

DATED this _____ day of _____, 19__.

(signed)

(title)

(phone number)

[Statutory Authority: RCW 28A.02.240. 85-24-056 (Order 23-85), § 180-90-160, filed 12/2/85. Statutory Authority: RCW 28A.04.120(4). 82-04-004 (Order 3-82), § 180-90-160, filed 1/21/82. Statutory Authority: RCW 28A.02.201 et seq. and 28A.04.120(4). 78-06-064 (Order 9-78), § 180-90-160, filed 5/25/78; Order 2-77, § 180-90-160, filed 3/24/77; Order 1-76, § 180-90-160, filed 2/3/76; Order 1-75, § 180-90-160, filed 2/4/75.]

Title 182 WAC

STATE EMPLOYEES INSURANCE BOARD

Chapters

- 182-08** **Procedures.**
- 182-12** **Eligible and noneligible employees.**

**Chapter 182-08 WAC
PROCEDURES**

- WAC
- 182-08-140 Repealed.
 - 182-08-150 Repealed.
 - 182-08-195 Retroactive employer and employee contributions restricted.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

- 182-08-140 New dependents' life coverage after enrollment. [Order 7228, § 182-08-140, filed 12/8/76.] Repealed by 84-09-043 (Resolution No. 2-84), filed 4/16/84. Statutory Authority: Chapter 41.05 RCW.
- 182-08-150 Reduction or cancellation of optional insurance coverages. [Order 3-77, § 182-08-150, filed 11/17/77; Order 7228, § 182-08-150, filed 12/8/76.] Repealed by 84-09-043 (Resolution No. 2-84), filed 4/16/84. Statutory Authority: Chapter 41.05 RCW.

WAC 182-08-140 Repealed. See Disposition Table at beginning of this chapter.

WAC 182-08-150 Repealed. See Disposition Table at beginning of this chapter.

WAC 182-08-195 Retroactive employer and employee contributions restricted. Withdrawals from the SEIB revolving fund will not be allowed without written approval of the trustee or his designee. Withholding of previously paid employee or employer contribution from

transmittals will be similarly restricted. [Statutory Authority: Chapter 41.05 RCW. 84-09-043 (Resolution No. 2-84), § 182-08-195, filed 4/16/84.]

**Chapter 182-12 WAC
ELIGIBLE AND NONELIGIBLE EMPLOYEES**

- WAC
- 182-12-125 Repealed.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

- 182-12-125 Employee or dependents become ineligible for state group coverage. [Statutory Authority: Chapter 41.05 RCW. 84-09-043 (Resolution No. 2-84), § 182-12-125, filed 4/16/84; Order 5646, § 182-12-125, filed 2/9/76.] Repealed by 84-14-058 (Order 5-84), filed 6/29/84. Statutory Authority: Chapter 41.05 RCW.

WAC 182-12-125 Repealed. See Disposition Table at beginning of this chapter.

Title 192 WAC

**EMPLOYMENT SECURITY
DEPARTMENT**

Chapters

- 192-09** **Practice and procedure.**
- 192-12** **Substantive rules.**
- 192-23** **Conditional payment regulations.**
- 192-24** **Claimant information.**
- 192-28** **Recovery of benefit overpayments.**
- 192-30** **Maginal labor force attachment.**

**Chapter 192-09 WAC
PRACTICE AND PROCEDURE**

- WAC
- 192-09-040 Interested parties defined.
 - 192-09-060 Appeals—Right to notice of.
 - 192-09-063 Appeals—Who may appeal—Time limitation.

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

(1) 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.

(2) In the case of an assessment for, or denial of a claim for refund of, contributions, interest, or penalties, or a denial of a redetermination of benefit charges made to an employer's account or an employer's determined or redetermined rate of contribution, the party whose contributions, experience rating, benefit charges, or rate of contribution is affected by such assessment or denial.

(3) Any other party whom the commissioner shall in writing recognize as an interested party. [Statutory Authority: RCW 50.12.010 and 50.12.040. 85-11-038 (Order 1-85), § 192-09-040, filed 5/15/85. Statutory Authority: RCW 50.12.010. 78-09-027 (Order 1-78), § 192-09-040, filed 8/14/78; Order 2602, § 192-09-040, 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:

- (1) Redetermination of an initial determination.
- (2) Determination of allowance or denial of waiting period credit or benefits.
- (3) Redetermination of allowance or denial of waiting period credit or benefits.
- (4) Notice of assessment of contributions, interest, or penalties.
- (5) Denial of a claim for refund of contributions, interest, or penalties.
- (6) Denial of a redetermination of benefit charges made to an employer's account.
- (7) Denial of a redetermination or adjustment of an employer's determined or redetermined rate of contribution.
- (8) Denial of a request for relief of benefit charges.
- (9) Denial of approval or extension of standby status.
- (10) Decisions and orders issued by the office of administrative hearings other than an order approving a withdrawal of appeal.
- (11) Decisions of commissioner. [Statutory Authority: Chapter 50.04 RCW, RCW 50.29.020, 50.12.010 and 50.12.040. 85-21-023 (Order 5-85), § 192-09-060, filed 10/10/85. Statutory Authority: RCW 50.12.010 and 50.12.040. 85-11-038 (Order 1-85), § 192-09-060, filed 5/15/85. Statutory Authority: RCW 50.12.010. 78-09-027 (Order 1-78), § 192-09-060, filed 8/14/78; Order 2602, § 192-09-060, filed 4/24/70.]

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, interest, or penalties, or denial of a redetermination of benefit charges made to an employer's account, or an employer's 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. [Statutory Authority: RCW 50.12.010 and 50.12.040. 85-11-038 (Order 1-85), § 192-09-063, filed 5/15/85; Order 2602, § 192-09-063, filed 4/24/70.]

