

WSR 22-17-110
PROPOSED RULES
EMPLOYMENT SECURITY DEPARTMENT
[Filed August 19, 2022, 4:54 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-11-031.

Title of Rule and Other Identifying Information: WAC 192-310-030
What are the report and tax payment penalties and charges? (RCW
50.12.220), 192-310-010 What reports are required from an employer?,
and 192-310-050 What records must every employer keep? (RCW 50.12.070)

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?](https://esd-wa-gov.zoom.us/j/86510494742?pwd=NUN0a0F2cWg5Q0UlcFIwTWRib1Vjdz09)
[pwd=NUN0a0F2cWg5Q0UlcFIwTWRib1Vjdz09](https://esd-wa-gov.zoom.us/j/86510494742?pwd=NUN0a0F2cWg5Q0UlcFIwTWRib1Vjdz09).

Date of Intended Adoption: September 30, 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 Eck-
stein, 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: In 2020, the legislature enacted SHB
2308, which requires employers to include the standard occupational
classification (SOC) code or job title of each worker in their quar-
terly tax reports to the employment security department (ESD). ESD is
seeking to adopt rules that implement the requirement for employers to
report SOC codes or job titles for workers when reporting.

Reasons Supporting Proposal: RCW 50.12.070 (2)(a) requires em-
ployers to include the SOC code or job title of each worker in their
quarterly tax reports to ESD. RCW 50.12.220 (2)(c) requires an employ-
er to pay an incomplete report penalty if the employer knowingly fails
to report the SOC or job title of each worker. This rule making pro-
vides clarity for employers on these new reporting requirements.

Statutory Authority for Adoption: RCW 50.12.010 and 50.12.040
provide general rule-making authority to ESD. RCW 50.12.070 requires
employers to include the SOC code or job title of each worker in their
quarterly tax reports to ESD. RCW 50.12.220 requires an employer to
pay an incomplete report penalty if the employer knowingly fails to
report the SOC or job title of each worker.

Statute Being Implemented: RCW 50.12.070 and 50.12.220.

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 pre-
liminary 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.

Scope of exemption for rule proposal from Regulatory Fairness Act
requirements:

Is not exempt.

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. ESD anticipates a minimal amount of money charged to employers from penalties related to employers submitting incomplete forms if they do not include job titles for their employees. ESD currently assesses approximately \$57,300 in incomplete report penalties annually. Not all the penalties are collected as almost 40 percent of penalized employers request waivers. ESD estimates approximately 50 percent of waiver requests are approved, which works out to approximately 20 percent of total cash receipts collected or \$11,460.

Additionally, no penalties will be charged for failing to provide SOC code or job titles while ESD does not offer employers the ability to provide job titles in their quarterly reports.

August 19, 2022

Dan Zeitlin

Employment Security Policy Director

OTS-3178.3

AMENDATORY SECTION (Amending WSR 17-17-128, filed 8/22/17, effective 9/22/17)

WAC 192-310-010 What reports are required from an employer? (1) **Business license application.** Every person or unit with one or more individuals performing services for it in the state of Washington must file a business license application with the department of revenue.

(2) **Employer registration:**

(a) Every employer shall register with the department and obtain an employment security account number. Registration shall include the names, Social Security numbers, mailing addresses, telephone numbers, and the effective dates in that role of natural persons who are spouses or domestic partners of owners and owners, partners, members, or corporate officers of an employer. Registration of corporations shall include the percentage of stock ownership for each corporate officer, delineated as zero percent, less than ten percent, or ten percent or more, and the family relationship of corporate officers to other corporate officers who own ten percent or more. Every employer shall report changes in owners, partners, members, corporate officers, and percentage of ownership of the outstanding stock of the corporation by corporate officers. The report of changes is due each calendar quarter at the same time that the quarterly tax and wage report is due.

(b) A nonprofit corporation that is an employer shall register with the department, but is not required to provide names, Social Security numbers, mailing addresses, or telephone numbers for corporate officers who receive no compensation from the nonprofit corporation with respect to their services for the nonprofit corporation.

(c) An employer who omits required information when registering with the department, or fails to provide the department with the required information within thirty days of registration, must pay a penalty of twenty-five dollars for each violation unless the penalty is waived by the department.

