

# Title 192 WAC

## EMPLOYMENT SECURITY DEPARTMENT

### Chapters

- 192-09 Practice and procedure.**
- 192-10 Hearing and review under the work incentive program.**
- 192-12 Substantive rules.**
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- 192-16 Interpretative regulations of the commissioner of the employment security department.**
- 192-17 State Environmental Policy Act— Interpretation.**

### DISPOSITION OF CHAPTERS FORMERLY CODIFIED IN THIS TITLE

#### Chapter 192-08

#### PRACTICE AND PROCEDURE

Later promulgation, see chapter 192-09 WAC, Practice and Procedure.

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| <p>192-08-001 Promulgation. [Regulation 15 (part), adopted 5/18/58.] Repealed by Order 2602, filed 4/24/70.</p> <p>192-08-002 Promulgation. [Regulation 16, last paragraph, effective 1/1/66.] Repealed by Order 2602, filed 4/24/70.</p> <p>192-08-009 Preamble. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.</p> <p>192-08-010 Appearance and practice before the employment security department—Who may appear. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53. prior: Regulation 15, adopted and effective 5/15/58. Later promulgation, see WAC 192-08-070.] Repealed by Order 2602, filed 4/24/70.</p> <p>192-08-020 Appearance and practice before the employment security department—Appearance in certain proceedings may be limited to attorneys. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53. prior: Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] As reenacted effective 1/1/66, now codified as WAC 192-08-002, 192-08-010 through 192-08-060, and 192-08-080 et seq. Repealed by Order 2602, filed 4/24/70.</p> <p>192-08-030 Appearance and practice before the employment security department—Solicitation of business unethical. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.</p> <p>192-08-040 Appearance and practice before the employment security department—Standards of ethical conduct. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.</p> <p>192-08-050 Appearance and practice before the employment security department—Appearance by former employee of agency or former member of attorney general's staff. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.</p> <p>192-08-060 Appearance and practice before the employment security department—Former employee as expert witness. [Regulation 16 (part), effective 1/1/66;</p> | <p>Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.</p> <p>192-08-061 Examiners—Conflicts of interest—Change of examiner. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.</p> <p>192-08-070 Computation of time. [Regulation 15, adopted and effective 5/15/58. prior: WAC 192-08-010.] Repealed by Order 2602, filed 4/24/70.</p> <p>192-08-080 Notice and opportunity for hearing in contested cases. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.</p> <p>192-08-090 Service of process—By whom served. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.</p> <p>192-08-100 Service of process—Upon whom served. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.</p> <p>192-08-110 Service of process—Service upon parties. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.</p> <p>192-08-120 Service of process—Method of service. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.</p> <p>192-08-130 Service of process—When service complete. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.</p> <p>192-08-140 Service of process—Filing with agency. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.</p> <p>192-08-141 Interested parties. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.</p> <p>192-08-142 Filing appeals. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.</p> <p>192-08-143 Review by commissioner. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.</p> <p>192-08-150 Subpoenas—Where provided by law—Form. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.</p> <p>192-08-160 Subpoenas—Issuance to parties. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.</p> <p>192-08-170 Subpoenas—Service. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.</p> <p>192-08-180 Subpoenas—Fees. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.</p> <p>192-08-181 Subpoenas—Cost bills. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted</p> |
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- 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
- 192-08-190 Subpoenas—Proof of service. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
- 192-08-200 Subpoenas—Quashing. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
- 192-08-210 Subpoenas—Enforcement. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
- 192-08-220 Subpoenas—Geographical scope. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
- 192-08-221 Withdrawal of appeal. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
- 192-08-230 Depositions and interrogatories in contested cases—Right to take. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
- 192-08-240 Depositions and interrogatories in contested cases—Scope. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
- 192-08-250 Depositions and interrogatories in contested cases—Officer before whom taken. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
- 192-08-260 Depositions and interrogatories in contested cases—Authorization. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
- 192-08-270 Depositions and interrogatories in contested cases—Protection of parties and deponents. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
- 192-08-280 Depositions and interrogatories in contested cases—Oral examination and cross-examination. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
- 192-08-290 Depositions and interrogatories in contested cases—Recordation. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
- 192-08-300 Depositions and interrogatories in contested cases—Signing attestation and return. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
- 192-08-310 Depositions and interrogatories in contested cases—Use and effect. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
- 192-08-320 Depositions and interrogatories in contested cases—Fees of officers and deponents. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
- 192-08-330 Depositions upon interrogatories—Submission of interrogatories. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
- 192-08-340 Depositions upon interrogatories—Interrogation. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
- 192-08-350 Depositions upon interrogatories—Attestation and return. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
- 192-08-360 Depositions upon interrogatories—Provisions of deposition rule. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/70.] Repealed by Order 2602, filed 4/24/70.
- 192-08-370 Official notice—Matters of law. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
- 192-08-380 Official notice—Material facts. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
- 192-08-390 Presumptions. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
- 192-08-400 Stipulations and admissions of record. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
- 192-08-410 Form and content of decisions in contested cases. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
- 192-08-420 Definition of issues before hearing. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
- 192-08-430 Prehearing conference rule. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
- 192-08-440 Prehearing conference rule—Record of conference action. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
- 192-08-450 Submission of documentary evidence in advance. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
- 192-08-460 Excerpts from documentary evidence. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
- 192-08-470 Expert or opinion testimony and testimony based on economic and statistical data—Number and qualifications of witnesses. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
- 192-08-480 Expert or opinion testimony and testimony based on economic and statistical data—Written sworn statements. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
- 192-08-490 Expert or opinion testimony and testimony based on economic and statistical data—Supporting data. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
- 192-08-500 Expert or opinion testimony and testimony based on economic and statistical data—Effect of noncompliance with WAC 192-08-470 or 192-08-480. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
- 192-08-510 Continuances. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
- 192-08-511 Informal disposition of hearing. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.

- 192-08-520 Rules of evidence—Admissibility criteria. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
- 192-08-530 Rules of evidence—Tentative admission—Exclusion—Discontinuance—Objections. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
- 192-08-540 Petitions for rule making, amendment or repeal—Who may petition. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
- 192-08-550 Petitions for rule making, amendment or repeal—Requisites. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
- 192-08-560 Petitions for rule making, amendment or repeal—Agency must consider. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
- 192-08-570 Petitions for rule making, amendment or repeal—Notice of disposition. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
- 192-08-580 Declaratory rulings. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
- 192-08-590 Forms. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
- 192-09-300 Decisions—Contents.
- 192-09-305 Decisions—Preparation and service.
- 192-09-310 Decisions—Disposition by other than decision on the merits—Petition from.
- 192-09-315 Decisions—Petition for review.
- 192-09-400 Special proceedings—Prehearing conference—Purpose.
- 192-09-405 Special proceedings—Prehearing conference—Examiner's order.
- 192-09-410 Special proceedings—Depositions and interrogatories.
- 192-09-415 Special proceedings—Reopening of a closed case.
- 192-09-420 Special proceedings—Challenge of examiner—Bias or interest.
- 192-09-425 Special proceedings—Challenge of commissioner—Bias or interest.
- 192-09-430 Petition for rulemaking, amendment or repeal—Who may petition.
- 192-09-435 Petition for rulemaking, amendment or repeal—Requisites.
- 192-09-440 Petition for rulemaking, amendment or repeal—Form.
- 192-09-445 Petition for rulemaking, amendment or repeal—Consideration.
- 192-09-450 Petition for rulemaking, amendment or repeal—Disposition.
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### Chapter 192-09 WAC

#### PRACTICE AND PROCEDURE

##### WAC

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- 192-09-150 Hearings—Admissibility of evidence.
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- 192-09-200 Subpoenas—Procedure for issuance.
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- 192-09-235 Subpoenas—Judicial enforcement.
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**WAC 192-09-010 Promulgation.** Pursuant to and in accordance with RCW 50.12.040, 42.32.010, and chapter 34.04 RCW, Maxine E. Daly, commissioner of the employment security department of the state of Washington, hereby prescribes that WAC 192-08-001 be recodified as WAC 192-09-020; that WAC 192-08-070 be recodified as WAC 192-09-065; that WAC 192-12-030, 192-12-040, 192-12-060, and 192-12-090 shall be amended as set forth herein; that WAC 192-08-002 through 192-08-061 and WAC 192-08-070 through 192-08-590 shall each be repealed; and that a new chapter to be designated as WAC 192-09 shall be adopted as set forth herein; which action is to take effect thirty days after the filing of these regulations with the office of the code reviser. [Order 2602, § 192-09-010, filed 4/24/70.]

**WAC 192-09-020 Promulgation.** Pursuant to the appropriate provisions of the Washington Employment Security Act (chapter 35, Laws of 1945, as amended), and in accordance with section 43 thereof, I, Peter R. Giovine, commissioner of the employment security department, do hereby adopt the foregoing regulation, designated as regulation 15, and prescribe that the same shall take effect May 15, 1958. [Order 2602, § 192-09-020, filed 4/24/70. Formerly § 192-08-001.]

**WAC 192-09-030 Preamble.** RCW 50.32.010 provides, in part, as follows:

"... Notice of any appeal or petition for hearing taken to an appeal tribunal in any proceeding under this act may be filed with such agency as the commissioner may by regulation prescribe."

RCW 50.32.060 provides, in part, as follows:

"The manner in which any dispute shall be presented to the appeal tribunal, and the conduct of hearings and appeals, shall be in accordance with regulations prescribed by the commissioner for determining the rights of the parties, whether or not such regulations conform

to common law or statutory rules of evidence and other technical rules of procedure. \* \* \*

RCW 50.32.070 provides:

"Within ten days from the date of notification or mailing, whichever is the earlier, of any decision of an appeal tribunal, the commissioner on his own order may, or upon petition of any interested party shall, take jurisdiction of the proceedings for the purpose of review thereof. Appeal from any decision of an appeal tribunal may be perfected so as to prevent finality of such decision if, within ten days from the date of mailing the appeal tribunal decision, or notification thereof, whichever is the earlier, a petition in writing for review by the commissioner is received by the commissioner or by such representative of the commissioner as the commissioner by regulation shall prescribe. The commissioner may also prevent finality of any decision of an appeal tribunal and take jurisdiction of the proceedings for his review thereof by entering an order so providing on his own motion and mailing a copy thereof to the interested parties within the same period allowed herein for receipt of a petition for review. The time limit provided herein for seeking review by the commissioner and for the commissioner's assumption of jurisdiction on his own motion for review shall be deemed to be jurisdictional."

RCW 50.32.100 provides:

"In all proceedings provided by this title prior to court review involving dispute of an individual's initial determination, or claim for waiting period credit, or for benefits, the fees of all witnesses attending such proceedings pursuant to subpoena shall be paid at the rate fixed by such regulation as the commissioner shall prescribe and such fees and all costs of such proceedings otherwise chargeable to such individual, except charges for services rendered by counsel or other agent representing such individual, shall be paid out of the unemployment compensation administration fund. In all other respects and in all other proceedings under this title the rule in civil cases as to costs and attorney fees shall apply: *Provided*, That cost bills may be served and filed and costs shall be taxed in accordance with such regulation as the commissioner shall prescribe."

RCW 50.20.150 provides:

"The applicant for initial determination, his most recent employing unit as stated by the applicant, and any other interested party which the commissioner by regulation prescribes, shall, if not previously notified within the same continuous period of unemployment, be given notice promptly in writing that an application for initial determination has been filed and such notice shall contain the reasons given by the applicant for his last separation from work. If, during his benefit year, the applicant becomes unemployed after having accepted subsequent work, and reports for the purpose of re-establishing his eligibility for benefits, a similar notice shall be given promptly to his then most recent employing unit as stated by him, or to any other interested party which the commissioner by regulation prescribes.

"Each base year employer shall be promptly notified of the filing of any application for initial determination which may result in a charge to his account."

RCW 50.12.010 provides, in part, as follows:

"The commissioner shall administer this title. He shall have the power and authority to adopt, amend, or rescind such rules and regulations, . . . as he deems necessary or suitable to that end. . . ."

RCW 34.04.020 provides, in part, as follows:

"In addition to other rule-making requirements imposed by law:

(1) Each agency shall adopt rules governing the formal and informal procedures prescribed or authorized by this chapter and rules of practice before the agency, together with forms and instructions: *Provided*, That RCW 34.04.022 shall apply to agencies which have not adopted comprehensive rules of practice and procedure, in accordance with the provisions of this chapter, prior to July 1, 1967."

RCW 34.04.090 provides, in part, as follows:

"\* \* \*

"(7) Each agency shall adopt appropriate rules of procedure for notice and hearing in contested cases.

"(8) Agencies, or their authorized agents, may

"\* \* \*

"(d) take or cause depositions to be taken pursuant to rules promulgated by the agency, \* \* \*"

The commissioner accordingly prescribes: [Order 2602, § 192-09-030, filed 4/24/70.]

**WAC 192-09-035 Predetermination procedure—Separation issue.** No determination on a separation issue (RCW 50.20.050, 50.20.060) will be issued until both the interested employer and the claimant have been afforded an opportunity to present facts concerning the matter in issue. [Order 2-72, § 192-09-035, filed 7/6/72.]

**WAC 192-09-040 Interested parties defined.** As used in this regulation, unless the context clearly indicates otherwise, the term "interested party" means:

(a) In the case of a claim for waiting period credit or benefits, the claimant, and in the event of an issue concerning a separation from work for reasons other than lack of work, the party from whose employ the claimant became separated.

(b) In the case of an assessment for, or denial of a claim for refund of, contributions or interest, or of denial of adjustment of experience rating credit, or a denial of a redetermination of benefit charges made to his account or his determined or redetermined rate of contribution, the party affected by such assessment or denial.

(c) Any other party whom the commissioner shall in writing recognize as an interested party. [Order 2602, § 192-09-040, filed 4/24/70.]

**WAC 192-09-050 Appearance—Who may appear.** Any interested party may appear at any hearing by an attorney-at-law or other qualified person. The commissioner or an appeal tribunal may refuse to allow any person who is found guilty of unethical conduct or who intentionally and repeatedly fails to observe the provisions of the Washington Employment Security Act or the rules and regulations of the employment security department, to represent others in any proceeding. [Order 2602, § 192-09-050, filed 4/24/70.]

**WAC 192-09-060 Appeals—Right to notice of.** Notice of appeal rights shall be set forth on the face of, or as an attachment to, each of the following:

- (a) Redetermination of an initial determination.
- (b) Determination of allowance or denial of waiting period credit or benefits.
- (c) Redetermination of allowance or denial of waiting period credit or benefits.
- (d) Notice of assessment of contributions or interest.
- (e) Denial of a claim for refund of contributions or interest.
- (f) Denial of adjustment of experience rating credit.
- (g) Denial of a redetermination of benefit charges made to an employer's account.
- (h) Denial of a redetermination of an employer's determined or redetermined rate of contribution.
- (i) Decisions and orders issued by an appeal tribunal.
- (j) Decisions of commissioner. [Order 2602, § 192-09-060, filed 4/24/70.]

**WAC 192-09-062 Appeals—Payments under federal programs.** When the applicable federal law, regulations or guidelines for any federal program administered by the employment security department provides for the right of appeal from a decision or determination by the administering agency the procedures outlined in Title 50 RCW, Title 34 RCW, and chapter 192-09 WAC shall to the extent that said procedures are consistent with the federal law, regulations and guidelines, be utilized for the disposition of such appeals. [Order 2-72, § 192-09-062, filed 7/6/72.]

**WAC 192-09-063 Appeals—Who may appeal—Time limitation.** Any interested party may appeal from a redetermination of an initial determination or a determination of allowance or denial of waiting period credit or benefits, or a redetermination thereof, by filing a written notice of appeal, or in the case of an assessment for, or denial of a claim for refund of, contributions, or interest, or of denial of adjustment of experience rating credit, or denial of a redetermination of benefit charges made to an employer's account, or an employer's determined or redetermined rate of contribution, by filing a petition for hearing with any office of the employment security department, or the unemployment compensation agency in any other state or territory. Such appeals and petitions for hearing shall be filed within ten days of the date such determination, redetermination, assessment or denial is delivered or mailed, whichever is the earlier. If the appeal and/or petition is mailed, it shall be deemed filed with the department on the postmark date, if said document is properly addressed and has sufficient postage affixed thereto.

On the request of any interested party, the commissioner shall furnish forms for the filing of a notice of appeal or petition for hearing, but the use of such forms shall not be a jurisdictional requirement. [Order 2602, § 192-09-063, filed 4/24/70.]

**WAC 192-09-065 Appeals—Time computation.** The time within which appeals and petitions are to be

perfected, under the provisions of the Employment Security Act (Title 50 RCW, as amended) shall be computed by excluding the day of delivery or mailing of the determination, notice, or decision and including the last day. If the last day is a Saturday or Sunday or a holiday, the appeals and petitions must be perfected on the next business day. [Order 2602, § 192-09-065, filed 4/24/70. Formerly § 192-08-070.]

**WAC 192-09-070 Appeals—Withdrawal of.** Any interested party may withdraw his notice of appeal, petition for hearing, or petition for review at any time prior to a decision thereon, in which case the previous determination or decision shall be final in accordance with the provisions of the Employment Security Act. Such withdrawal shall, however, be subject to the approval of the appeal tribunal in the case of a notice of appeal or petition for hearing, and of the commissioner in the case of a petition for review. [Order 2602, § 192-09-070, filed 4/24/70.]

**WAC 192-09-100 Hearings—Notice requirement.** Upon perfecting any appeal involving an individual's right to benefits within the time limits set forth in WAC 192-09-063, the appeal tribunal shall cause to be served a notice of hearing on all interested parties at least seven days before the date set for the hearing, and in all other appeals arising under Title 50 of the Revised Code of Washington at least twenty days before the date set for the hearing: *Provided, however,* That such notice may be waived by consent of the interested parties. Service of the notice of hearing shall be accomplished by mailing a copy thereof to the last known address of each interested party. The notice shall state the time, place, and issues involved. [Order 2-73, § 192-09-100, filed 11/15/73; Order 2602, § 192-09-100, filed 4/24/70.]

**WAC 192-09-105 Hearings—Scheduling—Location.** All hearings contemplated by this regulation shall be scheduled and held at a time and place reasonably convenient to all interested parties and in such manner as will expedite a fair disposition of all issues on appeal; *Provided,* That all hearings will be scheduled between the hours of 8:00 a.m. and 5:00 p.m., Mondays through Fridays (state holidays excepted), at the local office where the claim was filed, the county seat of the county of residence of any interested party, or any other location necessary to assure reasonable opportunity to be heard. [Order 2602, § 192-09-105, filed 4/24/70.]

