

# Chapter 192-210 WAC

## SPECIAL CATEGORY OCCUPATIONS

### WAC

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### DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

192-210-020	Reasonable assurance for instructional, research, or principal administrative staff at a community or technical college—RCW 50.44.053(3). [Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 02-19-009, § 192-210-020, filed 9/5/02, effective 10/6/02.] Repealed by WSR 18-19-007, filed 9/7/18, effective 10/8/18. Statutory Authority: RCW 50.12.010, 50.12.040, 50.44.050, 50.44.053 and 50.44.055.
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**WAC 192-210-001 Which employment is subject to RCW 50.44.050?** (1) The provisions of RCW 50.44.050 apply only to educational institutions or educational service districts operated by:

- (a) The state;
- (b) A political subdivision of the state;
- (c) A nonprofit organization or unit; or
- (d) An Indian tribe.

(2) The provisions of RCW 50.44.050 apply to services performed either:

- (a) In the employ of an educational institution; or
- (b) In any educational institution while in the employ of an educational service district established pursuant to chapter 28A.310 RCW.

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

- (i) The primary purpose of the subsidiary business or organization is other than educational;
- (ii) You are not employed in the role of instructional, research or principal administrative staff; and

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(iii) Your regular employment does not depend on the educational institution's academic calendar.

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

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

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

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.44.050, 50.44.053 and 50.44.055. WSR 18-19-007, § 192-210-001, filed 9/7/18, effective 10/8/18. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. WSR 10-11-046, § 192-210-001, filed 5/12/10, effective 6/12/10.]

**WAC 192-210-005 Definitions—Educational employees.** (1) **Considerably less.** The economic conditions of an offer of employment are considerably less if the individual will not earn at least ninety percent of the total wages earned in the prior academic year or term.

(2) **Educational institution.** Includes any public or private preschool, elementary school, secondary school, technical or vocational school, community or technical college, college, and university.

(3) **Educational service district** means an educational service district established pursuant to chapter 28A.310 RCW.

(4) **Highly probable** means very likely.

(5) **Nonprofessional capacity.** Includes all other services not performed in a professional capacity, regardless of the legal or educational requirements to perform such services.

(6) **Professional capacity.** Includes services performed in an instructional, research, or principal administrative capacity.

(7) **Same capacity.** In order for services to be performed in the same capacity, both the current work and the future work must both be in a professional capacity or both be in a nonprofessional capacity, even if the job titles or duties are different. In addition, both the current work and the future work must both be for an educational institution or both be

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for an educational services district, even if the employers or districts are different. For example:

(a) An assistant principal for the ABC school district has a contract to be a teacher for the XYZ school district the following academic year. These two positions are in the same capacity.

(b) A counselor who performed services in an educational institution for an educational services district is given reasonable assurance to work as a counselor directly for an educational institution the following academic year. These two positions are not in the same capacity.

(8) **Totality of the circumstances.** Analyzing the totality of the circumstances requires considering factors such as funding (including appropriations), enrollment, the nature of the course (required or optional, taught regularly or only sporadically), the claimant's seniority, budgeting and assignment practices of the school, the number of offers made in relation to the number of potential teaching assignments, the period of student registration, and any other contingencies.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.44.050, 50.44.053 and 50.44.055. WSR 18-19-007, § 192-210-005, filed 9/7/18, effective 10/8/18. Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 07-22-055, § 192-210-005, filed 11/1/07, effective 12/2/07; WSR 02-19-009, § 192-210-005, filed 9/5/02, effective 10/6/02. Statutory Authority: RCW 50.12.010, 50.12.040 and 50.20.010. WSR 99-18-066, § 192-210-005, filed 8/31/99, effective 10/1/99.]

**WAC 192-210-010 What are the objective criteria used to define "academic year"?—See RCW 50.44.050 (6).** Summer term will be considered part of the academic year for an educational institution unless:

(1) Total enrollment of full-time equivalent students during the previous summer term is less than one third of the average academic year enrollment of full-time equivalent students for the fall, winter, and spring terms of the preceding two years; or

(2) Total full-time equivalent staff during the previous summer term is less than fifty percent of the academic year average of the full-time equivalent staff during the fall, winter, and spring terms during the preceding two years.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.44.050, 50.44.053 and 50.44.055. WSR 18-19-007, § 192-210-010, filed 9/7/18, effective 10/8/18. Statutory Authority: RCW 50.12.010, 50.12.040 and 50.20.010. WSR 99-18-066, § 192-210-010, filed 8/31/99, effective 10/1/99.]

