

Chapter 192-510 WAC
ASSESSING AND COLLECTING PREMIUMS

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WAC

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WAC 192-510-010 Election, withdrawal, and cancellation of coverage. (1) Self-employed persons as defined in RCW 50A.10.010(1) and federally recognized tribes as defined in RCW 50A.10.020 may elect coverage under Title 50A RCW.

(2) Notice of election of coverage must be submitted to the department online or in another format approved by the department.

(3) Elective coverage begins on the first day of the quarter immediately following the notice of election.

(4) A period of coverage is defined as:

(a) Three years following the first day of elective coverage or any gap in coverage; and

(b) Each subsequent year.

(5) Any self-employed person or federally recognized tribe may file a notice of withdrawal within thirty calendar days after the end of each period of coverage.

(6) A notice of withdrawal from coverage must be submitted to the department online or in another format approved by the department.

(7) Any levy resulting from the department's cancellation of coverage is in addition to the due and unpaid premiums and interest for the remainder of the period of coverage.

[Statutory Authority: RCW 50A.05.60 [50A.05.060] and 50A.25.030. WSR 20-01-087, § 192-510-010, filed 12/12/19, effective 1/12/20. Statutory Authority: RCW 50A.04.215. WSR 19-08-016, § 192-510-010, filed 3/22/19, effective 4/22/19; WSR 18-12-032, § 192-510-010, filed 5/29/18, effective 6/29/18.]

WAC 192-510-020 Election of coverage for federally recognized tribes. (1) Federally recognized tribes electing coverage are employers as defined in RCW 50A.05.010 and are subject to all rights and responsibilities under Title 50A RCW.

(2) Employees of federally recognized tribes that elect coverage are employees as defined in RCW 50A.05.010 and are subject to all the rights and responsibilities under Title 50A RCW.

[Statutory Authority: RCW 50A.05.60 [50A.05.060] and 50A.25.030. WSR 20-01-087, § 192-510-020, filed 12/12/19, effective 1/12/20. Statutory

WAC 192-510-025 What wages are reportable to the department for premium assessment purposes? (1) Examples of wages reportable to the department for premium assessment purposes include, but are not limited to:

- (a) Salary or hourly wages;
- (b) Cash value of goods or services given in the place of money;
- (c) Commissions or piecework;
- (d) Bonuses;
- (e) Cash value of gifts or prizes;
- (f) Cash value of meals and lodging when given as compensation;
- (g) Holiday pay;
- (h) Paid time off, including vacation leave and sick leave, as well as associated cash outs, unless these wages are considered supplemental benefit payments provided by the employer;
- (i) Separation pay including, but not limited to, severance pay, termination pay, and wages in lieu of notice;
- (j) Value of stocks at the time of transfer to the employee if given as part of a compensation package;
- (k) Compensation for use of specialty equipment, performance of special duties, or working particular shifts; and
- (l) Stipends/per diems unless provided to cover a past or future cost incurred by the employee as a result of the performance of the employee's expected job functions.

(2) Examples of what the department will not consider wages include, but are not limited to:

- (a) A payment from an employer benefit that is not part of the employee's standard compensation.

Example: While on paid medical leave, an employee receives sixty-one percent of the employee's typical weekly wage from the state. Through an internal short-term disability benefit, the employer pays the employee the remaining thirty-nine percent of the employee's typical weekly wage as a supplemental benefit payment, bringing the employee's total benefit to one hundred percent of the employee's typical weekly wage. Since this supplemental benefit payment is not part of the employee's standard compensation, it is not considered a wage, and should not be reported on either the employee's weekly claim or the employer's quarterly report.

- (b) Any payment made to an employee to cover a past or future cost incurred by the employee related to the performance of the employee's expected job functions. Such costs include, but are not limited to, costs of meals and travel.

Example: An employer pays a per diem to an employee on a business trip to cover the cost of local travel and meals. This amount is not considered a wage, even if the per diem exceeds the actual cost incurred.

- (c) The amount of any payment made (including any amount paid by an employer for insurance or annuities, or into a fund to provide for any such payment) to, or on behalf of, an individual or the individual's dependents under a plan or system established by an employer which makes provision generally for individuals performing service for the employer (or for such individuals generally and their dependents) or for a class or classes of such individuals (or for a class or classes of such individuals and their dependents) on account of:

- (i) Retirement;
- (ii) Short-term or long-term disability;
- (iii) Medical or hospitalization expenses in connection with sickness or accident disability; or
- (iv) Death.

