

Chapter 192-320 WAC

EXPERIENCE RATING AND BENEFIT CHARGING

WAC

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	effective 1/1/08. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.29.064.
192-320-051	What are the requirements of partial predecessors under chapter 50.29 RCW? [Statutory Authority: RCW 50.12.010, 50.12.040, and 50.12.042. WSR 05-19-017, § 192-320-051, filed 9/9/05, effective 10/10/05.] Repealed by WSR 07-23-131, filed 11/21/07, effective 1/1/08. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.29.064.
192-320-055	Predecessor-successor transfers through intermediaries. [Statutory Authority: Chapters 34.05, 50.12 RCW, RCW 50.04.320 and 50.29.062. WSR 99-20-131, § 192-320-055, filed 10/6/99, effective 11/6/99.] Repealed by WSR 07-23-131, filed 11/21/07, effective 1/1/08. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.29.064.
192-320-060	Delinquent predecessor taxes. [Statutory Authority: Chapters 34.05, 50.12 RCW and portion of RCW 50.29.062. WSR 00-01-165, § 192-320-060, filed 12/21/99, effective 1/21/00. Formerly WAC 192-12-076.] Repealed by WSR 05-19-017, filed 9/9/05, effective 10/10/05. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.12.042.

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

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

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

192-320-020	How is the industry average calculated for rate years 2005, 2006, and 2007? (RCW 50.29.025.) [Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 07-23-127, § 192-320-020, 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, § 192-320-020, filed 9/9/05, effective 10/10/05.] Repealed by WSR 17-17-129, filed 8/22/17, effective 9/22/17. Statutory Authority: RCW 50.12.010 and 50.12.040.
192-320-030	How are unemployment insurance tax rates determined for a current "qualified employer"? [Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 07-23-127, § 192-320-030, filed 11/21/07, effective 1/1/08.] Repealed by WSR 17-17-129, filed 8/22/17, effective 9/22/17. Statutory Authority: RCW 50.12.010 and 50.12.040.
192-320-035	How are unemployment insurance tax rates determined for employers who are delinquent on taxes or reports through rate year 2010? [Statutory Authority: RCW 50.12.010, 50.12.040. WSR 10-23-065, § 192-320-035, filed 11/12/10, effective 12/13/10. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.29.010. WSR 09-24-009, § 192-320-035, filed 11/20/09, effective 12/21/09. Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 07-23-127, § 192-320-035, filed 11/21/07, effective 1/1/08.] Repealed by WSR 17-17-129, filed 8/22/17, effective 9/22/17. Statutory Authority: RCW 50.12.010 and 50.12.040.
192-320-050	What are the requirements of partial successors under chapter 50.29 RCW? [Statutory Authority: RCW 50.12.010, 50.12.040, and 50.12.042. WSR 05-19-017, § 192-320-050, filed 9/9/05, effective 10/10/05. Statutory Authority: RCW 50.12.010, 50.12.040. WSR 00-05-068, § 192-320-050, filed 2/15/00, effective 3/17/00.] Repealed by WSR 07-23-131, filed 11/21/07,

WAC 192-320-010 When is experience transferred to a successor employer? (1) Any benefits paid which are based on wages paid by the predecessor employer before the transfer of ownership must be charged to the successor employer. Just as the successor employer gets the organization, trade, business, assets, and experience of a predecessor employer as of the date of transfer, it must also get the benefit charges for past, current, or future claims connected to the predecessor employer (or a part of the predecessor employer that can be singled out) prior to the transfer.

(2) Once experience has been transferred, it becomes the successor employer's experience. It must be used to decide the successor's rates for any rate year that follows the year in which the transfer occurs. (There is an exception when, following the transfer, the successor does not have enough experience to be a qualified employer under RCW 50.29.010(6).) Since the transferred experience belongs to the successor employer, it may no longer be used to compute rates for the predecessor employer for rate years that follow.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.12.042. WSR 05-19-017, § 192-320-010, filed 9/9/05, effective 10/10/05.]

WAC 192-320-025 How are unemployment insurance tax rates determined for new employers? (RCW 50.29.025.) (1) Beginning in rate year 2008, unemployment

insurance tax rates for new employers shall be based on the history factor of new employers over the last three fiscal years applied to the experience tax and the social cost factor tax for each industry. The history factor shall be ninety percent, one hundred percent, or one hundred fifteen percent, based on the experience of new employers over the last three years, and shall be calculated under RCW 50.29.025.