**WAC 192-09-110 Hearings—Special scheduling—Postponement.** Requests for scheduling a hearing at an hour or on a day other than as specified in WAC 192-09-105 shall be addressed in writing to the chief appeal examiner who, in the exercise of sound discretion, shall grant such a hearing only upon a basis of good cause shown therefor. Any hearing, once scheduled, shall be rescheduled upon request of an interested party, only upon a basis of good cause shown therefor.

Any party who desires a postponement shall, immediately upon receipt of notice of a hearing, or as soon thereafter as facts requiring such postponement come to

his knowledge, notify the employment security department or its designated appeal examiner of said desire, stating in detail the reasons why such postponement is necessary. The employment security department or its designated appeals examiner, in passing upon a request for postponement, shall consider whether such request was promptly and timely made. For good cause shown, the employment security department or its designated appeals examiner shall grant such postponement, and may at any time order a postponement upon its or his own motion. [Order 2602, § 192-09-110, filed 4/24/70.]

**WAC 192-09-115 Hearings—Open to public—Exceptions.** Hearings before the appeal tribunal, in the absence of a showing of sufficient cause for a closed hearing, shall be open to the public. [Order 2602, § 192-09-115, filed 4/24/70.]

**WAC 192-09-120 Hearings—Representation—Cross-examination.** Any interested party, or his legally authorized representative, shall have the right to give testimony and to examine and cross-examine any other interested party and/or witnesses with respect to facts material and relevant to the issues involved. [Order 2602, § 192-09-120, filed 4/24/70.]

**WAC 192-09-125 Hearings—Pleadings and papers to be served.** All pertinent orders, notices and papers which the employment security department issues, together with any papers served on it by any interested party, shall be served by the employment security department on all counsel of record at the time of such filing and upon interested parties not represented by counsel or upon their designated agents. [Order 2602, § 192-09-125, filed 4/24/70.]

**WAC 192-09-130 Hearings—Duty of examiner.** An appeals examiner designated by the chief examiner shall be responsible for the conduct of all hearings assigned him. The appeals examiner so designated shall determine the order of the presentation of evidence, administer oaths and affirmations, issue subpoenas and may examine or cross-examine any interested party and/or witness.

Whenever an interested party is not represented by counsel, the appeal examiner conducting the proceedings shall advise such party as to his rights, aid him in examining and cross-examining witnesses, and give him every assistance compatible with the discharge of the official duties of the appeal examiner. [Order 2602, § 192-09-130, filed 4/24/70.]

**WAC 192-09-135 Hearings—Evidence.** At all hearings before an appeal tribunal testimony shall be taken under oath or on affirmation and the right of cross-examination afforded to all interested parties. The appeal tribunal shall receive any evidence logically tending to prove or disprove a given fact in issue, irrespective of common law rules of evidence, but no decision or findings of fact shall be based exclusively upon hearsay

evidence. The appeal tribunal, when any evidence is unnecessarily cumulative in effect or where any evidence neither tends to prove nor disprove a relevant fact in issue, may, on objection of an interested party or on its own motion, exclude or prohibit such evidence from being received. [Order 2602, § 192-09-135, filed 4/24/70.]

**WAC 192-09-140 Hearings—Disposition of motions and objections.** The appeal examiner shall rule upon all motions and objections to the introduction of evidence at the hearing subject to reserving his ruling as set forth in WAC 192-09-150. [Order 2602, § 192-09-140, filed 4/24/70.]

**WAC 192-09-145 Hearings—Objections to be specified.** Parties objecting to the introduction of evidence shall state the precise grounds of such objection if represented by counsel. In all other cases the grounds for objection shall be stated as precisely as is practicable. [Order 2602, § 192-09-145, filed 4/24/70.]

**WAC 192-09-150 Hearings—Admissibility of evidence.** When objection is made to the admissibility of evidence, such evidence may be received subject to a later ruling. The appeals examiner conducting the hearing may, in his discretion, either with or without objection, exclude inadmissible evidence or order cumulative evidence discontinued. [Order 2602, § 192-09-150, filed 4/24/70.]

**WAC 192-09-155 Hearings—Stipulations.** Any primary facts necessary to the determination of any issue may be evidenced by stipulation; but in case the appeal examiner has reason to believe that there is evidence available which would result in a finding of fact different from that sought to be established by stipulation, he shall require the production of such evidence. [Order 2602, § 192-09-155, filed 4/24/70.]

**WAC 192-09-160 Hearings—Continuance.** During a hearing, if it appears in the public interest or in the interest of justice that further testimony or argument should be received, the appeals examiner conducting the hearing shall continue the hearing and fix the date for introduction of additional evidence or presentation of argument. Written notice of the time and place fixed for the continued hearing will be given to any interested party or witness not present at the original hearing. [Order 2602, § 192-09-160, filed 4/24/70.]

**WAC 192-09-165 Hearings—Consolidated cases.** Hearings of several proceedings upon a consolidated record may be had whenever it appears to the appeal examiner that such procedure will not unduly complicate the issues in such proceedings. The appeal examiner shall determine the order in which the parties will proceed. [Order 2602, § 192-09-165, filed 4/24/70.]

**WAC 192-09-170 Hearings—Separate locations.** Where, because of the distance involved or for other reasons, it is impracticable for parties and their witnesses to appear at the same place of hearing, a hearing

reasonably convenient for each party will be scheduled. Such hearings will be scheduled in as close proximity, time-wise, as possible. Parties involved in separate hearings may appear or submit questions to the appeals examiner to be asked of the opposing party, his witnesses, or representatives of the department. Such questions must be reduced to writing and submitted to the appeals examiner prior to the hearing. If the questions are material to the issues, the appeals examiner shall ask them of the opposing party, witness and/or departmental representative. Each interested party shall have all the rights of fair hearing with respect to any such separate hearing. [Order 2602, § 192-09-170, filed 4/24/70.]

**WAC 192-09-200 Subpoenas—Procedure for issuance.** An appeal examiner, at the request of any interested party, or on his own motion, shall subpoena witnesses, records or documents who or which in the opinion of the examiner are relevant to the inquiry, including such records of the employment security department as are necessary for a proper determination of the issues. [Order 2602, § 192-09-200, filed 4/24/70.]

**WAC 192-09-205 Subpoenas—Form.** Every subpoena shall state the name of the employment security department in the title of the proceeding, if any, and shall command the person to whom it is directed to attend and give testimony or produce designated books, documents or things under his control at a specified time and place. [Order 2602, § 192-09-205, filed 4/24/70.]

**WAC 192-09-210 Subpoenas—Service.** Unless the service of a subpoena is acknowledged on its face by the person subpoenaed, service shall be made by delivering a copy of the subpoena to such person and by tendering him on demand the fees for one day's attendance and the mileage allowed by law. [Order 2602, § 192-09-210, filed 4/24/70.]

**WAC 192-09-215 Subpoenas—Proof of service.** The person serving the subpoena shall make proof of service by filing the subpoena and the required return, affidavit, or acknowledgment of service with the employment security department or the appeal examiner before whom the witness is required to testify or produce evidence. Failure to make proof of service does not affect the validity of the service. In all proceedings prior to court review involving a dispute of an individual's initial determination, or claim for waiting period credit, or for benefits, both service of a subpoena and proof of service thereof shall be accomplished by an agent of the employment security department. [Order 2602, § 192-09-215, filed 4/24/70.]

**WAC 192-09-220 Subpoenas—Attendance fees—How computed.** Witnesses summoned before the employment security department shall be paid by the party at whose instance they appear the same fees and mileage that are paid to witnesses in the superior courts of the state of Washington. *Provided*, That in all proceedings provided by the Employment Security Act prior

to court review involving a dispute of an individual's initial determination, or a claim for waiting period credit, or for benefits, the fees of all witnesses attending such proceedings pursuant to subpoena and all costs of such proceedings otherwise chargeable to such individual, except charges for services rendered by counsel or other agent representing such individual, shall be paid out of the unemployment compensation administration fund. [Order 2602, § 192-09-220, filed 4/24/70.]

**WAC 192-09-225 Subpoenas—Fees—Certification.** The appeal examiner who conducted the hearing shall certify as to the service performed by any witness entitled to per diem and mileage fees and shall present an itemized statement of costs of the hearing to the chief appeals examiner for approval and referral to the fiscal officer of the employment security department for further approval and payment. [Order 2602, § 192-09-225, filed 4/24/70.]

**WAC 192-09-230 Subpoenas—Procedure to quash.** Upon motion made promptly, and in any event at or before the time specified in the subpoena for compliance, by the person to whom the subpoena is directed (and upon notice to the party to whom the subpoena was issued) the employment security department or its authorized member or officer may (1) quash or modify the subpoena if it is unreasonable or requires evidence not relevant to any matter in issue, or (2) condition denial of the motion upon just and reasonable conditions. [Order 2602, § 192-09-230, filed 4/24/70.]

**WAC 192-09-235 Subpoenas—Judicial enforcement.** Upon application and for good cause shown, the employment security department will seek judicial enforcement of subpoenas issued to parties and which have not been quashed. [Order 2602, § 192-09-235, filed 4/24/70.]

**WAC 192-09-240 Subpoenas—Geographical scope.** Such attendance of witnesses and such production of evidence may be required from any place in the state of Washington, at any designated place of hearing. [Order 2602, § 192-09-240, filed 4/24/70.]

**WAC 192-09-300 Decisions—Contents.** Every decision issued by an appeal examiner or the commissioner of the employment security department, shall:

- (1) Be correctly captioned as to name of agency and name of proceeding;
- (2) Designate all parties and counsel to the proceeding;
- (3) Include a concise statement of the nature and background of the proceeding;
- (4) Be accompanied by appropriate numbered findings of fact and conclusions of law;
- (5) Whenever practical, the conclusions of law shall include all reasons for the particular decision or remedy afforded;
- (6) Wherever practical, the conclusions and/or decision shall be referenced to specific provisions of the law and/or regulations appropriate thereto, together with

reasons and precedents relied upon to support same. [Order 2602, § 192-09-300, filed 4/24/70.]

**WAC 192-09-305 Decisions—Preparation and service.** Within a reasonable time after the conclusion of a hearing before the appeal tribunal and/or review before the commissioner, the appeal examiner and/or the commissioner shall prepare his decision in writing and serve same upon all interested parties by personal delivery or mailing to the party's last known address. Copies of said decisions shall be made available to affected divisions of the employment security department. [Order 2602, § 192-09-305, filed 4/24/70.]

**WAC 192-09-310 Decisions—Disposition by other than decision on the merits—Petition from.** Upon approval of the appeal examiner, disposition may also be made of any hearing by stipulation, consent order or default. Any party deeming himself aggrieved by the entry of an order of default may petition the commissioner to review such order by complying with filing requirements set forth in WAC 192-09-315; *Provided, however,* That the default of such party shall be set aside by the commissioner only upon showing made of good and sufficient cause for such failure to appear or to request a postponement prior to the scheduled time for hearing. In the event such order of default is set aside, all interested parties shall be so notified in writing and the matter restored to the hearing calendar. [Order 2602, § 192-09-310, filed 4/24/70.]

**WAC 192-09-315 Decisions—Petition for review.** Any interested party deeming himself aggrieved by a decision of an appeal tribunal may petition the commissioner to review such decision. Such petition for review must be completed in writing by the aggrieved party or his representative and forms for this purpose shall be furnished by the commissioner on request, although the use of such forms shall not be a jurisdictional requirement. The filing of a petition for review shall be deemed timely if the written petition is received at any office of the employment security department, or in an office of the unemployment compensation agency of any other state or territory, within ten days after the date on which the appeal tribunal decision was mailed to the aggrieved party's last known address. If the petition for review is mailed, it shall be deemed filed with the addressee on the postmark date if said document is properly addressed and has sufficient postage affixed thereto. [Order 2602, § 192-09-315, filed 4/24/70.]

**WAC 192-09-400 Special proceedings—Pre-hearing conference—Purpose.** In any complex proceeding, the employment security department or its designated appeals examiner upon its or his own motion, or upon the request of any interested party or their qualified representative, may in its or his discretion direct the parties or their qualified representatives to appear at a specified time and place for a conference to consider

- (1) The simplification of the issues;
- (2) The necessity of amendments to the pleadings;

(3) The possibility of obtaining stipulations, admissions of fact and of documents;

(4) The limitation of witnesses;

(5) Such other matters as may aid in the disposition of the proceedings. [Order 2602, § 192-09-400, filed 4/24/70.]

**WAC 192-09-405 Special proceedings—Pre-hearing conference—Examiner's order.** The employment security department or its designated appeals examiner shall make an order or statement which recites the action taken at the conference, the amendments allowed to the pleadings and the agreements made by the parties or their qualified representatives as to any of the matters considered, including the settlement or simplification of issues, and which limits the issues for hearing to those not disposed of by admission or agreements, and such order or statement shall control the subsequent course of the proceeding unless modified for good cause by subsequent order. [Order 2602, § 192-09-405, filed 4/24/70.]

**WAC 192-09-410 Special proceedings—Depositions and interrogatories.** An appeals examiner may on his own motion, or on request of any interested party, take or cause to be taken depositions or interrogatories from interested parties and/or witnesses residing within or without the state. [Order 2602, § 192-09-410, filed 4/24/70.]

**WAC 192-09-415 Special proceedings—Reopening of a closed case.** The chief appeals examiner may order the closing of the file in any case where the appellant has been compelled to be absent from the United States. Written application to reopen the case shall be made within a reasonable period of time following the appellant's return to the United States. Only upon a showing of good cause shall the chief appeals examiner order the reopening of the case and set the matter for hearing on its merits. [Order 2602, § 192-09-415, filed 4/24/70.]

**WAC 192-09-420 Special proceedings—Challenge of examiner—Bias or interest.** No examiner shall hear or decide any disputed issues in any case in which he has an interest. Any interested party having reason to believe that the examiner assigned to the case is prejudiced in the matter, may, at any time prior to the mailing of a decision by the appeal tribunal, petition the examiner or the commissioner for a change of examiner. At any time prior to the commissioner's decision, any interested party having reason to believe that the examiner assigned to the hearing before the appeal tribunal was prejudiced in the matter, may petition the commissioner for a new hearing before the commissioner or his duly authorized representative. If an examiner assigned to hear a disputed matter refuses a petition for a change of examiner on a challenge to his interest, such challenge shall be heard and decided by the commissioner or his duly authorized representative. [Order 2602, § 192-09-420, filed 4/24/70.]



**WAC 192-09-425 Special proceedings—Challenge of commissioner—Bias or interest.** The commissioner shall not review any case on petition in which he has an interest. Any interested party having reason to believe that the commissioner is prejudiced in the matter shall address his reasons in support of such belief to the commissioner in writing at any time before issuance of the commissioner's decision. If the commissioner deems himself prejudiced in the matter, he shall under the authority of RCW 50.12.020, assign the matter for hearing and decision to any departmental employee he deems competent. Any decision issued under the authority of this provision shall be signed by the individual who prepared the decision with the designation, "representative of the commissioner" appearing immediately below his signature. [Order 2602, § 192-09-425, filed 4/24/70.]

**WAC 192-09-430 Petition for rulemaking, amendment or repeal—Who may petition.** Any interested person may petition the commissioner for the promulgation, amendment or repeal of any rule. [Order 4-72, § 192-09-430, filed 11/6/72.]

**WAC 192-09-435 Petition for rulemaking, amendment or repeal—Requisites.** Where the petition requests the promulgation of a rule, the requested or proposed rule must be set out in full. The petition must also include all the reasons for the requested rule together with briefs of any applicable law. Where the petition requests the amendment or repeal of a rule presently in effect, the rule or portion of the rule in question must be set out as well as a suggested amended form, if any. The petition must include all reasons for the requested amendment or repeal of the rule. [Order 4-72, § 192-09-435, filed 11/6/72.]

**WAC 192-09-440 Petition for rulemaking, amendment or repeal—Form.** A petition requesting the promulgation, amendment or repeal of any rules shall generally adhere to the following form:

At the top of the page shall appear the wording "Before the Commissioner of the Department of Employment Security." On the left side of the page below the foregoing the following caption shall be set out: "In the Matter of the Petition of (name of the petitioning person) for (state whether promulgation, amendment or repeal) of Rule (or Rules)." Opposite the foregoing caption shall appear the word "Petition."

The body of the petition shall be set out in numbered paragraphs. The first paragraph shall state the name and address of the petitioning person and whether petitioner seeks the promulgation of new rule or rules, or amendment or repeal of existing rule or rules. The second paragraph, in case of a proposed new rule or amendment of existing rule, shall set forth the desired rule in its entirety. Where the petition is for repeal of an existing rule, such shall be stated and the rule proposed to be repealed shall either be set forth in full or shall be referred to by agency rule number. The third paragraph shall set forth concisely the reasons for the proposal of the petitioner and shall contain a statement as to the interest of the petitioner in the subject matter of the rule.

Additional numbered paragraphs may be used to give full explanation of petitioner's reason for the action sought.

The petition shall be dated and signed by the person or entity named in the first paragraph or by his attorney. The original and two legible copies shall be filed with the commissioner. Petitions shall be on white paper, either 8 1/2 by 11 or 8 1/2 by 13 inches in size. [Order 4-72, § 192-09-440, filed 11/6/72.]

**WAC 192-09-445 Petition for rulemaking, amendment or repeal—Consideration.** All petitions shall be considered by the commissioner who may, at his discretion, order a hearing for the further consideration and discussion of the requested promulgation, amendment, repeal or modification of any rule. [Order 4-72, § 192-09-445, filed 11/6/72.]

**WAC 192-09-450 Petition for rulemaking, amendment or repeal—Disposition.** Within sixty (60) days after the submission of the petition, the commissioner shall notify the petitioning person of the disposition, if any, of the petition pursuant to RCW 34.04.060. [Order 4-72, § 192-09-450, filed 11/6/72.]

**WAC 192-09-455 Declaratory ruling—Who may petition—Scope.** As prescribed by RCW 34.04.080, any interested person may petition the commissioner for a declaratory ruling. The commissioner shall consider the petition and within a reasonable time shall:

- (1) issue a nonbinding declaratory ruling; or
- (2) notify the person that no declaratory ruling is to be issued; or
- (3) set a reasonable time and place for an oral hearing for the submission of written evidence upon the matter in his presence or in the presence of his authorized representative. Reasonable notification shall be given to all interested persons of the time and place for such hearing or submission and of the issues involved.

If a hearing as provided in subsection (3) is conducted, the commissioner shall, upon due consideration of the evidence and within a reasonable time:

- (1) issue a binding declaratory ruling; or
- (2) issue a nonbinding declaratory ruling; or
- (3) notify the petitioner that no declaratory ruling is to be issued. [Order 4-72, § 192-09-455, filed 11/6/72.]

