

Chapter 192-310 WAC

REPORTING OF WAGES AND TAXES DUE

WAC

192-310-010	What reports are required from an employer?
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.)
192-310-035	Employer reports—Failure to report or incorrectly reporting hours or wages.
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.)
192-310-060	Tips as wages.
192-310-070	Value of meals, lodging and in kind compensation—Payment by means other than cash—RCW 50.04.320.
192-310-080	When are performers in small performing arts industries who receive stipends not considered to be in employment? (RCW 50.04.275.)
192-310-090	When is "casual labor" exempt from unemployment insurance? (RCW 50.04.270.)
192-310-095	When are musicians and entertainers exempt from unemployment insurance? (RCW 50.04.148.)
192-310-100	What notices does the department require or recommend employers to post?
192-310-190	When is a corporate officer with at least ten percent ownership considered unemployed?

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

192-310-150	Are corporate officers covered for unemployment insurance? [Statutory Authority: RCW 50.12.010, 50.12.040, and 34.05.120. WSR 10-01-156, § 192-310-150, filed 12/22/09, effective 1/22/10. Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 07-23-127, § 192-310-150, filed 11/21/07, effective 1/1/09.] Repealed by WSR 13-24-068, filed 11/27/13, effective 12/29/13. Statutory Authority: RCW 50.12.010 and 50.12.040.
192-310-160	How may corporations exempt corporate officers from unemployment insurance coverage? [Statutory Authority: RCW 50.12.010, 50.12.040. WSR 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. WSR 10-01-156, § 192-310-160, filed 12/22/09, effective 1/22/10. Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 09-07-010, § 192-310-160, filed 3/5/09, effective 4/5/09; WSR 07-23-127, § 192-310-160, filed 11/21/07, effective 1/1/09.] Repealed by WSR 13-24-068, filed 11/27/13, effective 12/29/13. Statutory Authority: RCW 50.12.010 and 50.12.040.
192-310-170	How is unemployment insurance coverage of corporate officers reinstated? [Statutory Authority: RCW 50.12.-010 and 50.12.040. WSR 07-23-127, § 192-310-170, filed 11/21/07, effective 1/1/09.] Repealed by WSR 13-24-068, filed 11/27/13, effective 12/29/13. Statutory Authority: RCW 50.12.010 and 50.12.040.
192-310-180	Are corporate officers covered for unemployment insurance when the corporation has no other employees? [Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 07-23-127, § 192-310-180, filed 11/21/07, effective 1/1/08.] Repealed by WSR 13-24-068, filed 11/27/13, effective 12/29/13. Statutory Authority: RCW 50.12.010 and 50.12.040.

WAC 192-310-010 What reports are required from an employer? (1) Business license application.

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

(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 compensation from the nonprofit corporation with respect to their services for the nonprofit corporation.

(c) An employer who omits required information when registering with the department, or fails to provide the department with the required information within thirty days of registration, must pay a penalty of twenty-five dollars for each violation unless the penalty is waived by the department.

(d) 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*, *UIWeb Tax*, 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 and 50.12.040. WSR 13-23-008, § 192-310-010, filed 11/7/13, effective 12/8/13; WSR 11-21-015, § 192-310-010, filed 10/7/11, effective 11/7/11; WSR 10-23-064, § 192-310-010, filed 11/12/10, effective 12/13/10; WSR 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. WSR 05-19-017, § 192-310-010, filed 9/9/05, effective 10/10/05; WSR 04-23-058, § 192-310-010, filed 11/15/04, effective 12/16/04. Statutory Authority: RCW 50.12.070. WSR 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 postmarked 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. WSR 10-23-064, § 192-310-020, filed 11/12/10, effective 12/13/10; WSR 07-23-127, § 192-310-020, filed 11/21/07, effective 1/1/08; WSR 07-22-055, § 192-310-020, filed 11/1/07, effective 12/2/07; WSR 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. WSR 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. WSR 04-23-058, § 192-310-025, filed

11/15/04, effective 12/16/04. Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 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 and wage reports.** An employer who does not file a tax or wage 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 or wage report.** An employer must file tax and wage reports that are 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 employment security department 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 incorrectly formatted tax or wage 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 and wage 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 pro-

vide 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 and 50.12.040. WSR 13-23-007, § 192-310-030, filed 11/7/13, effective 12/8/13; WSR 10-23-064, § 192-310-030, filed 11/12/10, effective 12/13/10; WSR 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. WSR 05-19-017, § 192-310-030, filed 9/9/05, effective 10/10/05; WSR 04-23-058, § 192-310-030, filed 11/15/04, effective 12/16/04. Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 98-14-068, § 192-310-030, filed 6/30/98, effective 7/31/98.]