(2) As used in this section:

(a) "NAICS" is an abbreviation for North American Industry Classification System;

(b) "Industry average array calculation factor rate" means the average experience-based tax rate for a particular industry. When multiplied by the history factor, it will be referred to as the "experience tax."

(c) "Industry average social cost factor rate" means the average social tax rate for a particular industry. When multiplied by the history factor, it will be referred to as the "social cost factor tax."

(d) "History factor" shall be ninety percent, one hundred percent, or one hundred fifteen percent, depending on the ratio of benefits charged and contributions paid in the last three fiscal years by employers who were not considered a "qualified employer" under WAC 192-320-030 or were not delinquent on taxes under WAC 192-320-035. It shall be computed annually and is not limited to a particular industry.

(3) When calculating the experience tax and social cost factor tax, the department will use the first four digits of the NAICS code of the industry being calculated.

(4) Experience tax.

(a) The department will calculate the experience tax as follows:

(i) A table will be prepared that contains each of the forty rate classes;

(ii) For each rate class, the department will multiply, total, and display the taxable payrolls for all qualified employers assigned to that rate class with the NAICS code being calculated, by the percentage assigned to that rate class;

(iii) The department will total the tax rates for the forty industry rate classes and divide the sum by the total of all payrolls used in the calculation; and

(iv) The department will multiply the result by the history factor for that year, and show the final amount as a percentage rounded to two decimal places.

(b) The experience tax must be at least 1.00 percent and not more than 5.4 percent.

(5) Social cost factor tax.

(a) The department will calculate the social cost factor tax as follows:

(i) The experience tax table will show the percentage of the social cost factor tax assigned to each of the forty rate classes;

(ii) The department will multiply, total, and display the total payroll in each industry rate class by the percentage of social cost factor tax assigned to that rate class;

(iii) The department will total the social cost factor tax rate for the forty industry rate classes and divide the sum by the total of all payrolls used in the calculation; and

(iv) The department will multiply the result by the history factor for that year, and show the final amount as a percentage rounded to two decimal places.

(b) The social cost factor tax for an industry cannot be higher than the percentage of social cost factor tax assigned to rate class forty.

(6) If there are no qualified employers in the four-digit level of the NAICS code, the department will calculate the rates using the corresponding three-digit level and assign the result to the four-digit level. If there are no qualified employers in the three-digit level, the department will calculate the rates using the corresponding two-digit level and assign the result to both the three-digit and four-digit levels.

[Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 07-23-127, § 192-320-025, filed 11/21/07, effective 1/1/08.]

WAC 192-320-036 How are unemployment insurance tax rates determined for employers who are delinquent on taxes or reports, beginning in rate year 2011? (1)

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

(2) For purposes of this section, the department will disregard unpaid taxes, interest, and penalties if:

(a) The unpaid taxes, interest, and penalties add up to less than either one hundred dollars or one-half of one percent of the employer's total tax reported for the twelve-month period immediately preceding July 1st. These minimum amounts only apply to taxes, interest, and penalties, not failure to submit the required tax and wage reports; or

(b) The unpaid taxes, interest, and penalties were found in a voluntary audit unless the department determines the employer did not make a good faith effort to comply with the law.

(3)(a) Under RCW 50.29.080, the department may re-determine an employer's previously assigned tax rate and retroactively assign delinquent tax rates to prior years if the department discovers an employer did not correctly report its taxes and wages.

(b) In the event an employer does not register with the department, the department may assign the delinquent tax rate beginning the calendar year after the July 1st following the first quarter an employer paid wages.

(4)(a) This section does not apply if the otherwise qualified employer shows to the satisfaction of the department that he or she acted in good faith and that applying the delinquent tax rate would be inequitable. This exception is to be narrowly construed to apply at the sole discretion of the department. The department's decision will be subject to review only under the arbitrary and capricious standard and will be reversed in administrative proceedings only for manifest injustice.

(b) If the department finds the employer knew or should have known its actions or inactions would result in a failure to submit all reports, taxes, penalties and interest by September 30th, then the department will find that an employer did not act in good faith and that application of the delinquent tax rate will not be inequitable.

(c) In determining if an employer acted in good faith and if application of the delinquent tax rate would be inequitable, the department may consider all facts surrounding the delinquent reports, taxes, penalties and interest.

