

# Chapter 192-210 WAC

## SPECIAL CATEGORY OCCUPATIONS

### WAC

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**WAC 192-210-001 Which educational employees are subject to RCW 50.44.050?** (1) Except as provided in subsection (2) of this section, the provisions of RCW 50.44.050 apply to services performed in the employ of an educational institution or institution of higher education operated by:

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

(2)(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 faculty, research or principal administrative staff; and
- (iii) Your regular employment does not depend on the school'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 faculty, research or principal administrative staff and your regular employment does not depend on the school'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.

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(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 faculty, research, or principal administrative staff, and your regular employment does not depend on the school's academic calendar. You are not subject to the restrictions of RCW 50.44.050.

[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) **Contract.** An agreement that is binding on an educational institution to provide work and on an individual to perform services.

(2) **Faculty.** A teacher, counselor, librarian, or other position with similar training, experience and level of responsibility.

(3) **Full-time employment.** Employment designated as full time for or at the educational institution under a collective bargaining agreement, individual hiring contract, or other agreement (including institutional policies), as provided in RCW 50.04.310(2). For faculty at public institutions, the hiring contract, agreement or institutional policy must be consistent with the provisions of RCW 28A.405.210 (kindergarten through twelfth grade), RCW 28B.50.851 (community and technical colleges), RCW 28B.35.120 (regional universities), or RCW 28B.20.130 (other colleges and universities).

(4) **Under the same terms and conditions of employment.** This includes economic conditions of employment such as wages, duration of contract, hours of work, and general nature of the work. It does not include other conditions and details such as the specific work location, duties, or assignment. The position need not be identical to the previous position to meet this test. A position would be considered to be under the same terms and conditions of employment if it is of similar type or classification, with similar pay, fringe benefits, hours of work, general type of work, and duration of employment.

[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"?—RCW 50.44.050(5).** 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

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(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 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 reasonable assurance exists?—RCW 50.44.053.** Reasonable assurance is a bona fide offer from an educational institution to assign an individual future work at that institution under the same terms and conditions as the individual's previous employment. It is less than a contract or written agreement, but more than a mere possibility of future employment. The department must find that continued employment for that individual is likely or probable. For instructional, research, or principal administrative staff at a community or technical college, the additional provisions of WAC 192-210-020 will be considered in determining whether the individual has reasonable assurance.

[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 192-210-020 Reasonable assurance for instructional, research, or principal administrative staff at a community or technical college—RCW 50.44.053(3).** (1) A person who performs services in an instructional, research, or principal administrative capacity at a community or technical college is presumed not to have reasonable assurance when an offer is conditioned on enrollment, funding, or program changes.

(2) A conditional or contingent offer of employment is any offer other than an agreement that is binding on the college to provide work and on the individual to perform services.

(3) The assertion by the college that an individual has reasonable assurance of continued employment is insufficient to overcome the presumption that a conditional or contingent offer of employment does not constitute reasonable assurance unless supported by documentation explaining why reasonable assurance exists. The college bears the burden of providing the department with this documentation. Primary weight will be given to the contingent nature of the offer of employment.

(4) Whether an individual has reasonable assurance from the college will be determined on a case by case basis by the total weight of evidence, rather than the existence of any single factor.

(5) Examples of the types of evidence the department will consider in deciding whether the college has overcome the presumption that a conditional or contingent offer is not reasonable assurance include, but are not limited to, the following:

(a) The terms of the offer of employment between the individual and the college, with consideration given to any provisions related to length, contingencies, or reasons for cancellation;

(b) The number of comparable positions at the college;

(c) Any hiring priorities used by the college;

(d) The college's past practices, including the individual's previous experience with similar offers of employment from that college, and whether any classes have been canceled due to lack of enrollment, lack of funding, or program changes.

[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.]

**WAC 192-210-045 When does reasonable assurance apply if I work for more than one school?** (1) RCW 50.44.-050 prevents the payment of benefits when "any and all" school wages for "any and all" schools for **any** week of unemployment fall between two successive academic terms or during holiday or vacation break periods.

(2) If you receive reasonable assurance for the following academic term from any school, the wages from all schools for whom you worked during the preceding academic term or break will be restricted.

Example: You worked for ABC and XYZ schools during spring 2009. You received reasonable assurance of returning to work during the fall 2009 term from ABC School but not from XYZ School. The wages from both schools must be restricted during the period between academic terms or breaks.

(3) The period during which wages will be restricted begins during the first full week in which any school for which you worked during the preceding academic term is on break and continues through the last full week in which all schools for which you worked during the preceding academic term have resumed a term of instruction.

Example: You worked for ABC and XYZ schools during the 2008-2009 academic year. Summer is not part of the academic year for either school. ABC School's summer break begins June 15, 2009, and ends September 2, 2009. XYZ School's break begins June 22, 2009, and ends September 9, 2009. Your school wages must be restricted from June 14, 2009, through September 5, 2009.

[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 192-210-100 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.]