

## WSR 22-01-191

## PROPOSED RULES

## EMPLOYMENT SECURITY DEPARTMENT

[Filed December 20, 2021, 5:21 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-13-041.

Title of Rule and Other Identifying Information: WAC 192-110-015 Applications by standby workers—RCW 50.20.010, 192-110-095 May I backdate my application for unemployment benefits (RCW 50.04.030)?, 192-140-090 What happens if I do not schedule or report for reemployment services as provided in RCW 50.20.010 (1)(e)?, 192-150-055 Leaving work because of illness or disability—General rules and definitions—RCW 50.20.050 (1)(b)(ii) and (2)(b)(ii), 192-180-005 Registration for work—RCW 50.20.010(1) and 50.20.230, 192-180-025 Job search reviews, 192-180-040 Directive to attend job search workshop or training course—RCW 50.20.044, 192-270-065 Certification of satisfactory progress, 192-310-030 What are the report and tax payment penalties and charges (RCW 50.12.220)?, 192-250-020 What are the criteria for having shared work plan approved?, 192-250-045 Who is not eligible for participation in the shared work program?, 192-320-078 Catastrophic occurrence, 192-320-082 How will the department determine good cause exists for failing to respond timely or adequately—RCW 50.29.021(5)?, and 192-140-098 What happens if the department suspects my claim is fraudulent?

Hearing Location(s): On January 27, 2022, at 9 a.m., Zoom, Meeting ID 861 9814 1778, Passcode 307198, Call-in 253-215-8782. Join Zoom meeting <https://us02web.zoom.us/j/86198141778?pwd=NmRQNzNXcUR0M0JydVNxMVJzemgrZz09>.

Date of Intended Adoption: January 31, 2022.

Submit Written Comments to: Joshua Dye, P.O. Box 9046, Olympia, WA 98507-9046, email [rules@esd.wa.gov](mailto:rules@esd.wa.gov), fax 844-652-7096, by January 6, 2021.

Assistance for Persons with Disabilities: Contact Teresa Eckstein, phone 360-507-9890, fax 360-586-4600, TTY relay 711, email [teckstein@esd.wa.gov](mailto:teckstein@esd.wa.gov), by January 20, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The employment security department (department) is engaging in rule making regarding whether certain emergency rules adopted during the COVID-19 response should be made permanent. The emergency rules cover registration for work, certification of satisfactory progress for training programs, penalty waivers, updates to certain definitions, WorkSource closures, shared work, standby status, and suspected fraudulent claims.

Reasons Supporting Proposal: In February of 2020, Governor Inslee proclaimed a State of Emergency in Washington in response to COVID-19. The department filed a series of emergency rules to support the state's emergency response. The department is now seeking input from the public regarding which of those emergency rules should be made permanent to continue supporting Washington workers and businesses.

Statutory Authority for Adoption: RCW 50.12.010 and 50.12.040 provide general rule-making authority to the department. RCW 50.04.030 allows the commissioner to backdate an initial application for good cause. Under RCW 50.20.010 (1)(a), an individual is required to register and report for work at an employment office as the commissioner may prescribe, except that the commissioner may by regulation, waive those requirements in situations that are inconsistent with the pur-

pose of the Employment Security Act. RCW 50.20.010 (1)(e) requires an individual to participate in reemployment services unless the commissioner determines there is justifiable cause for the claimants' failure to participate in such services. Under RCW 50.20.050 (1)(b)(ii) and (2)(b)(ii), it is good cause to leave work voluntarily if the separation was necessary because of the illness or disability of a member of the claimant or the claimant's immediate family. RCW 50.20.240 requires the department to implement job search monitoring. Under RCW 50.20.010 (1)(c), an individual must be actively seeking work. Under RCW 50.20.044, if an otherwise eligible individual fails without good cause, as determined by the commissioner under rules prescribed [by] the commissioner, to attend a job search workshop or a training or retraining course when directed by the department and such workshop or course is available at public expense, such individual shall not be eligible for benefits with respect to any week in which such failure occurred. Under RCW 50.22.155 (2)(d), in order for a claimant to continue their eligibility for training benefits, they must make satisfactory progress in the training as defined by the commissioner and certified by the educational institution. RCW 50.12.220 authorizes the commissioner to waive penalties for good cause if the failure to file timely, complete, or correctly formatted reports or pay timely contributions was not due to the employer's fault. Under RCW 50.60.030, the commissioner shall approve a shared work compensation plan if certain criteria are met; the commissioner may also take into account any other factors which may be pertinent. Certain contribution paying base year employers may receive relief of benefit charges under RCW 50.29.021 (3)(a)(iii) if the benefit charges result from payment to an individual who is unemployed as a result of closure of the employer's worksite for reasons directly attributable to a catastrophic occurrence. RCW 50.29.021(5) authorizes the commissioner to determine whether an employer has good cause for failing to respond timely or adequately to a written request of the department for information relating to claims. RCW 50.20.010 addresses the availability requirements for certain individuals under quarantine or isolation. Under RCW 50.20.050(3), it is good cause to quit if during a public health emergency, the claimant worked at a health care facility, was directly involved in the delivery of health services, and left work for the period of quarantine because of exposure to or contracting the disease that is the subject of the declaration of the public health emergency. RCW 50.20.010 sets forth benefit eligibility conditions. RCW 50.20.160 establishes the circumstances in which the department may issue a re-determination, including in the case of fraud. Under RCW 50.20.170, benefits shall be paid through employment offices in accordance with such regulations as the commissioner may prescribe. RCW 50.20.190 requires individuals to repay benefits they are paid to which they are not entitled. Under RCW 50.22.155 (2)(b)(iv), the department has authority to waive training program deadlines established under RCW 50.22.155 (2)(b)(i) and (ii) for reasons deemed by the commissioner to be good cause.