**WAC 192-210-015 How will the department decide if an individual has a contract or reasonable assurance of future work?—See RCW 50.44.053.** (1)(a) For individuals who perform services in a professional capacity, wages and hours from an educational institution or educational services district will count towards the individual's base year and benefit year unless the educational institution or educational services district shows it is highly probable that the individual meets the three prerequisites in subsection (2) of this section and the educational institution or educational services district shows it is highly probable that the individual either has a contract for future work under subsection (3) of this section or reasonable assurance of future work under subsection (4) of this section.

(b) For individuals who perform services in a nonprofessional capacity, wages and hours from an educational institution or educational services district will count towards the

individual's base year and benefit year unless the educational institution or educational services district shows it is highly probable that the individual meets the three prerequisites in subsection (2) of this section and the educational institution or educational services district shows it is highly probable that the individual has reasonable assurance of future work under subsection (4) of this section.

(c) When determining if an individual has a contract or reasonable assurance of future work, the department will use the facts as they are known at the time the individual filed his or her weekly claim.

(2) In order for there to be a contract or reasonable assurance of future work, the following three prerequisites must be met:

(a) There is a written, verbal or implied offer of employment made by an individual with actual authority to offer employment;

(b) The offer of employment provides that the employee will perform services in the same capacity during the ensuing academic year or term (or remainder of the current academic year or term) as in the first academic year or term; and

(c) The economic conditions of the offer of employment may not be considerably less in the following academic year or term (or portion thereof) than in the first academic year or term (or portion thereof).

(3) A contract for future work is an agreement that is:

(a) Enforceable by both the employer and employee;

(b) Noncontingent; and

(c) Provides for compensation for either:

(i) An entire academic year; or

(ii) On an annual basis.

(4) Reasonable assurance for future work exists if either:

(a)(i) There are no contingencies in the offer of employment that are within the employer's control; and

(ii) After giving primary weight to contingent nature of an offer of employment and considering the totality of the circumstances, it is highly probable that the contingencies contained in the offer of employment will be met and there will be a job available for the claimant in the following academic year or term; or

(b) The individual is tenured or holds tenure track status, unless advised otherwise by the institution of higher education. An individual holds tenure track status if he or she is a probationary faculty employee having an opportunity to be reviewed for tenure.

(5) For the purposes of determining whether reasonable assurance of future work exists under subsection (4) of this section, contingencies considered to be in the employer's control include, but are not limited to, course programming, funding allocation decisions, final course offerings, and facility availability. Contingencies considered to be outside of the employer's control include, but are not limited to, enrollment and the availability of funding from an outside source, such as a grant.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.44.050, 50.44.053 and 50.44.055. WSR 18-19-007, § 192-210-015, filed 9/7/18, effective 10/8/18. Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 02-19-009, § 192-210-015, filed 9/5/02, effective 10/6/02. Statutory Authority: RCW 50.12.010, 50.12.040 and 50.20.010. WSR 99-18-066, § 192-210-015, filed 8/31/99, effective 10/1/99.]

**WAC 192-210-045 When does RCW 50.44.050 apply if an individual works for more than one employer?** An educational institution or educational services district that offers a contract or reasonable assurance of future work will not have its hours or wages count towards a claimant's base year and benefit year. The wages and hours from all other base year employers may count towards a claimant's base year and benefit year, unless another provision applies to exclude the wages and hours. If the claimant does qualify for benefits, the educational institutions or educational services districts that offered a contract or reasonable assurance of future work will not be charged for benefits paid or be required to reimburse the department for benefits paid. For example:

(1) An individual works for both the ABC elementary school and the XYZ elementary school during the base year. The ABC elementary school offers reasonable assurance of future work, while the XYZ elementary school does not. Only the wages and hours from the XYZ elementary school may count towards the individual's base year and benefit year.

