

WSR 23-17-057

PROPOSED RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed August 11, 2023, 2:03 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-12-009.

Title of Rule and Other Identifying Information: WAC 192-310-010 What reports are required from an employer? and 192-310-050 What records must every employer keep?

Hearing Location(s): On October 5, 2023, at 9:00 [a.m.], Zoom, Meeting ID 850 9179 6945, Passcode 418099, call in 253-215-8782. Join Zoom meeting <https://esd-wa-gov.zoom.us/j/85091796945?pwd=amlOam9reGdRNXhBcFcvSTJVVVTZjQT09>.

Date of Intended Adoption: October 6, 2023.

Submit Written Comments to: Stephanie Frazee, P.O. Box 9046, Olympia, WA 98507-9046, email rules@esd.wa.gov, fax 844-652-7096, by October 5, 2023.

Assistance for Persons with Disabilities: Contact Teresa Eckstein, phone 360-507-9890, fax 360-507-9890, TTY relay 711, email Teresa.eckstein@esd.wa.gov, by September 28, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule making will incorporate changes made by HB 1684 (2023), which allows, but does not require, federally recognized tribes to report to the employment security department (department) standard occupational classifications (SOC codes) and job titles for its employees in its wage reports.

Reasons Supporting Proposal: This rule making is necessary to incorporate HB 1684 into the department's rules.

Statutory Authority for Adoption: RCW 50.12.010 and 50.12.040 provide general rule-making authority to the department. RCW 50.12.070, as amended by HB 1684 (2023), provides authority for the department to adopt rules implementing HB 1684.

Statute Being Implemented: RCW 50.12.070, as amended by HB 1684 (2023).

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: Stephanie Frazee, Olympia, Washington, 425-465-0313; Implementation and Enforcement: J.R. Richards, Olympia, Washington, 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 Stephanie Frazee, P.O. Box 9046, Olympia, WA 98507-9046, phone 425-465-0313, fax 844-652-7096, TTY relay 771 [711], email rules@esd.wa.gov, <https://esd.wa.gov/newsroom/rulemaking/>.

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. This rule making will not impose costs because it does not require businesses to take any action. Federally recognized tribes may report SOC codes and job titles to the department but are not required to do so.

August 9, 2023

Joy E. Adams

Acting Director

Employment Security and Policy Integrity Division

OTS-4764.1

AMENDATORY SECTION (Amending WSR 22-21-094, filed 10/17/22, effective 11/17/22)

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~~) 10 percent, or (~~ten~~) 10 percent or more, and the family relationship of corporate officers to other corporate officers who own (~~ten~~) 10 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~~) 30 days of registration, must pay a penalty of (~~twenty-five dollars~~) \$25 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, 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 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 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);

(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) An Indian tribe, as defined in 26 U.S.C. § 3306, may, but is not required to, report the standard occupational classifications codes or job titles of workers; and

(vii) 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 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 31st, June 30th, September 30th and December 31st of each year. So, reports are due by April 30th, July 31st, October 31st, and January 31st, 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.

AMENDATORY SECTION (Amending WSR 22-21-094, filed 10/17/22, effective 11/17/22)

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. An Indian tribe, as defined in 26 U.S.C. § 3306, may elect to report the standard occupational classifications or job titles of workers. If an Indian tribe elects to report standard occupational classifications or job titles, it retains the option to opt out of reporting at any time for any reason it deems necessary;

(f) The location where such services were performed;

(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;

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

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

(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.