Statute Being Implemented: RCW 50.20.010 (1)(a), (e) (exceptions from participating in reemployment services and justifiable cause for failing to schedule or participate in reemployment services); RCW 50.04.030 (backdate application); RCW 50.20.050 (1)(b)(ii), (2)(b)(ii) (leaving work due to an illness or disability); RCW 50.20.044 (ineligibility for benefits for failure to attend a job search workshop or training unless an individual establishes good cause, as determined by the commissioner under rules prescribed by the commissioner); RCW

50.20.240 (job search monitoring); RCW 50.20.010 (1)(c) (claimants required to actively seek work); RCW 50.22.155 (2)(d) (training benefits eligibility requirement to make satisfactory progress in training as defined by the commissioner); RCW 50.12.220 (waiver of penalties for late reports or contributions); RCW 50.60.030 (criteria for approving a shared work compensation plan); RCW 50.22.155 (training benefits timeline); RCW 50.29.021 (3)(a)(iii) (relief of benefit charges when charges result from payment to an individual who is unemployed due to a catastrophic occurrence that closes the employer's worksite); RCW 50.29.021(5) (good cause for an employer to fail to respond timely or adequately); RCW 50.20.010 (1)(c)(ii), (5)(a) (benefit eligibility requirements for individuals under quarantine or isolation); RCW 50.20.050(3) (good cause for claimant who worked at a health care facility to leave work for period of quarantine); RCW 50.20.010 (benefit eligibility conditions); RCW 50.20.160 (redetermination); RCW 50.20.170 (payment of benefits); RCW 50.20.190 (recovery of benefit overpayments); RCW 50.22.155 (2)(b)(iv) (waiver of certain training benefit program deadlines for reasons deemed by the commissioner to be good cause).

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: Scott Michael, Olympia, Washington, 360-890-3448; Implementation and Enforcement: Julie Lord, Olympia, Washington, 360-902-9579.

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 Joshua Dye, P.O. Box 9046, Olympia, WA 98507-9046, phone 360-890-3472, fax 844-652-7096, TTY relay 711, email [rules@esd.wa.gov](mailto:rules@esd.wa.gov), <https://esd.wa.gov/newsroom/ui-rule-making/>.

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 proposed rules and amendments do not create additional tax burdens on employers of any size. The rule making provides flexibility for both employers and claimants in the case of a declared health emergency.

December 20, 2021

Dan Zeitlin

Employment System Policy Director

## OTS-3177.2

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 your previous full-time or part-time 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.]

**OTS-2107.2**

AMENDATORY SECTION (Amending WSR 16-21-013, filed 10/7/16, effective 11/14/16)

**WAC 192-110-095 May I backdate my application for unemployment benefits (RCW 50.04.030)?** (1) **General rule.** A benefit year begins on

Sunday of the calendar week in which you file your application for benefits. However, an application may also be backdated for good cause or for the convenience of the department.

(2) **Definitions.** As used in this section:

(a) "Good cause" means factors that would prevent a reasonably prudent person in similar circumstances from filing an application for benefits. These include, but are not limited to, incapacity due to illness or injury, or other serious factors. "Illness" includes a request from a medical professional, local health official, or the Secretary of Health to be isolated or quarantined as a consequence of an infection from a disease that is the subject of a public health emergency, even if you have not been actually diagnosed with the disease that is the subject of a public health emergency.

(b) "For the convenience of the department" means:

(i) For the purpose of program administration; or

(ii) Those situations where it is difficult or impossible for the department to accept a timely application. These include, but are not limited to, equipment breakdowns, lack of available staff to accept applications, or special handling requirements.

(3) **Limitations on good cause.**

(a) You must file your application for benefits during the first week in which those factors that constitute good cause are no longer present. The effective date will be Sunday of such week.

(b) Backdating will not be allowed if you claim good cause based on information from department staff or agents where you could reasonably be expected to question the accuracy of this information.

[Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 16-21-013, § 192-110-095, filed 10/7/16, effective 11/14/16. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. WSR 10-11-046, § 192-110-095, filed 5/12/10, effective 6/12/10.]

