

WSR 21-17-059

**PREPROPOSAL STATEMENT OF INQUIRY
EMPLOYMENT SECURITY DEPARTMENT**

[Filed August 11, 2021, 8:22 a.m.]

Subject of Possible Rule Making: The employment security department is engaging in rule making regarding the verification of underlying health conditions for unemployment claims.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 50.20.050 (2) (b) (xii) (C) (II) provides specific rule-making authority for verifying underlying health conditions. RCW 50.12.010 and 50.12.040 provide general rule-making authority to the employment security department.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: ESSB 5061 (2021) provides, among other things, good cause to leave work when during a public health emergency, the claimant was unable to perform their work for the employer from the claimant's home; the claimant is able and available to perform, and can actively seek suitable work which can be performed for an employer from the claimant's home; and the claimant or another individual residing with the claimant is at higher risk of severe illness or death from the disease that is the subject of the public health emergency because the higher risk individual has an underlying health condition, verified as required by the department by rule, that is identified as a risk factor of a disease that is the subject of a public health emergency. ESSB 5061, section 10, chapter 2, Laws of 2021 (codified at RCW 50.20.050 (b) (xii) (C) (II)). ESSB 5061 (2021) also provides that during the weeks of a public health emergency, an unemployed individual may meet the availability requirements of RCW 50.20.010 (1) (c) if they are able and available to perform, and actively seeking, suitable work which can be performed for an employer from the individual's home; and if the unemployed individual or another individual residing with the unemployed individual is at higher risk of severe illness or death from the disease that is the subject of the public health emergency because the higher risk individual has an underlying condition, verified as required by the department by rule, that is identified as a risk factor for the disease that is the subject of the public health emergency. Section 8, chapter 2, Laws of 2021 (codified at RCW 50.20.010 (4) (b) (ii)).

The rule making will detail how the department will verify underlying health conditions for purposes of RCW 50.20.010 (4) (b) (ii) and 50.20.050 (2) (b) (xii) (C) (II).

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: The United States Department of Labor (USDOL) reviews the state's administration of the unemployment insurance program to ensure conformity to federal statutes and regulations. The state has broad flexibility in the implementation of the unemployment insurance laws so long as conformity is maintained. The proposed regulations will be shared with USDOL prior to adoption.

Process for Developing New Rule: Draft rules will be shared with the public and stakeholders. The department will solicit input from all parties and consider all comments in the development of final rules.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Josh Dye, P.O. Box 9046, phone 360-890-3472, fax

844-652-7096, TTY relay 711, email Rules@esd.wa.gov, website <https://esd.wa.gov/newsroom/rulemaking/benefits>.

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Dan Zeitlin
Employment Security
Policy Director