**WAC 192-09-460 Declaratory ruling—Form.** A petition for a declaratory ruling pursuant to RCW 34.04.080 shall generally adhere to the following form:

At the top of the page shall appear the wording "Before the Commissioner of the Department of Employment Security." On the left side below the foregoing the following caption shall be set out: "In the Matter of (name of petitioning person) for a Declaratory Ruling." Opposite the foregoing caption shall appear the word "Petition."

The body of the petition shall be set out in numbered paragraphs. The first paragraph shall state the name and address of the petitioning person. The second paragraph shall state all rules or statutes that may be

brought into issue by the petition. Succeeding paragraphs shall set out the state of facts relied upon in form similar to that applicable to complaints in civil actions before the superior courts of this state. The concluding paragraphs shall contain the prayer of the petitioner. The petition shall be subscribed and verified in the manner prescribed for verification of complaints in the superior courts of this state.

The original and two legible copies shall be filed with the agency. Petitions shall be on white paper, either 8 1/2 by 11 or 8 1/2 by 13 inches in size. [Order 4-72, § 192-09-460, filed 11/6/72.]

### Chapter 192-10 WAC

#### HEARING AND REVIEW UNDER THE WORK INCENTIVE PROGRAM

##### WAC

192-10-010	Hearings and review under the work incentive program.
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#### WAC 192-10-010 Hearings and review under the work incentive program. Definitions:

(1) "AFDC" (Aid to Families with Dependent Children) means the program authorized under title IV of the federal Social Security Act to provide financial assistance and social services to needy families with children.

(2) "Appellant" means a registrant or participant who requests a hearing with the appeal tribunal.

(3) "Appeals examiner" means an authorized hearing officer of the appeal tribunal.

(4) "Appeal tribunal" means the adjudicative body provided by the department to hear disputes under this chapter.

(5) "Commissioner" means the commissioner of the employment security department.

(6) "Department" means the Washington state department of employment security in its capacity as state WIN administrator.

(7) "DSHS" means the Washington state department of social and health services.

(8) "Exemption" means freedom from the obligation imposed upon AFDC recipients under title IV of the Social Security Act to register for the WIN program.

(9) "National Review Panel" means the highest level of administrative authority for appeals under the WIN program. The panel is established by the United States department of labor pursuant to 29 CFR § 57.9 and is located in Washington, D.C.

(10) "Participant" means a registrant who has been appraised and for whom an employability plan has been initiated by the department and by DSHS.

(11) "Petitioner" means any person in interest who petitions the commissioner for review of a decision of the appeal tribunal.

(12) "Registrant" means an AFDC recipient who has registered for the WIN program.

(13) "WIN" means the work incentive program established under title IV of the federal Social Security Act and mandatory for all nonexempt AFDC recipients. [Order 4-72, § 192-10-010, filed 11/6/72.]

**WAC 192-10-020 Purpose and scope.** This chapter sets forth the rules of practice applicable to appeal tribunal hearings and commissioner's review proceedings relating to certain disputes arising under the WIN program in the state of Washington. Such disputes involve (1) the refusal or failure on the part of a registrant or participant to accept employment or to participate in the WIN program without good cause, and (2) exemption or nonexemption redeterminations of previously registered individuals by the department. Such disputes do not involve initial exemption or nonexemption determinations made by local offices of DSHS for AFDC recipients. [Order 4-72, § 192-10-020, filed 11/6/72.]

**WAC 192-10-030 Hearings—Requests—Time limitations.** Any registrant or participant who disagrees with a determination proposing to terminate him from the WIN program or who disagrees with a department denial of a claim of exemption based on a change of status may, within seven calendar days after the receipt of the notice of proposed termination or of the denial of a claim of exemption, request a hearing with the appeal tribunal. [Order 4-72, § 192-10-030, filed 11/6/72.]

**WAC 192-10-040 Hearings—Requests—How made.** The request for a hearing may be made orally or in writing by the appellant or his duly authorized representative to the department's local office from which the determination or denial was received. If the request is mailed to the local office, it shall be deemed made on the postmark date if the request is properly addressed and has sufficient postage affixed thereto. [Order 4-72, § 192-10-040, filed 11/6/72.]

**WAC 192-10-050 Hearings—Preparation and service.** A formal request for hearing shall be prepared on behalf of the appellant by the department's local office and shall be forwarded to the chief appeals examiner of the appeal tribunal together with the appellant's case record before the close of the next business day after receipt of the original request. In each case, the local office shall certify that the formal request was forwarded within the prescribed time period or provide a detailed report of the circumstances of the delay when said request has not been forwarded within the prescribed time period. [Order 4-72, § 192-10-050, filed 11/6/72.]

**WAC 192-10-060 Hearings—Notice requirements.** Before the close of the next business day after receipt of the formal request for hearing by the appeal tribunal, a notice of hearing and a copy of the rules of practice shall be sent by certified mail to the appellant and any other person in interest at their last known address. The notice shall state the time and place of hearing and the issues to be heard. [Order 4-72, § 192-10-060, filed 11/6/72.]

**WAC 192-10-070 Hearings—Scheduling—Location.** All hearings contemplated by this chapter shall be scheduled and held within seven working days of the notice of hearing, but in no event shall a hearing be held less than seven calendar days after the mailing of the notice: *Provided, however,* That the appeal tribunal may at its discretion reschedule or approve a request for rescheduling a hearing. *Provided further,* That all hearings will be scheduled between the hours of 8:00 a.m. and 5:00 p.m., Mondays through Fridays (state holidays excepted), at any reasonable location in the county wherein the appellant resides or any other mutually convenient location. [Order 4-72, § 192-10-070, filed 11/6/72.]

**WAC 192-10-080 Parties and presentation of the case.** The hearing shall be conducted by an appeals examiner. It shall include the appellant; his duly authorized representative and witnesses on his behalf if any; and where appropriate, representatives of the department, DSHS and witnesses if any. A member of the department shall have primary responsibility for presenting the case to the appeals examiner. [Order 4-72, § 192-10-080, filed 11/6/72.]

**WAC 192-10-090 Duties of the examiner.** The hearing shall be conducted with full regard to the requirements of due process of law to assure a fair and impartial hearing. The appeals examiner shall:

- (1) administer oaths and affirmations;
- (2) issue subpoenas as hereinafter authorized;
- (3) rule on offers of proof and receive relevant evidence;
- (4) regulate the course of the hearing and the order of presentation of evidence; and
- (5) take any other action necessary to insure an orderly hearing, including disqualification of a representative for improper conduct at the hearing. He may

participate in eliciting testimony from the witnesses, and shall, if feasible, resolve the dispute at any time. [Order 4-72, § 192-10-090, filed 11/6/72.]

**WAC 192-10-100 Testimony and examination of witnesses.** The appellant and/or his authorized representative, as well as representatives of the department and of DSHS, shall have the opportunity to give testimony and to present, examine, or cross-examine witnesses. [Order 4-72, § 192-10-100, filed 11/6/72.]

**WAC 192-10-110 Recording of testimony.** The testimony at the hearing shall be mechanically recorded. It shall be transcribed only as needed or when the appeal tribunal's decision is to be ultimately reviewed by the National Review Panel. [Order 4-72, § 192-10-110, filed 11/6/72.]

**WAC 192-10-120 Access to records.** The case record, or any portion thereof, shall be available for inspection and copying by any person in interest at, prior, or subsequent to the hearing upon said person's request. [Order 4-72, § 192-10-120, filed 11/6/72.]

**WAC 192-10-130 Admissibility of evidence.** The appeals examiner shall receive any evidence logically tending to prove or disprove a given fact in issue, irrespective of common law rules of evidence, but no decision or finding of fact shall be based exclusively upon hearsay evidence. The examiner may, with or without objection, exclude or prohibit the reception of irrelevant or unnecessarily cumulative evidence. [Order 4-72, § 192-10-130, filed 11/6/72.]

**WAC 192-10-140 Documentary evidence.** The appeals examiner shall receive and make part of the record documentary evidence offered by any party and accepted at the hearing and copies thereof shall be made available to other parties upon request. [Order 4-72, § 192-10-140, filed 11/6/72.]

**WAC 192-10-150 Stipulations.** Any primary facts necessary to the determination of any issue may be evidenced by stipulation; but in case the appeals examiner has reason to believe that there is evidence available which would result in a finding of fact different from that sought to be established by stipulation, he shall require the production of such evidence. [Order 4-72, § 192-10-150, filed 11/6/72.]

**WAC 192-10-160 Deposition and interrogatories.** The appeals examiner may on his own motion, or on request of any interested person, take or cause to be taken depositions or interrogatories from interested persons and/or witnesses residing within or without the state. [Order 4-72, § 192-10-160, filed 11/6/72.]

**WAC 192-10-170 Subpoenas—Procedure for issuance.** The appeals examiner shall, upon request of any person in interest or upon his own motion, subpoena witnesses, record or documents that are, in the opinion of the examiner, relevant to the hearing. [Order 4-72, § 192-10-170, filed 11/6/72.]

**WAC 192-10-180 Subpoenas—Service.** Unless service of a subpoena is acknowledged on its face by the person subpoenaed, service shall be made by delivering a copy of the subpoena to such person and by tendering to him upon demand the fees for one day's attendance and the mileage allowed by law. [Order 4-72, § 192-10-180, filed 11/6/72.]

**WAC 192-10-190 Subpoenas—Proof of service.** The person serving the subpoena shall make proof of service by filing the subpoena and the required return, affidavit, or acknowledgment of service with the appeals examiner before whom the witness is required to testify or produce evidence. Failure to make proof of service does not affect the validity of the service. Both service of a subpoena and proof of service shall be accomplished by an agent of the department. [Order 4-72, § 192-10-190, filed 11/6/72.]

**WAC 192-10-200 Subpoenas—Attendance fees.** Witnesses summoned before the appeal tribunal shall be paid by the department the same fees and mileage that are paid to witnesses in the superior courts of the state of Washington. The appeals examiner shall certify as to the service performed by any witness entitled to such fees and shall present an itemized statement of costs of the hearing to the chief appeals examiner for approval and referral to the fiscal officer of the department for further approval and payment. [Order 4-72, § 192-10-200, filed 11/6/72.]

**WAC 192-10-210 Procedure to quash subpoenas.** Upon motion made promptly, and in any event at or before the time specified in the subpoena for compliance by the person to whom the subpoena is directed (and upon notice to the person to whom the subpoena was issued), the appeals examiner may (1) quash or modify the subpoena if it is unreasonable or requires evidence not relevant to any matter in issue, or (2) condition denial of the motion upon just and reasonable conditions. [Order 4-72, § 192-10-210, filed 11/6/72.]

**WAC 192-10-220 Judicial enforcement.** Upon application and for good cause shown, the appeal tribunal will seek judicial enforcement of subpoenas which have been properly issued and which have not been quashed. [Order 4-72, § 192-10-220, filed 11/6/72.]

**WAC 192-10-230 Geographical scope.** Such attendance of witnesses and such production of evidence may be required from any place in the state of Washington, at any designated place of hearing. [Order 4-72, § 192-10-230, filed 11/6/72.]

**WAC 192-10-240 Medical evaluation.** In any case in which a hearing involves a medical issue the appeals examiner may authorize a medical evaluation on the motion of any interested party. The costs of procuring the medical evaluation will be borne by the work incentive program, however, no fee shall be paid which would

exceed the current fee schedule in effect at the Department of Social & Health Services for similar evaluations. [Order 4-72, § 192-10-240, filed 11/6/72.]

**WAC 192-10-250 Continuances.** During a hearing, if it appears in the interest of justice that further testimony or argument should be received, the appeals examiner may continue the hearing and fix the date for introduction of additional evidence or presentation of argument. Written notice of the time and place of the continued hearing will be given to any interested person or witness not present at the original hearing. [Order 4-72, § 192-10-250, filed 11/6/72.]

**WAC 192-10-260 Disposition by decision on the merits.** The appeals examiner may rule on the merits of a case in any of the following ways:

- (1) that the appellant has failed or refused to participate in the WIN program without good cause;
- (2) that the appellant should be returned to the registrant pool without prejudice because he lacks the capacity to benefit from training or other manpower service;
- (3) that good cause has been shown for failure or refusal to participate and the appellant should be retained in the WIN program;
- (4) that the appellant is exempt from the registration requirement and that he should be removed from the registration roll. [Order 4-72, § 192-10-260, filed 11/6/72.]

**WAC 192-10-270 Disposition by decision other than on the merits.** The appeals examiner may dismiss a request for hearing for the following reasons:

- (1) it was filed untimely;
- (2) it has been withdrawn in writing by the participant or his duly authorized representative;
- (3) the appellant has failed to appear at the hearing without good cause;
- (4) reasonable cause exists to believe that the request has been abandoned or that repeated requests by the appellant for rescheduling or continuances are arbitrary and for the purpose of unduly delaying or avoiding a hearing. [Order 4-72, § 192-10-270, filed 11/6/72.]

**WAC 192-10-280 Decisions—Preparation and service.** The appeals examiner shall, if possible, render an oral opinion at the conclusion of the hearing. On the basis of the record compiled at the hearing, he shall, within three working days of the close of the hearing, prepare a written decision stating his findings and conclusions. Copies of the decision shall be served by certified mail on the applicant, the department, and all other persons in interest. Instructions for petitioning for commissioner's review of an adverse decision shall be attached to the appellant's copy. The case record shall be returned to the department. [Order 4-72, § 192-10-280, filed 11/6/72.]

**WAC 192-10-290 Certification of novel questions of law or policy.** In cases involving novel questions of law or policy, the appeals examiner may, within five days after

issuance of his written decision, certify the case for review and decision to the commissioner. [Order 4-72, § 192-10-290, filed 11/6/72.]

**WAC 192-10-300 Petition for review by the commissioner.** If the appellant, the department or DSHS disagrees with the decision of the appeal tribunal, said person may, within fifteen days after the receipt of the appeal tribunal's written decision, petition the commissioner in writing for review of said decision. In all cases, whether or not he is the petitioner, the registrant or participant shall be furnished with the rules governing the commissioner's review along with notification of the receipt of the petition for such review. [Order 4-72, § 192-10-300, filed 11/6/72.]

**WAC 192-10-310 Commissioner's review procedure.**

(1) The commissioner shall consider and render a decision on a written petition for review which is filed within fifteen days after the receipt of the written appeal tribunal decision. The petition need not be in any particular form but should specify the decision to which the petitioner takes exception and the date on which the decision was received. The petition shall be signed by the petitioner or his duly authorized representative. The petition shall be deemed timely filed if it is received by the commissioner or by any local office of the department within the prescribed fifteen day time period. If the petition is mailed, it shall be deemed filed on the postmark date if the petition is properly addressed and has sufficient postage affixed thereto.

(2) Within thirty days after receipt of the petition for review, the commissioner shall prepare a written decision either affirming or reversing the appeal tribunal decision. The commissioner may also remand the case to the tribunal for further development of the evidence. The commissioner's decision shall be based solely upon his review of the hearing record and upon any additional evidence submitted to the tribunal in connection with the commissioner's review of the case. The decision shall state the findings and the reasons for the conclusions reached therein.

(3) Copies of the commissioner's decision shall be served by certified mail on the registrant or participant and other persons in interest. Instructions for appealing an adverse decision to the National Review Panel and the conditions under which the panel will consider an appeal shall be attached to the registrant's or participant's copy of the decision.

(4) The commissioner may, in petitions involving novel questions of law or policy, certify the case within five days after his decision to the National Review Panel for review and decision. [Order 4-72, § 192-10-310, filed 11/6/72.]

**WAC 192-10-320 Withdrawal of request for hearing and of petition for review.** A request for hearing or petition for review may be withdrawn at any time prior to a decision thereon, in which case the previous determination, denial or decision shall be final. Such withdrawal shall, however, be subject to the approval of the appeal tribunal in the case of a request for hearing, and

of the commissioner in the case of a petition for review. [Order 4-72, § 192-10-320, filed 11/6/72.]

**WAC 192-10-330 Representation.** An individual may represent himself or may be represented by legal counsel or by any spokesman of his choice, upon satisfactory proof of authorization. Charges or fees for services of a representative or attorney shall be the obligation of the individual. [Order 4-72, § 192-10-330, filed 11/6/72.]

## Chapter 192-12 WAC SUBSTANTIVE RULES

### WAC

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### DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

192-12-140	Registration and claims for benefits. [Order 2-72, § 192-12-140, filed 7/6/72; Regulation 13, effective 5/15/58.] Repealed by Order 2-77, filed 9/2/77.
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**WAC 192-12-010 General definitions and use of terms.** (1) Section 40 of the act (RCW 50.12.010) provides: "It shall be the duty of the commissioner to administer this act. He shall have the power and authority to adopt, amend, or rescind such rules and regulations,

\* \* \* as he deems necessary or suitable to that end.  
\* \* \* "

(2) The commissioner accordingly prescribes: In any rule or regulation now or hereafter promulgated, unless the context clearly indicates otherwise, all terms specially defined herein shall be given the meaning contained in such definition. However, the use of any term which has been specially defined in the act shall imply the same meaning as that term implies when used in the act. For purposes of contributions only:

(a) "Wages" shall include advances made to an individual in anticipation of services to be performed and such advances shall be deemed earned and paid when made. Petitions for refund or adjustment will be entertained in connection with contributions paid with respect to such advances, in the event that the anticipated services are not later performed.

(b) "Wages paid" include both wages actually received by an individual and wages constructively paid. Wages are constructively paid when they are credited to the account of or set apart for an individual so that they may be drawn upon by him at any time although not then actually reduced to possession. To constitute payment in such a case the wages must be credited or set apart to the individual without any substantial limitation or restriction as to the time or manner of payment or condition upon which payment is to be made, and must be made available to him so that they may be drawn at any time, and their payment brought within his own control and disposition.

(c) Deductions: Whenever under any act of congress or under the law of any state an employer is required or permitted to deduct any amount from the remuneration of an individual in its employ and to pay the amount deducted to the United States, a state, or any political subdivision thereof, the amount so deducted shall be considered as wages and shall be considered to have been paid to the individual at the time of such deduction. Other amounts deducted from the wages of an individual by an employer also constitute wages paid to the individual at the time of the deduction. [Regulation 1, adopted 6/10/53, effective 6/20/53.]

**WAC 192-12-020 Week defined.** Section 37 of the act (RCW 50.04.360) provides: "'Week' means any period of seven consecutive calendar days ending at midnight as the commissioner may by regulation prescribe."

The commissioner accordingly prescribes: The term "week" shall mean a period of seven consecutive calendar days commencing with Sunday and ending at midnight the following Saturday. [Regulation 2, adopted 6/10/53, effective 6/20/53.]