Chapter 192-12 WAC SUBSTANTIVE RULES

WAC

192-12-018	Definitions relating to musicians—Conditions for exemption of musicians and entertainers under chapter 50.04 RCW (section 1, chapter 47, Laws of 1985).
192-12-019	Employer request for benefit charge relief.
192-12-040	Contributions by employers.
192-12-070	Cash value of certain remunerations.
192-12-072	Predecessor-successor relationship defined.
192-12-074	Predecessor-successor transfers through intermediaries.
192-12-076	Delinquent predecessor contributions.
192-12-131	Repealed.
192-12-132	Repealed.
192-12-134	Overpayments—Offsets—Right to hearing.
192-12-151	Benefit payments—Not a determination of allowance.
192-12-157	Repealed.
192-12-190	Interpretive regulation—Failure to attend job search workshop or training or retraining course when directed.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

192-12-131	Pending of benefit claims—Notice. [Statutory Authority: RCW 50.12.010 and 50.12.040. 84-02-061 (Order 1-84), § 192-12-131, filed 1/4/84.] Repealed by 84-13-050 (Order 4-84), filed 6/18/84. Statutory Authority: RCW 50.12.010 and 50.12.040.
192-12-132	Pending of benefit claims—Notice—Advice on rights. [Statutory Authority: RCW 50.12.010 and 50.12.040. 84-02-061 (Order 1-84), § 192-12-132, filed 1/4/84.] Repealed by 84-13-050 (Order 4-84), filed 6/18/84. Statutory Authority: RCW 50.12.010 and 50.12.040.
192-12-157	Recovery of benefit payments. [Order 2-73, § 192-12-157, filed 11/15/73.] Repealed by 85-21-024 (Order 6-85), filed 10/10/85. Statutory Authority: RCW 50.20.190, 50.12.010 and 50.12.040.

WAC 192-12-018 Definitions relating to musicians—Conditions for exemption of musicians and entertainers under chapter 50.04 RCW (section 1, chapter 47, Laws of 1985). (1) A purchaser of musical or entertainment services will not be deemed the employer of the musician(s) or entertainers(s) if the following conditions are met:

- (a) There is a written contract for a specific engagement or engagements, in which the dates and/or times of performance are clearly set forth; and
- (b) Such contract identifies the owner(s) or leader of the music or entertainment group, or such contract is with a sole entertainer; and
- (c) The musician or entertainer performs no other duties for the purchaser other than those musical or entertainment services specifically contracted for; and
- (d) The musician or entertainer is not regularly and continuously employed by the purchaser.

Additionally, the purchaser will not incur secondary tax liability under RCW 50.24.130 if, at the time of

performance of the services, the business, group, or individual providing the services is registered as an employer with the department.

(2) The music or entertainment business or the owner(s) or leader of a music or entertainment group, is/are deemed to be the employer of all other musicians and entertainers who perform as members of the group for unemployment insurance tax purposes when the conditions in subsection (1) are met. In such instances, the owner(s) or leader must register with the department for the purpose of determining reporting requirements.

(3) "Individuals employing musicians or entertainers on a casual basis" are not considered to be a music or entertainment business, nor are they considered to be a music or entertainment leader.

(4) Definitions as used in this section:

(a) A "music or entertainment business" is an organization whose principal business activity is music or entertainment, but does not include an organization which provides music or entertainment that is only incidental to its business activity.

(b) A "music or entertainment group" is an association whose principal business activity is music or entertainment.

(c) A "music or entertainment group leader" is an individual whose group's principal business activity is music or entertainment.

(d) "Regularly and continuously employed" means:

(i) Working for someone for a sufficient period of time that one could objectively be deemed to be an employee and not an independent venturer (the value and ownership of musical or sound equipment should be considered); or

(ii) An employment (or contractual) relationship in which the musician or group is regularly available on an "on call" basis during the span of the contract; or

(iii) A working relationship in which the individual musician(s) are hired by and under the direct control of the purchaser (or his or her agent) for an indefinite period of time.

(e) "Performs no other duties for the purchaser" means that a musician or entertainer provides no other duties under the contract outside of those in music or entertainment for which hired.

(f) "Employing on a casual basis" means:

(i) Hiring performers on an occasional, random basis to perform services that are unrelated to the purchaser's business activity; or

(ii) The services are not for the promotion of a business venture which is the purchaser's business activity. [Statutory Authority: RCW 50.12.010, 50.12.040, chapter 50.04 RCW and 1985 c 47 § 1. 85-22-045 (Order 7-85), § 192-12-018, filed 11/1/85.]

WAC 192-12-019 Employer request for benefit charge relief. RCW 50.29.020(2) provides, in part, that a contribution-paying base year employer may request relief of benefit charges which result from payment to an individual who last left his/her employment voluntarily (for reasons not attributable to the employer) or

was discharged for misconduct connected with the work. The employer request must be received within 30 days of the mailing of the notification of the claimant filing an initial claim (the initial "Notice to base year employer" EMS 166).

The commissioner accordingly prescribes:

(1) Reasons not attributable to the employer for voluntarily leaving work shall be personal reasons, not work connected. These reasons may include, but are not limited to:

(a) Employee illness or disability;

(b) Illness or death of member(s) of employee's immediate family;

(c) Employee's leaving to accept work with another employer;

(d) Incarceration of employee;

(e) Marital or domestic responsibilities of the employee;

(f) Employee's pursuit of additional education; or

(g) Personal dissatisfaction with wages or hours known at time of hire.

(2) Reasons considered to be attributable to the employer are those work related factors of such a compelling nature as to cause a reasonably prudent person to leave his or her employment. Such work related factors may include, but are not limited to:

(a) Substantial involuntary deterioration of the work factors;

(b) Work location (distance and difficulty of travel);

(c) Safety of work site, equipment/machine safety;

(d) Employee skills no longer required for job performance; or

(e) Such other work related factors as the commissioner may deem pertinent.