## OTS-2108.2

AMENDATORY SECTION (Amending WSR 20-10-056, filed 4/30/20, effective 7/5/20)

**WAC 192-140-090 What happens if I do not schedule or report for reemployment services as provided in RCW 50.20.010 (1)(e)? (1) Written directives.**

(a) The commissioner may direct you in writing to schedule a time to report in person for reemployment services. The written directive will contain a deadline by which you must schedule and participate in reemployment services.

(b) If you fail to schedule a time to participate in reemployment services by the deadline, you will be ineligible to receive benefits for the week containing the date of the deadline, unless you show justifiable cause.

(c) If you fail to participate in reemployment services at the time you scheduled, you will be ineligible to receive benefits for the week containing the time you scheduled, unless you show justifiable cause.

(d) The department may verify the reasons you failed to schedule or participate in reemployment services. In all such cases, your ability to work or availability for work may be questioned.

(2) **Exceptions.** You will not be required to participate in reemployment services if you:

(a) Are a member of a full referral union and are eligible for dispatch and referral according to union rules;

(b) Are attached to an employer as provided in WAC 192-180-005;

(c) Are participating in a training program approved by the commissioner;

(d) Within the previous year have completed, or are currently scheduled for or participating in, similar services; ((or))

(e) Are an active registered electrical apprentice in an approved electrical apprenticeship program under chapter 49.04 RCW and chapter 296-05 WAC; or

(f) Are not able to attend due to the closure of the WorkSource office and the department cannot accommodate an alternative method to deliver the reemployment services.

(3) **Minimum services.** The services will consist of one or more sessions which include, but are not limited to:

(a) Local labor market information;

(b) Available reemployment and training services;

(c) Successful job search attitudes;

(d) Self-assessment of job skills and interests;

(e) Job interview techniques;

(f) The development of a resume or fact sheet; and

(g) The development of a plan for reemployment.

(4) **Justifiable cause.** Justifiable cause for failure to schedule or participate in reemployment services as directed will include factors specific to you which would cause a reasonably prudent person in similar circumstances to fail to schedule or participate in reemployment services. Justifiable cause includes, but is not limited to:

(a) Your illness or disability or that of a member of your immediate family. "Illness" includes a request from a medical professional, local health official, or the Secretary of Health to be isolated or quarantined as a consequence of an infection from a disease that is the subject of a public health emergency, even if you or your immediate family member have not been actually diagnosed with the disease that is the subject of a public health emergency;

(b) Conflicting employment or your presence at a job interview scheduled with an employer; or

(c) Severe weather conditions.

[Statutory Authority: RCW 50.12.010, 50.20.010, 50.20.230, 50.20.240, and 50.12.040. WSR 20-10-056, § 192-140-090, filed 4/30/20, effective 7/5/20. Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 19-12-091, § 192-140-090, filed 6/4/19, effective 7/22/19; WSR 16-21-013, § 192-140-090, filed 10/7/16, effective 11/14/16. Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. WSR 05-01-076, § 192-140-090, filed 12/9/04, effective 1/9/05.]

OTS-3492.2

NEW SECTION

**WAC 192-140-098 What happens if the department suspects a claim is impacted by imposter fraud?** (1) Imposter fraud occurs when someone files a claim using another individual's name or Social Security number without the individual's knowledge or consent.

(2) If the department discovers it has reason to suspect your claim is impacted by imposter fraud, the department will:

(a) Send you a request for information about the suspected imposter fraud; and

(b) If the claim is a continuing claim as defined in WAC 192-100-020, the department will:

(i) Pause determining your weekly eligibility and qualification for benefits, including any requested backdated weeks, until it resolves the suspected imposter fraud; and

(ii) Not make conditional payments, including for any requested backdated weeks, beginning the week in which the department discovered it had reason to suspect imposter fraud and until the department either issues a determination on the imposter fraud issue or until the end of the week following the week in which the discovery was made, whichever is sooner.

(c) If the claim is not a continuing claim, the department will not make any payments until it issues a determination on the imposter fraud issue. This determination will be made as soon as administratively feasible. If the claim is backdated, this pause will also apply to the backdated weeks.

(3) If you do not respond to the request for information about the suspected imposter fraud, or the information provided is insufficient to show the claim did not involve imposter fraud:

(a) The department will determine you are not eligible for receiving benefits and will deny benefits for an indefinite period of time; and

(b) An overpayment may be assessed for any previous benefits paid.

(4) If you provide the requested information and the department determines that imposter fraud has not occurred, the department will:

(a) If the claim is a continuing claim, resume determining weekly eligibility and qualification for benefits and pay benefits owed, if any.

(b) If the claim is not a continuing claim, determine if you are otherwise eligible and qualified to receive benefits.

(5) If the department has paused payment of your weekly benefits pursuant to subsection (2)(b) of this section and the department has not issued a determination denying benefits within the time frame specified in subsection (2)(b)(ii) of this section, the department will conditionally pay the paused weekly benefits by a payment method of the department's choosing.