[Statutory Authority: RCW 50A.05.60 [50A.05.060] and 50A.25.030. WSR 20-01-087, § 192-510-025, filed 12/12/19, effective 1/12/20. Statutory Authority: RCW 50A.04.215. WSR 19-13-001, § 192-510-025, filed 6/5/19, effective 7/6/19.]

WAC 192-510-030 How will the department determine the wages earned and hours worked for self-employed persons electing coverage?

(1) The department will use the self-employed person's wages reported in a quarter and divide it by the state's minimum wage to presume the number of hours worked for the quarter being reported.

(2) The self-employed person may overcome the presumption of hours in subsection (1) of this section by providing sufficient documentation to the department including, but not limited to, personal logs or contracts.

(3) If the determination of hours in subsection (1) or (2) of this section is greater than eight hundred twenty hours for that quarter, the number of hours worked will be considered eight hundred twenty hours.

Example: For this example, the state's minimum wage is \$12.00 per hour. The self-employed person electing coverage reports \$10,000 in wages in a quarter. The department will divide \$10,000 by \$12.00 and presume the self-employed person worked 833 hours in that quarter. The department will determine that the self-employed individual worked 820 hours in that quarter.

(4) The department may require copies of tax returns, bank records, or any other documentation deemed necessary by the department to verify or determine the self-employed person's hours and wages.

[Statutory Authority: RCW 50A.04.215. WSR 19-23-090, § 192-510-030, filed 11/19/19, effective 12/20/19; WSR 18-12-032, § 192-510-030, filed 5/29/18, effective 6/29/18.]

WAC 192-510-031 What are reportable wages for self-employed persons electing coverage? Each quarter, a self-employed individual who has elected coverage under Title 50A RCW will report to the department wages equal to the combined total of:

(1) The self-employed individual's net income related to their self-employment; and

(2) The gross amount of wages, if any, as defined in RCW 50A.05.010(24), paid to the self-employed individual from the self-employed individual's business entity.

Example 1: A sole-proprietor selling crafts online earns \$3,000 in a quarter and incurred \$2,000 in business-related expenses. The individual would report \$1,000 to the department for that quarter.

Example 2: A member of a limited liability company pays herself a salary in the amount of \$10,000 in a quarter. She also takes a draw from her company in the amount of \$5,000. She would report \$15,000 to the department for that quarter.

[Statutory Authority: RCW 50A.04.215. WSR 19-23-090, § 192-510-031, filed 11/19/19, effective 12/20/19.]

WAC 192-510-040 How does an employer's size affect liability for premiums and eligibility for small business assistance grants? (1) To assess premiums and determine eligibility for small business assistance grants, the department must determine the size of each applicable employer. The department will only count the number of in-state employees as defined in RCW 50A.05.010(4) when calculating employer size.

(2) If the department determines that the employer's status has changed as it relates to premium liability, the department will notify the employer. This notification will include the following information:

(a) If the employer was determined to have fifty or more employees for the preceding calendar year, and the employer is then determined to have fewer than fifty employees for the subsequent calendar year, the employer will not be required to pay the employer portion of the premium for the next calendar year; or

(b) If the employer was determined to have fewer than fifty employees for the preceding calendar year, and the employer is then determined to have fifty or more employees for the subsequent calendar year, the employer will be required to pay the employer portion of the premium for the next calendar year.

Example: On September 30, 2018, a business is determined to have had 53 employees on average during the previous four completed quarters, which covers July 1, 2017, through June 30, 2018. The employer is liable for the employer portion of premiums for 2019. On September 30, 2019, the business is determined to have had 48 employees on average during the previous four completed quarters, which covers July 1, 2018, through June 30, 2019. The employer is no longer liable for the employer share of premiums for 2020.

[Statutory Authority: RCW 50A.05.60 [50A.05.060] and 50A.25.030. WSR 20-01-087, § 192-510-040, filed 12/12/19, effective 1/12/20. Statutory Authority: RCW 50A.04.215. WSR 18-12-032, § 192-510-040, filed 5/29/18, effective 6/29/18.]

WAC 192-510-045 How will the department assess the size of employers for calendar years 2019 and 2020? (1) For the purposes of premium assessment for calendar year 2019, the department will determine the size of all employers by reviewing the number of employees reported pursuant to WAC 192-540-030 for the first calendar quarter. Employers that report fifty or more employees will be required to pay the employer share of the premium for all calendar quarters in calendar year 2019.