(3) The employer requests for benefit charging relief must be in writing and must be received or postmarked within 30 days of mailing of the notification of the initial determination (the initial "Notice to base year employer" EMS 166), except for good cause shown. Benefit charging relief is only available with respect to notices of initial determination (the initial "Notice to base year employer" EMS 166) mailed July 1, 1985, or later.

Any employer added to a monetary determination as a result of a redetermination of an initial claim, filed on July 1, 1985, or later, will be eligible for consideration of noncharging relief.

Any employer added to a monetary determination as the result of a redetermination of an initial claim filed prior to July 1, 1985, will be eligible for consideration of relief of charging if the notification of the initial determination ("Notice to base year employer" EMS 166) was mailed July 1, 1985, or later.

(4) Timeliness. If, upon receipt of the employer's written request, the department requires additional information, the employer shall provide the requested information within 10 working days from the date of mailing of the request by the department. Failure to respond within 10 working days will result in a denial of benefit charging relief for the employer unless good cause for the untimely response is shown.

(5) Burden of proof. It shall be the responsibility of the employer to provide all pertinent facts to the satisfaction of the department to allow a determination of noncharging relief or good cause for failure to respond in a timely manner.

(6) Any denial of a request for noncharging relief shall be in writing and will be the basis of appeal pursuant to RCW 50.32.050. [Statutory Authority: Chapter 50.04 RCW, RCW 50.29.020, 50.12.010 and 50.12.040. 85-21-023 (Order 5-85), § 192-12-019, filed 10/10/85.]

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

"Contributions shall accrue and become payable by each employer (except employers as described in RCW 50.44.010 who have properly elected to make payments in lieu of contributions and those employers who are required to make payments in lieu of contributions) for each calendar year in which the employer is subject to this title at the rate established pursuant to chapter 50.29 RCW.

"In each rate year, the amount of wages subject to tax for each individual shall be one hundred fifteen percent of the amount of wages subject to tax for the previous year rounded to the next lower one hundred dollars: *Provided*, That the amount of wages subject to tax in any rate year shall not exceed eighty percent of the 'average annual wage for contributions purposes' for the second preceding calendar year rounded to the next lower one hundred dollars: *Provided further*, That the amount subject to tax shall be twelve thousand dollars for rate year 1984 and ten thousand dollars for rate year 1985.

* * *

"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. [Statutory Authority: RCW 50.12.010 and 50.12.040. 85-11-038 (Order 1-85), § 192-12-040, filed 5/15/85; Order 2602, § 192-12-040, filed 4/24/70; Regulation 4, adopted 6/10/53, effective 6/20/53.]

WAC 192-12-070 Cash value of certain remunerations. RCW 50.04.320 provides:

"'Remuneration' means all compensation paid for personal services including commissions and bonuses and the cash value of all compensation paid in any medium other than cash. 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." The commissioner accordingly prescribes:

(1) Effective January 1, 1982, the value of meals and/or lodging provided for the convenience of the employer is not considered remuneration except when it comprises twenty-five percent or more of the employee's total compensation. "Convenience of the employer" means provided by the employer, on the employer's business premises, or as a condition of employment.

(2) Compensation for personal services paid in kind or in any medium other than cash shall, for all purposes under the act, except as indicated in (1) above, 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	\$75.00
Meals, per meal	\$ 2.00
Lodging, per week	\$50.00

[Statutory Authority: RCW 50.12.010 and 50.12.040. 85-11-038 (Order 1-85), § 192-12-070, filed 5/15/85. Statutory Authority: RCW 50.04.165, 50.04.320, 50.12.010 and 50.12.040. 81-23-010 (Order 4-81), § 192-12-070, filed 11/10/81. Statutory Authority: RCW 50.12.010. 78-09-027 (Order 1-78), § 192-12-070, filed 8/14/78; 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 192-12-072 Predecessor-successor relationship defined. For the purposes of Title 50 RCW, a predecessor employer is any individual or type of

organization defined as an employer under RCW 50.04-.080 that transfers, during any calendar year, either substantially all its operating assets, or the operating assets of a separate unit of its trade or business, to another employer, whether by sale, lease, gift, or any legal process.

A successor employer is any individual or type of organization defined as an employer under RCW 50.04-.080 that acquires, during any calendar year, either substantially all the operating assets of another employer, or the operating assets of a separate unit of another employer's trade or business, whether by purchase, lease, gift, or any legal process.

Operating assets are defined as those properties of a business used in the normal course of business operations to generate the operating income of that business.

In no case will a predecessor-successor relationship exist where any four consecutive calendar quarters, one of which includes the acquisition date, pass without reportable employment by either the predecessor, successor, or a combination of both. [Statutory Authority: RCW 50.12.010 and 50.12.040. 85-11-038 (Order 1-85), § 192-12-072, filed 5/15/85.]

WAC 192-12-074 Predecessor-successor transfers through intermediaries. RCW 50.04.320 and 50.29.062 describe predecessor-successor transactions. Certain franchise transactions, repossessions, or other economic activities result in the transfer of operating assets from one employer to another through an intermediary whose function is to arrange or facilitate the transfer process.

The presence of such an intermediary will not necessarily negate a predecessor-successor relationship between the original and final user of the operating assets transferred.

In such cases, the presence or absence of a predecessor-successor relationship will be considered on a case-by-case basis. In making a determination the department will consider the intent of the parties involved and the economic reality of the transactions, as opposed to the strict legal format of the multiple transfers. [Statutory Authority: RCW 50.12.010 and 50.12.040. 85-11-038 (Order 1-85), § 192-12-074, filed 5/15/85.]