**WAC 192-12-030 Reports required of persons or entities for whom personal services are performed.** RCW 50.12.070 provides:

" \* \* \* The commissioner may require from any employing unit any sworn or unsworn reports with respect to persons employed by it, which he deems necessary for the effective administration of this act. Each employer shall make periodic reports at such intervals as the commissioner may by regulation prescribe, setting

forth the remuneration paid for employment to workers in its employ, the names of all such workers and such other information as the commissioner may by regulation prescribe."

RCW 50.20.150 provides:

"The applicant for initial determination, his most recent employing unit as stated by the applicant, and any other interested party which the commissioner by regulation prescribes, shall, if not previously notified within the same continuous period of unemployment, be given notice promptly in writing that an application for initial determination has been filed and such notice shall contain the reasons given by the applicant for his last separation from work. If during the benefit year, the applicant becomes unemployed after having accepted subsequent work, and files a claim for waiting period credit or benefits, a similar notice shall be given promptly to his then most recent employing unit as stated by him, or to any other interested party which the commissioner by regulation prescribes."

RCW 50.32.020 provides:

"The applicant or claimant, his most recent employing unit or any interested party which the commissioner by regulation prescribes, may file an appeal from any determination or redetermination with the appeal tribunal within ten days after the date of notification or mailing, whichever is earlier, of such determination or redetermination to his last known address: \* \* \*"

RCW 50.12.010 provides:

"It shall be the duty of the commissioner to administer this act. He shall have the power and authority to adopt, amend, or rescind such rules and regulations, \* \* \* as he deems necessary or suitable to that end. \* \* \*"

The commissioner accordingly prescribes:

(1) **Employer's status report.** Every person or entity which has or subsequent to January 1, 1936, had one or more individuals performing services for it in the state of Washington shall have on file with the commissioner immediately after the effective date of this regulation an employer's status report in accordance with the form therefor furnished by the commissioner.

(2) **Contribution and wage reports:**

(a) **Contribution report.** Each employer shall not later than the last day of the month following the expiration of any calendar quarter file with the commissioner, on forms which the commissioner shall furnish, a report with respect to such quarter setting forth the wages paid for employment to individuals in his employ. Calendar quarters shall be deemed to end March 31, June 30, September 30 and December 31 respectively of each year.

(b) **Wage Report.** Each employer shall not later than the last day of the month following the expiration of such calendar quarter file with the commissioner, on forms which the commissioner shall furnish, a report with respect to such calendar quarter setting forth the wages paid during such calendar quarter for employment to individual in his employ, the number of calendar weeks during the quarter in which such individuals earned not less than 15% of the average weekly wage as defined by law and computed by the department, the

names of such individuals and their social security account numbers. The number of such calendar weeks reported should not exceed thirteen in any quarter. If a portion of a calendar week extends into the following calendar quarter, and services were performed in both portions of the week, that week shall be reported only in the quarter in which the major portion of the week falls. If the services performed in that week all fell in the portion lying within one quarter, the week shall be reported in that quarter in which the services were performed. Exceptions to the foregoing provisions 2(a) and (b) relative to the time and manner of reporting shall be allowed only after application has been made requesting exceptions and the application has been approved by the commissioner.

(c) Termination of business. Each employer who ceases business or for any reason causes his account to be closed by the department shall immediately file:

(i) A contribution report with respect to the current calendar quarter which report shall cover contributions due to the date such account is closed;

(ii) A quarterly wage report with respect to the current calendar quarter as provided in section (2)(b) of this regulation which report shall include all wages paid to the date such account is closed.

(d) Reports for maritime service.

(i) Maritime contribution reports. Contribution reports with respect to wages, including advances, allotments, slops, and payment in kind, such as board and lodging, earned in any pay period shall be submitted as of the calendar quarter in which any such wages in cash were actually paid or such wages in kind were furnished, except that any of such items which are unknown to the reporting office will be considered paid in the calendar quarter in which the voyage is terminated.

(ii) Maritime wage reports. Individual wage detail reports on wages falling within the purview of this regulation need not be filed prior to the time when reports regarding wages paid at the termination of such period must be filed; except, however, supplemental quarterly wage detail reports shall be filed whenever wages involved were actually paid in a previous calendar quarter. Such supplemental report shall be filed along with the related contribution report.

(iii) Maritime special reports. The employer shall, upon request of the commissioner, promptly furnish a statement of the wages of a seaman, whenever such statement is necessary in order to determine such seaman's eligibility for and rate of benefits. Such statements shall be prepared and submitted in such a manner as the commissioner may in each case prescribe.

(3) **Report of circumstances of applicant's separation from employment.** Whenever an individual files an application for an initial determination or thereafter lapses his reporting at the local office and later renews such reporting following intervening employment, a notice of such filing or renewal shall be mailed to the applicant's most recent employing unit as stated by the applicant. Any employing unit receiving such a notice and having knowledge of any factors which might render the applicant ineligible for waiting period credit or benefits shall

report such factors to the employment security department at the address indicated on the notice within ten days of the date of mailing of such notice. The absence of the receipt of the employing unit's report within the ten day period shall be deemed to justify allowances to the applicant of waiting period credit and the payment of benefits, provided the applicant is in all respects eligible.

In the event that information reported by an employing unit, in response to either of the notices required herein, is claimed by the employing unit to require disqualification from allowance of waiting period credit or payment of benefits, a determination of benefit rights will be made and a copy of such determination mailed to the employing unit.

(4) **Low Earnings report.** When requested to do so by an authorized representative of the commissioner any person or entity for whom personal services are performed by individuals working less than full time during a "week" as defined in WAC 192-12-020 with resulting loss of earnings, to wit: less than the maximum weekly benefit amount established by law, shall thereafter file with the nearest employment office, upon forms furnished by the commissioner, a report of low earnings with respect to such individuals for all weeks designated in the request.

(5) **Labor dispute report.** When any person or entity for whom personal services are performed has substantially curtailed or stopped operation by reason of a labor dispute or should such person or entity have reason to believe that such substantial curtailment or stoppage is due to a labor dispute, it shall advise the nearest employment office in writing of the date of the commencement of such substantial curtailment or stoppage of operations and upon the demand of the commissioner shall furnish, upon forms furnished by the commissioner, a report setting out the conditions under which such substantial curtailment or stoppage of operations occurred, together with the names, social security account numbers and job classifications of the individuals involved. Changes in the condition under which the labor dispute arose or in the status of any such individuals, occurring during the course of the dispute, shall be reported in the same manner.

Subsequent to the termination of the labor dispute, such person or entity shall advise the nearest employment service office in writing of the date of the termination of the labor dispute.

(6) **Vacation reports.** Each employer temporarily ceasing or substantially curtailing operations in order to allow a vacation period for individuals in its employ pursuant to an employment contract shall seven days prior to cessation or substantial curtailment of operations file with the nearest employment office a report giving the date of commencement and duration of the vacation period and shall further, upon the demand of the commissioner, furnish a report setting forth (a) the name of each individual ceasing work by reason of such cessation or curtailment of operations; (b) his social security account number; (c) the amount of wages or remuneration, if any, paid or payable to each individual

for the vacation period; and (d) the identity of such individuals who have been or will be granted vacations during some other period.

(7) **Report form instructions.** All instructions contained on any report form issued by the employment security department shall have the same force and effect as if such instructions had been incorporated into and made a part of this regulation. [Order 2602, § 192-12-030, filed 4/24/70; Regulation 3, filed 12/1/65, effective 1/1/66; Regulation 3, adopted 5/31/55, effective 7/3/55.]

**WAC 192-12-040 Contributions by employers.** RCW 50.24.010 provides:

"Contributions shall accrue and become payable by each employer for each calendar year in which he is subject to this title at the rate of two and seven-tenths percent of wages paid each employee, except for such rates as determined for qualified employers according to RCW 50.29.010 through 50.29.140: *Provided*, That if, as of any June 30th, the amount in the unemployment compensation fund is less than three and one-half percent of total remuneration paid by all employers during the preceding calendar year and reported on or before the March 31st following such year, contributions for the following calendar year for all employers shall be payable at the rate of three percent of wages subject to tax.

"The amount of wages subject to tax for each individual as of January 1, 1971, shall be four thousand two hundred dollars. If the amount in the unemployment compensation fund on any June 30th, after January 1, 1971, is less than four and one-half percent of total remuneration paid by all employers during the preceding calendar year and reported on or before the March 31st following such year, the amount of wages subject to tax shall increase on the January 1st next following by six hundred dollars: *Provided*, That the amount of wages subject to tax in any calendar year shall not exceed seventy-five percent of the 'average annual wage' for the second preceding calendar year rounded to the next lower multiple of three hundred dollars.

"Contributions shall become due and be paid by each employer to the treasurer for the unemployment compensation fund in accordance with such regulations as the commissioner may prescribe, \* \* \*."

The commissioner accordingly prescribes:

(1) Contributions shall become due and be payable quarterly and shall reach the office of the treasurer not later than the last day of the month following the end of the calendar quarter for which such contributions have accrued; but remittances made by mail shall be deemed to have been received timely in the office of the treasurer if they bear a postmark not later than midnight of the last day of such month. In the event that the last day of such month shall fall on a Sunday or a legal holiday or on a day which the legislature of the state of Washington has determined to be a nonwork day for the employees of the employment security department, then any contributions reaching the office of the treasurer or any duly constituted agent of the employment security department on the next work day shall be deemed to

have been received timely. Each quarterly payment shall include contributions accrued upon all wages paid during such quarter.

(2) Whenever any employer shall cease to do business (or his account with the unemployment compensation division is closed), be adjudicated a bankrupt, make an assignment for the benefit of his creditors, or go into receivership, contributions for employment occurring prior to the date thereof shall become immediately due and payable and if not paid immediately shall be delinquent, but interest shall not accrue thereon until the first day of the second month following the end of the calendar quarter for which such contributions have accrued. [Order 2602, § 192-12-040, filed 4/24/70; Regulation 4, adopted 6/10/53, effective 6/20/53.]

**WAC 192-12-043 Definition of student for purpose of RCW 50.44.040(8).** RCW 50.44.040 provides in part:

". . ."

"The term 'employment' as used in RCW 50.44.010, 50.44.020 and 50.44.030 shall not include service performed:

". . ."

"(8) In the employ of a school, college, or university, if such service is performed (a) by a student who is enrolled and is regularly attending classes at such school, college, or university, . . ."

". . ."

The status of the employee as a student performing the services shall be determined on the basis of the relationship of such employee with the organization for which the services are performed. Thus, an employee who performs services in the employ of a school, college, or university as an incident to and for the purpose of pursuing a course of study at such school, college, or university has the status of a student in the performance of such services. [Order 2-72, § 192-12-043, filed 7/6/72.]

**WAC 192-12-050 Records.** Section 46 of the act (RCW 50.12.070) provides: "Each employing unit shall keep true and accurate work records, containing such information as the commissioner may prescribe \* \* \*."

Section 40 of the act (RCW 50.12.010) provides: "It shall be the duty of the commissioner to administer this act. He shall have the power and authority to adopt, amend, or rescind such rules and regulations, \* \* \* as he deems necessary or suitable to that end. \* \* \*"

The commissioner accordingly prescribes:

(1) Each person or entity shall preserve existing records with respect to personal services performed for it on and after January 1, 1936. On and after the effective date of this regulation, each such person or entity shall establish and maintain records with respect to each individual performing services for it, which records shall show the following: (a) The name of each such individual; (b) his social security account number; (c) the days and weeks during which each such individual performed services for said person or entity; (d) hours spent in employment and in nonsubject work with respect to any pay period; (e) the amount of wages or remuneration paid or payable to such individual on account of such



services, said amounts to be segregated in such records into cash payment and payments in media other than cash; (f) the location at which such services were performed; (g) the date upon which each such individual was engaged or reengaged to perform services or returned to work after a temporary layoff; (h) the date when any individual's name was removed from the payroll; and (i) in the case of any individual whose separation from work was due to discharge, the cause of such discharge, or if his work was terminated by quit, the cause of such quit if known to such person or entity.

(2) Records relating to services performed in employment shall be maintained and preserved for not less than four years subsequent to the date contributions have been paid in respect thereto. Records relating to services not performed in employment shall be preserved and maintained for not less than four years subsequent to the calendar year in which the remuneration for such services was paid. [Regulation 5, adopted 6/10/53, effective 6/20/53.]

**WAC 192-12-060 Joint accounts.** RCW 50.24.170 provides:

"The commissioner shall prescribe regulations for the establishment, maintenance, and dissolution of joint accounts by two or more employers and shall, in accordance with such regulations and upon application by two or more employers to establish such account, or to merge their several individual accounts in a joint account, maintain such joint account as if it constituted a single employer's account."

The commissioner accordingly prescribes:

Any two or more employers may consolidate their accounts for the purposes of reporting and dealing with the division of unemployment compensation when the ends of convenience will be served thereby if the commissioner shall find that the plan of consolidated reporting proposed by such employer will not impair the obligation of any such employers to the division of unemployment compensation or interfere with the payment of benefits to workers and will adequately provide for the maintenance of all records necessary under the Employment Security Act, and if such proposed plan of joint reporting will not result in administrative inconvenience to the division of unemployment compensation nor allow an employer to receive an experience rate to which he would not otherwise be entitled. No consolidation of accounts shall occur until the plan of consolidation has been approved by the commissioner in writing. [Order 2602, § 192-12-060, filed 4/24/70; Regulation 6, adopted 6/10/53, effective 6/20/53.]

**WAC 192-12-070 Cash value of certain remunerations.** (1) Section 33 of the act (RCW 50.04.320) provides:

"\* \* \* The reasonable cash value of compensation paid in any medium other than cash and the reasonable value of gratuities shall be estimated and determined in accordance with rules prescribed by the commissioner."

(2) The commissioner accordingly prescribes:

Compensation for personal services paid in kind or in any medium other than cash shall, for all purposes under

the act, be given its actual cash value to the worker, and such value shall be used in computing contributions due under the law. If any contract of hire shall fix the value of such items, the value so fixed shall be taken as the actual value thereof. If the actual cash value of any item of compensation is not readily determinable, it shall be fixed by the commissioner. In the latter case, until a specific determination is made by the commissioner, board and lodging furnished in addition to, or in lieu of money wages shall be deemed to have not less than the following values:

Full board and room, weekly . . . . .	\$10.00
Meals, per meal . . . . .	.40
Lodging, per week . . . . .	2.50

[Rule 1, filed 12/1/65, effective 1/1/66; Rule 1, adopted 11/21/49, effective 10 days after filing with secretary of state and publication.]

**WAC 192-12-080 Workers to procure social security account numbers.** Section 40 of the act (RCW 50.12.010) provides: "It shall be the duty of the commissioner to administer this act. He shall have the power and authority to adopt, amend, or rescind such rules and regulations, \* \* \* as he deems necessary or suitable to that end. \* \* \*"

The commissioner accordingly prescribes:

(1) Each employer shall ascertain the federal social security account number of each individual engaged by him in employment subject to the Washington Employment Security law.

(2) The employer shall report the individual's federal social security account number in making any report required by the employment security department with respect to an individual in employment.

(3) If an employer has in his employ an individual engaged in employment who does not have an account number, such employer shall request the individual to show him a receipt issued by an office of the social security administration acknowledging that the individual has filed an application for an account number. The receipt shall be retained by the individual. In making any report required by the employment security department with respect to such an individual, the employer shall report the date of issue of the receipt, its termination date, the address of the issuing office, and the name and address of the individual exactly as shown in the receipt.

(4) If an individual fails to report to the employer his correct federal social security account number or fails to show the employer a receipt issued by an office of the social security administration acknowledging that he has filed an application for an account number, the employer shall inform the individual that applicable regulations of the bureau of internal revenue, United States treasury department, under the Federal Insurance Contributions Act provide that:

(a) Each individual shall report to every employer for whom he is engaged in employment, his federal social security account number and his name exactly as shown on the account number card issued to him by the social security administration.

(b) Each individual engaged in employment who has not secured an account number shall file an application

for a federal social security account number on form SS-5 of the treasury department, bureau of internal revenue. The application shall be filed on or before the seventh day after the date on which the individual first performs employment for wages, except that the application shall be filed on or before the date the individual leaves the employ of his employer if such date precedes such seventh day. Copies of form SS-5, "Application for a social security account number," can be secured at the field office of the social security administration nearest the individual's place of employment or the local post office.

(c) If, within 14 days after the date on which the individual first performs employment for wages for the employer, or on the day on which he leaves the employ of the employer, whichever is the earlier, the individual does not have a federal social security account number, and has not shown the employer a receipt issued to the worker by an office of the social security administration acknowledging that he has filed an application for an account number, the individual shall furnish the employer an application on form SS-5, completely filled in and signed by the individual. If a copy of form SS-5 is not available, the individual shall furnish the employer a written statement, signed by the individual, of the date of the statement, the individual's full name, present address, date and place of birth, father's full name, mother's full name before marriage, individual's sex and color, and a statement as to whether the individual had previously filed an application on form SS-5, and, if so, the date and place of such filing. Furnishing the employer with an executed form SS-5, or statement in lieu thereof, does not relieve the individual of his obligation to make an application on form SS-5 as required in paragraph (b).

(5) The employer shall inform the individual, in instances in which the information is pertinent, that in accordance with applicable regulations of the bureau of internal revenue, United States treasury department:

(a) Any individual who has lost his federal social security account number card may secure a duplicate card by applying at the field office of the social security administration nearest the individual's place of employment.

(b) Any individual may have his account number changed at any time by applying to a field office of the social security administration and showing good reason for a change. Any individual whose name is changed by marriage or otherwise, or who has stated incorrect information on form SS-5, should report such change or correction to a field office of the social security administration. Copies of the form OAAN-7003, "Employee's request for change in records," for making such reports may be obtained from any field office of the social security administration, the central office of the employment security department, or any local office of the Washington state employment service.

(c) Any individual who has more than one social security account number shall report all numbers to the field office of the social security administration nearest the worker's place of employment or to a local employment office. [Regulation 7, adopted 6/10/53, effective 6/20/53.]

**WAC 192-12-090 Employer elections to cover individuals performing personal services in more than one state.** RCW 50.12.060 provides:

"The commissioner is hereby authorized to enter into arrangements with the appropriate agencies of other states, foreign governments or the federal government whereby services performed by an individual for a single employing unit for which services are customarily performed in more than one state shall be deemed to be services performed entirely within any one of the states (a) in which any part of such individual's service is performed, or (b) in which such individual has his residence, or (c) in which the employing unit maintains a place of business: *Provided*, That there is in effect as to such services, an election by the employing unit with the acquiescence of such individual, approved by the agency charged with the administration of such state's unemployment compensation law, pursuant to which all the services performed by such individual for such employing unit are deemed to be performed entirely within such state."