(6) If an imposter files a claim using another individual's name or Social Security number without that individual's knowledge or consent:

(a) That individual is not responsible to repay sums improperly paid on the claim, unless the individual actually received the benefit payments; and

(b) The imposter fraud does not affect the individual's eligibility or qualification for benefits.

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## OTS-2109.3

AMENDATORY SECTION (Amending WSR 10-01-156, filed 12/22/09, effective 1/22/10)

**WAC 192-150-055 Leaving work because of illness or disability—General rules and definitions—RCW 50.20.050 (1)(b)(ii) and (2)(b)(ii).** (1) **General rule.** To establish good cause for leaving work voluntarily because of your illness or disability or the illness, disability, or death of a member of your immediate family, you must demonstrate that:

(a) You left work primarily because of such illness, disability, or death; and

(b) The illness, disability, or death made it necessary for you to leave work; and

(c) You first exhausted all reasonable alternatives prior to leaving work, including:

(i) Notifying your employer of the reason(s) for the absence as provided in WAC 192-150-060; and

(ii) Asking to be reemployed when you are able to return to work. (You are not required to request reemployment after the job separation has occurred to establish good cause.)

(2) For claims with an effective date of January 4, 2004, or later, you are not eligible for unemployment benefits unless, in addition to the requirements of subsections (1)(a)-(c) above, you terminate your employment and are not entitled to be reinstated in the same or similar position.

(3) **Exception.** You may be excused from failure to exhaust reasonable alternatives prior to leaving work as required by subsection (1)(c) if you can show that doing so would have been a futile act.

(4) **Definitions.** For purposes of this chapter:

(a) "Disability" means a sensory, mental, or physical condition that:

(i) Is medically recognizable or diagnosable;

(ii) Exists as a record or history; and

(iii) Substantially limits the proper performance of your job;

(b) "Immediate family" means your spouse, domestic partner, and the children (including unborn children), siblings, step-children, foster children, or parents of either spouse or domestic partner, whether living with you or not, and other relatives who temporarily or permanently reside in your household;

(c) "Necessary" means the conditions are of such degree or severity in relation to your particular circumstances that they would cause a reasonably prudent person acting under similar circumstances to quit work;

(d) "Illness" includes a request from a medical professional, local health official, or the Secretary of Health to be isolated or quarantined as a consequence of an infection from a disease that is the subject of a public health emergency, even if you or your immediate family member have not been actually diagnosed with the disease that is the subject of a public health emergency.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 34.05.120. WSR 10-01-156, § 192-150-055, filed 12/22/09, effective 1/22/10. Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. WSR 05-01-076, §

192-150-055, filed 12/9/04, effective 1/9/05. Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 02-14-035, § 192-150-055, filed 6/25/02, effective 7/26/02.]

### OTS-2110.3

AMENDATORY SECTION (Amending WSR 20-10-056, filed 4/30/20, effective 7/5/20)

**WAC 192-180-005 Registration for work—RCW 50.20.010(1) and 50.20.230.** (1) **Am I required to register for work?** You must register for work unless you are:

- (a) Attached to an employer, meaning you are:
  - (i) Partially unemployed as defined in WAC 192-180-013(1);
  - (ii) On standby as defined by WAC 192-110-015;
  - (iii) Unemployed because you are on strike or locked out from the worksite as provided in RCW 50.20.090; or
  - (iv) Participating in the shared work program under chapter 50.60 RCW;
- (b) A member of a union that participates in the referral union program (see WAC 192-210-110);
- (c) Participating in a training program approved by the commissioner;
- (d) The subject of an antiharassment order. This includes any court-issued order providing for your protection, such as restraining orders, no contact orders, domestic violence protective orders, and similar documents; (~~or~~)
- (e) An active registered electrical apprentice in an approved electrical apprenticeship program under chapter 49.04 RCW and chapter 296-05 WAC; or
- (f) Under isolation or quarantine at the request of a medical professional, local health official, or the Secretary of Health as a consequence of a disease that is the subject of a public health emergency, even if you or your immediate family member have not been actually diagnosed with a disease that is the subject of a public health emergency.

(2) **How soon do I have to register?**

- (a) If you live within the state of Washington, the department will register you automatically based on information contained in your application for benefits. In unusual circumstances where you are not automatically registered, you must register within one week of the date on which you are notified by the department of the requirement to register for work.
- (b) If you live in another state, you must register for work within one week of the date your first payment is issued on your new or reopened claim.
- (c) If you have been requested by a medical professional, local health official, or the Secretary of Health to be isolated or quarantined as a consequence of a disease that is the subject of a public health emergency, even if you or your immediate family member have not been actually diagnosed with a disease that is the subject of a public health emergency and were not automatically registered, you must reg-

ister for work within one week of the date you are no longer requested to be isolated or quarantined.

(3) **Where do I register for work?** You will be registered for work with the department. However, if you live in another state, you must register for work with the equivalent public employment agency in that state.

(4) **What is the penalty if I do not register for work?** You will not be eligible for benefits for any week in which you are not registered for work as required by this section.