WAC 192-12-076 Delinquent predecessor contributions. RCW 50.29.062 provides that under certain circumstances a successor employer, as defined in WAC 192-12-072, will take on the contribution rate of the predecessor employer. When a successor employer has been assigned the maximum contribution rate due to late payment or nonpayment of contributions by a predecessor, the successor employer shall, upon written application to the department and after payment of those delinquent contributions by the cut-off date, be assigned for the rate year following the cut-off date the contribution rate the predecessor would have transferred to the successor had those contributions been paid in a timely manner. The successor will then retain this rate

until eligible under experience rate statutes for a different rate. [Statutory Authority: RCW 50.12.010 and 50.12.040. 85-11-038 (Order 1-85), § 192-12-076, filed 5/15/85.]

WAC 192-12-131 Repealed. See Disposition Table at beginning of this chapter.

WAC 192-12-132 Repealed. See Disposition Table at beginning of this chapter.

WAC 192-12-134 Overpayments--Offsets--Right to hearing. RCW 50.20.190 provides that uncollected overpayments may be deducted from, or offset by, any future benefits payable to the claimant. The commissioner prescribes that no offset action shall be taken until the claimant has been provided an opportunity for hearing on the overpayment issue. *Provided, However,* that if both the claimant and the department agree as to the circumstances and amount of the overpayment, it may be offset by currently claimed benefits in the absence of an overpayment assessment. In such instances, the department shall ensure that claimants are advised in writing of the right to a formal overpayment assessment, the possibility of waiver and associated appeal rights. [Statutory Authority: RCW 50.12.010 and 50.12.040. 84-02-061 (Order 1-84), § 192-12-134, filed 1/4/84.]

WAC 192-12-151 Benefit payments--Not a determination of allowance. Benefit payments which are identified as "conditional payments" in the message portion of the mailer will not be deemed determinations of allowance under RCW 50.20.160(3). [Statutory Authority: RCW 50.12.010 and 50.12.040. 84-13-050 (Order 4-84), § 192-12-151, filed 6/18/84.]

WAC 192-12-157 Repealed. See Disposition Table at beginning of this chapter.

WAC 192-12-190 Interpretive regulation--Failure to attend job search workshop or training or retraining course when directed. RCW 50.20.044 provides that: "If an otherwise eligible individual fails without good cause, as determined by the commissioner under rules prescribed by the commissioner, to attend a job search workshop or a training or retraining course when directed by the department and such workshop or course is available at public expense, such individual shall not be eligible for benefits with respect to any week in which such failure occurred."

If the commissioner finds that a claimant's chance to become reemployed will be enhanced by enrollment in a job search workshop, training or retraining course, the following general rules shall apply:

(1) The department shall not direct a claimant to attend a job search workshop, training or retraining course, if

(a) The individual has a verifiable bona fide job offer beginning within two weeks, or

(b) The workshop or training is given at a location outside the individual's labor market, or

(c) Cost of child care, transportation, or other training related to expense would substantially exceed the costs of conducting an active work search and which would result in an unreasonable hardship on the individual, or

(d) Attendance at the workshop or course would work an unreasonable hardship on the individual, or

(e) The individual is a member in good standing of a full referral union, unless such individual is also being required to begin an independent search for work or has been identified as a dislocated worker as defined in RCW 50.04.075.

(2) Directives to attend training or retraining courses will be subject to periodic review of appropriateness of attendance in courses exceeding three weeks duration.

(3) An individual who, having been directed and who fails, without good cause, to attend during a week a substantial portion of the training course or workshop will be disqualified under RCW 50.20.044 for the entire week. Good cause shall include illness or disability of the claimant or the claimant's immediate family, or claimant's presence at a job interview scheduled with an employer. Reasons for absence shall be subject to verification.

(4) An individual attending a job search workshop shall not be disqualified as the result of such attendance for failure to be available for work or to actively seek work under the provisions of:

- (a) RCW 50.20.010(3),
- (b) RCW 50.20.015 (2)(a)(i), or
- (c) RCW 50.22.020(1).

(5) An individual attending a training or retraining course resulting from a directive under the provisions of RCW 50.20.044 shall not be disqualified as the result of such attendance for failure to seek work or failure to apply for or to accept work under the provisions of:

- (a) RCW 50.20.010(3),
- (b) RCW 50.20.080,
- (c) RCW 50.22.020 (1)(a),
- (d) RCW 50.22.020 (1)(b),
- (e) RCW 50.20.015 (2)(a)(i),
- (f) RCW 50.20.015 (2)(a)(ii).

(6) Definitions. For purposes of this regulation:

(a) "Available at public expense" means a job search workshop, training or retraining course that is offered at no expense to the individual by:

- (i) The employment security department, or
- (ii) Any other governmental or publicly funded organization, or
- (iii) Any organization offering a job search workshop or training or retraining program funded privately, but open to the general public, or

(iv) Any educational institution, if expenses are paid by the institution, by a grant to the institution, or a grant to the individual for training expenses.

(b) "Unreasonable hardship" means a result, not due to the individual's voluntary action, that would cause a reasonable person to be unable to attend. [Statutory Authority: RCW 50.20.044. 84-24-061 (Order 6-84), § 192-12-190, filed 12/5/84.]

Chapter 192-23 WAC

CONDITIONAL PAYMENT REGULATIONS

WAC	
192-23-001	Failure to respond to request for information results in a presumption of disqualifying information.
192-23-002	Failure to respond defined.
192-23-011	Failure to provide details of employment.
192-23-012	Failure to provide details on holiday and/or vacation pay.
192-23-013	Failure to report in person.
192-23-014	Failure to establish ability to work.
192-23-015	Failure to establish active search for work.
192-23-016	Failure to meet work search requirements.
192-23-017	Failure to respond to a request for information regarding late filing of claims.
192-23-051	Failure to provide details on separation from employment.
192-23-052	Failure to respond to a request for information regarding voluntary quit.
192-23-061	Failure to respond to a request for information regarding a discharge from work.
192-23-081	Failure to provide details on a refusal of an offer of work.
192-23-082	Failure to respond to a request for information regarding failure to apply for work.
192-23-091	Failure to respond to a request for information regarding labor dispute.
192-23-096	Failure to provide information regarding attendance at school.
192-23-113	Failure to respond to a request to provide information regarding athletic employment.
192-23-301	Failure to respond to a request for information regarding reasonable assurance of return to work.
192-23-320	Failure to respond to a request for documentation of a systematic and sustained work search.
192-23-350	Failure to respond to a request for pension information.
192-23-800	Claimant certification of ineligibility.
192-23-810	Claimant certification of return to full-time work.
192-23-900	Claimant liable for repayment of overpayments caused by conditional payment.