RCW 50.12.010 provides:

"It shall be the duty of the commissioner to administer this act. He shall have the power and authority to adopt, amend, or rescind such rules and regulations, \* \* \* as he deems necessary or suitable to that end. \* \* \*"

The commissioner accordingly prescribes:

(1) The following regulation shall govern the Washington employment security department in its administrative cooperation with other states subscribing to the interstate reciprocal coverage arrangement, hereinafter referred to as "the arrangement."

(2) **Definitions.** As used in this regulation, unless the context clearly indicates otherwise:

(a) "Jurisdiction" means any state of the United States, the District of Columbia, or, with respect to the federal government, the coverage of any federal unemployment compensation law;

(b) "Participating jurisdiction" means a jurisdiction whose administrative agency has subscribed to the arrangement and whose adherence thereto has not terminated;

(c) "Agency" means any officer, board, commission or other authority charged with the administration of the unemployment compensation law of a participating jurisdiction;

(d) "Interested jurisdiction" means any participating jurisdiction to which an election submitted under this regulation is sent for its approval; and "interested agency" means the agency of such jurisdiction;

(e) "Services 'customarily performed' by an individual in more than one jurisdiction" means performed in more than one jurisdiction during a reasonable period, if the nature of the services gives reasonable assurance that they will continue to be performed in more than one jurisdiction or if such services are required or expected to be performed in more than one jurisdiction under the election.

(3) **Submission and approval of coverage elections under the interstate reciprocal coverage arrangement.**

(a) Any person or entity for whom personal services are performed may file an election, on appropriate forms, to cover under the law of a single participating jurisdiction all of the services performed for him by any individual who customarily performs services for him in more than one participating jurisdiction.

Such an election may be filed with respect to an individual, with any participating jurisdiction in which (1) any part of the individual's services are performed; (2) the individual has his residence; or (3) the employing unit maintains a place of business to which the individual's services bear a reasonable relation.

(b) The agency of the elected jurisdiction (thus selected and determined) shall initially approve or disapprove the election.

If such agency approves the election, it shall forward a copy thereof to the agency of each other participating jurisdiction specified thereon, under whose unemployment compensation law the individual or individuals in question might, in the absence of such election, be covered. Each such interested agency shall approve or disapprove the election, as promptly as practicable; and shall notify the agency of the elected jurisdiction accordingly.

The Washington agency before taking such action, shall require from the electing person or entity for whom personal services are performed satisfactory evidence that the affected individuals engaged to perform services have been notified of, and have acquiesced in, the election.

(c) If the agency of the elected jurisdiction or the agency of any interested jurisdiction, disapproves the election, the disapproving agency shall notify the elected jurisdiction and the electing person or entity of its action and of its reasons therefor.

(d) Such an election shall take effect as to the elected jurisdiction only if approved by its agency and by one or more interested agencies.

An election thus approved shall take effect, as to any interested agency, only if it is approved by such agency.

(e) In case any such election is approved only in part, or is disapproved by some of such agencies, the electing person or entity may withdraw its election within ten days after being notified of such action.

**(4) Effective period of elections.**

(a) **Commencement.** An election duly approved under this regulation shall become effective at the beginning of the calendar quarter in which the election was submitted, unless the election, as approved, specifies the beginning of a different calendar quarter.

If the electing unit requests an earlier effective date than the beginning of the calendar quarter in which the election is submitted, such earlier date may be approved solely as to those interested jurisdictions in which the employer had no liability to pay contributions for the earlier period in question.

**(b) Termination.**

(i) The application of an election to any individual under this regulation shall terminate, if the agency of the elected jurisdiction finds that the nature of the services customarily performed by the individual for the electing unit has changed, so that they are no longer

customarily performed in more than one participating jurisdiction. Such termination shall be effective as of the close of the calendar quarter in which notice of such findings is mailed to all parties affected.

(ii) Except as provided in subparagraph (i) above, each election approved hereunder shall remain in effect through the close of the calendar year in which it is submitted and thereafter until the close of the calendar quarter in which the electing unit gives written notice of its termination to all affected agencies.

(iii) Whenever an election under the regulation ceases to apply to any individual, under subparagraph i or ii (above), the electing unit shall notify the affected individual accordingly.

**(5) Reports and notices by the electing unit.**

(a) The electing unit shall promptly notify each individual affected by its approved election, on the appropriate forms supplied by the elected jurisdiction, and shall furnish the elected agency a copy of such notice.

(b) Whenever an individual covered by an election under this regulation is separated from his employment, the electing unit shall again notify him, forthwith, as to the jurisdiction under whose unemployment compensation law his services have been covered. If at the time of termination the individual is not located in the elected jurisdiction, the electing unit shall notify him as to the procedure for filing interstate benefit claims.

(c) The electing unit shall immediately report to the elected jurisdiction any change which occurs in the conditions of employment pertinent to its election, such as cases where an individual's services for the employer cease to be customarily performed in more than one participating jurisdiction or where a change in the work assigned to an individual requires him to perform services in a new participating jurisdiction. [Order 2602, § 192-12-090, filed 4/24/70; Regulation 8, adopted 6/10/53, effective 6/20/53.]

**WAC 192-12-100 Posting of notices by employers.**

Section 82 of the act (RCW 50.20.140) provides: "\* \* \* Each employer shall post and maintain printed statements of such regulations in places readily accessible to individuals in his employment and shall make available to each such individual at the time he becomes unemployed, a printed statement of such regulations and such notices, instructions and other material as the commissioner may by regulation prescribe. Such printed material shall be supplied by the commissioner to each employer without cost to him \* \* \*."

The commissioner accordingly prescribes: Every employer (including every person or entity for whom personal services are performed which has, with the approval of the commissioner, become an employer by election under the provisions of the act) shall post and maintain printed notices to individuals in his employ informing them that he is liable for contributions under the Employment Security Act. Such notices shall also include information applicable not only to workers who are separated but also to workers who are working less than full time and informing such individuals of their rights to benefits and instructions as to the procedure for registering for work and for filing claims for benefits.

No such notice shall be posted or maintained by any person or entity to whom an unemployment compensation account number has not been assigned by the commissioner or who has ceased to be an employer. Such notices shall be furnished by the commissioner in such numbers as he may determine to be necessary and shall be posted and maintained in conspicuous places near the actual locations where the personal services are performed. Other notices including information as to individuals' rights to benefits and instructions as to procedure for registering for work and for filing claims for benefits shall be furnished by the commissioner to, and shall be similarly posted by, every person or entity for whom personal services are performed as the commissioner in his discretion deems administratively practicable so that any individual entitled to benefits (whether the person or entity for whom services are or were performed is or is not an employer) may be informed of his rights to benefits and the means of attaining them. [Regulation 9, adopted 6/10/53, effective 6/20/53.]

**WAC 192-12-110 Employing unit's liability for contributions due from contractors or subcontractors.** RCW 50.24.130 provides: "No employing unit which contracts with or has under it any contractor or subcontractor who is an employer under the provisions of this title shall make any payment or advance to, or secure any credit for, such contractor or subcontractor (for) or on account of any contract or contracts to which said employing unit is a party unless such contractor or subcontractor has paid contributions, due or to become due, for wages paid or to be paid by such contractor or subcontractor for personal services performed pursuant to such contract or subcontract, or has furnished a good and sufficient bond acceptable to the commissioner for payment of contributions, including interest. Failure to comply with the provisions of this section shall render said employing unit directly liable for such contributions and interest and the commissioner shall have all of the remedies of collection against said employing unit under the provisions of this title as though the services in question were performed directly for said employing unit."

RCW 50.12.010 provides: "It shall be the duty of the commissioner to administer this act. He shall have the power and authority to adopt, amend, or rescind such rules and regulations, \* \* \* as he deems necessary or suitable to that end. \* \* \*."

The commissioner accordingly prescribes:

(1) No employing unit under the provisions of RCW 50.24.130 of the act shall be held liable for contributions due the unemployment compensation fund from any contractor or subcontractor of such employing unit in excess of the amount of contribution attributable to the services performed by individuals engaged by such contractor or subcontractor for the employing unit pursuant to the contract or contracts in question.

(2) Whenever the commissioner deems that any bond that has been deposited with him pursuant to the provisions of RCW 50.24.130 of the act and this regulation is

insufficient to guarantee payment of contributions collection of which was intended to be assured by such bond, he shall mail by registered mail addressed to the principal and to the surety named in the bond at their last known addresses a notice that such bond is no longer sufficient or acceptable to the commissioner as a guarantee of payment of the contributions in question and the reason therefor, and if within ten days from the mailing of the notice the bond is not increased so as to be acceptable to the commissioner, or a new bond furnished acceptable to the commissioner, as required in the notice, the bond on deposit, and deemed insufficient by the commissioner as stated in the notice, shall no longer be deemed a good and sufficient bond acceptable to the commissioner for the purposes of RCW 50.24.130. No recovery on any bond furnished to the commissioner shall be prejudiced by the provisions of this regulation or notices mailed pursuant to its provisions. Upon payment being made of all contributions and interest guaranteed by any bond furnished the commissioner, the commissioner shall forthwith cancel such bond.

(3) Any employing unit, may, in lieu of requiring a contractor or subcontractor to furnish a bond, withhold from any payment of indebtedness due a contractor or subcontractor on any contract involving the performance of personal services an amount sufficient to pay the actual or estimated contributions due or to become due in respect to services performed for the employing unit pursuant to such contract and pay the same over to the employment security department or local office thereof for credit to the account of such contractor or subcontractor and in such event the employing unit shall be relieved of any direct liability for payment of such contributions to the extent of the amount so withheld and paid over to the employment security department and the account of the contractor or subcontractor shall be credited with such payment.

(4) If any contractor or subcontractor or any other person or entity on behalf of the contractor or subcontractor provides proof of payment of the contributions in question, such contributions paid shall relieve the employing unit of direct liability therefor to the extent of the payment made. [Order 2-73, § 192-12-110, filed 11/15/73; Regulation 10, adopted 6/10/53, effective 6/20/53.]

**WAC 192-12-120 Secrecy of information.** RCW 50.12.110 provides: "Information obtained from employing unit records under the provisions of this title or obtained from any individual pursuant to the administration of this title shall be confidential \* \* \*."

RCW 50.12.010 provides: "It shall be the duty of the commissioner to administer this act. He shall have the power and authority to adopt, amend, or rescind such rules and regulations, \* \* \* as he deems necessary or suitable to that end. \* \* \*."

The commissioner accordingly prescribes:

(1) Information on file with, or records of the employment security department relating to social security account numbers furnished by the social security administration shall be deemed confidential and access to and use of such information shall at all times be restricted to

the terms of the following agreement, undertaken by the employment security department entered into between said department and the federal social security administration on August 21, 1943, the provisions of which are as follows:

(a) The copies of form OA -702, or any part thereof and of form OAR-7001, whether the old or revised type, together with verifications of account numbers and cross references on multiple account numbers received from other state employment security agencies will be kept in confidential files.

(b) The information obtained from such forms and records will be used only for the administration of the Employment Security Act and no such information will be divulged to any individual or agency, except (1) to authorized employees of the bureau of old-age and survivors insurance for purposes connected with the administration of the old-age and survivors insurance provisions of the Social Security Act; (2) to a claimant or prospective claimant for benefits under the Employment Security Act, or his duly authorized representative, as to matters directly concerning such claimant or prospective claimant; (3) to another state employment security agency lawfully charged with the administration of an unemployment compensation law for the purposes only of such administration; or (4) in judicial proceedings instituted under the Employment Security Act and

(c) Any such forms and records as may be discarded will be so mutilated before final disposal that they cannot be used by any person.

(2) Except as otherwise governed by the provisions of the foregoing agreement and commissioner likewise prescribes that:

All files and records of the employment security department and all information acquired by said office in the administration of the Employment Security Act shall be deemed confidential. No person shall have access to the files or records of such office except members of the staff of the employment security department whose duties require the use thereof. No member of the staff of the employment security department, except as expressly authorized by this regulation, shall produce or disclose to any person or before any tribunal, whether in response to a subpoena or otherwise, any record (including any file, letter, application, claim, return, report or other paper or document) or any information acquired therefrom, or otherwise officially acquired, pertaining to any individual or person or entity for whom personal services are performed. If any member of the staff of the employment security department is sought to be required by subpoena or other compulsory process to produce such records or give such information he shall inform the tribunal of the privileged nature of such information and he shall claim the right to be excused from testifying or producing such information because of this regulation and RCW 50.12.110.

(3) Disclosure of such records or information is hereby authorized only in the following cases:

(a) Any interested party at a hearing before an appeal tribunal, or in a petition for review by the commissioner, shall be furnished such information as may be necessary for the proper presentation of the case in question.

(b) Upon a request being made therefor the commissioner shall furnish to any agency of the government of the United States charged with the administration of public works or assistance through public employment the name, address, ordinary occupation and employment status of each recipient of benefits, and such recipient's rights to further benefits under the act.

(c) Any claimant or prospective claimant for benefits, or any person or entity for whom personal services are performed, or the duly authorized representative of either, may be informed of matters directly concerning the status of such claimant or employing unit, respectively, or his or its rights, or obligations, respectively, under the Employment Security Act.

(d) Representatives, auditors and attorneys of the bureau of employment security United States department of labor charged with coordinating state unemployment compensation agencies and officers of any state department or office charged with the disbursement or collection of public funds or taxes shall have access to such records and obtain such information as shall be necessary in the performance of their duties.

(e) The records of the employment security department shall be available to the railroad retirement board and to the bureau of old-age and survivors insurance of the federal security agency and they may at their own expense obtain such copies thereof as they shall deem necessary for their purposes.

(f) Authorized representatives of the federal bureau of internal revenue charged with the collection of taxes due under Title IX of the Social Security Act may have access to reports of employers through the division of unemployment compensation and may be informed of amounts paid by employers.

(g) Any agency of the state or federal government assisting in the enforcement of the Employment Security Act or the detection or prosecution of fraud against the employment security department may be given such information as shall be necessary for such purpose.

(h) State elected officials and the directors of state agencies shall have access to information, otherwise confidential pursuant to RCW 50.12.110, to the extent necessary for the expeditious and complete performance of duties imposed on them by the laws of the state of Washington. Requests for such information shall be in writing and directed to the commissioner. They must be authorized by the state official or agency director making the request and shall set forth with specificity the information or records sought. The information sought shall not, by virtue of such disclosure, be deemed a matter of public record nor shall such information be published in any manner except as a necessary incident to an administrative, legislative, or judicial proceeding. The costs of retrieval or reproduction of any such information shall be billed to the office of the official or agency making the request.

(4) Nothing in this regulation shall be construed to preclude the disclosure of any record in any formal proceeding before any appeal tribunal or the commissioner nor shall anything herein be construed to prohibit the publication of statistical data or other information not

disclosing the identity of any individual or person or entity for whom personal services are performed, nor shall this regulation apply to personnel information relating to members of the staff of the employment security department. [Order 2-73, § 192-12-120, filed 11/15/73; Regulation 11, adopted 6/10/53, effective 6/20/53.]

**WAC 192-12-130 Payment of benefits to interstate claimants.** Section 44 of the act (RCW 50.12.050) provides: \* \* \* The commissioner may enter into agreement with any other state whereby in the event an individual files a claim in another state against wages earned in employment in this state, or against wage credits earned in this state and in any other state or who files a claim in this state against wage credits earned in employment in any other state, or against wages earned in this state and in any other state, the claim will be paid by this state or another state as designated by the agreement in accordance with a determination on the claim as provided by the agreement and pursuant to the qualification and disqualification provisions of this act or under the provisions of the law of the designated paying state (including another state) \* \* \*."

Section 40 of the act (RCW 50.12.010) provides: "It shall be the duty of the commissioner to administer this act. He shall have the power and authority to adopt, amend, or rescind such rules and regulations, \* \* \* as he deems necessary or suitable to that end. \* \* \*." The commissioner accordingly prescribes:

(1) The following regulation shall govern the Washington employment security department in its administrative cooperation with other states adopting similar regulation for the payment of benefits to interstate claimants.

(2) **Definitions.** As used in this regulation, unless the context clearly requires otherwise:

(a) "Interstate benefit payment plan" means the plan approved by the interstate conference of employment security agencies under which benefits shall be payable to unemployed individuals absent from the state (or states) in which benefit credits have been accumulated.

(b) "Interstate claimant" means an individual who claims benefits under the unemployment insurance law of one or more liable states through the facilities of the agent state. The term interstate claimant shall not include any commuter provided, however, that the Washington employment security department may, by arrangement with any adjoining state employment security agency, treat certain commuters as interstate claimants if they reside in geographical areas from which the Washington employment security department finds that requiring commuters to file their benefit claims in the state of their last employment would cause undue hardship to such claimants. As herein used, the term commuter applies to each individual who, immediately before becoming unemployed, customarily commuted from his residence in the agent state to his work in the liable state.

(c) "State" includes Alaska, Hawaii and the District of Columbia.

(d) "Agent state" means any state in which an individual files a claim for benefits from another state or states.

(e) "Liable state" means any state against which an individual files, through another state, a claim for benefits.

(f) "Benefits" means the compensation payable to an individual, with respect to his unemployment, under the unemployment insurance law of any state.

(g) "Week of unemployment" includes any week of unemployment as defined in the law of the liable state from which benefits with respect to such week are claimed.

**(3) Registration for work.**

(a) Each interstate claimant shall be registered for work, through any public employment office in the agent state when and as required by law, regulations, and procedures of the agent state. Such registration shall be accepted as meeting the registration requirements of the liable state.

(b) Each agent state shall duly report, to the liable state in question, whether each interstate claimant meets the registration requirements of the agent state.

**(4) Benefit rights of interstate claimants.**

(a) If a claimant files a claim against any state, and it is determined by such state that the claimant has available benefit credits in such state, then claims shall be filed only against such state as long as benefit credits are available in that state. Thereafter, the claimant may file claims against any other state in which there are available benefit credits.

For the purposes of this regulation, benefit credits shall be deemed to be unavailable whenever benefits have been exhausted, terminated, or postponed for an indefinite period or for the entire period in which benefits would otherwise be payable, or whenever benefits are affected by the application of a seasonal restriction.

(b) The benefit rights of interstate claimants established by this regulation shall apply only with respect to new claims (notices of unemployment) filed on or after July 5, 1953.

**(5) Claim for benefits.**

(a) Claims for benefits or waiting period shall be filed by interstate claimants on uniform interstate claims forms and in accordance with uniform procedures developed pursuant to the interstate benefit payment plan. Claims shall be filed in accordance with the type of week in use in the agent state. Any adjustments required to fit the type of week used by the liable state shall be made by the liable state on the basis of consecutive claims filed.