[Statutory Authority: RCW 50.12.010, 50.20.010, 50.20.230, 50.20.240, and 50.12.040. WSR 20-10-056, § 192-180-005, filed 4/30/20, effective 7/5/20. Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 17-01-051, § 192-180-005, filed 12/13/16, effective 1/13/17; WSR 13-09-010, § 192-180-005, filed 4/5/13, effective 5/6/13; WSR 07-22-055, § 192-180-005, filed 11/1/07, effective 12/2/07; WSR 99-13-002, § 192-180-005, filed 6/3/99, effective 7/4/99.]

AMENDATORY SECTION (Amending WSR 17-01-051, filed 12/13/16, effective 1/13/17)

**WAC 192-180-025 Job search reviews.** (1) **What is a job search review (JSR)?** The JSR is a review of your job search activities by the department. At a minimum, the department will review your job search documentation, your ability to work, availability for work, and your efforts to find work. The department may also promote an active search for work by directing you to resources that will assist you with your job search efforts.

(2) **Will my job search activities be reviewed?** Yes, you must provide your job search log to the department when requested. The department will review your log, review your eligibility for benefits as required by RCW 50.20.010 (1)(c), and, when appropriate, provide feedback on areas in which your job search can be improved.

(3) **How many weeks will be reviewed?** The department will review at least one week of your job search documentation at the initial JSR.

(a) If the documentation shows you met the job search requirements for that week, no further action will be taken at that time except as provided in WAC 192-180-020(2). You may be scheduled for another JSR at a later date.

(b) If the documentation shows that you substantially complied with the job search requirements, you will not be scheduled for an all weeks JSR. However, your benefits may be denied for that week and the department will issue you a work search directive explaining how your job search efforts or documentation of those efforts must be modified.

(c) If the job search documentation fails to show that you substantially complied with the job search requirements, the department will reschedule you for a second JSR in which your job search for all weeks claimed will be reviewed.

(4) **What happens if I do not participate in the initial JSR?** If you fail to participate in the initial JSR, the department will determine if your failure is excused or unexcused.

(a) If you have an excused absence, the department will reschedule you for a JSR of one week of your job search documentation.

You may be excused from participating in the initial JSR only for good cause:

(i) Your illness or disability or that of a member of your immediate family that prevents you from participating. "Illness" includes a request from a medical professional, local health official, or the Secretary of Health to be isolated or quarantined as a consequence of a disease that is the subject of a public health emergency, even if you or your immediate family member have not been actually diagnosed with a disease that is the subject of a public health emergency;

(ii) Your employment or presence at a job interview scheduled with an employer;

(iii) Natural disaster or similar acts of nature; or

(iv) Factors specific to your situation which would prevent a reasonably prudent person in similar circumstances from participating.

(b) If you have an unexcused absence, the department will:

(i) Schedule you for a JSR of your job search activities for all weeks claimed; and

(ii) Deny your benefits for the week of the initial JSR unless you can show good cause for not participating. (See WAC 192-180-030.)

(5) **What does "all weeks" mean?** For purposes of this section, "all weeks" means the latest of the following:

(a) Weeks claimed since you filed your application for benefits; or

(b) Weeks claimed since your last all weeks JSR.

(6) **Will the department verify my identity at the JSR interview?**

Yes, you must be prepared to provide the department with sufficient information to verify your identity.

[Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 17-01-051, § 192-180-025, filed 12/13/16, effective 1/13/17. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. WSR 10-11-046, § 192-180-025, filed 5/12/10, effective 6/12/10. Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 07-22-055, § 192-180-025, filed 11/1/07, effective 12/2/07. Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. WSR 05-01-076, § 192-180-025, filed 12/9/04, effective 1/9/05. Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 99-13-002, § 192-180-025, filed 6/3/99, effective 7/4/99.]

AMENDATORY SECTION (Amending WSR 20-10-056, filed 4/30/20, effective 7/5/20)

**WAC 192-180-040 Directive to attend job search workshop or training course—RCW 50.20.044.** (1) The department may direct you, in writing, to attend a job search workshop or training course when it finds that your chances of finding employment will be improved by enrollment in such activity.

(2) You will not be directed to attend a job search workshop or training course if:

(a) You have an offer of bona fide work that begins within two weeks; or

(b) The workshop or training location is outside your labor market or would require you to travel further than the nearest WorkSource office or local employment center;

(c) You are a member in good standing of a full referral union, unless you are also being required to begin an independent search for

work or have been identified as a dislocated worker as defined in RCW 50.04.075; or

(d) You are an active registered electrical apprentice in an approved electrical apprenticeship program under chapter 49.04 RCW and chapter 296-05 WAC.

(3) If you receive a directive and fail without good cause to attend a substantial portion of the workshop or training course during a week, you will be ineligible for benefits for the entire week. Good cause includes your illness or disability or that of a member of your immediate family, or your presence at a job interview scheduled with an employer. "Illness" includes a request from a medical professional, local health official, or the Secretary of Health to be isolated or quarantined as a consequence of a disease that is the subject of a public health emergency, even if you or your immediate family member have not been actually diagnosed with a disease that is the subject of a public health emergency. Reasons for absence may be verified and may result in a denial of benefits under RCW 50.20.010.

