1) A contribution-paying base year employer, who has not been granted relief of charges under RCW 50.29.021(3), may request relief of charges for a voluntary quit not attributable to the employer under RCW 50.29.021(4) and WAC 192-320-065. This section does not apply to local governments.

(2) **Reasons for a voluntary quit not attributable to the employer.** A claimant may have been denied unemployment benefits for voluntarily quitting work without good cause, but subsequently requalify for unemployment benefits through work and earnings. Even if the claimant has requalified for benefits, the following reasons for leaving work will be considered reasons not attributable to the employer:

(a) The claimant's illness or disability or the illness, disability or death of a member(s) of the claimant's immediate family;

(b) The claimant's domestic responsibilities;

(c) Accepting a job with another employer;

(d) Relocating for a spouse's or domestic partner's employment;

(e) Starting or resuming school or training;

(f) Being in jail;

(g) The distance to the job site when the job was accepted and the distance at the time of the quit remained the same; or the job location may have changed but the distance traveled or difficulty of travel was not increased;

(h) Being dissatisfied with wages, hours or other working conditions generally known when the job was accepted; and the working conditions are determined suitable for the occupation in the claimant's labor market; and

(i) Separation necessary to protect the claimant or any member of the claimant's immediate family from domestic violence or stalking; and

(j) Entry into an apprenticeship program approved by the Washington state apprenticeship training council.

(3) **Reasons for a voluntary quit considered attributable to employer** are those work-related factors of such a compelling nature as to cause a reasonably prudent person to leave employment. The work factors must have been reported to the employer if the employer has reasons not to be aware of the conditions, and the employer failed to improve the factors within a reasonable period of time. The reason for quitting may or may not have been determined good cause for voluntarily leaving work under RCW 50.20.050. For benefit charging purposes, however, such work-related factors may include, but are not limited to:

(a) Change in work location which causes an increase in distance and/or difficulty of travel, but only if it is clearly greater than is customary for workers in the individual's classification and labor market;

(b) Deterioration of work site safety provided the employee has reported such safety deterioration to the employer and the employer has failed to correct the hazards within a reasonable period of time;

(c) Employee skills no longer required for the job;

(d) Unreasonable hardship on the health or morals of the employee;

(e) Reductions in hours;

(f) Reduction in pay;

(g) Notification of impending layoff; and

(h) Other work-related factors the commissioner considers pertinent.

[Statutory Authority: RCW 50.12.010, 50.12.040, 10-23-064, § 192-320-070, filed 11/12/10, effective 12/13/10; 07-23-127, § 192-320-070, filed 11/21/07, effective 1/1/08. Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042, 04-23-058, § 192-320-070, filed 11/15/04, effective 12/16/04. Statutory Authority: RCW 50.12.010, 50.12.040, 00-05-069, § 192-320-070, filed 2/15/00, effective 3/17/00.]

[2011 WAC Supp—page 30]

WAC 192-320-085 When is an overpayment of benefits credited to an employer's account? Benefits paid shall be recoverable to the extent allowable pursuant to RCW 50.20.190 in the event that the decision allowing benefits is ultimately modified or reversed. Reversal or modification shall not affect previous benefit charges ultimately modified or reversed; however, benefit credits in an amount equal to the erroneous charges shall be applied to the employer's account for the quarter in the calendar year in which the decision is ultimately modified or reversed.

[Statutory Authority: RCW 50.12.010, 50.12.040, 10-23-064, § 192-320-085, filed 11/12/10, effective 12/13/10; 10-16-038, § 192-320-085, filed 7/26/10, effective 8/26/10.]

Chapter 192-330 WAC

COLLECTIONS AND REFUNDS

WAC

192-330-110 What tax rate is assigned to a delinquent employer who becomes a contribution-paying employer?

192-330-150 How may the option to make payments in lieu of contributions be revoked for tribes and tribal entities? (RCW 50.50.040.)

WAC 192-330-110 What tax rate is assigned to a delinquent employer who becomes a contribution-paying employer? RCW 50.29.025 specifies the tax rate that shall be charged to employers who have failed to pay their contributions and who are not in compliance with a deferred payment contract. The tax rate established by that section shall also be assigned to a reimbursable employer (one who makes payments in lieu of contributions) who is delinquent in its payments and elects or is required to become a contribution-paying employer.

[Statutory Authority: RCW 50.12.010, 50.12.040, 10-23-064, § 192-330-110, filed 11/12/10, effective 12/13/10; 03-22-032, § 192-330-110, filed 10/28/03, effective 11/28/03.]

WAC 192-330-150 How may the option to make payments in lieu of contributions be revoked for tribes and tribal entities? (RCW 50.50.040.) (1) In any revocation action, the department will treat the entire tribe as a single entity. If any tribal entity or unit becomes delinquent, the entire tribe will be treated as delinquent. If any entity of the tribe is a contribution-paying employer and is delinquent, the entire tribe will be treated as a contribution-paying employer and will be subject to revocation of coverage.