(2) An individual works full time as a computer programmer for a software company during the day. At night, the individual also teaches a programming class at a technical college. At the end of the spring term, the individual is laid off from the software company and receives a contract or reasonable assurance of future work from the technical college. Only the wages and hours from the software company may count towards the individual's base year and benefit year.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.44.050, 50.44.053 and 50.44.055. WSR 18-19-007, § 192-210-045, filed 9/7/18, effective 10/8/18. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. WSR 10-11-046, § 192-210-045, filed 5/12/10, effective 6/12/10.]

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

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

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

**WAC 192-210-055 What is the impact of voluntary quits on the between and within terms denial provisions of RCW 50.44.050?** An employee of an educational institution, or an employee of an educational services district that performs services in an educational institution, who voluntarily leaves work for reasons that constitute good cause under RCW 50.20.050 may have the hours and wages from the educational institution or educational services district count towards the base year or benefit year, even if the

employee has a contract or reasonable assurance of future work.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.44.050, 50.44.053 and 50.44.055. WSR 18-19-007, § 192-210-055, filed 9/7/18, effective 10/8/18.]

**WAC 192-210-060 Under what circumstances is an educational employee entitled to retroactive payments of unemployment benefits?** (1) A nonprofessional employee who is denied unemployment benefits pursuant to RCW 50.44.050 can receive a retroactive payment of unemployment benefits if:

(a) The employee filed a timely claim for benefits for each week claimed;

(b) Benefits were originally denied for that week solely pursuant to RCW 50.44.050 because the employee received a reasonable assurance of future work; and

(c) Despite the reasonable assurance of future work, work was not actually available in the ensuing academic year or term.

(2) A professional employee who is denied benefits pursuant to RCW 50.44.050 because the employee received a contract or reasonable assurance of future work cannot receive a retroactive payment of unemployment benefits, even if work is not actually available in the ensuing academic year or term.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.44.050, 50.44.053 and 50.44.055. WSR 18-19-007, § 192-210-060, filed 9/7/18, effective 10/8/18.]

**WAC 192-210-100 What is the purpose of the referral union program?** (1) RCW 50.20.010 (1)(c) requires individuals who receive unemployment benefits to actively look for work using customary trade practices. They must also be able to work and available for work. In some trades, labor unions refer members to job openings in that labor market. The referral union program is a way for unions to help its members find work and to give eligibility information about its members to the department when requested. When an individual is a member of a union in the referral union program, the individual's job search must follow the union's dispatch rules.

(2) The term "union" means a bona fide labor organization formed to negotiate with employers, on behalf of workers collectively, about job related issues such as salary, benefits, hours, and working conditions. A "referral union" means a union that refers its members to jobs by referral or dispatch.

(3) A union must apply with and be approved by the department to join the referral union program.

(4) To be eligible to join the referral union program:

(a) The union must have a constitution, bylaws, or working rules that prohibit its members from seeking work in the industry on their own; or

(b) Members are permitted to seek work in the industry on their own but at least fifty percent of the union members eligible for dispatch who got a job during the most recent completed calendar year did so through referral or dispatch by the union.

(5) For purposes of the referral union program, the terms "referral" and "dispatch" are synonymous.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.20.010. WSR 07-01-038, § 192-210-100, filed 12/12/06, effective 1/12/07.]

**WAC 192-210-105 May all individuals on a union dispatch list participate in the referral union program?** No. Participation in the referral union program is limited to persons who are eligible for dispatch by the union and actively seeking dispatch. The union must meet the requirements of WAC 192-210-100.

(1) **Qualified referral unions.** A referral union that does not meet the requirements of WAC 192-210-100(4) is called a "qualified referral union." A qualified referral union is one that permits its members to look for work in the covered industry **and**, during the most recent calendar year, fewer than fifty percent of the union membership eligible for dispatch obtained employment through their union's referral program. Qualified referral unions are not part of the referral union program. However, a contact with the qualified referral union for a specific job counts as one of the three job search contacts required by RCW 50.20.240. For the remaining contacts, the person must search for work on his or her own.

(2) **Eligible for dispatch.** For purposes of this chapter, an individual is eligible for dispatch if he or she meets the minimum requirements for the job being filled, including having any license or certificate required for that occupation.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.20.010. WSR 07-01-038, § 192-210-105, filed 12/12/06, effective 1/12/07.]