(i) The department will consider the following factors when determining if an employer acted in good faith and if application of the delinquent tax rate will be inequitable. No single factor is conclusive. The factors include, but are not limited to:

(A) Whether there were events beyond the employer's reasonable control;

(B) Whether departmental error led to the delinquency;

(C) Whether the employer made only isolated errors instead of repeated errors;

(D) If the employer was a domestic service employer under RCW 50.04.160;

(E) Whether the employer, upon learning of the delinquency, made a diligent effort to pay overdue taxes, penalties, and interest and file overdue reports within ninety days;

(F) The amount of taxes, penalties and interest an employer failed to pay compared to the amount of taxes an employer reported and paid during the same time period;

(G) The number of employees an employer failed to report compared to the number of employees an employer reported during the same time period;

(H) The additional amount of taxes, penalties, and interest resulting from the application of delinquent tax rates compared to the amount of taxes, penalties, and interest the employer failed to pay originally.

(ii) The department will not consider the following factors when determining if an employer acted in good faith and if application of the delinquent tax rate would be inequitable:

(A) An employer's lack of available funds to pay taxes, penalties, and interest;

(B) Delay by the employer or its representative in opening mail or receiving other notices from the department relating to tax filing and payment.

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

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

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

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

whether the notice is part of the department's annual tax rate run.

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

(6) An employer that is not a "qualified employer" because of failure to pay contributions when due will be assigned a social cost factor rate in rate class 40. The tax rate caps for "qualified employers" in RCW 50.29.025 will not apply either to the calculation of the social cost factor rate in rate class 40 or to the sum of the array calculation factor rate and the graduated social cost factor rate for employers that are not "qualified employers."

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

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

[Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 17-14-077, § 192-320-036, filed 6/29/17, effective 7/30/17; WSR 10-23-065, § 192-320-036, filed 11/12/10, effective 12/13/10.]

WAC 192-320-040 When will the department recalculate employer tax rates? (RCW 50.29.080.) (1) The department may, at its discretion, recalculate the tax rate for any employer if it determines, within three years of the July 1 computation date, that the rate as originally computed was erroneous.

(2) Except as provided in subsection (1) of this section, an employer must submit a written request for rate review or recalculation before the department will recalculate a rate. This does not apply if the department determines that the department's error caused an incorrect tax rate.

(3) The department will not recalculate a tax rate at the request of the employer more than once in a calendar year.

[Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 07-23-127, § 192-320-040, filed 11/21/07, effective 1/1/08.]

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

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

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

(3) Additional information.

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

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

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

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

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

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

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

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

(b) The claimant's domestic responsibilities;

(c) Accepting a job with another employer;

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

(e) Starting or resuming school or training;

(f) Being in jail;

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

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

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

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

(3) Reasons for a voluntary quit considered attributable to employer are those work-related factors of such a compelling nature as to cause a reasonably prudent person to

leave employment. The work factors must have been reported to the employer if the employer has reasons not to be aware of the conditions, and the employer failed to improve the factors within a reasonable period of time. The reason for quitting may or may not have been determined good cause for voluntarily leaving work under RCW 50.20.050. For benefit charging purposes, however, such work-related factors may include, but are not limited to:

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

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

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

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

(e) Reductions in hours;

(f) Reduction in pay;

(g) Notification of impending layoff; and

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

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

WAC 192-320-075 Charges to the separating employer—RCW 50.29.021 (2)(c). (1) If a claimant voluntarily quits work to accept a job with a new employer, one hundred percent of benefits paid on the claim will be charged to the new employer when this new employer is the claimant's last employer, a base period employer, and a contribution-paying employer.

(2) If a claimant quits work because of the working conditions listed in this subsection, the employer from whom the separation occurred will be charged for one hundred percent of benefits paid on the claim if the employer is the claimant's last employer, a base period employer, and a contribution-paying employer. These working conditions include:

(a) A reduction in the individual's usual compensation of twenty-five percent or more under WAC 192-150-115;

(b) A reduction in the individual's usual hours of twenty-five percent or more under WAC 192-150-120;

(c) A change in the work location which caused a substantial increase in distance or difficulty of travel under WAC 192-150-125;

(d) A deterioration in the individual's worksite safety under WAC 192-150-130;

(e) Illegal activities in the individual's worksite under WAC 192-150-135; or

(f) The individual's usual work was changed to work that violates the individual's religious convictions or sincere moral beliefs under WAC 192-150-140.