WAC 192-23-001 Failure to respond to request for information results in a presumption of disqualifying information. If a claimant provides potentially disqualifying information or fails to provide necessary information and then fails to respond to a request for specific information, the failure to respond will result in a presumption of disqualifying information and the issuance of a formal determination of disqualification. The presumption of disqualifying information is rebuttable. RCW 50.20.160 provides the department the authority to issue redeterminations. If a claimant successfully rebuts the presumption of disqualifying information, provides information sufficient to establish eligibility, and a redetermination is permitted by RCW 50.20.160, a redetermination will be issued allowing benefits. [Statutory Authority: RCW 50.12.010 and 50.12.040. 84-13-050 (Order 4-84), § 192-23-001, filed 6/18/84.]

WAC 192-23-002 Failure to respond defined. An individual will be deemed to have failed to respond to a request for information if the claimant has not reported in person, if so directed, or responded in writing by the response date indicated in the request for information, providing all the information requested.

If the request for information requires an in-person response and the individual responds in writing, the individual will be deemed to have failed to respond unless the written response provides specific information that will establish good cause for a failure to respond in person. [Statutory Authority: RCW 50.12.010 and 50.12.040. 84-13-050 (Order 4-84), § 192-23-002, filed 6/18/84.]

WAC 192-23-011 Failure to provide details of employment. (1) If a claimant reports that he or she had work or earnings for one or more weeks or fails to indicate whether he or she had work or earnings and fails to respond to a request for subsequent information with respect to the work and earnings, the claimant will be presumed to be not unemployed as defined in RCW 50.04.310 and therefore not eligible for benefits pursuant to RCW 50.20.010.

(2) The denial of benefits authorized by this section is a denial for a definite period of time, being the week or weeks for which work and earnings information is incomplete. [Statutory Authority: RCW 50.12.010 and 50.12.040. 84-13-050 (Order 4-84), § 192-23-011, filed 6/18/84.]

WAC 192-23-012 Failure to provide details on holiday and/or vacation pay. (1) If a claimant certifies that he or she has received holiday and/or vacation pay, or fails to certify whether he or she has received holiday or vacation pay and fails to respond to provide details of the holiday and/or vacation pay, the individual will be presumed to be not unemployed as defined in RCW 50.04.310 and subject to denial pursuant to RCW 50.20.010.

(2) The denial of benefits authorized by this section is a denial for a definite period of time, being the week or weeks for which vacation and/or holiday pay information is incomplete. [Statutory Authority: RCW 50.12.010 and 50.12.040. 84-13-050 (Order 4-84), § 192-23-012, filed 6/18/84.]

WAC 192-23-013 Failure to report in person. (1) If a claimant fails to report in person when directed and fails to respond to provide information to explain why he or she did not report in person, the claimant will be presumed to have failed to report in person without good cause and be subject to denial pursuant to RCW 50.20.010(1).

(2) The denial of benefits authorized by this section is a denial for a definite period of time, being the week or weeks in which the claimant failed to report as directed. [Statutory Authority: RCW 50.12.010 and 50.12.040. 84-13-050 (Order 4-84), § 192-23-013, filed 6/18/84.]

WAC 192-23-014 Failure to establish ability to work. (1) If a claimant certifies that he or she was not able to work or not available for work in any week or fails to certify whether he or she was able to work or was available for work, and fails to respond to provide details relating to his or her ability and or availability for work, the claimant will be presumed to be not able or

available for work and subject to denial of benefits pursuant to RCW 50.20.010(3).

(2) The denial of benefits authorized by this section is a denial for a definite period of time, being the week or weeks for which information on the claimant's ability to work or availability for work is incomplete. [Statutory Authority: RCW 50.12.010 and 50.12.040. 84-13-050 (Order 4-84), § 192-23-014, filed 6/18/84.]

WAC 192-23-015 Failure to establish active search for work. (1) If a claimant certifies that he or she was not actively seeking work, fails to certify whether he or she made an active search for work, and/or fails to provide complete work search details and other information as directed and fails to respond to provide details relating to work search activity, the individual will be presumed to be not actively seeking work and will be subject to denial pursuant to RCW 50.20.010(3).

(2) For the purpose of this subsection complete work search details include:

- (a) Names of employers contacted,
- (b) Date of each employer contact,
- (c) Employer location,
- (d) Type of work sought, and
- (e) Methods of contact.

(3) The denial of benefits authorized by this section is a denial for a definite period of time, being the week or weeks for which work search information is incomplete. [Statutory Authority: RCW 50.12.010 and 50.12.040. 84-13-050 (Order 4-84), § 192-23-015, filed 6/18/84.]

WAC 192-23-016 Failure to meet work search requirements. (1) If a claimant has been directed to meet specific work search requirements, fails to report a work search that meets those requirements, and fails to respond to a request to provide additional work search information or responds with information that does not meet the specific requirements, the individual will be presumed to not be actively seeking work as directed and subject to denial pursuant to RCW 50.20.010(3).