(2) The ninety day response period in RCW 50.50.040 (1)(a) and the one hundred eighty day response period in RCW 50.50.040 (2)(a) begin with the date the tax statement is received, which is deemed to be three days after it is mailed to the employer by the department.

[Statutory Authority: RCW 50.12.010, 50.12.040, 10-23-064, § 192-330-150, filed 11/12/10, effective 12/13/10; 03-22-032, § 192-330-150, filed 10/28/03, effective 11/28/03.]

Chapter 192-340 WAC

AUDITS AND TECHNICAL ASSISTANCE

WAC

192-340-100 What reasonable audit expenses may the department charge if an employer knowingly misrepresents payroll? (RCW 50.12.220(3).)

WAC 192-340-100 What reasonable audit expenses may the department charge if an employer knowingly misrepresents payroll? (RCW 50.12.220(3).) If an employer knowingly misrepresents its payroll to the department, it shall be liable for the reasonable expenses of auditing its books and collecting taxes. These may include:

(1) Salaries and benefits based on the payrolls documented for state staff conducting the audit (including reporting and follow-up costs);

(2) Communication costs such as telephone charges for arranging the audit, e-mails, mail or similar communication services;

(3) Travel costs for expenses such as transportation, lodging, subsistence and related items incurred by state employees traveling for the purpose of conducting the audit. Such costs may be charged on an actual cost basis or on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two, provided the method used is applied to an entire trip, and results in charges consistent with those normally allowed by the department;

(4) Customary standard commercial airfare costs (coach or equivalent);

(5) Costs for materials and supplies (including the costs of producing reports and audit findings);

(6) Equipment costs necessary for conducting the audit;

(7) Collection costs, including court costs, lien and warrant fees, and related costs; and

(8) Other costs which the department establishes that are directly related to the audit or collection of the penalty (e.g., appeal costs).

[Statutory Authority: RCW 50.12.010, 50.12.040, 10-23-064, § 192-340-100, filed 11/12/10, effective 12/13/10. Statutory Authority: RCW 50.12.-010, 50.12.040, 50.12.042, 04-23-058, § 192-340-100, filed 11/15/04, effective 12/16/04.]

Chapter 192-350 WAC TRANSFER OF BUSINESS

WAC

192-350-010	What is a predecessor-successor relationship?
192-350-070	What effect does a predecessor-successor relationship have on tax rates?
192-350-090	When does an employer quit or dispose of a business for purposes of successor liability? (RCW 50.24.210.)

WAC 192-350-010 What is a predecessor-successor relationship? (1) This section applies only to those individuals and organizations that meet the definition of an employer contained in RCW 50.04.080.

(2) A predecessor-successor relationship exists when a transfer occurs and one business (successor) acquires all or part of another business (predecessor). It may arise from the transfer of operating assets, including but not limited to the transfer of one or more employees from a predecessor to a successor. It may also arise from an internal reorganization of affiliated companies. Whether or not a predecessor-successor relationship (including a "partial predecessor" or "partial successor" relationship) exists depends on the totality of the circumstances.

(3) **Predecessor.** An employer may be a "predecessor," including a "full predecessor" or "partial predecessor," if,

during any calendar year, it transfers any of the following to another individual or organization:

(a) All or part of its operating assets as defined in subsection (5) of this section; or

(b) A separate unit or branch of its trade or business.

(4) **Successor.** A "successor" may be either a "full successor" or a "partial successor." An employer may be a "full successor" if, during any calendar year, it acquires substantially all of a predecessor employer's operating assets. It may be a "partial successor" if, during any calendar year, it acquires:

(a) Part of a predecessor employer's operating assets; or

(b) A separate unit or branch of a predecessor employer's trade or business.

(5) **Operating assets.** "Operating assets" include the resources used in the normal course of business to produce operating income. They may include resources that are real or personal, and tangible or intangible. Examples include land, buildings, machinery, equipment, stock of goods, merchandise, fixtures, employees, or goodwill. "Goodwill" includes the value of a trade or business based on expected continued customer patronage due to its name, reputation, or any other factor.

(6) **Transfer of assets.** Transfers from a predecessor to a successor employer may occur by sale, lease, gift, or any legal process, except those listed in subsection (9) of this section.

(7) **Simultaneous acquisition.** For purposes of successor simultaneous acquisition, the term "simultaneous" means all transfers that resulted from acquiring or reorganizing the business, beginning when the acquisition started and ending when the primary unit is transferred.

(8) **Factors.** Factors should be weighed instead of merely adding up the number of individual factors. No single factor is necessarily conclusive. Some of the factors which the department may consider as favoring establishment of a predecessor-successor (including a "full successor" or "partial successor") relationship are:

(a) Whether the employers are in the same or a like business (e.g., providing similar or comparable goods or services or serving the same market);

(b) Whether the asset(s) transferred constitute a substantial or key portion of similar assets for either the predecessor or successor;

(c) Whether the assets were transferred directly and not through an independent third party;

(d) Whether multiple types of assets (e.g., employees, real property, equipment, goodwill) transferred;

(e) Whether a significant number or significant group of employees transferred between employers;

(f) Whether the assets transferred at the same time or in a connected sequence, as opposed to several independent transfers;

(g) Whether the business name of the first employer continued or was used in some way by the second employer;

(h) Whether the second employer retained or attempted to retain customers of the first employer;

(i) Whether there was relative continuity and not a significant lapse in time between the operations of the first and second employers;

(j) Whether there was continuity of management between employers;

(k) Whether the employers shared one or more of the same or related owners;

(l) Whether documents, such as a contract or corporate minutes, show the sale or transfer of a business or a portion of a business; and

(m) Whether other factors indicate that a predecessor-successor relationship exists.