(b) Claims shall be filed in accordance with agent-state regulations for intrastate claims in local employment offices, or at an itinerant point, or by mail.

(i) With respect to claims for weeks of unemployment in which an individual was not working for his regular employer, the liable state shall, under circumstances which it considers good cause, accept a continued claim filed up to one week, or one reporting period, late. If a claimant files more than one reporting period late, an initial claim must be used to begin a claim series

and no continued claim for a past period shall be accepted.

(ii) With respect to weeks of unemployment during which an individual is attached to his regular employer, the liable state shall accept any claim which is filed within the time limit applicable to such claims under the law of the agent state.

**(6) Determination of claims.**

(a) The agent state shall, in connection with each claim filed by an interstate claimant, ascertain and report to the liable state in question such facts relating to the claimant's availability for work and eligibility for benefits as are readily determinable in and by the agent state.

(b) The agent state's responsibility and authority in connection with the determination of interstate claims shall be limited to investigation and reporting of relevant facts. The agent state shall not refuse to take an interstate claim.

**(7) Appellate procedure.**

(a) The agent state shall afford all reasonable cooperation in the taking of evidence and the holding of hearings in connection with appealed interstate benefit claims.

(b) With respect to the time limits imposed by the law of a liable state upon the filing of an appeal in connection with a disputed benefit claim, an appeal made by an interstate claimant shall be deemed to have been made and communicated to the liable state on the date when it is received by any qualified officer of the agent state.

**(8) Extension of interstate benefit payments to include claims taken in and for Canada.** This regulation shall apply in all its provisions to claims taken in and for Canada. [Rule 12, adopted 6/10/53, effective 6/20/53.]

**WAC 192-12-141 Registration, reports, and claims for unemployment compensation and related benefits.** (1) **Interstate claimants.** Individuals who file interstate claims for benefits against this state through the local office of any agent state shall not be subject to this regulation. (See WAC 192-12-130.)

(2) **Application for initial determination.** Except for good cause shown an application for initial determination shall be filed in person at a Washington State Employment Security office on forms provided by the department. Such application may be made at any time.

(3) **Registration for work.** As a condition of eligibility for waiting period credit or benefits, an individual shall register for work at an office of the Washington State Employment Security Department on forms provided and shall thereafter renew his registration as directed during the total period in which he maintains active claim status except as provided in WAC 192-12-150, covering the requirements for payment of benefits to partially unemployed individuals and standby workers.

**(4) Perfecting a claim for waiting period credit.**

(a) Except for good cause shown, to perfect a claim for waiting period credit, a claimant shall report in person at an Employment Security Department office during the week for which he intends to claim waiting period credit.

(b) The claim for waiting period credit shall be made in writing on forms provided by the department. It shall be filed at the office during the calendar week immediately following the last day of the week being claimed except for good cause shown.

(5) **Claim for benefits.** A claim for benefits shall be filed with a Washington State Employment Security office, in writing, on forms prescribed by the department. The department shall determine the method and time sequence by which each individual shall file a claim for benefits.

(a) The method for filing claims shall be one of the following:

(i) **IN PERSON METHOD**, whereby the claimant shall file the claim in person except for good cause shown;

(ii) **MAIL METHOD**, whereby the claimant shall file the claim by mail or in a Washington State Employment Security office drop box except for good cause shown. Claims submitted by mail shall be deemed filed with the department on the postmarked date.

(b) The time sequence for filing claims shall be one of the following:

(i) **WEEKLY SEQUENCE**, whereby claims shall be filed during the calendar week immediately following the week being claimed except for good cause shown;

(ii) **BIWEEKLY SEQUENCE**, whereby a claim for a two-consecutive-week period shall be filed during the calendar week immediately following such period except for good cause shown.

**(6) Certain exceptions pertaining to filing claims in person.**

(a) A claimant who is directed to file a claim for waiting period credit or benefits in person and because of returning to work is unable to do so must be permitted to file the claim by mail. The claimant must file the claim or claims within the same period as the claimant was directed to file in person except for good cause shown, provided that claims submitted by mail shall be deemed filed with the department on the postmarked date.

(b) In the event that a claimant is scheduled to file a claim (or claims) in person on the last business day of the week and the claimant fails to file as scheduled, the claimant shall be allowed the next business day to file such claim (or claims) in person.

(7) **Reporting responsibility.** Irrespective of time sequences for filing claims for waiting period credit or benefits, the department may require a claimant to report to a local office in person for any reason deemed appropriate. Failure to report, as and when directed, shall result in the denial of benefits for the week during which such failure occurs, except for good cause shown.

(8) **Itinerant offices.** In cases where a representative of the Employment Security Department shall establish a location apart from the usual place of reporting for the purpose of taking registrations, initial applications or claims for waiting period credit or benefits, all individuals registering or filing an application or claims at such location shall be deemed to have registered or filed at an Employment Security office. [Order 2-75, § 192-12-141, filed 2/10/75.]

**WAC 192-12-142 Claims, appeals, petitions—**  
**Filing not to be refused.** No employee or agent of the employment security department shall refuse to accept for filing any claim, appeal, or petition relating to any program administered by the department regardless of his or her personal evaluation of the efficacy of such action. [Order 2-72, § 192-12-142, filed 7/6/72.]

**WAC 192-12-150 Payment of benefits to partially unemployed persons and stand-by workers.** Section 81 of the act (RCW 50.20.130) provides: "\* \* \* Each eligible individual who is unemployed in any week shall be paid with respect to such week a benefit in an amount equal to his weekly benefit amount less that part of the remuneration (if any) payable to him with respect to such week which is in excess of eight dollars. \* \* \*."

[ **Reviser's note:** Laws of 1959, chapter 321 section 3; (RCW 50.20.130) amended the above section by striking out "eight dollars" and inserting "twelve dollars".]

Section 68 of the act (RCW 50.20.010) provides: "An unemployed individual shall be eligible to receive waiting period credit or benefits with respect to any week only if the commissioner finds that

"(1) he has registered for work at, and thereafter has continued to report at, an employment office in accordance with such regulation as the commissioner may prescribe, except that the commissioner may by regulation waive or alter either or both of the requirements of this subdivision as to individuals attached to regular jobs and as to such other types of cases or situations with respect to which he finds that the compliance with such requirements would be oppressive, or would be inconsistent with the purposes of this title; \* \* \*"

Section 32 of the act (RCW 50.04.310) provides: "An individual shall be deemed to be 'unemployed' in any week during which he performs no services and with respect to which no remuneration is payable to him, or in any week of less than full-time work, if the remuneration payable to him with respect to such week is less than his weekly benefit amount. The commissioner shall prescribe regulations applicable to unemployed individuals making such distinctions in the procedures as to such types of unemployment as the commissioner deems necessary."

Section 40 of the act (RCW 50.12.010) provides: "The commissioner shall administer this title. He shall have the power and authority to adopt, amend, or rescind such rules and regulations, \* \* \* as he deems necessary or suitable to that end. \* \* \*"

The commissioner accordingly prescribes:

**(1) Definitions.**

(a) The term "employer" as used in this regulation shall mean any person or entity for whom personal services are performed for wages.

(b) A partially unemployed individual is one who during a particular week earned some remuneration but less than his weekly benefit amount, was employed by his regular employer and worked less than his normal customary full hours for such regular employer because of lack of full-time work.

(c) With respect to a partially unemployed individual whose remuneration is paid on a calendar week basis, a

week of partial unemployment shall consist of the calendar week.

(d) With respect to partially unemployed individuals whose pay periods do not coincide with calendar weeks, remuneration earned during such pay periods may, if not allocated by the employer, be allocated by a representative of the commissioner directly from the employer's payroll records or from certified earnings reports from the employer to each calendar week during which such remuneration was earned.

(e) A "stand-by" worker is an individual who is totally unemployed, but who expects to resume work with his regular employer within a reasonable time and whose best interests and those of his regular employer are served, in the judgment of the commissioner, by his remaining in readiness to resume such work.

**(2) Employer responsibility in the initiation of first claim for partial benefits in a new spell of partial unemployment.**

(a) Immediately after the termination of any week beginning a new spell of partial unemployment in which an employer has furnished any individual in his employ less than such individuals's customary full time hours of work and earnings of less than the maximum weekly benefit amount established by law, or, if weekly benefit amount is known, earnings less than such weekly benefit amount, such employer shall either

(i) Advise the worker that he may be entitled to partial benefits by handing him a weekly low earnings report or a substitute device for presentation at an employment office, or

(ii) Notify the local employment office nearest the establishment and await and abide by the instructions of that office concerning the taking of claims.

**(3) Weekly low earnings report or substitute devices.** After the employer has given notice to individuals in his employment and/or the employment office, as required above, he shall, throughout the continuance of the spell of partial unemployment, after the termination of each pay period within such spell, issue to each affected individual a weekly low earnings report showing the actual earnings of each such individual for each week of partial unemployment occurring within such pay period or shall furnish such individual with a payroll by-product. Such weekly low earnings reports or payroll by-products shall be issued by the employer not more than thirty days after the end of the week of partial unemployment to which they pertain. The payroll by-product must show in ink or typewriting:

(a) The name and official unemployment compensation code number of the employer;

(b) The name and social security account number of the individual in employment;

(c) The beginning or ending date of such week;

(d) The amount of remuneration earned in such week;

(e) The following certification: "I certify that the above amount represents reduced earnings in a week of less than full-time work because of lack of work."

(f) A signature (actual or facsimile) by the employer to the above certification, or other positive identification of the authority supplying the evidence.



In the event the local employment office furnishes a representative at the employer's establishment for the purpose of taking the claims and obtaining from the employer verification of earnings and affirmative evidence that all available work with such employer was taken by each claimant, no such low earnings report or substitute thereof shall be required.

Utilization of the payroll by-product is permissible only in the event the pay period for partial unemployment coincides with the calendar week.

**(4) Registration and filing of claims for partial unemployment.** An individual attached to a regular job may file a claim with respect to any calendar week during the next succeeding four calendar weeks following the receipt from the employer of information as to his earnings in any such week: *Provided*, That if the commissioner finds that the failure of any individual to file a claim for partial unemployment benefits within such four weeks was due to failure on the part of the employer to comply with any of the provisions of subsection (b) and (c) above of this regulation, or to coercion or to intimidation exercised by the employer to prevent the prompt filing of such claim, or to failure by the employment security department to discharge its responsibilities promptly in connection with such partial unemployment, the commissioner shall extend the period during which such claim may be filed to a date which shall be not less than one week after the individual has received appropriate notice of his potential rights to benefits and his earnings during the period of such partial unemployment.

A partially unemployed applicant for benefits who is attached to a regular job shall not be required to register for work in any week with respect to which he is partially unemployed, and prior registration shall not be a condition precedent to the filing of a claim for benefits for partial unemployment. Registration for work, initial applications, and claims for waiting period credit and benefits may be filed by mail on forms furnished by the employment security department, and given the same effect as though filed in person at an established employment security office whenever, in the judgment of the commissioner, the personal reporting of such claimant is or becomes impracticable.

**(5) Registration and filing of claims by "Stand-by" workers.** The commissioner may waive the requirement of registration for work by a "stand-by" worker during the first four weeks of such worker's unemployment, and in such event prior registration shall not be a condition precedent to filing a claim for benefits for such four weeks. Such worker shall, however, during any calendar week for which benefits are claimed report in person, and in the next succeeding period of two calendar weeks shall make a certification with respect to the week for which benefits are claimed: *Provided*, That registration for work, initial applications, and claims for waiting period credit and benefits may be filed by mail on forms furnished by the employment security department, and given the same effect as though filed in person at an established employment security office whenever, in the judgment of the commissioner, the personal reporting of such claimant is or becomes impracticable; and *Provided*

*further*, That whenever failure to comply with this regulation is for reasons which, in the judgment of the commissioner, constitute good cause, the commissioner may make such exceptions to this regulation as he deems necessary.

Whether or not any claimant shall be determined by the commissioner to be in a "stand-by" status shall depend upon the length of the prospective period of unemployment, the availability of other suitable work, the temporary or permanent nature of the new prospective employment, the effect upon the employer and the worker of acceptance of new employment, the nature of the contract to be entered into by the worker in prospective new employment, and such other factors as the commissioner deems pertinent.

**(6) Employer records in connection with partial unemployment.** Each employer shall maintain its payroll records in such form that it will be possible from an inspection thereof by the employment security department to determine with respect to each individual in its employ who may be eligible for partial benefits: (a) Remuneration earned, by weeks, in such manner as to make possible and practical the allocating to calendar weeks of remuneration earned if the pay period does not coincide with calendar weeks; (b) Whether any week was in fact a week of less than full-time work; and (c) Time lost, if any, by each such worker, due to his unavailability for work. [Regulation 14, adopted and effective 5/15/58.]

**WAC 192-12-153 Payment of benefits—Initial allowance—Employer appeal.** A determination of allowance of benefits shall result in the prompt payment of any benefits due. The filing of an appeal by the employer shall not serve to stay the payment of benefits. [Order 2-72, § 192-12-153, filed 7/6/72; General Order 2, § 192-12-153, filed 12/9/70.]

**WAC 192-12-154 Payment of benefits by appeals tribunal—Claimant appeal.** To the extent that any appeals decision allows benefits by reversing or modifying a local office determination such benefits shall be promptly paid. The filing of a petition for the commissioner's review shall not operate to stay the effect of the appeals tribunal decision. [Order 2-72, § 192-12-154, filed 7/6/72; General Order 2, § 192-12-154, filed 12/9/70.]

**WAC 192-12-155 Payment of benefits by commissioner—Petition to court.** To the extent that any commissioner's decision allows benefits by reversing or modifying an appeal tribunal decision, such benefits shall be promptly paid. The filing of a petition for judicial review shall not operate to stay the effect of the commissioner's decision. [Order 2-72, § 192-12-155, filed 7/6/72; General Order 2, § 192-12-155, filed 12/9/70.]

**WAC 192-12-156 Overpayment of benefits—Credit to employers' account.** Benefits paid pursuant to WAC 192-12-153 through WAC 192-12-155 shall be recoverable to the extent allowable pursuant to RCW

50.20.190 in the event that the decision allowing benefits is ultimately modified or reversed. Such ultimate reversal or modification shall not affect previous benefit charges based thereon; however, benefit credits in an amount equal to the erroneous charges shall be applied to the employers' account for the calendar year in which the decision is ultimately modified or reversed. [Order 2-72, § 192-12-156, filed 7/6/72; General Order 2, § 192-12-156, filed 12/9/70.]

**WAC 192-12-157 Recovery of benefit payments.** RCW 50.20.190 provides: "An individual who is paid any amount as benefits under this title to which he is not entitled shall, unless otherwise relieved pursuant to this section, be liable for repayment of the amount overpaid. The department shall issue an overpayment assessment setting forth the reasons for and the amount of the overpayment. The amount assessed, to the extent not collected, shall be deducted from any future benefits payable to the individual.

The commissioner may waive an overpayment if he finds that said overpayment was not the result of fraud, misrepresentation, wilful nondisclosure, or fault attributable to the individual and that the recovery thereof would be against equity and good conscience \* \* \*

The commissioner accordingly prescribes:

(1) Definitions

(a) The term "fault" as used in this regulation means any degree of responsibility on the part of the person for the overpayment of benefits.

(b) The term "equity and good conscience" as used in this regulation means fairness in holding the person liable for refund of benefits overpaid in any amount without causing undue hardship.

(2) Determination of fault in the matter of overpayment.

(a) When any person is paid any amount as benefits by the department to which he is not entitled, a determination shall be made as to whether the person was without fault on his part in bringing about the overpayment and if recovery of the overpayment should be waived. "Fault" does not require fraudulent or felonious intent and to be at fault a person need not be entirely at fault. It does not matter that another party or the department is partly at fault; if the person who is paid benefits to which he is not entitled is also partly at fault, he is not without fault. A person will be deemed at fault in the matter of overpayment if

(i) he failed to furnish facts which materially affected his eligibility for benefits, when it was within the realm of his responsibility to furnish such facts; or

(ii) he made an incorrect statement which he knew or should have known would materially affect his eligibility for benefits; or

(iii) he accepted and retained a payment of benefits when he knew, or reasonably should have known, that the payment was improper or the amount paid was incorrect.

(3) Consideration of equity and good conscience when the person is without fault in the matter of overpayment.

(a) When any person is paid any amount as benefits by the department to which he is not entitled and it is

determined in accordance with this regulation that he is without fault, the department shall not hold such person liable for the amount overpaid if it is found that recovery would be against equity and good conscience. Accordingly, the following are a few but not all of the factors which shall be considered when the question of equity and good conscience applies to the matter of recovery of an overpayment:

(i) the person's financial situation, including employment status, earnings, pensions, and total indebtedness;

(ii) the person's personal situation, including age, marital and dependency status, health, and educational background as it applies to potential for re-employment;

(iii) the general economic conditions affecting the person's customary occupation. [Order 2-73, § 192-12-157, filed 11/15/73.]

**WAC 192-12-160 Withdrawals from trust fund.**

Section 62 of the act (RCW 50.16.030) provides: "Moneys shall be requisitioned from this state's account in the unemployment trust fund solely for the payment of benefits and repayment of loans from the federal government to guarantee solvency of the unemployment compensation fund in accordance with regulations prescribed by the commissioner. \* \* \*"

The commissioner accordingly prescribes: Moneys may be requisitioned from the unemployment trust fund from time to time when it shall be necessary for the payment of benefits upon requisitions signed by either the commissioner, the deputy commissioner, the supervisor of the unemployment compensation division or the treasurer of the unemployment compensation fund. Requisitions signed by any of the foregoing persons shall be deemed to be requisitions of the commissioner. [Regulation 17, filed 12/1/65, effective 1/1/66; Regulation 17, adopted 6/10/53, effective 6/20/53.]

**WAC 192-12-170 Unemployment compensation administration fund.**

Section 64 of the act (RCW 50.16.050) provides: "\* \* \* The unemployment compensation administration fund shall consist of all moneys received from the United States of America or any department or agency thereof, or from any other source, for such purpose. All moneys in this fund shall be deposited, administered, and disbursed by the treasurer of the unemployment compensation fund under rules and regulations of the commissioner and none of the provisions of section 5501 of Remington's Revised Statutes, as amended, shall be applicable to this revolving fund \* \* \*."

The commissioner accordingly prescribes: The treasurer shall deposit in, administer and disburse from the unemployment compensation administration fund in accordance with the terms of part IV (Fiscal management) of the employment security manual, United States department of labor, bureau of employment security, as it now is or as it may hereafter be amended. [Regulation 18, adopted 6/10/53, effective 6/20/53.]

