

Chapter 192-300 WAC

REGISTERING FOR UNEMPLOYMENT INSURANCE TAXES

WAC	
192-300-010	What documentation and liability requirements apply to employer representatives?
192-300-060	What are reimbursable employers?
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?
192-300-150	Employer election to cover individual—Interstate reciprocal coverage agreement.
192-300-170	Requirements for election of unemployment insurance coverage.
192-300-180	Joint accounts.
192-300-185	Branch accounts.
192-300-190	Are owners of entities covered for unemployment insurance purposes?
192-300-200	What is a professional employer organization (PEO)?
192-300-210	What requirements apply to professional employer organizations and client employers?
192-300-220	What unemployment taxes apply to professional employer organizations and client employers?
192-300-230	What enforcement, penalties, and collection procedures apply to professional employer organizations and client employers?

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

192-300-050	What is a predecessor-successor relationship? [Statutory Authority: RCW 50.12.010, 50.12.040, and 50.12.042. 05-19-017, § 192-300-050, filed 9/9/05, effective 10/10/05; 04-23-058, § 192-300-050, filed 11/15/04, effective 12/16/04. Statutory Authority: RCW 50.12.010, 50.12.040. 00-05-068, § 192-300-050, filed 2/15/00, effective 3/17/00.] Repealed by 07-23-131, filed 11/21/07, effective 1/1/08. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.29.064.
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WAC 192-300-010 What documentation and liability requirements apply to employer representatives? (1) In order to represent an employer before the department, a representative from a third party must file with the department a power of attorney in a form acceptable to the department. The department may accept a signed power of attorney form by fax or in other electronic form. The department will send a letter to the employer confirming that the employer has authorized the employer representative to represent it before the department.

(2) The employer remains liable for the payments of any taxes, interest, or penalties due if its third party representative errs in registering, filing reports, or paying unemployment taxes.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 07-23-127, § 192-300-010, filed 11/21/07, effective 1/1/08.]

WAC 192-300-060 What are reimbursable employers? (1) Some nonprofit organizations, states and political subdivisions of the state, and Indian tribes may qualify under chapters 50.44 and 50.50 RCW as reimbursable employers which reimburse the department for unemployment benefits

actually paid to separated employees instead of paying unemployment taxes.

(2) In order to qualify, a nonprofit organization must be a section 501 (c)(3) tax-exempt organization under the federal tax code and must provide the department with a copy of its section 501 (c)(3) letter.

(3) If a new employer chooses and qualifies for the reimbursable method, the department may require it to post a bond or security deposit under RCW 50.44.070. Political subdivisions and nonprofit hospitals, colleges, and universities are not required to post a bond or security deposit. For a new employer, the department will base the amount of any required bond on the projected taxable payroll for the coming year, multiplied by the industry average tax rate, with the result rounded down.

(4) For an existing reimbursable employer, the department will base the amount of any required bond based on individual wages of each employee for the previous four complete calendar quarters, multiplied by new taxable wage amounts using the maximum taxable wage base assigned for the coming year, with the result rounded down.

(5) If a reimbursable employer switches to the taxable method, the employer will be assigned the industry average rate until it satisfies the requirements to become a "qualified employer" under RCW 50.29.010. This does not apply to delinquent employers under WAC 192-330-110.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 07-23-127, § 192-300-060, filed 11/21/07, effective 1/1/08.]

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 corporation, 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 corpo-

rate 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 192-300-150 Employer election to cover individuals—Interstate reciprocal coverage agreement. The commissioner may enter into interstate reciprocal coverage agreements with other states for the purpose of covering services performed by a person for a single employer where the services were performed in more than one state (RCW 50.12.060). These services are to be considered performed entirely in one state where:

- a. Any part of the person's service is performed;
- b. The person has a residence; or
- c. The employer keeps a place of business.

(1) Election process

(a) **Filing.** An employer for whom personal services are performed, may file an election for coverage under the laws of a single state, for individuals who normally perform services in more than one state (or other jurisdiction) using a Form RC-1 "Employer's Election to Cover Multi-State Workers." Our department also requires that any employee to be covered sign the Form RC-2A "Notice to and Acquires-

cence of Employee as to Unemployment Compensation Coverage" which must accompany the Form RC-1.

(b) **Approval.** The agency of the elected state approves or disapproves the election.

