

WSR 23-11-073

EXPEDITED RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed May 16, 2023, 4:55 p.m.]

Title of Rule and Other Identifying Information: WAC 192-310-190
When is a corporate officer with at least ten percent ownership considered unemployed?

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule making is to update the employment security department's (ESD) rules to reflect SSB 5176 (2023), which amended RCW 50.04.310 to expand the availability of unemployment benefits to officers of three types of employee-owned cooperative businesses.

Reasons Supporting Proposal: This rule making is necessary to bring ESD's current rule in line with SSB 5176, which was passed during the 2023 legislative session.

Statutory Authority for Adoption: RCW 50.12.010 and 50.12.040 provide general rule making authority to ESD. RCW 50.04.310 governs the circumstances under which officers of employee cooperative corporations, cooperative associations, and limited cooperative associations are considered to be unemployed.

Statute Being Implemented: SSB 5176, which amends RCW 50.04.310.

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

Name of Proponent: ESD, governmental.

Name of Agency Personnel Responsible for Drafting: Stephanie Fra-
zee, Olympia, Washington, 425-465-0313; Implementation and Enforce-
ment: JR Richards, Olympia, Washington, 360-463-1076.

Agency Comments or Recommendations, if any, as to Statutory Lan-
guage, Implementation, Enforcement, and Fiscal Matters: None.

This notice meets the following criteria to use the expedited adoption process for these rules:

Adopts or incorporates by reference without material change fed-
eral statutes or regulations, Washington state statutes,
rules of other Washington state agencies, shoreline master
programs other than those programs governing shorelines of
statewide significance, or, as referenced by Washington
state law, national consensus codes that generally establish
industry standards, if the material adopted or incorporated
regulates the same subject matter and conduct as the adopt-
ing or incorporating rule.

Explanation of the Reason the Agency Believes the Expedited Rule-
Making Process is Appropriate: The purpose of the rule making is to
incorporate into ESD's rules, without material change, the new lan-
guage set forth in SSB 5176.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROC-
ESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEAR-
INGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE
RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU
OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EX-
PRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Josh Dye,
ESD, P.O. Box 9046, Olympia, WA 98507-9046, phone 360-890-3472, fax
844-652-7096, email rules@esd.wa.gov, TDD Relay 711, AND RECEIVED BY
July 25, 2023.

May 3, 2023

Dan Zeitlin

Employment Security Policy Director

OTS-4565.2

AMENDATORY SECTION (Amending WSR 13-24-068, filed 11/27/13, effective 12/29/13)

WAC 192-310-190 When is a corporate officer with at least ~~((ten))~~ 10 percent ownership considered unemployed? (1) This section applies if your claim for benefits is based on wages from a corporation that are (~~((twenty-five))~~) 25 percent or more of your total covered base year wages and you are an officer of that corporation who:

(a) Owns (~~((ten))~~) 10 percent or more of the outstanding stock or shares of the corporation; or

(b) Has a family member who is also a corporate officer who owns (~~((ten))~~) 10 percent or more of the outstanding stock or shares of the corporation. For purposes of this section, a "family member" is a person related by blood or marriage or domestic partnership as parent, stepparent, grandparent, spouse or domestic partner, child, brother, sister, stepchild, adopted child, or grandchild.

(2) At any time during the benefit year of your claim, you are a corporate officer under subsection (1) of this section even if you are not paid wages during that time.

(3) You are considered unemployed and potentially eligible for benefits for weeks after:

(a) The corporation dissolves; or

(b) You permanently resign or are permanently removed as a corporate officer under the articles of incorporation or bylaws.

For purposes of this section, "permanently" means for a period of indefinite duration, but expected to extend at least through the claimant's benefit year end date.

(4) You will be ineligible for benefits and liable for repayment of all benefits paid during that benefit year if you take a position as a corporate officer as defined under subsection (1) of this section at any time during your claim.

(5) For purposes of this section, the department will consider a corporation dissolved when the corporation has provided the department with at least two of the following documents:

(a) A business licensing service change form requesting closure of the corporate account;

(b) A department of revenue clearance certificate;

(c) Articles of dissolution of a Washington profit corporation filed with the secretary of state; or

(d) A court order dissolving the corporation.

(6) A corporation must provide notice to the department in a format approved by the department when the ownership percentage of a corporate officer increases to become (~~((ten))~~) 10 percent or more or decreases to become less than (~~((ten))~~) 10 percent. The notice is due by the time the next quarterly tax and wage report is due from the corporation.

(7) Subsection (1) of this section does not apply to officers of an employee cooperative corporation organized under chapter 23.78 RCW, a cooperative association organized under chapter 23.86 RCW, or a limited cooperative association organized under chapter 23.100 RCW. An officer of an employee cooperative corporation organized under chapter 23.78 RCW, a cooperative association organized under chapter 23.86 RCW, or a limited cooperative association under chapter 23.100 RCW will not be considered to be performing services by acting only as an officer for the entity.

[Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 13-24-068, § 192-310-190, filed 11/27/13, effective 12/29/13; WSR 10-23-064, § 192-310-190, filed 11/12/10, effective 12/13/10. Statutory Authority: RCW 50.12.010, 50.12.040, and 34.05.120. WSR 10-01-156, § 192-310-190, filed 12/22/09, effective 1/22/10. Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 07-23-127, § 192-310-190, filed 11/21/07, effective 1/1/08.]