

WSR 23-22-090

PROPOSED RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed October 30, 2023, 10:24 a.m.]

Continuance of WSR 23-19-005.

Preproposal statement of inquiry was filed as WSR 23-12-017.

Title of Rule and Other Identifying Information: WAC 192-150-055 Leaving work because of illness or disability—General rules and definitions—RCW 50.20.050 (1) (b) (ii) and (2) (b) (ii).

Hearing Location(s): On December 8, 2023, at 9:00 a.m., via Zoom. Join Zoom meeting <https://esd-wa-gov.zoom.us/j/84354600235?pwd=d2d0dDJUVk4xTHdHY0tQYllScHBJQT09>, Meeting ID 843 5460 0235, Passcode 554784; or call in +12532158782,,84354600235#,,,,*554784# US (Tacoma), +12532050468,,84354600235#,,,,*554784# US.

Date of Intended Adoption: December 9, 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 December 8, 2023.

Assistance for Persons with Disabilities: Contact Teresa Eckstein, phone 360-507-9890, fax 360-507-9890, TTY 711, email Teresa.eckstein@esd.wa.gov [Teresa.eckstein@esd.wa.gov], by December 1, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule making will update WAC 192-150-055 to reflect ESHB 1106 (2023), which expanded good cause for voluntarily quitting a job due to death, illness, or disability. Specifically, this rule making will change "immediate family" to "family member" effective September 3, 2023, and will require that, to establish good cause for leaving work voluntarily because of illness or disability or the illness, disability, or death of a family member, a claimant must request changes in working conditions, changes to work schedule, or a leave of absence.

Reasons Supporting Proposal: This rule making is necessary to implement ESHB 1106.

Statutory Authority for Adoption: RCW 50.12.010 and 50.12.040 provide general rule-making authority to the employment security department (department). The department has authority to adopt rules to implement ESHB 1106, which amended RCW 50.20.050.

Statute Being Implemented: RCW 50.20.050.

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 711 [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. The proposed rule implements SHB 1106's expansion of good cause for voluntarily quitting a job by updating the department's rules. The rule changes will not impose more-than-minor costs to small businesses.

October 30, 2023
Joy Adams, Acting Director
Employment Security Policy and Integrity Division

OTS-4924.1

AMENDATORY SECTION (Amending WSR 23-15-009, filed 7/6/23, effective 8/6/23)

WAC 192-150-055 Leaving work because of illness or disability—General rules and definitions—RCW 50.20.050 (1) (b) (ii) and (2) (b) (ii). (1) For separations occurring before September 3, 2023:

(a) General rule. To establish good cause for leaving work voluntarily because of your illness or disability or the illness, disability, or death of a member of your immediate family, you must demonstrate that:

~~((a))~~ (i) You left work primarily because of such illness, disability, or death; and

~~((b))~~ (ii) The illness, disability, or death made it necessary for you to leave work; and

~~((c))~~ (iii) You first exhausted all reasonable alternatives prior to leaving work, including:

~~((i))~~ (A) Notifying your employer of the reason(s) for the absence as provided in WAC 192-150-060; ~~(and~~

~~((ii))~~ (B) Requesting changes in working conditions, changes to your work schedule, or a leave of absence; and

(C) Asking to be reemployed when you are able to return to work. (You are not required to request reemployment after the job separation has occurred to establish good cause.)

~~((2))~~ (b) For claims with an effective date of January 4, 2004, or later, you ~~((are not eligible for unemployment benefits))~~ will not be deemed to have left work with good cause unless, in addition to the requirements of ((subsection (1) (a) through (c) of this section)) (a) (i) through (iii) of this subsection, you terminate your employment and are not entitled to be reinstated in the same or similar position.

~~((3))~~ (c) Exception. You may be excused from failure to exhaust reasonable alternatives prior to leaving work as required by ~~((subsection (1) (c) of this section))~~ (a) (iii) of this subsection if you can show that doing so would have been a futile act.