WAC 192-310-035 Employer reports—Failure to report or incorrectly reporting hours or wages. (1) If an employer does not report hours worked and a former employee applies for benefits, the department will divide the wages earned by the state's minimum wage (RCW 49.46.020) in effect at the time to estimate the hours worked.

(2) If the employer later provides the actual hours worked, the department will recalculate the former employee's claim.

(3) If the claim is voided or benefits are reduced as a result of the recalculation, the claimant will not be required to repay any benefits that were overpaid and WAC 192-220-070 will apply.

(4) The employer will be charged under WAC 192-320-080 for benefits paid.

[Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 07-23-127, § 192-310-035, filed 11/21/07, effective 1/1/08. Statutory Authority: Chapters 34.05, 50.12 RCW and RCW 49.46.020. WSR 99-20-134, § 192-310-035, filed 10/6/99, effective 11/6/99.]

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 piecework 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. WSR 10-23-064, § 192-310-040, filed 11/12/10, effective 12/13/10; WSR 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). WSR 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. WSR 10-23-064, § 192-310-050, filed 11/12/10, effective 12/13/10. Statutory Authority: Chapters 34.05 and 50.12 RCW. WSR 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. WSR 10-23-064, § 192-310-055, filed 11/12/10, effective 12/13/10; WSR 07-22-055, § 192-310-055, filed 11/1/07, effective 12/2/07. Statutory Authority: Chapters 34.05 and 50.12 RCW. WSR 00-01-166, § 192-310-055, filed 12/21/99, effective 1/21/00. Formerly WAC 192-12-050 (part).]

WAC 192-310-060 Tips as wages. "Tips as wages" are those tips an employee is required to report to the employer by federal law.

(1) The employer must report tips each quarter on an "as paid" basis. Tips are considered paid when the employee reports them to the employer for federal income tax purposes; or when they are distributed by the employer to the employee.

(2) Tips will not be treated as wages when an individual's benefits are calculated if the individual did not report their value to the employer.

[Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 07-22-055, § 192-310-060, filed 11/1/07, effective 12/2/07. Statutory Authority: Chapters 34.05, 50.12 RCW and RCW 50.04.320. WSR 99-20-129, § 192-310-060, filed 10/6/99, effective 11/6/99.]

WAC 192-310-070 Value of meals, lodging and in kind compensation—Payment by means other than cash—RCW 50.04.320. (1) The employer should not report the value of meals or lodging provided to an employee for the convenience of the employer unless the value equals twenty-five percent or more of the employee's total pay during a pay period. Meals or lodging provided on the employer's premises or as a condition of employment will be considered as provided for the convenience of the employer.

(2) Compensation for personal services paid in kind (in any form other than cash), will be given its current prevailing

[Ch. 192-310 WAC p. 6]

market value. This value will be treated as wages in computing the unemployment insurance taxes that are due. If the value of an item is set by a hiring contract, the department will treat the value set by the contract as the actual value.

[Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 07-22-055, § 192-310-070, filed 11/1/07, effective 12/2/07. Statutory Authority: Chapters 34.05, 50.12 RCW and RCW 50.04.320. WSR 99-20-130, § 192-310-070, filed 10/6/99, effective 11/6/99.]

WAC 192-310-080 When are performers in small performing arts industries who receive stipends not considered to be in employment? (RCW 50.04.275.) (1) A person who is participating in a performance for an employer in subsection (2) of this section is not considered to be in employment if the person receives no remuneration other than a nominal stipend.

(2) This section only applies to employers that are classified in the North American industry classification system as theater companies, dinner theaters, dance companies, musical groups and musical artists, and museums. The employer may not employ more than three individuals during any portion of a day during a calendar year. If an organization employs no more than three individuals who regularly exceed half-time employment, it will be presumed to meet this test.

If an employer becomes ineligible during the course of a year, the employer must from that time forward until the end of the calendar year treat persons who receive only a nominal stipend as in employment.

(3) As used in this section, "participating in a performance" includes serving as an actor or actress, musician, lighting technician, costume designer, stagehand, or in performing other functions relating specifically to the performance.

(4) A stipend is nominal when it is a fixed sum of money which the employer pays periodically to defray incidental expenses involved in participating in a performance and which does not exceed the amount specified under WAC 192-100-500(5).

[Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 07-23-127, § 192-310-080, filed 11/21/07, effective 1/1/08.]

