

WSR 23-21-062

PROPOSED RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed October 12, 2023, 2:00 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-14-051.

Title of Rule and Other Identifying Information: Expanding overpayment waivers; WAC 192-220-017 Am I required to pay the overpayment?, 192-220-018 Blanket overpayment waivers for federally funded pandemic era benefits, and 192-220-080 How do I obtain a waiver?

Hearing Location(s): On November 21, 2023, at 9:00 a.m., via Zoom, Meeting ID 811 7064 7138, Passcode 849377, Call in +12532050468,,81170647138#,,,,\*849377# US, +12532158782,,81170647138#,,,,\*849377# US (Tacoma). Join Zoom meeting <https://esd-wa-gov.zoom.us/j/81170647138?pwd=aWluV2kvK3BSbERZMmd2bkhTL21tQT09>.

Date of Intended Adoption: November 22, 2023.

Submit Written Comments to: Stephanie Frazee, P.O. Box 9046, Olympia, WA 98507-9046, email [rules@esd.wa.gov](mailto:rules@esd.wa.gov), fax 844-652-7096, by November 21, 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](mailto:Teresa.eckstein@esd.wa.gov), by November 14, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule making will permanently adopt the department's overpayment waiver emergency rules in order to ensure the overpayment waiver project can be completed. This rule making will also allow the department to consider waivers for claimants with overpayments resulting from a discharge for misconduct that occurred from February 2, 2020, through September 4, 2021.

Reasons Supporting Proposal: The department's current overpayment waiver emergency rules must be adopted as permanent rules so that all applications can be processed under those rules. Additionally, in order to expand the availability of overpayment waivers to individuals impacted by the pandemic, the eligibility for waiver of overpayment should be extended to claimants who have an overpayment because they were discharged for misconduct during the pandemic period.

Statutory Authority for Adoption: RCW 50.20.190, 50.24.020, 50.12.010, and 50.12.040.

Statute Being Implemented: RCW 50.20.190.

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](mailto:rules@esd.wa.gov), <https://esd.wa.gov/newsroom/rulemaking/overpayment-waivers-permanent-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. The rule making does not impose any additional requirements or costs on small businesses.

October 11, 2023

Joy E. Adams, Acting Director  
Employment System Policy and Integrity

#### OTS-4233.4

AMENDATORY SECTION (Amending WSR 08-21-056, filed 10/9/08, effective 11/9/08)

**WAC 192-220-017 Am I required to repay the overpayment?** (1) You must repay the full amount of the overpayment, even if you are not at fault, unless you are granted a waiver. (See also WAC 192-230-110.) A waiver means you do not have to repay the overpayment.

(2) Except as provided in subsection (3) of this section, you are potentially eligible for a waiver of an overpayment when it would be against equity and good conscience for the department to require you to repay the full amount.

(3) You are not eligible for a waiver when:

(a) You are at fault for the overpayment;

(b) The overpayment is the result of a discharge for misconduct or gross misconduct (see RCW 50.20.066(5)), unless the discharge occurred during the time period beginning on February 2, 2020, and ending on September 4, 2021;

(c) ~~((The overpayment is the result of a conditional payment of benefits;~~

~~(d))~~ The overpayment decision was issued by a state other than Washington; or

~~((e))~~ (d) The overpayment is for disaster unemployment assistance benefits paid under Section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

[Statutory Authority: RCW 50.12.010, 51.12.040, and 50.20.010. WSR 08-21-056, § 192-220-017, filed 10/9/08, effective 11/9/08.]

#### NEW SECTION

**WAC 192-220-018 Blanket overpayment waivers for federally funded pandemic era benefits.** The department will waive overpayments for federally funded benefits when:

(1) The individual answered "no" to being able to work and available for work and:

(a) The state paid Pandemic Unemployment Assistance, Federal Pandemic Unemployment Compensation, or Pandemic Emergency Unemployment Compensation without adjudicating the eligibility issue;

(b) Upon requesting additional information from the individual, the individual either did not respond or the individual confirmed that they were not able to work nor available for work for the week in question; and

(c) The paid benefits resulted in an overpayment for that week.

(2) The individual answered "no" to being unemployed, partially unemployed, or unable or unavailable to work because of the approved COVID-19-related reasons provided in 15 U.S.C. § 9021(a)(3)(A)(ii)(I) and:

(a) The state paid Pandemic Unemployment Assistance anyway;

(b) Following a request from the department for a new self-certification, the individual either did not respond or the individual confirmed that none of the approved COVID-19-related reasons were applicable; and

(c) The state's payment of these benefits resulted in an overpayment for that week.

(3) The individual complied with instructions from the department to submit proof of earnings to be used in calculating the individual's Pandemic Unemployment Assistance weekly benefit amount and:

(a) Through no fault of the individual, the department's instructions were either inadequate or the department incorrectly processed this calculation using self-employment gross income instead of net income or documents from an inapplicable tax year, resulting in an incorrect higher Pandemic Unemployment Assistance weekly benefit amount; and

(b) The department established an overpayment for the difference in the individual's Pandemic Unemployment Assistance weekly benefit amount.

(4) The individual complied with instructions from the department to submit proof of earnings to be used in calculating the individual's Mixed Earner Unemployment Compensation weekly benefit amount and:

(a) Through no fault of the individual, the department's instructions were either inadequate or the department incorrectly processed this calculation using self-employment gross income instead of net income or documents from an inapplicable tax year, resulting in an incorrect higher Mixed Earner Unemployment Compensation weekly benefit amount; and

(b) The department established an overpayment for the difference in the individual's Mixed Earner Unemployment Compensation weekly benefit amount.

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AMENDATORY SECTION (Amending WSR 17-04-090, filed 1/31/17, effective 3/3/17)

**WAC 192-220-080 How do I obtain a waiver?** (1) When a decision is issued that creates an overpayment, the department will send you an application for waiver if you are potentially eligible.

(2) The waiver application asks for information concerning your financial condition and other circumstances which will help the department determine if the overpayment should be waived.

(3) The financial information requested includes documentation for the previous month, current month, and following month of your:

(a) Income and, to the extent available, the income of other household members who contribute financially to the household;

(b) Expenses; and

(c) Readily available liquid assets including, but not limited to, checking and savings account balances, stocks, bonds, and cash on hand.

(4) The completed application and supporting documents must be returned to the department by the response deadline indicated in the notice, which will be no less than five working days plus reasonable mailing time, if any. If you do not provide the information by the deadline, the department will make a decision about your eligibility for waiver based on available information.

(5) A waiver cannot exceed the total amount of benefits available on your claim. The department will not waive the overpayment in such a way as to allow you to receive either a greater weekly benefit amount or a greater total benefit amount than you were originally eligible to receive. Any benefits waived are considered paid to you.

Example: You misplace a benefit check and request a replacement from the department. You subsequently cash both the original check and the replacement. Waiver will not be approved under these circumstances because you have been paid twice for the same week.

(6) If a waiver is approved based on information that is later found to be false or misleading, the amount waived will be restored to your overpayment balance.

(7) For benefits paid for the week beginning February 2, 2020, through the week ending September 4, 2021, the department will allow claimants to apply a second time for a waiver of their overpayment for benefits, even if the individual previously had an overpayment waiver request denied or was previously deemed ineligible for an overpayment waiver.

[Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 17-04-090, § 192-220-080, filed 1/31/17, effective 3/3/17; WSR 16-21-013, § 192-220-080, filed 10/7/16, effective 11/14/16. Statutory Authority: RCW 50.12.010, 51.12.040, and 50.20.010. WSR 08-21-056, § 192-220-080, filed 10/9/08, effective 11/9/08.]