

WSR 21-14-066

EMERGENCY RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed July 2, 2021, 11:07 a.m., effective July 2, 2021, 11:07 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: These emergency rules relate to applications for standby (WAC 192-110-015) and allows the requirement to register for and search for work to be met by staying in contact with the employer; requires the claimant to be available for suitable work; expands standby eligibility to full-time, part-time, and less than full-time workers; automatically places claimants on standby from March 22, 2020, through July 3, 2021; and resets the number of weeks claimants can claim standby. These emergency rules permit greater flexibility in the use of standby in light of changes to Washington's economy due to COVID-19.

Citation of Rules Affected by this Order: Amending WAC 192-110-015.

Statutory Authority for Adoption: RCW 50.12.040.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: In Proclamation 20-05, Governor Inslee proclaimed a State of Emergency in Washington regarding COVID-19. The proclamation directs agencies and departments to support the department of health and local officials in alleviating the impacts to people, property, and infrastructure across the state. The proposed rules allow for greater flexibility in the use of standby in light of changes to Washington's economy due to COVID-19 and permit claimants an opportunity to transition toward having to actively search for work in order to be eligible for unemployment benefits.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: July 2, 2021.

Dan Zeitlin
Employment Security
Policy Director

OTS-3177.1

AMENDATORY SECTION (Amending WSR 20-03-073, filed 1/10/20, effective 2/10/20)

WAC 192-110-015 Applications by standby workers—RCW 50.20.010.

(1) What is "standby?"

(a) "Standby" means you are temporarily unemployed because of a lack of work but:

(i) You expect to return to work with your regular employer within four weeks; or

(ii) You expect to begin full-time work with a new employer within two weeks; or

(iii) You are temporarily unemployed due to natural disaster.

(b) ~~((You do not have))~~ The requirement to register for work ((or look for other work while)) and search for work is fulfilled so long as you are on standby and take reasonable measures to maintain contact with your employer.

(c) You must be available for all hours of work offered by your regular employer.

(2) How long can I be on standby?

(a) You can ask to be on standby for up to four weeks.

(b) We will ask your employer to verify that you are on standby, including your expected return to work date:

(i) If your employer does not reply, you can be on standby for up to four weeks;

(ii) If your employer confirms you are on standby, you can be on standby until the return to work date given by your employer, subject to the limitations of (c) of this subsection;

(iii) If your employer replies that you are not on standby or do not have a return to work date within eight weeks, we will require you to immediately register for work and to look for work.

(c) Your regular employer may ask that you be placed on standby for a maximum of eight weeks (except as provided in (2)(d) below). This request must be approved by the department. We will consider the following before deciding whether to approve standby for more than four weeks:

(i) How long you have been out of work;

(ii) Whether other suitable work is available;

(iii) The impact on you and your employer if you accept other work; and

(iv) Other factors that apply to your situation.

(d) At ~~((his or her))~~ the discretion of the commissioner, the commissioner may grant standby for more than eight weeks in a benefit year. Exceptions can be made due to natural disaster. Exceptions can also be made in other extraordinary circumstances when the employer applies in writing and shows there are conditions that apply to the business that are so unique or unusual compared to similar businesses that having their employees on standby for more than eight weeks is necessary.

(e) We can approve standby if you have obtained a definite offer of bona fide full-time work that has a probable start date within two weeks, which includes the week of the job offer and up to two additional weeks. The job, however, must be:

(i) With a new employer or with a former employer to whom you are no longer attached as provided in subsection (3)(f) of this section; and

(ii) Covered by Title 50 RCW or the comparable laws of another state or the federal government.

(f) Any weeks of standby you used prior to July 4, 2021, will be disregarded for calculating the number of weeks you are allowed to be on standby.

(3) Are there conditions that apply to a request for standby?

(a) You must have a probable date when you will return to work for your regular employer;

(b) We will not approve standby if you only have prospects of future work with your regular employer or a promise of more work at some unspecified date;

(c) We will not approve standby with your regular employer unless the employment is covered by Title 50 RCW or the comparable laws of another state or the federal government;

~~(d) ((Except for claimants who qualify as part-time eligible workers under RCW 50.20.119, we will not approve standby if you regularly work less than full-time. For purposes of this section, "full-time" means forty hours each week or the number of hours that are full-time for your occupation and labor market area;))~~ Standby is available to all full-time, part-time, and other less than full-time employees;

(e) Any week(s) that you do not qualify for benefits will not be considered as part of the maximum eight weeks of standby; ~~((and))~~

(f) After eight consecutive weeks of unemployment, we will no longer consider you attached to that employer. You must meet the job search requirements specified by RCW 50.20.010 (1)(c) and 50.20.240; and

(g) For any claims between March 22, 2020, and July 3, 2021, you are automatically deemed to be on standby. Such weeks will not count towards the four weeks of standby you may request pursuant to subsection (2)(a) of this section or the eight weeks requested by your employer in subsection (2)(b)(ii) of this section.

(4) When does standby begin?

(a) Standby begins the day of your request unless your request is backdated pursuant to (b) of this subsection.

(b)(i) You may backdate your request for standby up to one week for any reason.

(ii) Your request for standby may also be backdated for the convenience of the department. "For the convenience of the department" means for the purpose of program administration; or those situations where it is difficult or impossible to accept a timely request including, but not limited to, equipment breakdowns, lack of available staff, or special handling requirements.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042, and 50.20.010. WSR 20-03-073, § 192-110-015, filed 1/10/20, effective 2/10/20. Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 17-17-126, § 192-110-015, filed 8/22/17, effective 10/10/17; WSR 17-01-051, § 192-110-015, filed 12/13/16, effective 1/13/17. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.12.042. WSR 05-19-018, § 192-110-015, filed 9/9/05, effective 10/10/05. Statutory Authority: RCW 50.20.010 and 50.12.040. WSR 99-08-073, § 192-110-015, filed 4/5/99, effective 5/6/99.]