

**Chapter 192-170 WAC
AVAILABILITY FOR WORK**

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WAC

192-170-010	Availability for work—RCW 50.20.010.
192-170-050	Suitable work factors—RCW 50.20.100 and 50.20.110.
192-170-060	Suitable work factors—Domestic violence or stalking—RCW 50.20.050 (2) (b) (iv).
192-170-065	Suitable work factors—Agricultural labor—RCW 50.04.150 and 50.20.100.
192-170-070	What are the availability requirements for part-time eligible workers?—RCW 50.20.119.
192-170-080	Leave of absence.
192-170-090	Incarceration.
192-170-100	AmeriCorps and AmeriCorps VISTA volunteers.

WAC 192-170-010 Availability for work—RCW 50.20.010. (1) In general, the department will consider you available for work if you:

(a) Are willing to work full-time, part-time, and accept temporary work during all of the usual hours and days of the week customary for your occupation.

(i) You are not required to be available for part-time or temporary work if it would substantially interfere with your return to your regular occupation.

(ii) The requirement to be available for full-time work does not apply under the circumstances described in WAC 192-170-050 (1)(b) or 192-170-070;

(b) Are capable of accepting and reporting for any suitable work within the labor market in which you are seeking work;

(c) Do not impose conditions that substantially reduce or limit your opportunity to return to work at the earliest possible time;

(d) Are available for work during the hours customary for your trade or occupation; and

(e) Are physically present in your normal labor market area, unless you are actively seeking and willing to accept work outside your normal labor market.

(2) [You are considered available for work if you are an active registered electrical apprentice in an approved electrical apprenticeship program under chapter 49.04 RCW and chapter 296-05 WAC.

(3) You are not considered available for work if you fail or refuse to seek work as required in a directive issued by the department under WAC 192-180-010.

(3) If you are physically located outside of the United States, Puerto Rico, or the U.S. Virgin Islands, the department will consider you available for work if you meet the requirements of subsections (1) and (2) of this section, and:

(a) You are legally authorized to work in the country in which you are physically located;

(b) You are immediately available for work in the United States;

or

(c) You are a spouse or domestic partner of a member of the United States Armed Forces and you are legally authorized to work within the foreign military base where your spouse or domestic partner is stationed.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042 and 50.20.010. WSR 20-11-022, § 192-170-010, filed 5/13/20, effective 7/5/20. Statutory Authority: RCW 50.12.010, 50.20.010, 50.20.230, 50.20.240, and 50.12.040. WSR 20-10-056, § 192-170-010, filed 4/30/20, effective 7/5/20. Statutory Authority: RCW 50.12.010, 50.12.040, and

50.20.010. WSR 10-11-046, § 192-170-010, filed 5/12/10, effective 6/12/10.]

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules, and deems ineffectual changes not filed by the agency in this manner. The bracketed material in the above section does not appear to conform to the statutory requirement.

WAC 192-170-050 Suitable work factors—RCW 50.20.100 and 50.20.110. (1) **Physical fitness.** In determining whether work is suitable as defined by RCW 50.20.100 and 50.20.110, the department will consider whether you have a disability that prevents you from performing the essential functions of the job without a substantial risk to your health or safety.

(a) For purposes of this section, the term "disability" means a sensory, mental, or physical condition that:

- (i) Is medically recognizable or diagnosable;
- (ii) Exists as a record or history; and
- (iii) Substantially limits the proper performance of your job.

(b) The department may determine in individual circumstances that less than full-time work is suitable if:

- (i) The disability prevents you from working the number of hours that are customary to the occupation;
- (ii) You are actively seeking work for the occupation and hours you have the ability to perform; and
- (iii) The restriction on the number of hours you can work, the essential functions you can perform, and the occupations you are seeking does not substantially limit your employment prospects within your general area.

(c) To be considered available for suitable work, you must be available for employment in an occupation in keeping with your prior work experience, education, or training. If such employment is not available in your general area, you must be willing to accept any employment which you have the physical or mental ability to perform.

(d) Disabilities resulting from pregnancy will be treated the same as other disabilities, except that the department will also consider the risk to your pregnancy when deciding whether work is suitable.

(e) The department will require verification from a physician of your disability, including:

- (i) The restrictions on the tasks or work-related functions you can perform;
- (ii) The restrictions on the number of hours you can work, if any;
- (iii) The expected duration of the disability and resulting work restrictions; and
- (iv) The types of tasks or work-related functions you are able to perform with this disability, if known by the physician.

(2) **Definitions.** For the purposes of this chapter:

(a) "General area" means an individual's labor market area and includes the geographic area within which an individual would customarily seek work in a given occupation.

(b) "Physician" means a person licensed to practice one or more of the following professions: Medicine and surgery (including, but not limited to, psychiatry); osteopathic medicine and surgery; chiropractic; naturopathic medicine; podiatry.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.20.010. WSR 02-08-072, § 192-170-050, filed 4/2/02, effective 5/3/02.]