WAC 192-310-090 When is "casual labor" exempt from unemployment insurance? (RCW 50.04.270.) "Casual labor" that is not in the course of the employer's trade or business and does not promote or advance the employer's trade or business is not considered employment. This exemption only applies to services such as yard work or minor repair work which is performed for a private individual on nonbusiness property. Any employment which is treated as a business expense does not qualify for this exemption.

"Domestic service" is considered a separate exemption under RCW 50.04.160.

[Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 13-09-010, § 192-310-090, filed 4/5/13, effective 5/6/13; WSR 07-23-127, § 192-310-090, filed 11/21/07, effective 1/1/08.]

WAC 192-310-095 When are musicians and entertainers exempt from unemployment insurance? (RCW 50.04.148.) Musicians or entertainers who contract to perform specific engagements with a purchaser are not considered in employment when they provide no other duties for the

purchaser and are not regularly and continuously employed by the purchaser. This exemption only applies if the primary business purpose of the purchaser is not music or entertainment. The music or entertainment provided must be incidental to the primary business activity of the purchaser. An example would be a tavern that periodically contracts with different bands to play live music.

[Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 07-23-127, § 192-310-095, filed 11/21/07, effective 1/1/08.]

WAC 192-310-100 What notices does the department require or recommend employers to post? (Relating to RCW 50.20.140, 50.12.290, 50.44.045, 50.24.160, and 50.04.170.)

(1) Employers who are responsible for unemployment insurance coverage of their employees must post and maintain printed notices to individuals who are employed by the employer. The notices provide information to individuals who may be unemployed about how to apply for benefits. The notices are to be posted in conspicuous places close to the actual location where the personal services are performed.

(2) The department will provide required notices to employers without charge. The department will send required notices to employers when they file a master application for a business license registering for unemployment insurance. The department will send updated notices to employers when there are substantive changes in the information.

(3) The department may also make recommendations of additional materials to post.

(4) A church, a convention or association of churches, or an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or a convention or association of churches shall display in a conspicuous place a poster giving notice that its employees are not considered in employment for purposes of unemployment insurance. The department shall make these posters available without charge.

(5)(a) The owner of a boat with an operating crew normally made up of fewer than ten individuals engaged in the catching of fish or other forms of aquatic animal life must provide the individual members of the operating crew written notice, or post such notice in a conspicuous place, that states these individuals are not covered for unemployment insurance purposes unless the owner chooses to voluntarily cover them, when the operating crew receives no remuneration other than the following:

(i) A share of the boat's catch (or the catch of multiple boats if the fishing operation involves more than one boat); or

(ii) A share of the proceeds from the sale of the catch.

(b) The amount of the individual's share must depend on the amount of the boat or boats' catch.

(c) A notice that meets these requirements is available without charge on the department's web site.

[Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 13-24-011, § 192-310-100, filed 11/21/13, effective 12/22/13; WSR 07-23-127, § 192-310-100, filed 11/21/07, effective 1/1/08. Statutory Authority: Chapters 34.05, 50.12 RCW and RCW 50.20.140. WSR 99-20-133, § 192-310-100, filed 10/6/99, effective 11/6/99.]

(11/27/13)

WAC 192-310-190 When is a corporate officer with at least ten percent ownership considered unemployed?

(1) This section applies if your claim for benefits is based on wages from a corporation that are twenty-five percent or more of your total covered base year wages and you are an officer of that corporation who:

(a) Owns ten percent or more of the outstanding stock or shares of the corporation; or

(b) Has a family member who is also a corporate officer who owns ten percent or more of the outstanding stock or shares 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.

(2) At any time during the benefit year of your claim, you are a corporate officer under subsection (1) of this section even if you are not paid wages during that time.

(3) You are considered unemployed and potentially eligible for benefits for weeks after:

(a) The corporation dissolves; or

(b) You permanently resign or are permanently removed as a corporate officer under the articles of incorporation or bylaws.

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.

(4) You will be ineligible for benefits and liable for repayment of all benefits paid during that benefit year if you take a position as a corporate officer as defined under subsection (1) of this section at any time during your claim.

(5) For purposes of this section, the department will consider a corporation dissolved when the corporation has provided the department with at least two of the following documents:

(a) A business licensing service change form requesting closure of the corporate account;

(b) A department of revenue clearance certificate;

(c) Articles of dissolution of a Washington profit corporation filed with the secretary of state; or

(d) A court order dissolving the corporation.

(6) 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 and 50.12.040. WSR 13-24-068, § 192-310-190, filed 11/27/13, effective 12/29/13; WSR 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. WSR 10-01-156, § 192-310-190, filed 12/22/09, effective 1/22/10. Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 07-23-127, § 192-310-190, filed 11/21/07, effective 1/1/08.]