**WAC 192-210-110 What are the requirements for unions in the referral union program? (1) Application.** The union's application for participation in the referral union program is subject to approval by the department. By submitting a signed application, the union agrees to:

(a) When requested, tell the department whether a person is a member of the union, eligible for dispatch or referral, and complying with union dispatch and referral rules;

(b) Advise its members that their eligibility for unemployment benefits may be affected if they are not available for suitable work as defined by RCW 50.20.100 or 50.20.110 and that, when requested, any failure to do so will be reported to the department;

(c) Advise its members that any refusal of dispatch or referral by the union to suitable work may affect the claimant's eligibility for unemployment benefits and, when requested, will be reported to the department, even if refusal is permitted under union rules; and

(d) When requested, provide the department other records that will help the department decide if an individual is available for work and actively seeking work, as long as disclosure of this information does not violate state or federal law.

The department will make the requests described in this subsection as needed to confirm the reliability of the referral union program.

(2) **Notify department of changes.** The union must notify the department within thirty days of any changes in its address, telephone number, or designated contact person, or changes in its procedures that modify the requirements a person must meet to be eligible for dispatch. The union must provide the department with a copy of the revised dispatch requirements within thirty days of implementation. The union's participation in the referral union program will be subject to reapproval based on the revised dispatch requirements.

(3) **Renewal.** Unions must renew their membership in the referral union program at intervals established by the department. If the union does not renew its membership within sixty days of the date given in the renewal notice, the department will revoke its membership in the referral union program.

(4) **Revocation.** The department may revoke a union's membership in the referral union program if the union does not comply with the terms of the agreement.

(a) If the revocation is based on failure to meet technical requirements of the program, such as failure to renew its membership or to respond to an information request from the department, the revocation will last until the failure is corrected;

(b) If the revocation is for violations of this section, such as the union's refusal to comply with program requirements, fraud, falsification of information regarding claimants' job search activities, or similar reasons, the revocation will last until the department is satisfied the union will comply with program requirements in future. In the case of serious or repeated violations, the revocation period may also include, at the department's discretion, an additional suspension period of up to sixty days.

(5) **Appeal of revocation.** An appeal of the revocation of a union's participation in the program is governed by chapter 34.05 RCW, the Administrative Procedure Act. If an appeal is filed, the revocation will be postponed until a final decision has been issued.

(6) **Withdrawal from program.** If a union chooses to withdraw from the referral union program, it must give the department thirty days notice. This will give the department time to notify claimants who are members of that union of their new job search requirements.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.20.010. WSR 07-01-038, § 192-210-110, filed 12/12/06, effective 1/12/07.]

**WAC 192-210-115 How does membership in a referral union impact a claimant's eligibility for benefits? (1) Job search.** If you are a member of a union that has been approved for the referral union program, the department will accept this as meeting the job search requirements of RCW 50.20.010 (1)(c). This means that you are not required to look for work on your own as long as you meet the requirements of WAC 192-210-120.

(2) **Union membership.** Membership in a referral union means journeymen, apprentices, members in travel status as allowed by union guidelines, and those eligible for dispatch and actively seeking dispatch for suitable work.

(3) **Violation of union rules.** You are not required to take an action that violates your union rules or places your union standing in jeopardy as a condition of receiving unemployment benefits.

(4) **Removal from program.** The department will remove you from the referral union program if you do not meet the requirements of WAC 192-210-120. You will be directed to look for work on your own, outside the union dispatch or referral process. You may also be denied benefits for any week(s) in which we decide you were not available for work.

(5) **Extended benefits.** This section does not apply if you are receiving extended benefits. You must meet the job search requirements listed in WAC 192-240-030.

(6) **Union verification.** The department will ask the union to verify that you are eligible for dispatch and actively seeking suitable work through the union. This will be done when you file a new application for unemployment benefits, reopen an existing unemployment claim, and at times while you are in continuous claim status. While you are in continuous claim status, the department will also ask your union to report whether you refused an offer of suitable work during the period in question.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.20.010. WSR 07-01-038, § 192-210-115, filed 12/12/06, effective 1/12/07.]