**WAC 192-12-173 Federal programs—Maintenance of regulations and guidelines.** The employment security department shall maintain a compilation of the

federal law, regulations and guidelines governing the operations of federal programs administered by this agency. The compilation will be available at each local office and at the central office in Olympia. Each office shall have at least one person available to assist individuals seeking information on such programs. [Order 2-72, § 192-12-173, filed 7/6/72.]

**WAC 192-12-180 Training defined.** As used in RCW 50.20.043 the term "training" means vocational or technical training or retraining (including but not limited to field or laboratory work and remedial or related academic and technical instruction incident thereto) which is being conducted as a program designed to prepare individuals for gainful employment in recognized occupations and in new and emerging occupations, but does not include basic education or training that has for its purpose the preparation of individuals for employment in occupations generally classified as professional or which require a Baccalaureate or higher degree from institutions of higher education. [Order 2-73, § 192-12-180, filed 11/15/73.]

**WAC 192-12-182 Training—Approval by commissioner.** Conditions for approval of training by the commissioner are as follows:

(1) No vocational training course, or courses in basic educational skills as a prerequisite for such vocational training, shall be considered for approval by the commissioner or his authorized representative unless:

An application to take such training course is made in writing and filed with the commissioner at any local office of the Washington employment security department, or in the case of an individual in another state, with the local office of such state through which the individual is filing his claim for unemployment compensation against the state of Washington. Such application must be filed prior to payment.

(2) In the approval of any program of training, the commissioner shall consider, among other factors, the following:

(a) The nature of the facility and the quality of the program of instruction, and

(b) Whether such program of instruction relates to an occupation or skill for which there are, or are expected to be, reasonable employment opportunities in the state in which the individual intends to seek work, and

(c) Whether the individual has the qualifications and aptitudes to successfully complete such program of instruction; and further

(d) Whether employment opportunities for which the individual is fitted by past training and experience do not exist or have substantially diminished in the labor market due to business or economic conditions in the area, or because of conditions peculiar to the individual such as health, physical stature, criminal background, or other circumstances of a similar nature, to the extent that in the judgment of the commissioner the individual will experience an extended period of unemployment and dependence upon the unemployment compensation program. [Order 2-73, § 192-12-182, filed 11/15/73.]

**WAC 192-12-184 Training—Unemployment benefits while pursuing a course.** The commissioner prescribes the following requisites:

(1) Individuals eligible for unemployment compensation under the provisions of RCW 50.20.010 shall not be ineligible for such benefits because of enrollment and attendance in a vocational training course, or a course in basic educational skills as a prerequisite for such vocational training, that is approved by the commissioner provided that an application to take such training course therefor is made in writing and filed with the commissioner at any local office of the Washington employment security department, or in the case of an individual in another state, with the local office of such state through which the individual is filing his claim for unemployment compensation against the state of Washington.

(2) Any claimant who, during a week, fails to attend half or more of the scheduled class days of the approved training, or a course in basic educational skills as a prerequisite for such training, will not be excused from meeting the availability for work and active search for work requirements of RCW 50.20.010(3) and the provisions of RCW 50.20.080 relating to failure to apply for, or refusal to accept suitable work, unless the training facility or organization certifies that such absence will not cause the claimant to be unsuccessful in completing the course.

(3) The training facility or organization will certify to the Washington employment security department, through the claimant, his record of attendance each week, an explanation of each absence, and whether or not such absence will cause the claimant to be unsuccessful in completing the course. Such certification must be submitted to the Washington employment security department at the time of the claiming of benefits for a week.

(4) A claimant making application for unemployment compensation pursuant to the Employment Security Act and these regulations must comply with all other requirements of the Employment Security Act and commissioner's regulations. [Order 2-73, § 192-12-184, filed 11/15/73.]

**WAC 192-12-186 Training—Denial of commissioner approval or continued approval of claim for unemployment benefits while pursuing a training course.** The decision of the commissioner or his authorized representative to approve or disapprove an application of an individual or deny continued approval of an individual's claim for unemployment benefits under the provisions of the Employment Security Act and these regulations shall be in writing and shall set forth the reasons therefor. Decisions of the commissioner pursuant to these regulations shall be served upon the individual by personal delivery or by mailing to the individual's last-known address of record with the employment security department and shall be subject to appeal and review as provided under RCW 50.32.020, RCW 50.32.070, and these regulations. [Order 2-73, § 192-12-186, filed 11/15/73.]

**Chapter 192-14 WAC  
PUBLIC DISCLOSURE**

**WAC**

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**WAC 192-14-010 Purpose.** The purpose of this chapter shall be to ensure compliance by the employment security department with the provisions of chapter 42.17 RCW and in particular with RCW 42.17.250 through 42.17.320 concerning disclosure of public records. [Order 2-73, § 192-14-010, filed 11/15/73.]

**WAC 192-14-020 Definitions.** (1) "Public record" includes any writing containing information relating to the conduct of governmental or the performance of any governmental or proprietary function prepared, owned, used or retained by any state or local agency regardless of physical form or characteristics.

(2) "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation, including letters, words, pictures, sounds; or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums and other documents. [Order 2-73, § 192-14-020, filed 11/15/73.]

**WAC 192-14-030 Description of central and field organization of employment security department.** (1) The employment security department is a public service agency. The administrative office of the employment security department and its staff are located at 212 Maple Park, Olympia, Washington 98504.

(2) The employment security department is headed by a commissioner appointed by the governor. Under the commissioner is a deputy commissioner and a limited number of special staff that report directly to him. This includes an assistant attorney general assigned to the department who provides legal services in all agency matters. There are four assistant commissioners who report to the commissioner and are directly responsible for the functions of their respective divisions.

(a) The assistant commissioner (UC) is responsible for the collection of unemployment compensation taxes from covered employers; the program responsibility for payment of unemployment benefits to eligible individuals; administrative law hearings below the commissioner's level; collection of OASI for all state agencies and political subdivisions; and the formulation of policy and

operating procedures necessary to carry out the foregoing. This position also is responsible for the development and presentation of agency recommendations concerning unemployment compensation programs to the governor and the legislature. Local offices for services relating to unemployment compensation taxes are located throughout the state and are headed by a manager.

(b) The assistant commissioner (ES) is responsible for the policy and operating procedures necessary to provide a full range of manpower services including intake, assessment, job referral, job development, job placement, employee relations and follow-up. Policy and operating procedures for specific manpower programs are formulated and established, and staff support to local and area offices is provided by the division. This division also develops and presents ES agency recommendations to the governor and the legislature.

(c) The assistant commissioner (FO) through area offices for supervision and local offices for operations is responsible for the delivery of manpower employment services and unemployment insurance compensation services. Local offices for services relating to payment of unemployment benefits and manpower services are located throughout the state and each is headed by a manager.

(d) The assistant commissioner (AS) is responsible for services and functional support to enable the UI division, ES division, FO division and the office of the commissioner to carry out their duties in the most expeditious manner compatible with law. [Order 2-73, § 192-14-030, filed 11/15/73.]

**WAC 192-14-040 Operations and procedures.** (1) A staff member of a local office will take the following action with respect to public records:

(a) Identify requests to inspect or obtain copy of a public record;

(b) Assist in identifying specific public records;

(c) If the public record is one that is normally disseminated by the agency, obtain and provide a copy to the requester; otherwise make the public record available for inspection or copying;

(d) If the public record is exempt from disclosure, have requester fill out the request for public records form and then forward it to the administrative office, attention: Chief, business management, for action.

(2) On receipt of requests for a public record forwarded by the local office, the administrative office will take the following action:

(a) If the public record is one that is not exempt from disclosure, send the material requested to the local office, if available, or advise specific date it will become available;

(b) If the public record is exempt from disclosure, after coordination with assistant attorney general: (1) Prepare a statement that the record cannot be disclosed and the reason why; or (2) prepare a statement that the record may be partially disclosed and note the cost of providing copies with exempt material deleted; and (3) inform the local office of the statement so they may advise the person who has requested the information of the

statement, and assist the individual who has requested the information in further remedies;

(c) The administrative office will establish necessary control to insure prompt service for all requests. [Order 2-73, § 192-14-040, filed 11/15/73.]

**WAC 192-14-050 Public records available.** All public records of the employment security department, as defined in WAC 192-14-020 are deemed to be available for public inspection and copying pursuant to these rules, except as otherwise provided by RCW 42.17.210, 50.12.110 and WAC 192-14-100. [Order 2-73, § 192-14-050, filed 11/15/73.]

**WAC 192-14-060 Public records officer.** The employment security department public records shall be in the custody of the chief, business management, of the employment security department. The chief, business management, is located in the administrative office of the employment security department. The chief, business management, shall be responsible for the following: The implementation of the employment security department's rules and regulations regarding release of public records, coordinating the staff of the employment security department in this regard, and generally insuring compliance by the staff with the public records disclosure requirements of chapter 42.17 RCW. [Order 2-73, § 192-14-060, filed 11/15/73.]

**WAC 192-14-070 Office hours.** Public records shall be available for inspection and copying during the customary office hours of the employment security department. For the purposes of this chapter, the customary office hours shall be from 9:00 a.m. to noon and from 1:00 p.m. to 4:00 p.m., Monday through Friday, excluding legal holidays. [Order 2-73, § 192-14-070, filed 11/15/73.]

**WAC 192-14-080 Requests for public records.** In accordance with requirements of chapter 1, Laws of 1973 that agencies prevent unreasonable invasions of privacy, protect public records from damage or disorganization, and prevent excessive interference with essential functions of the agency, public records may be inspected or copied or copies of such records may be obtained, by members of the public, upon compliance with the following procedures:

(1) A request shall be made in writing upon a form prescribed by the employment security department which shall be available at its local offices and its administrative office. The form shall be presented to the chief, business management; or to any member of the employment security department's staff, if the chief, business management is not available, at the administrative office of the employment security department during customary office hours. The request shall include the following information:

- (a) The name of the person requesting the record;
- (b) The time of day and calendar date on which the request was made;
- (c) The nature of the request;

(d) If the matter requested is referenced within the current index maintained by the chief of business management, a reference to the requested record as it is described in such current index;

(e) If the requested matter is not identifiable by reference to the employment security department's current index, an appropriate description of the record requested.

(2) In all cases in which a member of the public is making a request, it shall be the obligation of the chief, business management, or staff member to whom the request is made, to assist the member of the public in appropriately identifying the public record requested. [Order 2-73, § 192-14-080, filed 11/15/73.]

**WAC 192-14-090 Copying.** No fee shall be charged for the inspection of public records. The employment security department shall charge an established amount per page of copy for providing copies of public records and for use of the employment security department copy equipment. This charge is the amount necessary to reimburse the employment security department for its actual costs incident to such copying. [Order 2-73, § 192-14-090, filed 11/15/73.]

**WAC 192-14-100 Exemptions.** (1) The employment security department reserves the right to determine that a public record requested in accordance with the procedures outlined in WAC 192-14-080 is exempt under the provisions of RCW 42.17.310, 50.12.110, and WAC 192-12-100.

(2) In addition, pursuant to RCW 42.17.260, the employment security department reserves the right to delete identifying details when it makes available or publishes any public record, in any cases when there is reason to believe that disclosure of such details would be an invasion of personal privacy protected by chapter 1, Laws of 1973. The chief, business management, will fully justify such deletion in writing.

(3) All denials of requests for public records must be accompanied by a written statement specifying the reason for the denial, including a statement of the specific exemption which authorizes withholding of the record and a brief explanation of how the exemption applies to the record withheld. [Order 2-73, § 192-14-100, filed 11/15/73.]

**WAC 192-14-110 Review of denials of public records requests.** (1) Any person who objects to the denial of a request for a public record may petition for prompt review of such decision by tendering a written request for review. The written request shall specifically refer to the written statement by the chief, business management, or other staff member which constituted or accompanied the denial.

(2) Immediately after receiving a written request for review of a decision denying a public record, the chief, business management or other staff member denying the request shall refer it to the commissioner of the employment security department. The commissioner shall immediately consider the matter and either affirm or

reverse such denial. In any case, the request shall be returned with a final decision, within two business days following the original denial.

(3) Administrative remedies shall not be considered exhausted until the employment security department has returned the petition with a decision or until the close of the second business day following denial of inspection, whichever occurs first. [Order 2-73, § 192-14-110, filed 11/15/73.]

#### **WAC 192-14-120 Protection of public records.**

When a public record is turned over for inspection or copying, a place will be provided so that adequate surveillance may be made to prevent damage, disorganization, and loss of such records. At no time shall the original record be transported from one area to another without a member of the agency staff being present. [Order 2-73, § 192-14-120, filed 11/15/73.]

**WAC 192-14-130 Records index.** (1) The employment security department has available to all persons a current index which provides identifying information as to the following records:

(a) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(b) Those statements of policy and interpretations of policy, statute and the regulations which have been adopted by the agency;

(c) Administrative staff manuals and instructions to staff that affect a member of the public;

(d) Planning policies and goals, and interim and final planning decisions;

(e) Factual staff reports and studies, factual consultant's reports and studies, scientific reports and studies, and any other factual information derived from tests, studies, reports or surveys, whether conducted by public employees or others; and

(f) Correspondence, and materials referred to therein, by and with the agency relating to any regulatory, supervisory or enforcement responsibilities of the agency, whereby the agency determines, or opines upon, or is asked to determine or opine upon, the rights of the state, the public, a subdivision of state government, or of any private party.

(2) The current index promulgated by the employment security department shall be available to all persons under the same rules and on the same conditions as are applied to public records available for inspection. [Order 2-73, § 192-14-130, filed 11/15/73.]

**WAC 192-14-140 Responsible addressee.** All communications with the employment security department including but not limited to the submission of materials pertaining to its operations and/or the administration or enforcement of chapter 1, Laws of 1973 and these rules; requests for copies of the employment security department's decisions and other matters, shall be addressed as follows: Employment Security Department, Attention: Chief, Business Management, P.O. Box 367, Olympia, Washington 98504. [Order 2-73, § 192-14-140, filed 11/15/73.]

**WAC 192-14-150 Forms.** The employment security department will provide forms for use by all persons requesting inspection and/or copying or copies of its records. [Order 2-73, § 192-14-150, filed 11/15/73.]

### **Chapter 192-16 WAC**

#### **INTERPRETATIVE REGULATIONS OF THE COMMISSIONER OF THE EMPLOYMENT SECURITY DEPARTMENT**

##### **WAC**

192-16-001	Interpretative regulations—Employer reports—Effect of omitting information—Limitation.
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192-16-003	Interpretative regulations—Effect of repeal of RCW 50.20.030—Pregnancy disqualification.
192-16-005	Interpretative regulations—Applications for initial determinations—Backdating—RCW 50.04.030.
192-16-007	Interpretative regulations—Disqualification for leaving work voluntarily—Effective date of RCW 50.20.050.
192-16-009	Interpretative regulations—Disqualification for leaving work voluntarily—Meaning of good cause—RCW 50.20.050(1) and (3).
192-16-011	Interpretative regulations—Leaving work to accept bona fide job offer—RCW 50.20.050(2)(a).
192-16-013	Interpretative regulations—Leaving work because of illness or disability of self or immediate family member—RCW 50.20.050(2)(b).
192-16-015	Interpretative regulations—Leaving work for marital or domestic reasons—RCW 50.20.050(4).
192-16-017	Interpretative regulations—Satisfying disqualifications under RCW 50.20.050(1) and (4), 50.20.060 and 50.20.080.
192-16-019	Interpretative regulations—Discharges and suspensions for misconduct—Effective date of RCW 50.20.060—Felony discharges.
192-16-021	Interpretative regulations—Suitable work factors—Effective date of RCW 50.20.100.
192-16-023	Interpretative regulations—Disqualification of students—Section 8, chapter 33, Laws of 1977 ex. sess.

**WAC 192-16-001 Interpretative regulations—Employer reports—Effect of omitting information—Limitation.** RCW 50.12.070 as amended by section 3, chapter 33, Laws of 1977 ex. sess. generally requires employers to maintain accurate employment records and file required reports. Due to the failure on the part of certain employers to accurately report the number of weeks worked on their quarterly detail reports the processing of benefit claims has been hampered. In view of the requirements of federal law that unemployment insurance claims be promptly paid the department felt it necessary to have available to it a method of establishing and computing entitlement, at least on an interim basis, in an expeditious though necessarily arbitrary manner. The amendatory section was submitted with this remedy in mind.

The section is to be applied in the computation and establishment of initial claims filed on and after the week commencing June 29, 1975. If an employer reports 0 weeks on the form it will be deemed a completed report and the entitlement will be computed on that basis. If the employer leaves the "weeks worked" box

blank, the computation called for in the act will be applied in establishing the individual's right to benefits as set forth in the initial determination issued pursuant to RCW 50.20.140.

All employers are required to report the number of hours worked by each worker beginning July 1, 1977. If an employer reports -0- hours on the quarterly wage report form, EMS 5208, it will be deemed a completed report and the entitlement will be computed on that basis. If the employer leaves the "hours worked" column blank the computation called for in the act will be applied in establishing the individual's right to benefits as set forth in the initial determination issued pursuant to RCW 50.20.140.

The mathematical computation made by the department in accordance with this section will not be subject to employer appeal; however, the subsequent submittal of accurate and complete reports may result in a redetermination by the department. Benefits paid prior to the redetermination which are based on the arbitrary computation will be charged to each employer's account as though the initial determination were accurate even though subsequent redetermination based on accurate information would result in the issuance of a determination that the claim was invalid.

The amount paid to any claimant on the basis of the initial determination issued in accordance with the arbitrary computation procedure will not be established as an overpayment in the absence of fraud, misrepresentation or nondisclosure on the part of the claimant (RCW 50.20.160(1)); however, the department will not continue to pay benefits to a claimant once a redetermination of nonentitlement, based on accurate information on a complete wage detail report, has been issued. It was not the intention of the department in submitting the legislation, nor do we believe it was the intention of the legislature in adopting the legislation, to establish an exception to the qualification criteria, RCW 50.04.030, which would allow the continued payment of unemployment insurance benefits to individuals clearly not meeting the basic qualification criteria. It would be an unsound policy to dispense public funds in the guise of a penalty against an employer who has failed to comply with the provisions of the law when in fact it is the unemployment insurance fund which suffers the detriment and only the unqualified individual who is benefited. [Order 2-77, § 192-16-001, filed 9/2/77; Order 4-75, § 192-16-001, filed 8/29/75, effective 10/6/75.]