(2) On September 30, 2019, the department will average the number of employees reported over the quarters for which reporting exists to determine employer size for calendar year 2020.

[Statutory Authority: RCW 50A.04.215. WSR 18-22-080, § 192-510-045, filed 11/2/18, effective 12/3/18.]

WAC 192-510-050 How will the department assess the size of new employers? An employer that has not been in business in Washington long enough to report four calendar quarters by September 30th will have its size calculated after the second quarter of reporting is due by averaging the number of employees reported over the quarters for which reporting exists. Premium assessment based on this determination will begin on this reporting date. This size determination remains in effect until the following September 30th pursuant to RCW 50A.10.030 (8) (c).

[Statutory Authority: RCW 50A.05.60 [50A.05.060] and 50A.25.030. WSR 20-01-087, § 192-510-050, filed 12/12/19, effective 1/12/20. Statutory Authority: RCW 50A.04.215. WSR 18-12-032, § 192-510-050, filed 5/29/18, effective 6/29/18.]

WAC 192-510-060 When are employer premium payments due? (1) Premiums must be paid quarterly. Each payment must include the premiums owed on all wages subject to premiums 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 premiums are being paid.

(2) 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 premium payment must be postmarked by the next business day.

(3) Premium payments are due within ten calendar days when a business is dissolved or the account is closed by the department. Premiums not paid timely are delinquent and subject to interest under RCW 50A.45.025.

[Statutory Authority: RCW 50A.05.60 [50A.05.060] and 50A.25.030. WSR 20-01-087, § 192-510-060, filed 12/12/19, effective 1/12/20. Statutory Authority: RCW 50A.04.215. WSR 18-12-032, § 192-510-060, filed 5/29/18, effective 6/29/18.]

WAC 192-510-065 When can an employer deduct premiums from employees? (1) An employer may not deduct more than the maximum allowable employee share of the premium from wages paid for a pay period.

(2) If an employer fails to deduct the maximum allowable employee share of the premium from wages paid for a pay period, the employer is considered to have elected to pay that portion of the employee share under RCW 50A.10.030 (3)(d) for that pay period. The employer cannot deduct this amount from a future paycheck of the employee for a different pay period.

(3) Subsections (1) and (2) of this section do not apply if an employer was unable to deduct the maximum allowable employee share of the premium for a pay period due to a lack of sufficient employee wages for that pay period.

[Statutory Authority: RCW 50A.05.60 [50A.05.060] and 50A.25.030. WSR 20-01-087, § 192-510-065, filed 12/12/19, effective 1/12/20. Statutory Authority: RCW 50A.04.215. WSR 19-08-016, § 192-510-065, filed 3/22/19, effective 4/22/19; WSR 18-22-080, § 192-510-065, filed 11/2/18, effective 12/3/18.]

WAC 192-510-066 How are payments applied to paid family and medical leave premiums? (1) A payment received with a premium assessment will be applied to the quarter for which the premium assessment applies. A payment exceeding the legal fees, penalties, interest and premiums due for that quarter will be applied to any other debt as provided in subsection (4) of this section.

(2) If no debt exists, premium overpayments of less than fifty dollars will be credited to future payments due.

(3) If no debt exists, premium overpayments of fifty dollars or more may be refunded to the employer at the employer's request. Otherwise, such overpayments will be credited to future payments due.

(4) Payments received will be applied in the following order of priority:

(a) Current quarter balance;

(b) Any previous quarter premium balance due starting with the oldest quarter;

(c) Then beginning with the oldest quarter in which a balance is owed:

(i) Penalties;

(ii) Fees; and

(iii) Interest charges.

[Statutory Authority: RCW 50A.04.215. WSR 19-23-090, § 192-510-066, filed 11/19/19, effective 12/20/19; WSR 18-22-080, § 192-510-066, filed 11/2/18, effective 12/3/18.]

WAC 192-510-070 What is "localization" and how does it affect conditional waivers? (1) An employee's work is subject to all reporting requirements and premiums when the work is localized in Washington. An employee's work is considered localized in Washington when:

(a) All of the employee's work is performed entirely within Washington; or

(b) Most of the employee's services are performed within Washington, but some of the work which is temporary or transitory in nature, or consists of isolated transactions is performed outside of Washington.

(2) Services that are not localized in Washington will be subject to reporting requirements and premiums when the services are not localized in any state, but some of the services are performed in Washington, and:

(a) The base of operations of the employee is in Washington, or if there is no base of operations, then the place from which such services is directed or controlled is in Washington; or

(b) The base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in Washington.