If the agency approves the election, it forwards a copy of the election to any other participating states where the individual(s) might be covered by unemployment compensation law. Each participating state approves/disapproves the election as quickly as possible and notifies the appropriate agency of the elected state. If disapproved, the disapproving state notifies the elected state of its action and reason(s) for disapproval.

(c) **Withdrawal of election.** If an election is not approved, the employer may withdraw its election within ten days of notification.

(d) **Effective date of election.** An approved election is effective at the beginning of the calendar quarter when the election was submitted.

(e) **Termination of election.** A request for election will be automatically terminated if an employee ceases to perform work in more than one state. This termination would take place at the end of the calendar quarter when the change was discovered.

2. Reports/notices to employees by employer or electing unit.

(a) The employer notifies each person affected of any approved election and sends the elected agency a copy of such notice.

(b) If a person covered by this election becomes unemployed, the employer, or electing unit will notify him/her as to which state covers any unemployment insurance claim.

(c) If an election ceases to apply to an individual, the employer will notify the affected individual in writing.

3. Other jurisdictions.

The commissioner may also enter into such reciprocal coverage agreements with the federal government, or foreign governments.

[Statutory Authority: Chapters 34.05, 50.12 RCW and RCW 50.12.060, 99-20-132, § 192-300-150, filed 10/6/99, effective 11/6/99.]

WAC 192-300-170 Requirements for election of unemployment insurance coverage. The department applies RCW 50.04.165 and 50.24.160 to establish the election of coverage for unemployment insurance by employers where personal services are not considered employment under the law:

(1) RCW 50.24.160 allows any business to request unemployment insurance coverage for personal services that are not covered as employment:

(a) The request must be in writing to the department;

(b) The department must approve the request for election of coverage in writing; and

(c) The request must be signed by someone legally authorized to bind the business.

(2) All changes in elected coverage remain in effect for at least two calendar years. The business may terminate coverage only at the end of a calendar year. To terminate coverage, the employer must send a written request to the department by January 15.

(3) The department reserves the right to disapprove a request for coverage because:

(a) The applicant is not liable for federal unemployment taxes (FUTA);

(b) The occupation or industry is seasonal; or

(c) Other reasons apply.

(4) The department reserves the right to cancel unemployment insurance coverage for a voluntary election employer because:

(a) Of nonpayment of unemployment insurance taxes or failure to file an unemployment insurance tax and wage report;

(b) Of misrepresentation of facts;

(c) Coverage is not used for involuntary unemployment as outlined in RCW 50.01.010; or

(d) Other reasons apply.

[Statutory Authority: RCW 50.12.010 and 50.12.040, 07-23-127, § 192-300-170, filed 11/21/07, effective 1/1/09; 00-05-064, § 192-300-170, filed 2/15/00, effective 3/17/00.]

WAC 192-300-180 Joint accounts. (RCW 50.24.170.)

(1) Any two or more employers may form joint accounts (consolidate) for the purposes of reporting and dealing with the department.

(2) Joint accounts must be acceptable to the department and cannot:

(a) Impair any obligation by these employers to the department;

(b) Interfere with the payment of benefits to claimants;

(c) Increase administrative costs to the department; or

(d) Allow an employer to receive an experience rate to which it was not entitled.

(3) Joint accounts must provide for the maintenance of all records required under Title 50 RCW.

(4) Joint accounts may not be formed until the department has approved in writing the consolidation plan.

(5) A joint account may not be established for a third-party payer under RCW 50.04.248, a common paymaster under RCW 50.04.065, or a professional employer organization under RCW 50.04.298.

[Statutory Authority: RCW 50.12.010 and 50.12.040, 07-23-130, § 192-300-180, filed 11/21/07, effective 1/1/08. Statutory Authority: Chapters 34.05, 50.12 RCW and RCW 50.24.170, 99-20-128, § 192-300-180, filed 10/6/99, effective 11/6/99.]

WAC 192-300-185 Branch accounts. The department may establish branch accounts for a single registered employer. All branch accounts shall be consolidated for purposes of establishing a single tax rate for the employer.

[Statutory Authority: RCW 50.12.010 and 50.12.040, 07-23-127, § 192-300-185, filed 11/21/07, effective 1/1/08.]

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.]