(d) For purposes of this subsection:

(i) "Owner" means the owner of an employer operated as a sole proprietorship;

(ii) "Partner" means a general partner of an employer organized as a partnership, other than limited partners of a limited partnership who are not also general partners of the partnership;

(iii) "Member" means a member of an employer organized as a limited liability company, other than members who, pursuant to applicable law or the terms of the limited liability company's operating agreement or other governing documents, have no right to participate in the management of the limited liability company; and

(iv) "Corporate officer" means an officer described in the bylaws or appointed or elected by the board of directors in accordance with the bylaws or articles or certificates of incorporation of an employer organized as a for-profit or nonprofit corporation.

(3) Quarterly tax and wage reports:

(a) Tax report. Each calendar quarter, every employer must file a tax report with the commissioner. The report must list the total wages paid to every employee during that quarter.

(b) Report of employees' wages. Each calendar quarter, every employer must file a report of employees' wages with the commissioner. This report must list each employee by full name, Social Security number, standard occupational classification code or job title, and total hours worked and wages paid during that quarter.

(i) Social Security numbers are required for persons working in the United States;

(ii) If an individual has a Social Security card, (~~he or she~~) the individual must present the card to the employer at the time of hire or shortly after that. This does not apply to agricultural workers who, under federal rules, may show their Social Security card on the first day they are paid;

(iii) If the individual does not have a Social Security card, Internal Revenue Service rules allow an employer to hire the individual with the clear understanding that the individual will apply for a Social Security number within seven calendar days of starting work for the employer. The individual must give the employer a document showing (~~he or she~~) the individual has applied for a Social Security card. When the card is received, the individual must give the employer a copy of the card itself. An employer should keep copies of the document(s) for (~~his or her~~) their records;

(iv) If the employee does not show his or her Social Security card or application for a card within seven days and the employer continues to employ the worker, the employer does not meet the reporting requirements of this section. The department will not allow waiver of the incomplete report penalty (see WAC 192-310-030); (~~and~~)

(v) For the purposes of this section, if an employee does not have a Social Security number but does have an individual taxpayer identification number (ITIN), the ITIN qualifies as a Social Security number. If the employee later obtains a Social Security number, the employer should use the Social Security number when filing the report of employees' wages; and

(vi) The United States Bureau of Labor Statistics Standard Occupational Classification system is used by federal agencies to classify workers into standard occupational categories for the purpose of collecting, calculating or disseminating data. These standard occupational categories are identified by a six-digit numerical code.

(c) Format. Employers must file the quarterly tax and wage reports in one of the following formats:

(i) ~~Electronically, using ((the current version of employer account management services (EAMS), UIFastTax, UIWebTax, or ICESA Washington))~~ programs or services authorized by the department; or

(ii) Paper forms supplied by the department (or an approved version of those forms). Agency forms include "drop-out ink" that cannot be copied. Therefore, photocopies are considered incorrectly formatted reports and forms.

(d) Due dates. The quarterly tax and wage reports are due by the last day of the month following the end of the calendar quarter being reported. Calendar quarters end on March 31, June 30, September 30 and December 31 of each year. So, reports are due by April 30, July 31, October 31, and January 31, in that order. If these dates fall on a Saturday, Sunday, or a legal holiday, the reports will be due on the next business day. Reports submitted by mail will be considered filed on the postmarked date. The commissioner must approve exceptions to the time and method of filing in advance.

(e) Termination of business. Each employer who stops doing business or whose account is closed by the department must immediately file:

(i) A tax report for the current calendar quarter which covers tax payments due on the date the account is closed; and

(ii) A report of employees' wages for the current calendar quarter which includes all wages paid as of the date the account is closed.

[Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 17-17-128, § 192-310-010, filed 8/22/17, effective 9/22/17; WSR 13-23-008, § 192-310-010, filed 11/7/13, effective 12/8/13; WSR 11-21-015, § 192-310-010, filed 10/7/11, effective 11/7/11; WSR 10-23-064, § 192-310-010, filed 11/12/10, effective 12/13/10; WSR 07-23-127, § 192-310-010, 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, § 192-310-010, filed 9/9/05, effective 10/10/05; WSR 04-23-058, § 192-310-010, filed 11/15/04, effective 12/16/04. Statutory Authority: RCW 50.12.070. WSR 98-14-068, § 192-310-010, filed 6/30/98, effective 7/31/98.]

AMENDATORY SECTION (Amending WSR 10-23-064, filed 11/12/10, effective 12/13/10)

WAC 192-310-050 What records must every employer keep? (RCW 50.12.070.) The commissioner requires every employer to keep true and accurate business, financial, and employment records which are deemed necessary for the effective administration of chapter 50.12 RCW.