**WAC 192-16-002 Interpretative regulations—  
Employer reports—Further defining hours worked—**

**RCW 50.12.070.** RCW 50.12.070 as amended by section 3, chapter 33, Laws of 1977 ex. sess. requires employers to report "the hours worked by each worker and such other information as the commissioner may by regulation prescribe," beginning July 1, 1977. In order to further define what hours should be included on quarterly wage reports, the commissioner accordingly prescribes as follows:

(1) Vacation Pay. The employee will be credited for the actual number of hours on leave with pay. Vacations

without pay will not count as hours worked. Cash payments in lieu of vacations will not be counted as hours worked.

(2) Sick Leave Pay. Hours will not be reported for sick pay excluded under the provisions of RCW 50.04.330(1). However, sick pay which is not excluded under the provisions of RCW 50.04.330(1) shall be reported as leave with pay and the number of hours reported accordingly.

(3) Overtime. The number of hours actually worked for which overtime pay or compensatory time is provided, will be reported without regard to the amount of compensation paid.

(4) Employees On Salary. If a salaried employee works irregular nonstandard weeks, he or she shall be reported for the actual number of hours worked. In the absence of reliable time figures, a full-time salaried employee will be reported for 40 hours worked for each week in which any of his or her duties are performed.

(5) Commissioned Employees. Employees compensated by commission will be reported for the actual number of hours worked. In the absence of reliable time figures, a full-time commissioned employee will be reported for 40 hours worked for each week in which any of his or her duties are performed.

(6) Wages In Lieu Of Notice. Employees paid wages in lieu of notice will be reported for the actual number of hours compensated thereby.

(7) Severance Pay. Since the payment is predicated on past services, no additional hours are to be reported for severance pay. Severance pay is compensation for the separation from the employment itself as distinguished from wages in lieu of notice which compensates the employee for the amount of wages or salary he or she would have earned during the specified notice period.

(8) Payments In Kind. The actual number of hours worked (or reasonable estimate thereof) for performing services which are compensated only by payment in kind shall be reported.

(9) Bonuses, Tips And Other Gratuities. If such compensation is received during the course of performing regular compensated services for which hours are reported, no additional hours shall be reported for items in these categories. However, if the sole compensation for services performed are from any of these items, hours shall be reported.

(10) Fractions Of Hours. If the employee's total number of hours for the quarter results in a fraction amount, the total figure will be rounded off to the next higher number. [Order 2-77, § 192-16-002, filed 9/2/77.]

**WAC 192-16-003 Interpretative regulations—  
Effect of repeal of RCW 50.20.030—Pregnancy disqualification.** RCW 50.20.030 has been repealed by section 18, chapter 288, Laws of 1975 1st ex. sess., effective June 29, 1975. That section imposed a disqualification from receipt of unemployment compensation benefits on any person who quit work because of pregnancy. The disqualification imposed ended with the week in which the termination of pregnancy occurred.

The department submitted a repealer of this provision for the reason that it imposed a special disqualification on a condition peculiar to women. The department believed that other sections of the law could be applied in a manner which would establish the right of entitlement to benefits without imposing the arbitrary standards in the former legislation.

The severance of one's employment due to a condition which will terminate as of the occurrence of an ascertainable future event may raise in reasonable minds a strong question as to the ability or willingness of the individual to accept and maintain suitable employment; the repeal of the statute will allow the department to respond to those exceptional situations in which the individual can establish that overall conditions would justify the department in holding that she is in fact willing and able to accept all suitable employment even though her pregnancy has not been terminated.

Effective with the week beginning June 29, 1975, and thereafter, all voluntary quits, whether due to pregnancy or otherwise, shall be adjudicated pursuant to RCW 50.20.050. Previously imposed disqualifications pursuant to RCW 50.20.030 shall be deemed lifted as to weeks commencing June 29, 1975, and thereafter. In this latter circumstance, the original disqualifying act (leaving work voluntarily due to pregnancy) shall not be readjudicated pursuant to RCW 50.20.050. Additionally, all women who left work voluntarily due to pregnancy, whether prior or subsequent to June 29, 1975, who wish to claim benefits for the week beginning June 29, 1975, and those following, shall be issued a formal determination adjudicating their eligibility for benefits pursuant to RCW 50.20.010(3). Such individual's most recent employer shall be deemed an interested party to said determination and provided appeal rights therefrom. [Order 4-75, § 192-16-003, filed 8/29/75, effective 10/6/75.]

**WAC 192-16-005 Interpretative regulations—Applications for initial determinations—Backdating—RCW 50.04.030.** (1) General Rule. A benefit year begins no earlier than the first day of the calendar week in which the individual files an application for an initial determination. However, at the convenience of the department or for good cause shown, the application for initial determination may be backdated.

(2) Definitions. As used in this section:

(a) "for the convenience of the department" is intended to embrace those situations in which the backdating of an initial application is required by circumstances which render impracticable or impossible the acceptance of an initial application during a week in which it would normally be filed. Such factors could be but are not limited to special handling prescribed by practicabilities of service, equipment breakdown, departmental employee-management disputes and lack of available personnel to accept applications.

(b) "good cause" means factors peculiar to the claimant. "Good cause" in this context means factors which would effectively prevent a reasonable person facing similar circumstances from filing an initial application. Such circumstances include but are not limited to acting or failing to act based on authoritative advice directly

from departmental personnel upon which a reasonable person would normally rely, severe weather conditions precluding safe travel to the point of filing, incapacity due to illness or injury and other factors of similar gravity.

(3) Limitations As To Good Cause.

(a) Good cause will not be found for backdating an application if an individual does not file the request for backdating during the first week in which factors constituting "good cause" for failure to file were not present.

(b) In backdating an application for good cause, the effective date will not be prior to the first week in which the conditions existed that precluded the individual from filing the application.

(c) Backdating of initial applications will not be allowed if the claimant alleges "good cause" based on erroneous advice or information from departmental personnel if he or she could be reasonably expected to question the accuracy of the information and knew or should have known of redetermination or appeal rights which he or she failed to exercise in a timely manner. [Order 2-77, § 192-16-005, filed 9/2/77.]

**WAC 192-16-007 Interpretative regulations—Disqualification for leaving work voluntarily—Effective date of RCW 50.20.050.** RCW 50.20.050, the section of the act relating to disqualification of an individual who leaves work voluntarily, has been substantially amended by section 4, chapter 33, Laws of 1977 ex. sess. Section 11, chapter 33, Laws of 1977 establishes an effective date of this section of July 3, 1977. This section, therefore, will be applied to separations occurring on and after that date. Separations occurring prior to that date will be adjudicated under and disqualification will be imposed pursuant to the statute as it exists prior to the effective date of the amendatory language regardless of the date on which an individual first files his or her claim. [Order 2-77, § 192-16-007, filed 9/2/77.]

**WAC 192-16-009 Interpretative regulations—Disqualification for leaving work voluntarily—Meaning of good cause—RCW 50.20.050(1) and (3).** (1) General Rule. Except as provided in WAC 192-16-011 and 192-16-013, in order for an individual to establish good cause within the meaning of RCW 50.20.050(1) for leaving work voluntarily it must be satisfactorily demonstrated:

(a) that he or she left work primarily because of a work connected factor(s); and

(b) that said work connected factor(s) was (were) of such a compelling nature as to cause a reasonably prudent person to leave his or her employment; and

(c) that he or she first exhausted all reasonable alternatives prior to termination: *Provided*, That the individual asserting "good cause" may establish in certain instances that pursuit of the otherwise reasonable alternatives would have been a futile act, thereby excusing the failure to exhaust such reasonable alternatives.

(2) Exceptions. Notwithstanding the provisions of subsection (1) above, neither the distance of the work from the individual's residence, if known at the time of



hire, nor any other work factor which was generally known and present at the time of hire will provide good cause for voluntarily leaving work unless the individual satisfactorily demonstrates:

(a) that the related circumstances have so changed as to amount to a substantial involuntary deterioration of the work factor; or

(b) that other related circumstances would work an unconscionable hardship on the individual if he or she were required to continue in the employment.

(3) Definitions. For purposes of subsection (2) above:

(a) "generally known" means commonly known without reference to specific cases or individuals; and

(b) "substantial involuntary deterioration" means an actual and considerable worsening of the work factor outside the control of the individual; and

(c) "unconscionable hardship" means a result that would be shockingly harsh and not resulting from the individual's voluntary action. [Order 2-77, § 192-16-009, filed 9/2/77.]

**WAC 192-16-011 Interpretative regulations—Leaving work to accept bona fide job offer—RCW 50.20.050(2)(a).** An individual who leaves work to accept a bona fide offer of employment will be found to have good cause within the meaning of RCW 50.20.050(1) only if he or she satisfactorily demonstrates that:

(1) prior to leaving work, the individual received a definite offer of employment; and

(2) the individual had a reasonable basis for believing that the offeror had authority to make the offer; and

(3) a specific starting date and the terms and conditions of the employment were mutually agreed upon; and

(4) the individual continued in his or her old employment for as long as was reasonably consistent with whatever arrangements were necessary to start working at the new job. [Order 2-77, § 192-16-011, filed 9/2/77.]

**WAC 192-16-013 Interpretative regulations—Leaving work because of illness or disability of self or immediate family member—RCW 50.20.050(2)(b).** (1) General Rule. In order for an individual to establish good cause within the meaning of RCW 50.20.050(2)(b) for leaving work voluntarily because of his or her illness or disability or the illness or disability of a member of his or her immediate family it must be satisfactorily demonstrated:

(a) that he or she left work primarily because of such illness or disability; and

(b) that such illness or disability necessitated his or her leaving work; and

(c) that he or she first exhausted all reasonable alternatives prior to termination, including but not limited to:

(i) promptly notifying the employer of the reason for the absence; and

(ii) prior to the time of separation, requesting reemployment when again able to return to work. (A request for reemployment made after the date of termination is not required to establish good cause within RCW 50.20.050(2)(b)).

(2) Exception. Notwithstanding the provisions of subsection 1(c) above the individual asserting good cause may establish in certain instances that the otherwise reasonable alternatives would have been a futile act, thereby excusing the failure to exhaust such reasonable alternatives.

(3) Definitions. As used in subsection (1) above:

(a) "disability" means the temporary or permanent loss of an individual's former capacity or capacities due to physical, mental or emotional impairment; and

(b) "immediate family" means the individual's spouse, children (including unborn children), step-children, foster children, or parents of either spouse, whether living with the individual or not, and other relatives who temporarily or permanently reside in the individual's household. [Order 2-77, § 192-16-013, filed 9/2/77.]

**WAC 192-16-015 Interpretative regulations—Leaving work for marital or domestic reasons—RCW 50.20.050(4).** (1) General Rule. An individual whose marital status or domestic responsibilities are the primary cause of his or her voluntarily leaving employment shall be disqualified from benefits pursuant to the terms of RCW 50.20.050(4). This rule applies whether or not the individual took reasonable precautions to preserve his or her employment. Domestic responsibilities mean obligations or duties relating to the individual's home circumstances or immediate family, and include the illness or disability of the claimant's "immediate family" as defined in WAC 192-16-013.

(2) Exception. Notwithstanding the provisions of subsection (1) above, an individual who leaves employment because of the health or disability of a member of his or her immediate family as defined in WAC 192-16-013 and who establishes good cause under RCW 50.20.050(2)(b), will not be subject to disqualification under RCW 50.20.050(4): *Provided*, That if such individual fails to establish good cause under RCW 50.20.050(2)(b), disqualification will be imposed under RCW 50.20.050(4) rather than under RCW 50.20.050(1). [Order 2-77, § 192-16-015, filed 9/2/77.]

**WAC 192-16-017 Interpretative regulations—Satisfying disqualifications under RCW 50.20.050(1) and (4), 50.20.060 and 50.20.080.** (1) Satisfying The Disqualifications Through Subsequent Employment. The voluntary leaving work section, RCW 50.20.050, the discharge section, RCW 50.20.060, and the refusal of work or referral to employment section, RCW 50.20.080, may be satisfied by obtaining work and earning wages of not less than the suspended weekly benefit amount in each of five weeks. The disqualification imposed may be satisfied if the claimant demonstrates:

(a) that, since the occurrence of the disqualifying act, he or she has obtained work and performed services in at least five calendar weeks; and

(b) that, in at least five of the calendar weeks, the individual earned wages of not less than his or her suspended weekly benefit amount: *Provided*, That the

wages earned need not be in covered employment; however, the department must be satisfied that the employment is not a sham designed in whole or in part to avoid the effect of the disqualification.

(2) The Alternative Method Of Satisfying The Disqualification Under RCW 50.20.050(4). The disqualification imposed by RCW 50.20.050(4) may be satisfied in the alternative by:

(a) the individual reporting in person to the department, or in the case of claimants filing in other states, to the employment office in such other state, in each of ten different calendar weeks, not necessarily consecutive; and

(b) certifying on each occasion that he or she is ready, able and willing immediately to accept any suitable work which may be offered and is actively seeking work pursuant to customary trade practices, and is utilizing such employment counseling and placement services as are available through the employment office; and

(c) having certified pursuant to subsection 2(b) above, completing a timely claim for benefits with respect to the week of certification, thereby attesting to the bona fide nature of said certification. The claim for benefits will not be compensable.

*Provided*, That in certain instances, literal compliance with the terms of the special requalification provisions in RCW 50.20.050(4) may impose an unreasonable hardship on claimants who live in remote portions of the state; therefore, the department may, when the individual's labor market does not encompass within it an employment office or itinerant point, establish procedures for special reporting which as nearly as possible approximate the exposure to work and availability checks contemplated by the express terms of the statute. [Order 2-77, § 192-16-017, filed 9/2/77.]

**WAC 192-16-019 Interpretative regulations—Discharges and suspensions for misconduct—Effective date of RCW 50.20.060—Felony discharges.** (1) Effective Date. The provisions of RCW 50.20.060 as amended by section 5, chapter 33, Laws of 1977 ex. sess. are effective as to all discharges or suspensions occurring on July 3, 1977, and thereafter.

(2) Definitions. "Felony" means every crime which may be defined as such by the applicable state or federal statutes.

(3) Felony Discharge. Any individual who has been discharged because of a felony of which he or she has been convicted or has admitted committing shall be disqualified from receiving any benefits for which base year wage credits are earned in any employment prior to the discharge. *Provided*, That,

(a) the felony must have been connected with the individual's work; and

(b) the admission must have been made to each and every element of the felony which caused the individual to be discharged; and

(c) the disqualification begins with the first day of the calendar week in which the individual is either convicted or admits to the felony regardless of the week in which the discharge occurred. [Order 2-77, § 192-16-019, filed 9/2/77.]

**WAC 192-16-021 Interpretative regulations—Suitable work factors—Effective date of RCW 50.20.100.** (1) EFFECTIVE DATE AND GENERAL COMMENTS. RCW 50.20.100 has been amended by section 6, chapter 33, Laws of 1977 ex. sess. and the provisions are effective as to all claims filed for weeks of unemployment beginning July 3, 1977, and thereafter. This amendment removes RCW 50.20.100 from consideration when adjudicating voluntary quits under RCW 50.20.050. This amendment also modifies the factors which are to be considered in determining whether work is suitable for purposes of RCW 50.20.080 and 50.20.010(3).

(2) SUITABLE WORK FACTORS.

(a) Suitable work is employment in keeping with the individual's prior work experience, education, or training. If the individual lacks such prior work experience, education, or training or such employment is not available in the general area suitable work shall include any employment which the individual would have the physical and mental ability to perform.

(b) In addition to the considerations set forth above and those set forth in RCW 50.20.110, the department shall consider the following factors in determining whether work is suitable to an individual:

(i) the degree of risk involved to the individual's health, safety, and morals;

(ii) the individual's physical fitness;

(iii) the individual's length of unemployment and prospects for securing work in the individual's customary occupation;

(iv) the distance of the available work from the individual's residence; and

(v) the existence of any state or national emergency.

(3) DEFINITION OF GENERAL AREA. "General area" means an individual's labor market area and includes the geographic area within which an individual would customarily seek work in a given occupation. [Order 2-77, § 192-16-021, filed 9/2/77.]

**WAC 192-16-023 Interpretative regulations—Disqualification of students—Section 8, chapter 33, Laws of 1977 ex. sess.** (1) Effective Date. The provisions of section 8, chapter 33, Laws of 1977 ex. sess. are effective as to all claims filed for weeks of unemployment beginning July 3, 1977, and thereafter.

(2) General Rule. An individual registered at an established school in a course of study providing scholastic instruction of twelve or more hours per week, or the equivalent thereof, is disqualified from receiving benefits or waiting period credit.

(3) The Period Of Disqualification. The disqualification mentioned in subsection (1) above begins with the first week of scholastic instruction or the week of leaving employment to return to school, whichever is the earlier. The disqualification ends Saturday midnight of the week that precedes the first full week in which the individual is no longer registered for classes, if his nonregistration will last for 60 days or more. Pre-registration for classes beginning 60 or more days in the future will not serve to extend the disqualification described in this subsection.

(4) Full-time Students To Whom Disqualification Does Not Apply. The disqualification mentioned in subsection (1) shall not apply to any individual who:

(a) is in approved training within the meaning of RCW 50.20.043; or

(b) at the time he or she applies for benefits, demonstrates by a preponderance of the evidence that his or her student status does not significantly interfere with his or her actual availability for work.

(5) Definitions. As used in this section:

(a) "school" includes primary schools, secondary schools, and institutions of higher education, as that phrase is defined in RCW 50.44.030;

(b) "scholastic instruction" includes all teaching or opportunity for learning subjects other than those of a strictly vocational nature. Subjects of a vocational nature are those embraced in the definition of "training" contained in WAC 192-12-180.

(c) "twelve or more hours per week" means twelve or more credit hours per week or the equivalent thereof;

(d) "preponderance of evidence" means evidence sufficient to persuade a reasonable person considering all the evidence, that the proposition sought to be established by that evidence is more probably true than not true.

(6) Other Sections Of Act Not Pre-empted By Student Disqualification. Students who claim benefits are subject to all of the provisions of the Employment Security Act including:

(a) RCW 50.20.050 dealing with those who leave work voluntarily without good cause; and

(b) RCW 50.20.010(3) requiring claimants to be able and available for and actively seeking work. [Order 2-77, § 192-16-023, filed 9/2/77.]

#### Chapter 192-17 WAC

#### STATE ENVIRONMENTAL POLICY ACT— INTERPRETATION

##### WAC

192-17-010 Exemption from provisions of WAC 197-10-800.

**WAC 192-17-010 Exemption from provisions of WAC 197-10-800.** The Employment Security Department of the State of Washington has reviewed its authorized activities and found all of them to be exempt from the provisions of Title 197 WAC. This statement is provided as compliance with the requirements that the Employment Security Department adopt guidelines consistent with Title 197 WAC. [Order 1-76, § 192-17-010, filed 4/12/76.]