WAC 192-300-200 What is a professional employer organization (PEO)? A "professional employer organization," as further defined in RCW 50.04.298(1), is a person or entity that enters into an agreement with one or more client employers to provide professional employer services in a coemployment relationship. The professional employer services may include functions such as human resources, risk management, payroll administration services, or unemployment insurance. Both the professional employer organization and the client employer are considered coemployers.

A "professional employer organization" includes entities that use the term "staff leasing company," "permanent leasing company," "registered staff leasing company," "employee leasing company," or "administrative employer" and provide professional employer services to client employers. It does not include independent contractors under RCW 50.04.140, temporary staffing services companies and services referral agencies under RCW 50.04.245, third-party payers under RCW 50.04.248, labor organizations, or common paymasters or common pay agents under RCW 50.04.065.

[Statutory Authority: RCW 50.12.010 and 50.12.040, 07-23-130, § 192-300-200, filed 11/21/07, effective 1/1/08.]

WAC 192-300-210 What requirements apply to professional employer organizations and client employers?

(1) Both professional employer organizations and client employers must comply with all applicable state laws. Professional employment agreements may not allocate rights and obligations between professional employer organizations and client employers other than in compliance with state law.

(2) Professional employer organizations must file a business license application with the state. They must register with the department under RCW 50.12.070 and obtain an employer reference number issued by the department (employment security number). This applies to professional employer organizations that have their own employees in this state and to professional employer organizations that have client employers who do business or have employees in this state.

(3) Professional employer organizations must ensure that their client employers are registered with the department under RCW 50.12.070. Professional employer organizations may only file papers to register the client employer if they also have filed with the department a power of attorney form signed by an authorized representative of the client employer.

(4) In order to represent a client employer to the department, a professional employer organization must file with the department a power of attorney in a form acceptable to the department. The signed power of attorney form may be sent by fax or in other electronic form acceptable to the department. The department will acknowledge receipt of the power of attorney to the sender and will send a letter to the client employer confirming that the professional employer organization is authorized to represent it to the department.

(5)(a) Professional employer organizations shall provide the department with the following information for client employers: Names, addresses, unified business identifier

numbers, employment security numbers, names and Social Security numbers of corporate officers, owners and partners (if not a corporation or limited liability company), or limited liability company members, effective date the relationship between the professional employer organization and client employer began, and a business location in Washington state where payroll and business records for the client employer will be made available for review or inspection when requested by the department.

Information is due:

(i) By September 1, 2007, for all then existing client employers;

(ii) Within thirty days for any client employer registering with the department for the first time; and

(iii) Within thirty days of the effective date whenever the professional employer organization and a client employer enter a professional employer agreement.

(b) Professional employer organizations shall notify the department within thirty days of the termination of a relationship with a client employer. The notice shall include the name, address, unified business identifier number, employment security number, effective date, and contact information for the client employer.

(c) The department shall provide forms for the information required in this subsection. The department may require professional employer organizations to submit the information in an electronic format.

(6) Professional employer organizations shall maintain accurate payroll records for each client employer and make them available for review and inspection at a business location in Washington state when requested by the department. The location may vary for different client employers. Appropriate department facilities may be used for this purpose with the consent of the department. The department may require client employers or professional employer organizations to produce other business and financial records at an in-state location in the same manner it requires other employers to do so under WAC 192-310-050.

(7) Professional employer organizations shall file quarterly tax and wage reports for client employers they represent in a format specified by the department. Reports shall contain separate and distinct information for each client employer, regardless of the format used. Professional employer organizations may file a single electronic report for multiple client employers, separate paper or electronic reports for individual client employers, or a combination of electronic and paper filing.

(8) The department shall provide an electronic system for filing quarterly tax and wage reports which allows a professional employer organization to make payments when filing for multiple client employers with a single payment for those employers.

(9) If the professional employer organization files separate quarterly tax and wage reports for individual client employers, it shall make separate payments for each employer.

[Statutory Authority: RCW 50.12.010 and 50.12.040, 12-04-018, § 192-300-210, filed 1/24/12, effective 2/24/12; 07-23-130, § 192-300-210, filed 11/21/07, effective 1/1/08.]

WAC 192-300-220 What unemployment taxes apply to professional employer organizations and client employers? (1) Effective January 1, 2008, each professional employer organization and each client employer shall be assigned an individual tax rate based on its own experience.