WAC 192-170-060 Suitable work factors—Domestic violence or stalking—RCW 50.20.050 (2) (b) (iv). When the department decides you left work for good cause due to domestic violence or stalking, you are required to be available for suitable work to receive benefits. Suitable work is work that is in keeping with your prior experience, employment or training. Suitability of work must also include consideration of your need to address the physical, psychological, legal and other effects of domestic violence or stalking. A job is not considered suitable when it would require you to be available on a day or at a specific time that conflicts with your need to address the effects of the domestic violence or stalking.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042, and 50.20.010. WSR 05-13-156, § 192-170-060, filed 6/21/05, effective 7/22/05.]

WAC 192-170-065 Suitable work factors—Agricultural labor—RCW 50.04.150 and 50.20.100. When deciding whether agricultural labor is suitable work for you, the department will consider the degree of risk involved to your health, safety, and morals, your physical fitness, your skill level, your length of unemployment and prospects for work in your customary occupation, the distance of the available work from your residence, and other factors pertinent to your ability to perform the work.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. WSR 10-11-046, § 192-170-065, filed 5/12/10, effective 6/12/10.]

WAC 192-170-070 What are the availability requirements for part-time eligible workers?—RCW 50.20.119. (1) If you are a part-time eligible worker as defined in RCW 50.20.119, you may limit your availability for work to 17 or fewer hours per week. You may refuse any job of 18 or more hours per week.

(2) You must be available for work during the usual hours for your occupation. For example, if your occupation normally requires both day and evening hours of work, you must be available for work both day and evening hours.

(3) You must be available for work all days of the week that are usual for your occupation, even if you have not worked those days in the past. If you are not available for work on any day that is a usual day of work for your occupation, we will reduce your benefits under RCW 50.20.130. For example, if your occupation usually works Monday through Friday, you must be available for work Monday through Friday, even if you have only worked weekends in the past.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.12.042. WSR 05-19-018, § 192-170-070, filed 9/9/05, effective 10/10/05.]

WAC 192-170-080 Leave of absence. (1) A leave of absence is an absence from work mutually and voluntarily agreed upon by you and your employer or a collective bargaining agent, or leave to which you are entitled under federal or state law, where the employer-employee relationship is continued and you will be reinstated in the same or similar job when the leave expires.

(a) If you are on a leave of absence, you are not unemployed and thus not eligible for benefits.

(b) If you choose not to return to work when the leave of absence ends, the separation is treated as a voluntary quit. The separation date will be the first working day after the leave expires.

(c) If no job is available with the employer when the leave of absence ends, the separation is treated as a layoff due to a lack of work.

(d) If you have been on medical leave and are released for work by your medical provider, but your employer refuses to permit you to return to work, you are considered to be laid off due to a lack of work and potentially eligible for benefits.

(2) A leave of absence does not exist if the employer offers you only a preference for rehire or a promise of a job if work exists at the end of the leave. An employee-initiated leave that only provides fringe benefits during the leave or preferential status for reemployment is not a leave of absence but a voluntary quit.

(3) A temporary or indefinite disciplinary suspension from work by the employer is not a leave of absence. The department will treat this as a suspension.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. WSR 10-11-046, § 192-170-080, filed 5/12/10, effective 6/12/10.]

WAC 192-170-090 Incarceration. (1) If you were previously warned that your continued employment was in jeopardy because of poor attendance, and you engage in illegal activities where you are aware there is a clear possibility of arrest and detention, misconduct may be established under RCW 50.04.294 (2)(d) or (e).

(2) If you are jailed but later released without having been charged with or convicted of a crime, the separation is not considered misconduct except as provided in subsection (3) of this section.

(3) If your employer discharges you for absenteeism or job abandonment because you failed without good cause to notify the employer of your incarceration or anticipated release date, such failure may be considered misconduct.

(4) You will be considered unavailable for work during any days in which you are incarcerated unless those days are not part of your regular work week based on your occupation. Example: You are sentenced to a specific time in custody but allowed to serve your time on weekends. If weekends are not part of your regular work week, you will be considered available for work.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. WSR 10-11-046, § 192-170-090, filed 5/12/10, effective 6/12/10.]

WAC 192-170-100 AmeriCorps and AmeriCorps VISTA volunteers. (1) AmeriCorps volunteers enroll with nonprofit organizations to provide services within the state. They may enroll in full-time or part-time

programs. If you enroll in a part-time program, you can seek and accept other work. You are potentially eligible for benefits if you are immediately available for and seeking full-time work.

(2) AmeriCorps VISTA (volunteers in service to America) volunteers are assigned to public or private organizations to work towards meeting community needs. The contract requires they be available for service each day and evening of the week. AmeriCorps VISTA volunteers are not available for work. You are not eligible for benefits while under contract, even if you received benefits prior to enrollment in service.

(3) Stipends received as an AmeriCorps or AmeriCorps VISTA volunteer are not covered employment. They may not be used to requalify for benefits after a denial for a quit, discharge, or job refusal.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. WSR 10-11-046, § 192-170-100, filed 5/12/10, effective 6/12/10.]