(9) **Exceptions.** A predecessor-successor relationship will not exist:

(a) For the purposes of chapter 50.24 RCW (payment of taxes), when the property is acquired through court proceedings, including bankruptcies, to enforce a lien, security interest, judgment, or repossession under a security agreement unless the court specifies otherwise;

(b) For the purposes of chapter 50.29 RCW (experience rating), when any four consecutive quarters, one of which includes the acquisition date, pass without reportable employment by the predecessor, successor, or a combination of both.

(10) **Burden of proof.** The department has the burden to prove by a preponderance of the evidence that a business is the successor or partial successor to a predecessor business. However, if a business fails to respond to requests for information necessary to determine a predecessor-successor relationship, the department may meet its burden by applying RCW 50.12.080 to determine the necessary facts.

[Statutory Authority: RCW 50.12.010, 50.12.040, 10-23-064, § 192-350-010, filed 11/12/10, effective 12/13/10. Statutory Authority: RCW 50.12.-010, 50.12.040, and 50.29.064, 07-23-131, § 192-350-010, filed 11/21/07, effective 1/1/08.]

WAC 192-350-070 What effect does a predecessor-successor relationship have on tax rates? (1) Under RCW 50.29.062(1), if the successor is an employer at the time of the transfer of a business, the successor's tax rate shall remain unchanged for the rest of the calendar year. Beginning on January 1 of the year after the transfer and until the successor qualifies for its own rate, the successor's tax rate for each rate year shall combine the successor's experience with the experience of the predecessor or the relevant portions of the partial predecessor.

(2)(a) Under RCW 50.29.062 (2)(b), if the successor is not an employer at the time of the transfer of a business and if the transfer occurs after January 1, 2005, the successor's tax rate for the rest of the calendar year shall be the same as the predecessor employer at the time of the transfer. Any experience attributable to the predecessor shall be transferred to the successor.

(b) Under RCW 50.29.062 (2)(b)(ii), if there is a substantial continuity of ownership, control, or management by the successor, beginning on January 1 after the transfer, the successor's tax rate shall be based on a combination of the successor's experience and the transferred experience from the predecessor.

(c) Under RCW 50.29.062 (2)(b)(i), if there is not a substantial continuity of ownership, control, or management by the successor, beginning on January 1 after the transfer, the successor's tax rate shall be assigned under RCW 50.29.062 (2)(b)(i)(B). However, if the predecessor terminates business

on December 31st of any year and the successor begins business on January 1st of the next year, the department will calculate tax rates as if the transfer occurred on January 1st. Therefore, the department will assign a tax rate to the predecessor for January 1st and that rate will transfer to the successor.

(3) If the successor simultaneously acquires businesses from two or more employers with different tax rates, the successor's tax rate shall be assigned under RCW 50.29.062 (2)(b)(iii).

(4) The tax rate on any payroll retained by a predecessor employer shall remain unchanged for the rest of the rate year in which the transfer occurs. Beginning on January 1 after the transfer, the predecessor's tax rate shall be assigned under RCW 50.29.062 (3)(b).

(5) Changes in rate class for a predecessor or successor are effective only for the rate year the information was provided and for subsequent rate years.

(6) This section does not apply to a transfer of less than one percent of a business.

(7) This section does not apply if there is "SUTA dumping" under RCW 50.29.063.

[Statutory Authority: RCW 50.12.010, 50.12.040, 10-23-064, § 192-350-070, filed 11/12/10, effective 12/13/10. Statutory Authority: RCW 50.12.-010, 50.12.040, and 50.29.064, 07-23-131, § 192-350-070, filed 11/21/07, effective 1/1/08.]

WAC 192-350-090 When does an employer quit or dispose of a business for purposes of successor liability? (RCW 50.24.210.)

For purposes of RCW 50.24.210, an employer is considered to have quit business or disposed of its business or stock of goods if it disposes of substantially all of its operating assets. An employer is also considered to have quit business or disposed of its business or stock of goods if it transfers operating assets and retains only assets that do not have substantial net value or that are lower in value than total unemployment taxes, penalties, and interest owed. If an employer quits business or disposes of its business or stock of goods and has more than one successor, all successors are jointly and severally liable for any unemployment taxes due unless the employer and all successors have notified the department in writing and the department has approved apportioning any unemployment tax liability between the successors.

[Statutory Authority: RCW 50.12.010, 50.12.040, 10-23-064, § 192-350-090, filed 11/12/10, effective 12/13/10.]