

# Chapter 192-04 WAC

## PRACTICE AND PROCEDURE

### WAC

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**WAC 192-04-010 Adoption of model rules.** The model rules of procedure contained in chapter 10-08 WAC, as they exist now or may be hereafter amended, are, to the extent they are not inconsistent with the rules contained in this chapter, adopted as the rules of procedure before this agency. The rules contained in this chapter will, to the extent of any conflict with the model rules of procedure, be deemed to supersede the conflicting provisions of the model rules of procedure. The model rules of procedure will be included in the departmental publication provided for in RCW 50.12-160.

[Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 89-24-030, § 192-04-010, filed 11/30/89, effective 1/1/90.]

**WAC 192-04-020 Definitions.** Unless the context in this chapter clearly indicates otherwise, the following terms and phrases shall have these meanings:

(1) "Appeal" means a request for a hearing before and decision by the office of administrative hearings in a matter involving unemployment insurance benefits.

(2) "Petition for hearing" means a request for hearing before and decision by the office of administrative hearings in a matter involving unemployment insurance taxes.

(3) "Petition for review" means a request directed to the commissioner for a review of the proceedings held and decision issued by the office of administrative hearings.

(4) "Advisement order" means an order issued by the commissioner on his or her own motion assuming jurisdiction

over a matter heard and/or decided by the office of administrative hearings.

(5) "Commissioner" means the commissioner's review office of the employment security department.

[Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 89-24-030, § 192-04-020, filed 11/30/89, effective 1/1/90.]

**WAC 192-04-030 Appeals—Petitions for review—Payments under federal programs.** When the applicable federal law, regulations or guidelines for any federal program administered by the employment security department provides for the right of appeal, petition for hearing or petition for review from a determination or decision of the employment security department or the office of administrative hearings, the procedures outlined in Title 50 RCW, Title 34 RCW, and chapter 192-04 WAC shall, to the extent that said procedures are consistent with the federal law, regulations and guidelines, be utilized for the disposition of such appeals or petitions for review.

[Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 89-24-030, § 192-04-030, filed 11/30/89, effective 1/1/90.]

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

**WAC 192-04-050 Appeals—Petitions for hearing—Right to notice.** Notice of appeal or petition for hearing rights shall be set forth on the face of, or as an attachment to, each of the following:

(1) Redetermination of an initial monetary determination.

(2) Determination of allowance or denial of waiting period credit or benefits.

(3) Redetermination of allowance or denial of waiting period credit or benefits.

(4) An overpayment assessment or a denial of a request for waiver of an overpayment.

(5) Order and notice of assessment of contributions, interest, or penalties.

(6) Denial of a claim for refund of contributions, interest, or penalties.

(7) Denial of a request for relief of benefit charges made to an employer's account.

(8) Denial of a redetermination or adjustment of an employer's determined or redetermined rate of contribution.

(9) Denial of approval or extension of standby status.

(10) Denial of a request for commissioner approved training or training benefits.

(11) Notice to separating employer of liability for all benefits paid on a claim as provided in RCW 50.29.021 (2)(c).

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. WSR 05-01-076, § 192-04-050, filed 12/9/04, effective 1/9/05. Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 89-24-030, § 192-04-050, filed 11/30/89, effective 1/1/90.]

**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. WSR 10-20-082, § 192-04-060, filed 9/29/10, effective 10/30/10. Statutory Authority: RCW 50.20.010 and 50.12.040. WSR 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. WSR 95-18-055, § 192-04-060, filed 8/31/95, effective 10/1/95. Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 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. WSR 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. WSR 95-18-055, § 192-04-063, filed 8/31/95, effective 10/1/95.]

**WAC 192-04-070 Mailing addresses—Obligations of parties.** Once an appeal or petition for hearing has been filed, any interested party must notify the office of administrative hearings of any change of mailing address.

Once a petition for review has been filed, any interested party must notify the commissioner's review office of any change of mailing address.

Any interested party who fails to comply with this regulation will not be deemed to have good cause for failure to appear at a hearing or for late filing of a petition for review or untimely submission of a reply or petition for reconsideration.

[Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 89-24-030, § 192-04-070, filed 11/30/89, effective 1/1/90.]

**WAC 192-04-080 Appeals—Petitions for hearing—Petitions for review—Advisement orders—Time computation.** The time within which an appeal, a petition for hearing, a petition for review, or advisement order is to be perfected, under the provisions of the Employment Security Act (Title 50 RCW, as amended) shall be computed by excluding the day of delivery or mailing of the determination, redetermination, denial, order and notice of assessment, or decision and including the last day. If the last day is a Saturday or Sunday or a holiday, as defined in RCW 1.16.050, the appeal, petition for hearing, petition for review or advisement order must be perfected no later than the next business day.

[Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 89-24-030, § 192-04-080, filed 11/30/89, effective 1/1/90.]

**WAC 192-04-090 Untimely appeals—Petitions for hearing or petitions for review—Good cause.** (1) The following factors shall be considered in determining whether good cause exists under RCW 50.32.075 for the late filing of an appeal, petition for hearing or petition for review:

(a) The length of the delay,

(b) The excusability of the delay, and

(c) Whether acceptance of the late filed appeal, petition for hearing, or petition for review will result in prejudice to other interested parties, including the department.

(2) In determining the excusability for the late filing of an appeal, petition for hearing or petition for review, the office of administrative hearings or the commissioner's review office shall take into account any physical, mental, educational or linguistic limitations of the appealing or petitioning party, including any lack of facility with the English language.

[Statutory Authority: RCW 50.12.010, [50.12.]040 and RCW 34.05.310 et seq. WSR 95-18-055, § 192-04-090, filed 8/31/95, effective 10/1/95. Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 89-24-030, § 192-04-090, filed 11/30/89, effective 1/1/90.]