(4) Participation in a job search workshop when directed meets the definition of an "in-person job search activity" as defined in WAC 192-180-010.

(5) When attending a job search workshop or training course as directed, you will not be ineligible for benefits for failure to be available for work or to actively seek work under the provisions of:

- (a) RCW 50.20.010 (1)(c);
- (b) RCW 50.20.240; or
- (c) RCW 50.22.020(1).

[Statutory Authority: RCW 50.12.010, 50.20.010, 50.20.230, 50.20.240, and 50.12.040. WSR 20-10-056, § 192-180-040, filed 4/30/20, effective 7/5/20. Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. WSR 05-01-076, § 192-180-040, filed 12/9/04, effective 1/9/05.]

### OTS-2170.3

AMENDATORY SECTION (Amending WSR 13-24-016, filed 11/21/13, effective 12/22/13)

**WAC 192-250-020 What are the criteria for having a shared work plan approved?** In addition to the criteria listed in RCW 50.60.030, employers must:

(1) ~~((Be current in the payment of all unemployment insurance taxes required under Title 50 RCW, or be current on an approved deferred payment contract on file with the department;~~

~~(2-))~~ Include their ESD number on the plan application; and

~~((3-))~~ (2) Designate a representative to be a liaison between the department and the employees who participate in the shared work plan.

[Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 13-24-016, § 192-250-020, filed 11/21/13, effective 12/22/13. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.60.901. WSR 06-22-004, § 192-250-020, filed 10/19/06, effective 11/19/06.]

AMENDATORY SECTION (Amending WSR 13-24-016, filed 11/21/13, effective 12/22/13)

**WAC 192-250-045 Who is not eligible for participation in the shared work program?** ~~((+1))~~ The following employees are not eligible for participation in the shared work program:

~~((a))~~ (1) Employees paid on any basis other than hourly wage. This includes, but is not limited to, employees paid on a piece rate, mileage rate, job rate, salary, or commission basis. The commissioner may waive this provision for employees paid as listed above if an hourly rate of pay can be established ~~((, except that salaried employees may participate only if they are eligible for paid overtime))~~.

~~((b))~~ (2) Officers of the corporation that is applying for participation.

~~((e))~~ (3) Seasonal employees during the off season.

~~((2))~~ The following businesses are not eligible for participation in the shared work program:

~~(a)~~ For weeks of benefits paid before July 1, 2012, and after June 28, 2015, businesses with a tax rate of 5.4 percent or more, not including the social cost factor rate and taxes under RCW 50.24.010 and 50.24.014.

~~(b)~~ Nonqualified employers, meaning employers who have reported no payroll for four consecutive quarters.

~~(c)~~ Employers not registered in Washington for six months prior to application.)

[Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 13-24-016, § 192-250-045, filed 11/21/13, effective 12/22/13. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. WSR 10-11-046, § 192-250-045, filed 5/12/10, effective 6/12/10. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.60.901. WSR 09-13-057, § 192-250-045, filed 6/12/09, effective 7/13/09; WSR 06-22-004, § 192-250-045, filed 10/19/06, effective 11/19/06.]

### OTS-2112.3

AMENDATORY SECTION (Amending WSR 12-09-025, filed 4/6/12, effective 7/1/12)

**WAC 192-270-065 Certification of satisfactory progress.** (1) In order to continue your eligibility for training benefits, the certification that you are making satisfactory progress in training must be signed by the registrar or an equivalent person designated by your educational institution. Except for dislocated workers eligible under RCW 50.22.155 (2) (a) (i), and disabled individuals as provided in RCW 50.22.155 (2) (c), training must be full-time as determined by the educational institution.

(2) Except as provided in subsection (3), for training benefits purposes the term "satisfactory progress" means:

(a) Your grade point average does not fall below 2.0 for two consecutive terms;

(b) You maintain a grade point average sufficient to graduate from, or receive certification in, your approved area of study; and

(c) You are completing sufficient credit hours to finish your approved course of study within the time frame established under your approved training plan.

(3) In the case of self-paced or ungraded learning programs, "satisfactory progress" means participating in classes and passing certification examinations within the time frame established under your approved training plan.

(4) Reasonable delays directly attributable to an infection from a disease that is the subject of a public health emergency or a request from a medical professional, local health official, or the Secretary of Health to be isolated or quarantined as a consequence of an infection from a disease that is the subject of a public health emergency will not prevent a certification that you are making satisfactory progress in training.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.22.155(12). WSR 12-09-025, § 192-270-065, filed 4/6/12, effective 7/1/12. Statutory Authority: RCW 50.12.010, 50.20.010, and 50.22.150(10). WSR 01-11-085, § 192-270-065, filed 5/16/01, effective 6/16/01.]