(2) The denial of benefits authorized by this section is a denial for a definite period of time, being the week or weeks for which work search information does not meet specific work search requirements. [Statutory Authority: RCW 50.12.010 and 50.12.040. 84-13-050 (Order 4-84), § 192-23-016, filed 6/18/84.]

WAC 192-23-017 Failure to respond to a request for information regarding late filing of claims. (1) If a claimant files a claim late as defined in WAC 192-12-141 and fails to respond to a request for an explanation of why the claim was filed late, it shall be presumed that the claim has not been filed as required and the individual will be subject to denial pursuant to RCW 50.20.010(2) and WAC 192-12-141.

(2) The denial of benefits authorized by this section is a denial for a definite period of time, being the week or weeks which were filed late. [Statutory Authority: RCW 50.12.010 and 50.12.040. 84-13-050 (Order 4-84), § 192-23-017, filed 6/18/84.]

WAC 192-23-051 Failure to provide details on separation from employment. If a claimant reports no work or earnings in a week following a week during which work and earnings were reported or in which he or she did not certify whether there were work and earnings or submits a claim after a break in reporting without reporting in person, does not provide complete employer and separation information, and does not respond to a request to supply complete employer and separation information, the individual will be presumed to have voluntarily left work without good cause and be subject to denial pursuant to RCW 50.20.050.

(1) A separation from employment occurs whenever the employer-employee relationship is interrupted or ended. For the purpose of this section a separation from employment occurs whenever:

(a) An employee is not scheduled to work for a period of one week or more.

(b) A claimant has a week with no earnings following a week in which the claimant had earnings.

(2) For the purpose of this section, complete employer and separation information consists of the following items:

(a) Name of employer,

(b) Complete address of employer,

(c) Last day worked,

(d) Reason for separation from employment,

(e) Information on hours worked and earnings if not previously reported.

(3) A "break in reporting" is any period of one or more weeks for which no continued claim forms are submitted.

(4) The denial of this section is indefinite in nature and will be applied until the claimant meets the requalification provisions of RCW 50.20.050. [Statutory Authority: RCW 50.12.010 and 50.12.040. 84-13-050 (Order 4-84), § 192-23-051, filed 6/18/84.]

WAC 192-23-052 Failure to respond to a request for information regarding voluntary quit. (1) If a claimant fails to respond to a notice to provide detailed information with respect to voluntarily quitting work, the claimant shall be presumed to have voluntarily left work without good cause and denied benefits pursuant to RCW 50.20.050.

(2) The denial of this section is indefinite in nature and will be applied until the claimant meets the requalification provisions of RCW 50.20.050. [Statutory Authority: RCW 50.12.010 and 50.12.040. 84-13-050 (Order 4-84), § 192-23-052, filed 6/18/84.]

WAC 192-23-061 Failure to respond to a request for information regarding a discharge from work. (1) If a claimant fails to respond to a request for information regarding a discharge from work and has provided insufficient information to identify or contact the employer, the claimant may be presumed to be discharged for misconduct connected with the work and denied benefits pursuant to RCW 50.20.060. If the claimant has supplied the agency with sufficient information to contact the employer, the claimant may not be denied

benefits pursuant to RCW 50.20.060 unless the employer has established by a preponderance of evidence that the claimant has been discharged for misconduct connected with the work.

(2) The denial of this section is indefinite in nature and will be applied until the claimant meets the requalification provisions of RCW 50.20.060. [Statutory Authority: RCW 50.12.010 and 50.12.040. 84-13-050 (Order 4-84), § 192-23-061, filed 6/18/84.]

WAC 192-23-081 Failure to provide details on a refusal of an offer of work. (1) If a claimant certifies that he or she refused an offer of work or fails to certify whether he or she refused an offer of work, and fails to respond to a notice to report or request to provide details relating to refusing an offer of work, the individual will be presumed to have refused an offer of available, suitable work without good cause and will be subject to denial of benefits pursuant to RCW 50.20.080.

(2) The denial of benefits under this section is indefinite in nature and will be applied until the claimant meets the requalification provisions of RCW 50.20.080. The beginning date of the denial will be the first day of week in which the claimant certified that he or she refused an offer of work or failed to indicate whether he or she refused an offer of work. [Statutory Authority: RCW 50.12.010 and 50.12.040. 84-13-050 (Order 4-84), § 192-23-081, filed 6/18/84.]

WAC 192-23-082 Failure to respond to a request for information regarding failure to apply for work. If the agency has directed a claimant to apply for work, the agency is advised that the claimant failed to apply as directed, and the claimant fails to respond to a request for information regarding the failure to apply as directed, the claimant shall be deemed to have failed to apply for available, suitable work without good cause and shall be subject to denial pursuant to RCW 50.20.080.

(2) The denial of benefits under this section is indefinite in nature and will be applied until the claimant meets the requalification provisions of RCW 50.20.080. The beginning date of the denial will be the date the claimant was directed to apply for work. [Statutory Authority: RCW 50.12.010 and 50.12.040. 84-13-050 (Order 4-84), § 192-23-082, filed 6/18/84.]

WAC 192-23-091 Failure to respond to a request for information regarding labor dispute. (1) If an individual fails to respond to a request for information regarding a labor dispute, the individual will be presumed to be unemployed due to the labor dispute and directly interested in and/or participating in the dispute.

(2) The presumption that the claimant is unemployed due to the labor dispute and directly interested in and/or participating in the dispute shall continue until the claimant provides information otherwise.

(3) The employer must establish that a stoppage of work caused by a labor dispute has resulted in the claimant being unemployed before the claimant may be denied benefits pursuant to RCW 50.20.090.

(4) The denial of benefits under this section is indefinite in nature and will continue as long as the employer can establish that there is a stoppage of work caused by a labor dispute. [Statutory Authority: RCW 50.12.010 and 50.12.040. 84-13-050 (Order 4-84), § 192-23-091, filed 6/18/84.]