(1) **Employment records.** Every employer shall with respect to each worker, make, keep, and preserve original records containing all of the following information for four calendar years following the calendar year in which employment occurred:

(a) The name of each worker;

(b) The Social Security number of each worker;

(c) The beginning date of employment for each worker and, if applicable, the separation date of employment of each worker;

(d) The basis upon which wages and/or remuneration are paid to each worker;

(e) The standard occupational classification code or job title associated with the worker's job duties;

(f) The location where such services were performed;

~~((f))~~ (g) A summary time record for each worker showing the calendar day or days of the week work was performed and the actual number of hours worked each day;

~~((g))~~ (h) The workers' total gross pay period earnings;

~~((h))~~ (i) The specific sums withheld from the earnings of each worker, and the purpose of each sum withheld to equate to net pay; and

~~((i))~~ (j) The cause for any discharge where a worker was separated from the job due to discharge; or the cause of any quit where a worker quit the job if the cause for the quit is known.

(2) **Business, financial records, and record retention.** Every employer shall make, keep, and preserve business and financial records containing the following information for four calendar years following the calendar year in which employment occurred:

(a) Payroll and accounting records, including payroll ledgers, all check registers and canceled checks covering both payroll and general disbursements, general and subsidiary ledgers, disbursement and petty cash records, and profit and loss statements or financial statements;

(b) Quarterly and annual tax reports, including W-2, W-3, 1099, 1096, and FUTA (940) forms;

(c) Quarterly reports to the employment security department and the department of labor and industries;

(d) For independent contractors and subcontractors, business license numbers and registration numbers and copies of contract agreements and invoices; and

(e) For years prior to 2009 for corporations that did not voluntarily elect to cover corporate officers for unemployment insurance, copies of written notifications to corporate officers that they were ineligible for unemployment insurance benefits.

(3) Employers who pay their workers by check are required to keep and preserve all check registers and bank statements. Employers who pay their workers by cash are required to keep and preserve records of these cash transactions which provide a detailed record of wages paid to each worker.

(4) Penalties for failure to keep and preserve records shall be determined under RCW 50.12.070(3).

(5) For assistance with determining the appropriate standard occupational codes for their workers' job titles, employers can refer to the department's website or contact the employer call center.

[Statutory Authority: RCW 50.12.010, 50.12.040. WSR 10-23-064, § 192-310-050, filed 11/12/10, effective 12/13/10. Statutory Authority: Chapters 34.05 and 50.12 RCW. WSR 00-01-164, § 192-310-050, filed 12/21/99, effective 1/21/00. Formerly WAC 192-12-050 (part).]

OTS-3990.2

AMENDATORY SECTION (Amending WSR 22-13-007, filed 6/2/22, effective 7/3/22)

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 re-**

ports. 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~~) \$25 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, standard occupational classification code or job title, 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, standard occupational classification codes or job titles, 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.); or

(vii) The report includes impossible standard occupational classification codes (such as 00-0000, 99-9999, 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~~) 19 employees and reports incomplete wage elements for two or more employees; or

(iii) Twenty to (~~forty-nine~~) 49 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) (i) The department will not issue a warning letter or penalty under this subsection for failure to report standard occupational classification codes or job titles for quarters where the department does not give employers the option to report standard occupational classification codes or job titles for their employees.

(ii) The department will not charge an incomplete report penalty for failure to report standard occupational classification codes or job titles unless the employer knowingly failed to report standard occupational classification codes or job titles.

(d) 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))~~ their payroll that is subject to unemployment taxes, the penalty is up to ~~((ten))~~ 10 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))~~ their 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))~~ 10 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;

(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 registered 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, 50.12.040, 50.04.030, 50.20.010, 50.20.010 (1) (a), (1) (e) and (1) (c), 50.20.050 (1) (b) (ii) and (2) (b) (ii), and (3), 50.20.240, 50.20.044, 50.22.155 (2) (d), (2) (b) (iv), (2) (b) (i) and (ii), 50.12.220(6), 50.60.030, 50.29.021 (3) (a) (iii), and (5), 50.20.160, 50.20.170, 50.20.190, and 50.20.100. WSR 22-13-007, § 192-310-030, filed 6/2/22, effective 7/3/22. 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.]