### OTS-2113.3

AMENDATORY SECTION (Amending WSR 13-23-007, filed 11/7/13, effective 12/8/13)

**WAC 192-310-030 What are the report and tax payment penalties and charges? (RCW 50.12.220.)** (1) **Penalty for late tax and wage reports.** An employer who does not file a tax or wage report within the time frame required by WAC 192-310-010 (3)(d) must pay a penalty of twenty-five dollars for each violation, unless the penalty is waived by the department.

(2) **Definition of incomplete or incorrect format tax or wage report.** An employer must file tax and wage reports that are complete and in the format required by the commissioner.

(a) An "incomplete report" is any report filed by any employer or their agent where:

(i) The entire wage report is not filed on time; or

(ii) A required element is not reported (Social Security number, name, hours worked, or wages paid); or

(iii) A significant number of employees are not reported; or

(iv) A significant number of any given element is not reported, for example, missing Social Security numbers, names, hours, or wages; or

(v) Either the employment security department number or Unified Business Identifier (UBI) number is not included with the tax or wage report; or

(vi) The report includes duplicate Social Security numbers, or impossible Social Security numbers as shown by the Social Security Administration (such as 999-99-9991, 999-99-9992, etc.).

(b) An "incorrect format" means any report that is not filed in the format required by the commissioner under WAC 192-310-010 (3)(c). Agency forms include "drop-out ink" that cannot be copied. Therefore, photocopies are considered incorrectly formatted reports and forms.

(c) For purposes of this section, the term "significant" means an employer who has:

- (i) One employee and reports incomplete wage elements for the one employee; or
- (ii) Two to nineteen employees and reports incomplete wage elements for two or more employees; or
- (iii) Twenty to forty-nine employees and reports incomplete wage elements for three or more employees; or
- (iv) Fifty or more employees and reports incomplete wage elements for four or more employees.

(3) **Penalty for filing an incomplete or incorrectly formatted tax or wage report.** An employer who files an incomplete or incorrectly formatted tax and wage report will receive a warning letter for the first occurrence. For subsequent occurrences of either an incomplete or incorrectly formatted report within five years of the date of the last occurrence (whether or not the last occurrence was before the effective date of this amendatory section), the employer must pay a penalty as follows:

(a) When quarterly tax is due and an employer has submitted an incomplete report or filed the report in an incorrect format, the following schedule will apply after the initial warning letter: Ten percent of the quarterly contributions for each occurrence, up to a maximum of \$250.00, but not less than:

(i)	2nd occurrence	\$75.00
(ii)	3rd occurrence	\$150.00
(iii)	4th and subsequent occurrences	\$250.00

(b) When no quarterly tax is due and an employer has submitted an incomplete report or filed the report in an incorrect format, the following schedule will apply after the initial warning letter:

(i)	2nd occurrence	\$75.00
(ii)	3rd occurrence	\$150.00
(iii)	4th and subsequent occurrences	\$250.00

(c) After five years without an occurrence, prior occurrences will not count and the employer shall receive a warning letter instead of a penalty on the next occurrence.

(4) **Penalty for knowingly misrepresenting amount of payroll.** If an employer knowingly (on purpose) misrepresents to the department the amount of his or her payroll that is subject to unemployment taxes, the penalty is up to ten times, in the discretion of the department, the difference between the taxes paid, if any, and the amount of taxes the employer should have paid for the period. This penalty is in addition to the amount the employer should have paid. The employer must also pay the department for the reasonable expenses of auditing his or her books and collecting taxes and penalties due as provided in WAC 192-340-100.

(5) **Late tax payments.** All employers must file a tax and wage report every quarter, including employers who have no payroll for a given quarter. If an employer does not report on time, it will be charged a late fee of \$25.00 for each report. If the payment is late, the employer will be charged interest at a rate of one percent of taxes due per month. A late payment penalty is also charged for overdue taxes:

(a) First month: Five percent of the total taxes due or \$10.00, whichever is greater;



(b) Second month: An additional five percent of total taxes due or \$10.00, whichever is greater; and

(c) Third month: An additional ten percent of total taxes due or \$10.00, whichever is greater.

(6) **Nonsufficient funds (NSF)**. The department shall charge \$25.00 for checks dishonored by nonacceptance or nonpayment. This is considered a commercial charge under the Uniform Commercial Code (RCW 62A.3-515).

(7) **Waivers of late filing and late payment penalties**. The department may, for good cause, waive penalties for late filing of a report and late payment of taxes that are due with a report. The commissioner must decide if the failure to file reports or pay taxes on time was not the employer's fault.