WAC 192-23-096 Failure to provide information regarding attendance at school. (1) If claimant or another party notifies the agency that the claimant is in school and the claimant fails to respond to a request for information regarding school attendance, the claimant shall be presumed to be registered for academic instruction of twelve or more hours and to have a limited attachment to the labor market, and to be not available for work, and shall be subject to denial of benefits pursuant to RCW 50.20.095 and 50.20.010(3).

(2) The denial of benefits under this section is indefinite in nature and continues until the individual reestablishes eligibility pursuant to RCW 50.20.095 and 50.20.010(3). [Statutory Authority: RCW 50.12.010 and 50.12.040. 84-13-050 (Order 4-84), § 192-23-096, filed 6/18/84.]

WAC 192-23-113 Failure to respond to a request to provide information regarding athletic employment. (1) If a claimant bases his or her eligibility for benefits on employment as a sport or athletic event participant and refuses to respond to a request for information regarding participation in past and coming seasons, the claimant shall be presumed to have a reasonable assurance of performing such services in an upcoming season and thereby be subject to denial of benefits pursuant to RCW 50.20.113.

(2) The denial in this section is definite in nature and applies to the entire period between seasons. [Statutory Authority: RCW 50.12.010 and 50.12.040. 84-13-050 (Order 4-84), § 192-23-113, filed 6/18/84.]

WAC 192-23-301 Failure to respond to a request for information regarding reasonable assurance of return to work. (1) In the case of a claimant whose benefits are based on services for an educational institution, and whose employer has provided information that the claimant has reasonable assurance of returning to employment during the following term, academic year or period following holiday or vacation, failure of the claimant to respond to a request for information concerning such assurance will result in a denial pursuant to the applicable section of RCW 50.44.050.

(2) The denial of benefits under this section is definite in nature, applying to the period between terms, between academic years, or the appropriate vacation and/or holiday period. [Statutory Authority: RCW 50.12.010 and 50.12.040. 84-13-050 (Order 4-84), § 192-23-301, filed 6/18/84.]

WAC 192-23-320 Failure to respond to a request for documentation of a systematic and sustained work

search. (1) If a claimant is receiving shareable or extended benefits and fails to report a systematic and sustained work search and fails to respond to a request to provide work search information, the claimant shall be presumed to have failed to actively engage in seeking work and be subject to denial of benefits pursuant to RCW 50.22.020 (1) and (2).

(2) The denial of benefits under this section is indefinite in nature and shall continue until the requalifying provisions of RCW 50.22.020(2) are met. [Statutory Authority: RCW 50.12.010 and 50.12.040. 84-13-050 (Order 4-84), § 192-23-320, filed 6/18/84.]

WAC 192-23-350 Failure to respond to a request for pension information. (1) If a claimant certifies that he or she has applied for a retirement pension or that his or her retirement pension has changed since his or her last claim or the claimant has failed to indicate whether he or she has applied for a pension or his or her pension changed, and fails to respond to a request for pension information, or responds with inadequate pension information, the individual will be presumed to be receiving a pension in an amount greater than his or her weekly benefit amount and contributed to solely by a base year employer and be subject to denial of benefits pursuant to RCW 50.04.323.

(2) The denial of benefits under this section is indefinite and will continue until the claimant establishes that he or she is no longer subject to disqualification pursuant to RCW 50.04.323. [Statutory Authority: RCW 50.12.010 and 50.12.040. 84-13-050 (Order 4-84), § 192-23-350, filed 6/18/84.]

WAC 192-23-800 Claimant certification of ineligibility. (1) If a claimant submits a claim form certifying that he or she was not available for work and not seeking work and providing additional information which supports such certification and which includes an unconditional statement of ineligibility, the submission of the form does not rise to the level of a claim for benefits and the claimant may be denied benefits pursuant to RCW 50.20.010(2) without requiring additional information or interview.

(2) The denial under this section is definite in nature and applies only to the week or weeks for which the claimant specifically indicates ineligibility. [Statutory Authority: RCW 50.12.010 and 50.12.040. 84-13-050 (Order 4-84), § 192-23-800, filed 6/18/84.]

WAC 192-23-810 Claimant certification of return to full-time work. (1) If a claimant certifies that he or she has returned to full-time work and reports hours worked consistent with a return to full-time work, but fails to provide specific earnings information, the certification of return to full-time work and hours worked shall be sufficient to determine that the individual is no longer an unemployed individual as defined in RCW 50.04.310 and subject to denial pursuant to RCW 50.20.010 without requiring additional information or interview.

(2) The denial under this section is definite in nature and applies only to the weeks claimed at the time of the certification of return to full-time work. [Statutory Authority: RCW 50.12.010 and 50.12.040. 84-13-050 (Order 4-84), § 192-23-810, filed 6/18/84.]

WAC 192-23-900 Claimant liable for repayment of overpayments caused by conditional payment. (1) If an overpayment of benefits results from a conditional payment and subsequent denial of benefits, the claimant is not eligible for waiver of that overpayment pursuant to RCW 50.20.190.

(2) A claimant who submits a claim form that fails to clearly establish eligibility and which results in a conditional payment is not without fault with respect to any overpayment subsequently established and therefore not eligible for the waiver provisions of RCW 50.20.190. [Statutory Authority: RCW 50.12.010 and 50.12.040. 84-13-050 (Order 4-84), § 192-23-900, filed 6/18/84.]

Chapter 192-24 WAC CLAIMANT INFORMATION

WAC

192-24-001	Information for claimants.
192-24-010	Claimant information booklet.
192-24-020	Presentation of benefit rights.
192-24-030	Claimant directive.

WAC 192-24-001 Information for claimants. (1) The employment security department will provide claimants with information necessary for filing claims for benefits.

(2) The department will provide assistance at its job service centers or in writing to any person needing assistance in filing claims.