#### **WAC 192-210-120 What are the requirements for individuals participating in the referral union program?**

(1) **Eligibility.** You are eligible for the program if you are registered with the union, eligible for dispatch, and you are:

(a) Immediately available for dispatch or referral as required by the union; and

(b) Actively seeking, willing and able to accept any suitable work as defined in RCW 50.20.100 and 50.20.110 that is offered through the union dispatch or referral process.

(2) **Reporting.** During any week you claim benefits you must report to the department if:

(a) You are not available for dispatch or referral;

(b) You refuse dispatch or referral;

(c) The union assigns jobs using a bid process and you do not bid on a job that, based on your seniority or union rules, you had a reasonable expectation of getting, unless you have already bid on three other jobs that week; or

(d) You are no longer registered or eligible for dispatch with the union.

(3) **License or certificate.** RCW 50.20.010 (1)(c) requires you to be immediately available to accept suitable work:

(a) If your occupation requires a license, certification or permit to work within your labor market area, your license, certification or permit must be current at the time you are dispatched to a job.

(b) If you do not have a current license, certification or permit when you are dispatched, your availability for work is in question. Your benefits may be denied for any week in which you do not have the license, certification or permit or the license, certification or permit was expired or invalid.

(c) It is your responsibility to keep your license, certification or permit current; it is not the union's responsibility to track your license status.

(d) Nothing in this section requires you to obtain specialty licenses or certifications as long as you are licensed or certified for those jobs for which you are available for dispatch and your failure to obtain a specialty license or certification does not substantially restrict your availability for work.

(4) **Refusing work.** If you refuse to bid on a job, or refuse dispatch or referral by the union, your availability for work and eligibility for unemployment benefits is in question. While some union rules do not penalize members for refusing dispatch, the refusal may not be allowed for unemployment insurance purposes. For example, your union may

permit you to refuse dispatch to two jobs without penalty. However, in the unemployment insurance program this is not permitted unless the work is not suitable. A refusal of dispatch may be considered a refusal of suitable work under RCW 50.20.080. The department will determine whether the work was suitable.

(5) **Standby.** If permitted by the union, you may be placed on standby by the department if you meet the requirements of WAC 192-110-015.

(6) **Fee payers.** If you are not registered with the union, eligible for dispatch, and actively seeking work through the union, but have only paid a fee to be on the union's out of work list, you must meet the job search requirements of RCW 50.20.240.

(7) **Presumption of availability.** The department will presume you have met the availability and job search requirements of RCW 50.20.010 when you file a weekly claim certifying that you are able to work, available for work, and actively seeking work as instructed. A cause for doubting your eligibility will be created if the department receives relevant information for a specific week regarding your eligibility for benefits. (See WAC 192-130-070)

(8) **Contact with union.** The department will contact you and the union for information about your job search activities and availability for work whenever a cause for doubting your eligibility for unemployment benefits is established for any reason listed in this section.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.20.010. WSR 07-01-038, § 192-210-120, filed 12/12/06, effective 1/12/07.]

#### **WAC 192-210-125 What information is the department responsible for providing to participating unions?**

The department will:

(1) Notify the union of changes in laws, rules, or policy that impact the referral union program; and

(2) Upon request, provide training to the designated contact person or other union staff on the requirements they must meet to participate in the referral union program.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.20.010. WSR 07-01-038, § 192-210-125, filed 12/12/06, effective 1/12/07.]

#### **WAC 192-210-200 Professional athletes—RCW 50.20.113.**

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

(2) Definitions: For purposes of this section:

(a) "Substantially all" means ninety percent of the individual's base period wages were earned in professional sports.

(b) "Professional athlete" includes:

(i) A regular player or team player;

(ii) An alternate player;

(iii) An individual in training to become a regular player or team player; and

(iv) An individual who, although not performing active sports, is retained as a player or team member while recuperating from illness or disability.

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

(3) Reasonable assurance exists when the individual has:

(a) A written or verbal multiyear contract which extends into the subsequent season; or

(b) Offered to work and the employer has expressed interest in hiring the athlete for the next season; or

(c) Expressed a readiness and intent to participate in the sport for the next season.

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