

WSR 22-17-021

PROPOSED RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed August 5, 2022, 10:41 a.m.]

Continuance of WSR 22-14-049.

Preproposal statement of inquiry was filed as WSR 21-11-052.

Hearing Location(s): On September 29, 2022, at 9:00 a.m. Zoom, Meeting ID 865 1049 4742, Passcode 285303, Call-in 253-215-8782. Join Zoom meeting <https://esd-wa-gov.zoom.us/j/86510494742?pwd=NUN0a0F2cWg5Q0UlcFIwTWIRib1Vjdz09>.

Date of Intended Adoption: October 5, 2022.

Submit Written Comments to: Josh Dye, P.O. Box 9046, Olympia, WA 98507-9046, email rules@esd.wa.gov, fax 844-652-7096, by September 29, 2022.

Assistance for Persons with Disabilities: Contact Teresa Eckstein, phone 360-507-9890, fax 360-586-4600, TTY relay 711, email teresa.eckstein@esd.wa.gov, by September 22, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules clarify that, during a public health emergency, benefits for claimants terminated from work due to entering quarantine because of an exposure to or contracting the disease that is the subject of the declaration of the public health emergency will be charged 100 percent to the claimant's last employer if: (a) The employer is a base-period employer; (b) the employer is a contribution-paying employer; (c) the employer is a health care facility as defined in RCW 9A.50.010; and (d) the claimant was directly involved in the delivery of health services. Additionally, the rules clarify that during the weeks of a declared public health emergency, an unemployed health care worker described in RCW 50.20.050(3) and 50.29.021 (1)(c)(iii) is considered available for work while isolated or under quarantine as directed by a medical professional, local health official, or the secretary of health, if the individual is available for work that will commence after the isolation or quarantine period ends; or which can be performed for an employer from the individual's home.

Reasons Supporting Proposal: ESSB 5190 amended availability requirements and created a good cause basis to quit work for certain health care workers during a public health emergency; RCW 50.20.010, 50.20.050. ESSB 5190 also clarified that when an eligible individual's separation employer is a covered contribution paying base year employer, benefits paid to the eligible individual shall be charged to the experience rating account of only the individual's separation employer if the individual qualifies for benefits because during a public health emergency, the claimant worked at a health care facility as defined in RCW 9A.50.010, was directly involved in the delivery of health services, and was terminated from work due to entering quarantine because of exposure to or contracting the disease that is the subject of the declaration of the public health emergency. RCW 50.29.021 (1)(c)(iii). The proposed rules provide clear and usable guidance for the public regarding unemployment benefits for health care workers during a public health emergency.

Statutory Authority for Adoption: RCW 50.12.010 and 50.12.040 provide general rule-making authority to the employment security department. RCW 50.20.010(5) and 50.20.050(3) address the availability requirements and good cause basis to quit work for certain health care workers during a public health emergency. RCW 50.29.021 (1)(c)(iii)

states that when an eligible individual's separation employer is a covered contribution paying base year employer, benefits paid to the eligible individual shall be charged to the experience rating account of only the individual's separation employer if the individual qualifies for benefits because during a public health emergency, the claimant worked at a health care facility as defined in RCW 9A.50.010, was directly involved in the delivery of health services, and was terminated from work due to entering quarantine because of exposure to or contracting the disease that is the subject of the declaration of the public health emergency.

Statute Being Implemented: RCW 50.20.010, 50.29.021.

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

Name of Agency Personnel Responsible for Drafting: Josh Dye, Olympia, 360-890-3472; Implementation and Enforcement: JR Richards, Olympia, 360-463-1079.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Josh Dye, P.O. Box 9046, Olympia, WA 98507-9046, phone 360-890-3472, fax 844-652-7096, TTY relay 771 [711], email rules@esd.wa.gov.

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. Due to the complexity of contribution calculations, the department is unable to forecast the costs to individual businesses. The proposed rule will create additional benefit charges as employers charged under WAC 192-320-075(3) will be charged for 100 percent of certain claimant's benefits (though an unknown number of those benefit charges would have been charged 100 percent regardless of the proposed rule). However, the number of possible variables for claims precludes the department from making a reliable forecast for individual businesses. When the possible increase is viewed across all employers, the department anticipates a negligible increase in tax liability for employer.

August 5, 2022

Dan Zeitlin

Employment Security Policy Director

OTS-3715.2

AMENDATORY SECTION (Amending WSR 21-16-034, filed 7/26/21, effective 1/2/22)

WAC 192-170-010 Availability for work—RCW 50.20.010. (1) In general, the department will consider you available for work if you:

(a) Are willing to accept suitable full-time, part-time, and temporary work during the usual hours and days of the week customary for your occupation.