(3) Benefits based on wages paid by the following entities will **not** be charged to the experience-rating account of

the separating employer as described in subsections (1) and (2) if they were earned:

- (a) In another state;
- (b) From a local government employer;
- (c) From the federal government; or
- (d) From any branch of the United States military.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. WSR 04-23-058, § 192-320-075, filed 11/15/04, effective 12/16/04.]

WAC 192-320-077 In which quarter will the department charge employers for unemployment benefits paid to claimants? Benefits will be charged to the quarter containing the first day of the week claimed, regardless of when the department actually pays the claimant for the week claimed.

[Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 16-21-013, § 192-320-077, filed 10/7/16, effective 11/14/16.]

WAC 192-320-080 Overpayments caused by incorrect reporting of wages and hours—RCW 50.12.070 (2)(b) and 50.29.021 (3)(a). (1) When an employer incorrectly reports an individual's wages or hours, and the claim becomes invalid due to a later correction in wages or hours, the department will charge that employer one hundred percent of benefits paid to that individual, except as provided in subsection (3) of this section.

(2) When an employer incorrectly reports an individual's wages and a claimant's weekly benefit amount or maximum benefits payable is reduced due to a later correction in wages, the department will charge that employer for the benefits that should not have been paid, but nonetheless were paid as a result of the employer's incorrect reports, except as provided in subsection (3) of this section.

(3) This section does not apply to the entities listed below. The department will charge only for the percentage of benefits that represent their percentage of base period wages. These include wages earned:

- (a) In another state;
- (b) From a local government employer;
- (c) From the federal government; or
- (d) From any branch of the United States military.

[Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 16-21-013, § 192-320-080, filed 10/7/16, effective 11/14/16. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. WSR 07-23-128, § 192-320-080, filed 11/21/07, effective 1/1/08.]

WAC 192-320-081 What constitutes an "event" for the purpose of determining if there is a pattern of failing to respond timely or adequately?—RCW 50.29.021(6). (1) An event occurs if a benefit overpayment is created and the employer or the employer's agent significantly contributed to the overpayment by failing to respond timely or adequately without good cause to the department's written request for information relating to a claim.

(2) When deciding if an event has occurred, there must be a decision made by the department resulting in a benefit overpayment.

(3) An event may occur even if the employer is not in the base year of the claim.

(8/22/17)

(4) The department must examine past events which contributed to benefit overpayments when deciding if a pattern exists.

[Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 13-24-108, § 192-320-081, filed 12/3/13, effective 1/3/14.]

WAC 192-320-082 How will the department determine good cause exists for failing to respond timely or adequately?—RCW 50.29.021(6). (1) The department may find that good cause exists in certain situations when the employer fails to respond due to an unforeseen event outside of the employer's or employer's agent's control, such as:

- (a) The death or serious illness of the employer;
- (b) Destruction of the employer's place of business or business records not caused by, or at the direction of, the employer or the employer's agent;
- (c) Fraud or theft against the employer.

(2) The employer is responsible to provide all pertinent facts and evidence or documentation for the department to determine good cause.

[Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 13-24-108, § 192-320-082, filed 12/3/13, effective 1/3/14.]

WAC 192-320-083 What is a written request for information?—RCW 50.29.021(6). For the purposes of this chapter, a written request for information relating to a claim is a paper or electronic transmission by the department requesting information from an employer or an employer's agent.

[Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 13-24-108, § 192-320-083, filed 12/3/13, effective 1/3/14.]

WAC 192-320-084 What is an employer's agent?—RCW 50.29.021(6). For the purposes of this chapter, the employer's agent is the employer's designated representative responsible for providing information to the department.

[Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 13-24-108, § 192-320-084, filed 12/3/13, effective 1/3/14.]

WAC 192-320-085 When is an overpayment of benefits credited to an employer's account? Benefits paid shall be recoverable to the extent allowable pursuant to RCW 50.20.190 in the event that the decision allowing benefits is ultimately modified or reversed. Benefit credits in an amount equal to the erroneous charges shall be applied to the employer's account for the quarter in the calendar year in which benefits were originally charged.

[Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 13-23-008, § 192-320-085, filed 11/7/13, effective 12/8/13; WSR 10-23-064, § 192-320-085, filed 11/12/10, effective 12/13/10; WSR 10-16-038, § 192-320-085, filed 7/26/10, effective 8/26/10.]