**WAC 192-04-100 Appeals—Petitions for hearing or petitions for review—Withdrawal of.** Any interested party may withdraw his or her appeal, petition for hearing or petition for review at any time prior to a decision thereon, in which case the previous determination, redetermination, denial, order and notice of assessment or decision shall be final in accordance with the provisions of the Employment Security Act. Such withdrawal shall, however, be subject to the approval of the office of administrative hearings in the case of an appeal or petition for hearing, or of the commissioner in the case of a petition for review.

[Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 89-24-030, § 192-04-100, filed 11/30/89, effective 1/1/90.]

**WAC 192-04-110 Hearings—Representation—Cross-examination.** Any interested party, or his or her legally authorized representative, shall have the right to give testimony and to examine and cross-examine any other interested party and/or witnesses with respect to facts material and relevant to the issues involved.

[Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 89-24-030, § 192-04-110, filed 11/30/89, effective 1/1/90.]

**WAC 192-04-120 Hearings—Postponements—Continuances.** Any party to a hearing may request a postponement of a hearing at any time prior to the actual convening of the hearing. The granting or denial of the request will be at the discretion of the presiding administrative law judge.

The presiding administrative law judge may in the exercise of sound discretion grant a continuance of a hearing at any time at the request of any interested party or on his or her own motion.

[Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 89-24-030, § 192-04-120, filed 11/30/89, effective 1/1/90.]

**WAC 192-04-130 Discovery—Depositions and interrogatories.** At the discretion of the presiding administrative law judge he or she may cause to be taken depositions or interrogatories on his or her own motion, or at the request of any interested party.

[Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 89-24-030, § 192-04-130, filed 11/30/89, effective 1/1/90.]

**WAC 192-04-140 Consolidated cases.** The presiding administrative law judge may hear individual matters on a consolidated record if there is a substantial identity of issues and the rights of no party will be adversely affected thereby. Such procedure should provide for the hearing of additional or unique issues relating to individual cases.

[Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 89-24-030, § 192-04-140, filed 11/30/89, effective 1/1/90.]

**WAC 192-04-150 Decisions—Contents.** Every decision issued by 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, and every decision issued by the commissioner pursuant to RCW 50.32.080, other than an interim order or an order granting or denying a motion for reconsideration or a stay, shall:

(1) Be correctly captioned as to the name of the agency and name of the proceeding;

(2) Designate all parties and representatives participating in the proceeding;

(3) Include a concise statement of the nature and background of the proceeding;

(4) Contain appropriate numbered findings of fact meeting the requirements in RCW 34.05.461;

(5) Contain appropriate numbered conclusions of law, including citations of statutes and rules relied upon;

(6) Contain an initial or final order disposing of all contested issues;

(7) Be accompanied by or contain a statement of petition for review or petition for judicial review rights.

[Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 89-24-030, § 192-04-150, filed 11/30/89, effective 1/1/90.]

**WAC 192-04-160 Decision of commissioner—Incorporation.** A decision of the commissioner issued pursuant to RCW 50.32.080 may incorporate by reference any portion of the decision under review. Such incorporation shall be deemed to meet the requirements of WAC 192-04-150.

[Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 89-24-030, § 192-04-160, filed 11/30/89, effective 1/1/90.]

**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 Commissioner's Review Office, 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 98507-9555. 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. WSR 13-05-033, § 192-04-170, filed 2/12/13, effective 3/15/13; WSR 10-20-082, § 192-04-170, filed 9/29/10, effective 10/30/10. Statutory Authority: RCW 50.20.010 and 50.12.040. WSR 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. WSR 95-18-055, § 192-04-170, filed 8/31/95, effective 10/1/95. Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 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. WSR 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. WSR 95-18-055, § 192-04-175, filed 8/31/95, effective 10/1/95.]

**WAC 192-04-180 Decisions—Disposition other than by hearing on the merits—Petition for review.** The presiding administrative law judge may dispose of any appeal or

petition for hearing by an order approving a withdrawal of appeal, an order approving a withdrawal of a petition for hearing, a consent order or an order of default. There shall be no petition for review rights from an order approving a withdrawal of appeal, an order approving a withdrawal of a petition for hearing or a consent order.

Any interested party aggrieved by the entry of an order of default may file a petition for review from such order by complying with the filing requirements set forth in WAC 192-04-170: Provided, however, That the default of such party shall be set aside by the commissioner only upon a showing of good cause for failure to appear or to request a postponement prior to the scheduled time for hearing. In the event such order of default is set aside, the commissioner shall remand the matter to the office of administrative hearings for hearing and decision.

[Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 89-24-030, § 192-04-180, filed 11/30/89, effective 1/1/90.]

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

**WAC 192-04-200 Declaratory orders.** The commissioner will not issue a declaratory order on any matter that may be adjudicated under any statute, regulation or other pro-

vision of law. No declaratory order will be issued which is merely an advisory opinion.

[Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 89-24-030, § 192-04-200, filed 11/30/89, effective 1/1/90.]

**WAC 192-04-210 Petitions for judicial review—Service on agency.** Delivery pursuant to RCW 34.05.542(4) shall be deemed to have been made when a copy of the petition for judicial review has been received by the Commissioner's Office at 212 Maple Park Avenue S.E., Olympia, WA or received by mail at the Commissioner's Review Office, Post Office Box 9555, Olympia, WA 98507-9555.

[Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 13-05-033, § 192-04-210, filed 2/12/13, effective 3/15/13; WSR 89-24-030, § 192-04-210, filed 11/30/89, effective 1/1/90.]