(i) You are not required to accept part-time or temporary work if it would substantially interfere with your return to your regular occupation.

(ii) The requirement to be willing to accept full-time work does not apply under the circumstances described in WAC 192-170-050 (1)(b) or 192-170-070;

(b) Are capable of accepting and reporting for any suitable work within the labor market in which you are seeking work;

(c) Do not impose conditions that substantially reduce or limit your opportunity to return to work at the earliest possible time;

(d) Are available for work for at least (~~forty~~) 40 hours during the week during the hours customary for your trade or occupation; and

(e) Are physically present in your normal labor market area, unless you are actively seeking and willing to accept work outside your normal labor market.

(2) You are considered available for work if you are an active registered electrical apprentice in an approved electrical apprenticeship program under chapter 49.04 RCW and chapter 296-05 WAC.

(3) You are not considered available for work if you fail or refuse to seek work as required in a directive issued by the department under WAC 192-180-010.

(4) If you are physically located outside of the United States, Puerto Rico, or the U.S. Virgin Islands, the department will consider you available for work if you meet the requirements of subsections (1) and (2) of this section, and:

(a) You are legally authorized to work in the country in which you are physically located;

(b) You are immediately available for work in the United States;

or
(c) You are a spouse or domestic partner of a member of the United States Armed Forces and you are legally authorized to work within the foreign military base where your spouse or domestic partner is stationed.

(5) (a) During the weeks of a declared public health emergency, an unemployed health care worker described in RCW 50.20.050(3) and 50.29.021 (1)(c)(iii) is considered available for work while isolated or under quarantine as directed by a medical professional, local health official, or the Secretary of Health, if the individual is available for work that:

(i) Will commence after the isolation or quarantine period ends;

(ii) Can be performed from the individual's home.

(b) For the purposes of this section, a health care worker is defined as an individual who was directly involved in the delivery of health services at a health care facility as defined in RCW 9A.50.010.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042, 50.20.010 and 50.20.100. WSR 21-16-034, § 192-170-010, filed 7/26/21, effective 1/2/22. 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, § 192-170-010, filed 5/28/21, effective 6/28/21. Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042 and 50.20.010. WSR 20-11-022, § 192-170-010, filed 5/13/20, effective 7/5/20. Statutory Authority: RCW 50.12.010, 50.20.010, 50.20.230, 50.20.240, and 50.12.040. WSR 20-10-056, § 192-170-010, filed 4/30/20, effective 7/5/20. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. WSR 10-11-046, § 192-170-010, filed 5/12/10, effective 6/12/10.]

OTS-3716.1

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

WAC 192-320-075 Charges to the separating employer—RCW

50.29.021 (1) (c). (1) If a claimant voluntarily quits work to accept a job with a new employer, (~~one hundred~~) 100 percent of benefits paid on the claim will be charged to the new employer when this new employer is the claimant's last employer, a base period employer, and a contribution-paying employer.

(2) If a claimant quits work because of the working conditions listed in this subsection, the employer from whom the separation occurred will be charged for (~~one hundred~~) 100 percent of benefits paid on the claim if the employer is the claimant's last employer, a base period employer, and a contribution-paying employer. These working conditions include:

(a) A reduction in the individual's usual compensation of (~~twenty-five~~) 25 percent or more under WAC 192-150-115;

(b) A reduction in the individual's usual hours of (~~twenty-five~~) 25 percent or more under WAC 192-150-120;

(c) A change in the work location which caused a substantial increase in distance or difficulty of travel under WAC 192-150-125;

(d) A deterioration in the individual's worksite safety under WAC 192-150-130;

(e) Illegal activities in the individual's worksite under WAC 192-150-135; or

(f) The individual's usual work was changed to work that violates the individual's religious convictions or sincere moral beliefs under WAC 192-150-140.

(3) During a public health emergency, 100 percent of the benefits paid on a claim will be charged to a claimant's last employer if:

(a) The employer is a base-period employer;

(b) The employer is a contribution-paying employer;

(c) The employer is a health care facility as defined in RCW

9A.50.010;

(d) The claimant was directly involved in the delivery of health services; and

(e) The claimant was terminated from work due to entering quarantine because of exposure to or contracting the disease that is the subject of the declaration of the public health emergency.

(4) Benefits based on wages paid by the following entities will **not** be charged to the experience-rating account of the separating employer as described in subsections (1) and (2) if they were earned:

(a) In another state;

(b) From a local government employer;

(c) From the federal government; or

(d) From any branch of the United States military.

[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, § 192-320-075, filed 5/28/21, effective 6/28/21. Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. WSR 04-23-058, § 192-320-075, filed 11/15/04, effective 12/16/04.]