

WSR 23-19-004

PROPOSED RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed September 6, 2023, 3:37 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-11-067.

Title of Rule and Other Identifying Information: WAC 192-310-040
How should employers report hours worked? (RCW 50.12.070.)

Hearing Location(s): On October 31, 2023, at 9:00 a.m., Zoom, Meeting ID 827 2060 9701, Passcode 764365; or call in +12532158782,,82720609701#,,,,*764365# US (Tacoma), +12532050468,,82720609701#,,,,*764365# US. Join Zoom meeting <https://esd-wa-gov.zoom.us/j/82720609701?pwd=My9oRk5iOE9LTitqWlFrZFBTb3htUT09>.

Date of Intended Adoption: November 1, 2023.

Submit Written Comments to: Stephanie Frazee, P.O. Box 9046, Olympia, WA 98507-9046, email rules@esd.wa.gov, fax 844-652-7096, by October 31, 2023.

Assistance for Persons with Disabilities: Contact Teresa Eckstein, phone 360-507-9890, fax 360-507-9890, TTY relay 711, email Teresa.eckstein@esd.wa.gov, by October 24, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule making is necessary to amend current rules in accordance with the employment security department's (department) 2022 legislative report on transportation network companies and to integrate transportation network companies and their drivers into the unemployment insurance system as set forth in SHB 1570 (2023). This rule making will set forth the method for transportation network companies to calculate and report hours worked by drivers in their quarterly reports to the department.

Reasons Supporting Proposal: This proposal is necessary to set forth the method for transportation network companies to calculate and report hours worked by drivers in their quarterly reports to the department.

Statutory Authority for Adoption: RCW 50.12.010, 50.12.040, 50.12.070; and SHB 1570, which adds a new section to chapter 50.04 RCW and amends RCW 50.29.021.

Statute Being Implemented: SHB 1570, which adds a new section to chapter 50.04 RCW and amends RCW 50.29.021.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Employment security department, governmental.

Name of Agency Personnel Responsible for Drafting: Stephanie Frazee, Olympia, Washington, 425-465-0313; Implementation and Enforcement: J.R. Richards, Olympia, Washington, 360-463-1079.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Stephanie Frazee, P.O. Box 9046, Olympia, WA 98507-9046, phone 360-890-3472, fax 844-652-7096, TTY relay 771 [711], email rules@esd.wa.gov, <https://esd.wa.gov/newsroom/rulemaking/transportation-network-companies>.

Scope of exemption for rule proposal from Regulatory Fairness Act requirements:

Is not exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how

costs were calculated. The rule proposal does not impose costs on businesses because it clarifies an existing requirement. Transportation network companies must report hours and wages of their drivers under existing law, and the rule explains how they must do so.

September 1, 2023
Joy Adams, Acting Director
Employment System Policy and Integrity Division

OTS-4771.1

AMENDATORY SECTION (Amending WSR 10-23-064, filed 11/12/10, effective 12/13/10)

WAC 192-310-040 How should employers report hours worked? (RCW 50.12.070.) This section defines the hours that employers must include on the quarterly tax and wage report.

(1) **Vacation pay.** Report the number of hours an employee is on paid leave. Do not report payments made in place of vacation time as hours worked.

(2) **Sick leave pay.** As provided in RCW 50.04.330(1), any payments made to an employee under a qualified plan for sickness or accident disability, insurance or annuities, medical or hospitalization expenses in connection with sickness or accident disability, death or retirement are not considered wages or compensation. Do not report these as hours or wages. For payments under a nonqualified plan, report both wages and hours.

(3) **Overtime.** Report the number of hours actually worked for which overtime pay or compensatory time is provided, without regard to the amount of wages or compensation paid.

(4) **Commissioned or piecework employees.** Report the actual number of hours worked by employees paid by commission or by piecework. If there are no reliable time keeping records, report a full-time commissioned or piecework employee for (~~forty~~) 40 hours worked for each week in which any of their duties were performed.

(5) **Wages in lieu of notice.** When an employee is paid wages in lieu of notice of termination, report the actual number of hours for which they were paid. Wages in lieu of notice of termination pays the employee whose services have been terminated by the employer for the amount of wages they would have earned during the notice period.

(6) **Employees on salary.** If a salaried employee works other than the regular (~~forty~~) 40-hour week, report the actual number of hours worked. If there are no reliable time keeping records, report (~~forty~~) 40 hours for each week in which a full-time salaried employee worked.

(7) **Faculty employees.** Faculty members of community and technical colleges must teach at least (~~fifteen~~) 15 classroom or laboratory hours to be considered full-time. A teaching load of less than (~~fifteen~~) 15 hours of instruction is considered part-time.

(a) If there is no reliable hourly information, report the hours of instruction as part-time based on (~~fifteen~~) 15 credits as a full-time teaching load and (~~thirty-five~~) 35 hours as full-time employment for a week. For example, an instructor teaches (~~twelve~~) 12

credits per week. Twelve divided by (~~fifteen~~) 15 equals (~~eighty~~) 80 percent. Thirty-five hours times (~~eighty~~) 80 percent equals (~~twenty-eight~~) 28 hours. The employer should report the (~~twenty-eight~~) 28 hours to the department on the employer's quarterly tax and wage report.

(b) Any part-time salaried instructor who does not establish a valid claim because of this formula may provide the department with evidence of hours worked that exceeds the hours reported by the employer.

(8) **Transportation network company drivers.** Transportation network companies should calculate and report hours that drivers work as passenger platform time multiplied by two. Passenger platform time shall have the same definition as in RCW 49.46.300.

(9) **Severance pay.** Do not report additional hours for severance pay. Report only the dollar amount paid to the employee. Severance pay is taxable because it is based on past service and compensates the employee upon job separation.

(~~9~~) (10) **Payment in kind.** Report the actual hours worked for performing services which are compensated only by payment in kind.

(~~10~~) (11) **Bonuses, tips and other gratuities.** Do not report additional hours for bonuses, tips or other gratuities if they are received by an employee who is working regular hours if bonuses, tips and gratuities are the only sources of compensation.

(~~11~~) (12) **Fractions of hours.** If the employee's total number of hours for the quarter results in a fraction amount, round the total to the next higher whole number.

(~~12~~) (13) **Practice, preparation, and rehearsal time.** If an employee who is part of a performing group is paid for a performance, but is also required by the employer to attend practice, preparation, and rehearsal on an organized group basis, report the hours spent in the required practice, preparation, and rehearsal as well as the performance.

(~~13~~) (14) **On-call and standby hours.** Do not report hours if an employee is paid for a shift of on-call or standby hours in which the employee was not actually called in and did not perform services. If the employee was called in or performed services, report the hours actually worked. If the employer has no records of the number of hours actually worked, report the duration of the shift up to eight hours per day.

[Statutory Authority: RCW 50.12.010, 50.12.040. WSR 10-23-064, § 192-310-040, filed 11/12/10, effective 12/13/10; WSR 07-23-127, § 192-310-040, filed 11/21/07, effective 1/1/08. Statutory Authority: Chapters 34.05 and 50.12 RCW, RCW 50.12.070 and 50.04.330(1). WSR 99-20-141, § 192-310-040, filed 10/6/99, effective 11/6/99.]