~~((4))~~ (d) Definitions. For purposes of this chapter:

~~((a))~~ (i) "Disability" means a sensory, mental, or physical condition that:

~~((i))~~ (A) Is medically recognizable or diagnosable;

~~((ii))~~ (B) Exists as a record or history; and

~~((iii))~~ (C) Substantially limits the proper performance of your job ~~((+))~~.

~~((b))~~ (ii) "Immediate family" means your spouse, domestic partner, and the children (including unborn children), siblings, step-children, foster children, or parents of either spouse or domestic partner, whether living with you or not, and other relatives who temporarily or permanently reside in your household.

~~((e))~~ (iii) "Necessary" means the conditions are of such degree or severity in relation to your particular circumstances that they would cause a reasonably prudent person acting under similar circumstances to quit work.

~~((d))~~ (iv) "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 that is active on the date of the request to enter isolation or quarantine, 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.

(2) For separations occurring on or after September 3, 2023:

(a) **General rule.** To establish good cause for leaving work voluntarily because of your illness or disability or the illness, disability, or death of a family member, you must demonstrate that:

(i) You left work primarily because of such illness, disability, or death; and

(ii) The illness, disability, or death made it necessary for you to leave work; and

(iii) You first exhausted all reasonable alternatives prior to leaving work, including:

(A) Notifying your employer of the reason(s) for the absence as provided in WAC 192-150-060;

(B) Requesting changes in working conditions, changes to your work schedule, or a leave of absence; and

(C) Asking to be reemployed when you are able to return to work. (You are not required to request reemployment after the job separation has occurred to establish good cause.)

(b) You will be deemed to not have left work with good cause unless, in addition to the requirements of (a)(i) through (iii) of this subsection, you terminate your employment and are not entitled to be reinstated in the same or similar position.

(c) **Exception.** You may be excused from failure to exhaust reasonable alternatives prior to leaving work as required by (a)(iii) of this subsection if you can show that doing so would have been a futile act.

(d) **Definitions.** For purposes of this chapter:

(i) "Disability" means a sensory, mental, or physical condition that:

(A) Is medically recognizable or diagnosable;

(B) Exists as a record or history; and

(C) Substantially limits the proper performance of your job.

(ii) "Family member" means your child, grandchild, grandparent, parent, sibling, or spouse, and also includes any individual who regularly resides in your home or with whom you are in a relationship that creates an expectation that you care for the person, and that individual depends on you for care. "Family member" includes any individual who regularly resides in your home, except that it does not include an individual who simply resides in your home with no expectation that you care for the individual.

(iii) "Child" includes a biological, adopted, or foster child, a stepchild, a child's spouse, or a child to whom you stand in loco pa-

rentis, are a legal guardian, or are a de facto parent, regardless of age or dependency status of the child, and including an unborn child.

(iv) "Grandchild" means a child of your child.

(v) "Grandparent" means a parent of your parent.

(vi) "Parent" means your or your spouse's biological, adoptive, de facto, or foster parent, stepparent, or legal guardian, or an individual who stood in loco parentis to you when you were a child.

(vii) "Sibling" means an individual with whom you share at least one parent.

(viii) "Spouse" means a husband or wife or a state-registered domestic partner.

(ix) "De facto parent" means an adult who has fully and completely undertaken a permanent, unequivocal, committed, and responsible parental role in a child's life in which the natural or legal parent consented to and fostered the parent-like relationship.

(x) "In loco parentis" means a situation in which an individual acts in place of a parent, intentionally takes over parental duties, and is responsible for exercising day-to-day care and control fulfilling the child's physical and psychological needs.

(xi) "Necessary" means the conditions are of such degree or severity in relation to your particular circumstances that they would cause a reasonably prudent person acting under similar circumstances to quit work.

(xii) "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 family member have not been actually diagnosed with the disease that is the subject of a public health emergency.