(2)(a) This subsection applies to professional employer organizations and client employers which have a coemployment relationship as of January 1, 2008.

(b) Except as provided in (d) and (e) of this subsection, the tax rate for professional employer organizations and client employers shall be determined on the basis that the client employer transferred from the professional employer organization effective January 1, 2008. A client employer's proportionate experience (benefits charged and taxable payroll) for the entire first quarter beginning January 1, 2008, shall transfer to the client employer. On or after January 1, 2008, experience shall transfer to a client employer regardless of whether the professional employer organization was the base year employer prior to that date.

(c) The client employer's tax rate shall remain unchanged for the remainder of the rate year in which the transfer occurred.

(d) Client employers that are qualified employers under RCW 50.29.010 or are delinquent under RCW 50.29.025 (2)(c)(i) and that joined a professional employer organization after the computation date of July 1, 2007, shall be assigned their own tax rate for 2008 as if they had not joined the professional employer organization. Any experience from July 1, 2007, to December 31, 2007, assigned to the professional employer organization for those client employers shall transfer to the client employer for purposes of setting future rates.

(e) If an employer is registered with the department and has its own tax rate, but is also a client employer for purposes of some of its employees, it shall keep its own tax rate for 2008 and that rate shall apply to all its employees. Any employees of a client employer that is in a coemployment relationship with a professional employer organization shall be considered a branch account under the registered employer.

(f) Beginning on January 1 of the year after the transfer, the client employer's tax rate for each rate year shall be based on a combination of:

(i) The client employer's experience with payrolls and benefits; and

(ii) The experience assigned to the professional employer organization which is attributable to the client employer, based on the percentage of employees transferred as of January 1, 2008, regardless of the date the client employer joined the professional employer organization.

(g)(i) The professional employer organization's tax rate on any payroll retained by the professional employer organization shall remain unchanged for the remainder of the year in which the transfer occurs.

(ii) Beginning on January 1 of the year after the transfer, the professional employer organization's tax rate for each rate year shall be based on its experience with payrolls and benefits as of the regular computation date for that rate year excluding the experience that has been attributed to client employers.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 07-23-130, § 192-300-220, filed 11/21/07, effective 1/1/08.]

WAC 192-300-230 What enforcement, penalties, and collection procedures apply to professional employer organizations and client employers? (1) A professional employer organization may collect and make payments on behalf of a client employer, but the client employer remains liable for the payments of any taxes, interest, or penalties due.

(2) Unless the professional employer organization has already notified the department that it has not received payments from the client employer, the department shall first attempt to collect any payments due from the professional employer organization and shall not attempt to collect from the client employer until at least ten days from the date payment was due. Collection procedures shall follow the requirements of chapter 50.24 RCW.

(3) A professional employer organization may elect to provide a bond to cover payments due. Any bond for this purpose shall be filed with the department, shall be in a form satisfactory to the commissioner, and shall be in an amount not less than the amount of contributions due in the highest quarter of the preceding calendar year. A bond does not relieve the professional employer organization or its client employers of ultimate liability for payments due.

(4) In case of error by a professional employer organization in which reports are incomplete, inaccurate, or late, or if the professional employer organization makes a single payment that does not match the amount due for multiple employers, the department will initially apply any penalty and interest charges for all amounts due against the professional employer organization, regardless of whether the professional employer organization has employees in Washington. However, the client employer ultimately remains liable for any taxes, penalties, or interest due.

All client employers of a professional employer organization may be subject to the tax rate for delinquent taxpayers if a delinquency under WAC 192-320-035 cannot be assigned to a specific client employer.

(5) If a professional employer organization reports employees of a client employer as its own employees, a first violation will be considered an incorrect report for the professional employer organization and an untimely report for the client employer under RCW 50.12.220(2). A second violation will be considered knowing misrepresentation under RCW 50.12.220(3). A third violation will be considered grounds for revocation of the authority of a professional employer organization to act on behalf of its client employers.

(6) The department may revoke the authority of a professional employer organization to act on behalf of its client employers if the professional employer organization substantially fails to comply with the provisions of RCW 50.12.300. An order to revoke the authority of a professional employer organization shall be considered an appealable order under chapter 34.05 RCW comparable to an order and notice of assessment under RCW 50.32.030.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 07-23-130, § 192-300-230, filed 11/21/07, effective 1/1/08.]