Example: A storm hits Washington. An employer in Oregon dispatches an employee who typically lives and works in Oregon to help with repair work. The employee works temporarily in Washington for the employer for one week, and then returns to work in Oregon for the employer. The employment is localized within Oregon and is not subject to premium assessment.

[Statutory Authority: RCW 50A.04.215. WSR 18-12-032, § 192-510-070, filed 5/29/18, effective 6/29/18.]

WAC 192-510-080 What are the requirements to be eligible for a conditional premium waiver? (1) An employer and employee may be eligible for a conditional waiver of premium payments by satisfying the requirements of RCW 50A.10.040.

Example: A storm hits Washington. An employer in Oregon hires a new employee who lives in Oregon to help with repair work. The employee only works in Washington for the employer for one week and is then laid off. The employer and the employee could submit a conditional premium waiver request for this employee.

(2) A conditional premium waiver is not required for work that is not subject to premiums under WAC 192-510-070 or fails to meet the definition of employment in RCW 50A.05.010 (7)(a).

(3) Any conditional premium waiver request must be submitted to the department online or in another format approved by the department.

(4) As a condition to granting the conditional premium waiver, the employer must file quarterly reports to verify that the employee for whom a conditional premium waiver has been granted is still eligible for the waiver.

(5) Once an employee works eight hundred twenty hours in a period of four consecutive complete calendar quarters localized in Washington for an employer, the conditional premium waiver expires.

(6) The department may require the employer to submit additional documentation as necessary.

(7) If the employee exceeds eight hundred twenty hours in a period of four consecutive complete calendar quarters, the conditional waiver expires and the employer and employee will be responsible for their shares of all premiums that would have been paid during the period of four consecutive complete calendar quarters in which the employee exceeded eight hundred twenty hours had the waiver not been granted. The employer and employee will each receive a notice of premium assessment. Payment of the missed premiums is due on the date provided in the notice. Upon payment of the missed premiums, the employee will be credited for the hours worked and will be eligible for benefits under this chapter as if the premiums were originally paid.

(8) A request for a conditional premium waiver may be denied if the department finds that the employee does not satisfy the requirements of RCW 50A.10.040.

(9) A conditional premium waiver may be canceled if the department finds that the employee no longer satisfies the requirements of RCW 50A.10.040.

[Statutory Authority: RCW 50A.04.215. WSR 19-23-090, § 192-510-080, filed 11/19/19, effective 12/20/19; WSR 18-12-032, § 192-510-080, filed 5/29/18, effective 6/29/18.]

WAC 192-510-085 How will the department assess premiums when a conditional premium waiver expires? (1) If an employee who is exempt from premiums under a conditional waiver works eight hundred twenty hours in any period of four consecutive quarters, the waiver will be determined to have expired.

(2) Upon expiration of a conditional premium waiver, the department will assess and notify:

(a) The employer of all the owed employer premiums; and

(b) The employee of all the owed employee premiums.

(3) Payment will be due upon receipt of the assessment.

(4) Failure to pay the assessment by the required date will result in the accrual of interest under RCW 50A.45.025.

(5) Upon payment of the employee premiums, the employee will be credited for the hours worked and will be eligible for benefits under Title 50A RCW as if the premiums were originally paid.

(6) Nothing in this section prevents the employer from paying part or all of the employee's share of the premiums.

[Statutory Authority: RCW 50A.05.60 [50A.05.060] and 50A.25.030. WSR 20-01-087, § 192-510-085, filed 12/12/19, effective 1/12/20. Statutory Authority: RCW 50A.04.215. WSR 19-08-016, § 192-510-085, filed 3/22/19, effective 4/22/19.]

WAC 192-510-090 How will the department determine the premium rate for each calendar year? (1) For calendar year 2021 and thereafter, the total premium rate shall be based on the family and medical leave insurance account balance ratio as of September 30th of the previous year.

(2) The commissioner shall calculate the account balance ratio by dividing the balance of the family and medical leave insurance account by total covered wages paid by employers and those electing coverage.

(3) For the purposes of this section, "total covered wages" is defined as the total amount of wages paid to employees that are subject to the paid family and medical leave premium from July 1st of the previous calendar year to June 30th of the current calendar year as reported by employers.

[Statutory Authority: RCW 50A.05.060. WSR 20-20-073, § 192-510-090, filed 10/2/20, effective 11/2/20.]