

WSR 23-21-089

PROPOSED RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed October 17, 2023, 2:15 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-22-028.

Title of Rule and Other Identifying Information: WAC 192-100-070 Conditional payments and 192-120-050 Conditional payment of benefits.

Hearing Location(s): On November 21, 2023, at 9:00 a.m. PST, via Zoom, Meeting ID 811 7064 7138, Passcode 849377; or 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, phone 425-465-0313, 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, by November 14, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 192-100-070 currently defines a conditional payment as an unemployment benefit paid after an individual has already received one benefit payment but "during a period in which the employment security department (department) questions [the individual's] continued eligibility for benefits." More clarity is needed to objectively define the beginning and end of this period during which the department is questioning the individual's continued eligibility for benefits. This rule making will also combine the definitions in WAC 192-100-070 and WAC 192-120-050 into a single rule, WAC 192-100-070.

Reasons Supporting Proposal: This proposal is necessary to provide clarity to claimants regarding the circumstances under which the department pays benefits on a conditional basis.

Statutory Authority for Adoption: RCW 50.12.010, 50.12.040, 50.20.170.

Statute Being Implemented: RCW 50.20.170.

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/>.

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. No costs are anticipated as a result of the rule making.

October 17, 2023

Joy E. Adams
Acting Director
Employment System Policy and Integrity

OTS-4524.1

AMENDATORY SECTION (Amending WSR 16-21-013, filed 10/7/16, effective 11/14/16)

WAC 192-100-070 Conditional payments. (1) A conditional payment is:

(a) Payment issued to you after you have already received benefits but during a period in which the department questions your continued eligibility for benefits; or

(b) Payment issued when you have provided reasonable evidence of authorization to work in the United States but the department is paying benefits pending verification by the federal government.

(2) Your right to retain such payment is conditioned on the department's finding that you were eligible for benefits during the week(s) in question.

(3) ~~((You are no longer considered to be in continued claim status if you have not claimed benefits (had a break in claim) for four weeks or longer.~~

~~(4))~~ Conditional payments under subsection (1)(a) of this section:

(a) Begin:

(i) The first week in which the department detects an eligibility issue; and

(ii) When the department has provided the claimant with adequate notice that benefits are being paid conditionally.

(b) End when the department makes a determination of eligibility for benefits; and

(c) May be paid for the entire length of time necessary for the department to make an eligibility determination.

(4) If you have not claimed benefits (had a break in claim) for four weeks or longer, the department will not conditionally pay you under subsection (1)(a) of this section.

(5) A conditional payment is not considered a "determination of allowance" as provided in RCW 50.20.160(3).

(6) Conditional payments will not be made under the conditions described in WAC 192-140-200 and 192-140-210.

[Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 16-21-013, § 192-100-070, filed 10/7/16, effective 11/14/16. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. WSR 10-11-046, § 192-100-070, filed 5/12/10, effective 6/12/10.]

OTS-4525.1

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 192-120-050 Conditional payment of benefits.