(a) The department may waive late penalties when there are circumstances beyond the control of the employer. These circumstances include, but may not be limited to, the following:

(i) The return was filed on time with payment but inadvertently mailed to another agency;

(ii) The delinquency was caused by an employee of the department, such as providing incorrect information to the employer, when the source can be identified;

(iii) The delinquency was caused by the death or serious illness, before the filing deadline, of the employer, a member of the employer's immediate family, the employer's accountant, or a member of the accountant's immediate family. "Serious illness" includes a request from a medical professional, local health official, or the Secretary of Health to be isolated or quarantined as a consequence of an infection from a disease that is the subject of a public health emergency, even if you or your immediate family member have not been actually diagnosed with the disease that is the subject of a public health emergency;

(iv) The delinquency was caused by the unavoidable absence of the employer or key employee before the filing deadline. "Unavoidable absence" does not include absences because of business trips, vacations, personnel turnover, or terminations;

(v) The delinquency was caused by the accidental destruction of the employer's place of business or business records;

(vi) The delinquency was caused by fraud, embezzlement, theft, or conversion by the employer's employee or other persons contracted with the employer, which the employer could not immediately detect or prevent. The employer must have had reasonable safeguards or internal controls in place; ((or))

(vii) The employer, before the filing deadline, requested proper forms from the department's central office or a district tax office, and the forms were not supplied in enough time to allow the completed report to be filed and paid before the due date. The request must have been timely, which means at least three days before the filing deadline; or

(viii) An infection from a disease subject to a public health emergency occurred at the employer's place of business and caused the employer to close or severely curtail operations.

(b) The department may waive late penalties if it finds the employer to be out of compliance during an employer-requested audit, but the department decides the employer made a good faith effort to comply with all applicable laws and rules;

(c) The department may waive late penalties for failure to file a "no payroll" report for one quarter if a new business initially regis-

tered that it would have employees that quarter, but then delayed hiring its first employees until after that quarter; and

(d) The department will not waive late penalties if the employer has been late with filing or with payment in any of the last eight consecutive quarters immediately preceding the quarter for which a waiver is requested. If an employer has been in business for fewer than the eight preceding quarters, then all preceding quarters must have been filed and paid on time and a one-time only waiver may be granted.

(8) **Incomplete reports or incorrect format penalty waivers.** For good cause, the department may waive penalties or not count occurrences for incomplete reports or reports in an incorrect format when the employer can demonstrate that the incomplete or incorrectly formatted report was not due to the fault of the employer.

(9) **Missing and impossible Social Security numbers.** When a Social Security number is impossible or missing, the department may waive penalties for incomplete reports only once for each worker and only when:

(a) The report was incomplete because it included impossible Social Security numbers, but the employer can show that the impossible Social Security numbers were provided to the employer by the employees; or

(b) The report was incomplete because of missing Social Security numbers, but the employer can show that the employee did not work for the employer after failing to provide a valid Social Security card or application for Social Security number within seven days of employment.

(10) **Penalty waiver requests.**

(a) An employer must request a waiver of penalties in writing, include all relevant facts, attach available proof, and file the request with a tax office. In all cases the burden of proving the facts is on the employer.

(b) At its discretion, the department may waive penalties on its own motion without requiring a request from the employer if it finds that the penalty was caused by the department's own error or for other good cause.

(11) **Extensions.** The department, for good cause, may extend the due date for filing a report. If granted, the employer must make a deposit with the department in an amount equal to the estimated tax due for the reporting period or periods. This deposit will be applied to the employer's debt. The amount of the deposit must be approved by the department.

[Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 13-23-007, § 192-310-030, filed 11/7/13, effective 12/8/13; WSR 10-23-064, § 192-310-030, filed 11/12/10, effective 12/13/10; WSR 07-23-127, § 192-310-030, filed 11/21/07, effective 1/1/08. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.12.042. WSR 05-19-017, § 192-310-030, filed 9/9/05, effective 10/10/05; WSR 04-23-058, § 192-310-030, filed 11/15/04, effective 12/16/04. Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 98-14-068, § 192-310-030, filed 6/30/98, effective 7/31/98.]

OTS-3258.1

NEW SECTION

**WAC 192-320-078 Catastrophic occurrence.** For the purposes of RCW 50.29.021 (3) (a) (iii), "catastrophic occurrence" includes an infection from a disease that is the subject of a public health emergency at the employer's place of business that causes the employer to close or severely curtail operations.

[]

AMENDATORY SECTION (Amending WSR 21-12-068, filed 5/28/21, effective 6/28/21)

**WAC 192-320-082 How will the department determine good cause exists for failing to respond timely or adequately?—RCW 50.29.021(5).**

(1) The department may find that good cause exists in certain situations when the employer fails to respond due to an unforeseen event outside of the employer's or employer's agent's control, such as:

(a) The death or serious illness of the employer. "Serious illness" includes a request from a medical professional, local health official, or the Secretary of Health to be isolated or quarantined as a consequence of an infection from a disease that is the subject of a public health emergency, even if you or your immediate family member have not been actually diagnosed with the disease that is the subject of a public health emergency;

(b) Destruction of the employer's place of business or business records not caused by, or at the direction of, the employer or the employer's agent;

(c) Fraud or theft against the employer.

(2) The employer is responsible to provide all pertinent facts and evidence or documentation for the department to determine good cause.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.20.010, 50.20.230, 50.20.240, 50.29.021, 50.29.025 and 50.29.062. WSR 21-12-068, § 192-320-082, filed 5/28/21, effective 6/28/21. Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 13-24-108, § 192-320-082, filed 12/3/13, effective 1/3/14.]