(3) A person given written information by the department will be responsible for acting in accord with that information for the duration of the claim and will be presumed to understand the information unless the individual asks for help in understanding. [Statutory Authority: RCW 50.12.010 and 50.12.040. 84-13-050 (Order 4-84), § 192-24-001, filed 6/18/84.]

WAC 192-24-010 Claimant information booklet.

(1) The department will publish an *Information for Claimants* booklet, form number EMS 8139 to provide basic information on the law, rules and procedures related to claims for unemployment insurance benefits. Single copies of the booklet will be available to the public at no charge.

(2) Each person filing a new claim for benefits will be given a copy of the most recent revision of the *Information for Claimants* booklet, form number EMS 8139.

(3) Each person given a copy of the information booklet will be responsible for filing claims in accordance with the instructions in the booklet.

(4) A replacement booklet will be given to any person who requests one.

(5) Each person given a booklet will be responsible for reporting and filing claims according to the information in the booklet for the duration of the claim unless other specific information is given to the person in writing.

(6) In its job service centers, the department will assist any person who may have difficulty understanding the booklet.

(7) If a person fails to ask for help in understanding the booklet, the person will be presumed to understand the contents of the booklet and held responsible for any failure to act as directed by the booklet. [Statutory Authority: RCW 50.12.010 and 50.12.040. 84-13-050 (Order 4-84), § 192-24-010, filed 6/18/84.]

WAC 192-24-020 Presentation of benefit rights. (1) The department will give each person filing a claim for benefits a presentation of benefit rights.

(2) If there is a change in eligibility requirements or if a person appears to need assistance, the department may require an individual to attend a presentation of benefit rights.

(3) Any person wishing to attend a presentation of benefit rights for general information or review may do so at a time convenient to the department.

(4) A person filing claims for benefits will be responsible for filing claims and providing information as directed in the presentation of benefit rights unless other written instructions are given after the presentation of benefit rights.

(5) If there is a conflict between written and spoken information given to a person, the written information will be held to apply. [Statutory Authority: RCW 50.12.010 and 50.12.040. 84-13-050 (Order 4-84), § 192-24-020, filed 6/18/84.]

WAC 192-24-030 Claimant directive. RCW 50.20.010(3) provides that to be eligible for benefits, an individual must be actively seeking work pursuant to customary trade practices and through other methods when so directed by the commissioner or his agents.

(1) A "claimant directive" is a notice to a claimant advising him or her that specific methods of work search are required in order to meet the actively seeking work requirements.

(2) No claimant directive will be effective until a written copy of the directive has been received by the claimant.

(3) A claimant directive may be issued to advise a claimant of any requirement related to the work search including the method of reporting of work search required.

(4) An individual given a claimant directive will be required to abide by the directive until it is replaced by a new written directive.

(5) A directive shall remain in effect until a claimant establishes a new valid benefit year or until a new written directive is given. [Statutory Authority: RCW 50.12.010 and 50.12.040. 84-13-050 (Order 4-84), § 192-24-030, filed 6/18/84.]

Chapter 192-28 WAC
RECOVERY OF BENEFIT OVERPAYMENTS

WAC	
192-28-100	Recovery of benefit overpayment—General provisions.
192-28-105	Recovery of benefit overpayment—Notification to individual.
192-28-110	Recovery of benefit overpayment—Fault provisions.
192-28-115	Recovery of benefit overpayment—Equity and good conscience provisions.
192-28-120	Recovery of benefit overpayment—By repayment or offset against future benefits.
192-28-125	Recovery of benefit overpayment—Notification of right to appeal.

WAC 192-28-100 Recovery of benefit overpayment—General provisions. The purpose of this chapter is to interpret and implement the provisions of RCW 50.20.190 concerning the recovery of benefit overpayments. RCW 50.20.190 provides: "An individual who is paid any amount as benefits under this title to which he or she 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, may 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: . . ." [Statutory Authority: RCW 50.20.190, 50.12.010 and 50.12.040. 85-21-024 (Order 6-85), § 192-28-100, filed 10/10/85.]

WAC 192-28-105 Recovery of benefit overpayment—Notification to individual. (1) When the department has information which causes it to believe that an individual has been paid more benefits than he or she is entitled to receive, it will provide that individual with a written notice that a potential overpayment exists. This notice shall contain the following:

(a) The reasons for the department's belief that the individual has been overpaid benefits.

(b) The amount of the overpayment.

(c) The fact that the department will collect overpayments in accordance with WAC 192-28-120.

(d) The fact that final overpayment assessments constitute legally enforceable debts which individuals are liable to repay whether or not they are claiming or receiving unemployment benefits. These debts can be used to obtain warrants which could result in liens, garnishment of salaries, and possible sale of real and personal properties.

(e) An explanation that if an individual is found to be not at fault, he or she has the right to request a waiver of the overpayment and that waiver means the individual would not have to repay the overpayment because it would be against the principles of equity and good conscience.

(f) A statement that an individual has 10 days to submit information to the local job service center regarding or disputing the existence of an overpayment and whether or not he or she was at fault. Failure to do so will result in the department making a decision, based on available information, regarding the existence of the overpayment and the individual's eligibility for waiver. [Statutory Authority: RCW 50.20.190, 50.12.010 and 50.12.040. 85-21-024 (Order 6-85), § 192-28-105, filed 10/10/85.]

WAC 192-28-110 Recovery of benefit overpayment—Fault provisions. (1) In each instance where an overpayment occurs, the department will make a finding of fault or nonfault based on information provided by the individual and/or by the employer and from information contained in its records. After reviewing all such information, the individual will be considered to be at fault when the overpayment is:

(a) The result of fraud, misrepresentation, wilful nondisclosure; or

(b) The result of a disqualification for a felony or gross misdemeanor pursuant to the provisions of RCW 50.20.060(2), or if all of the following three elements are established:

(i) The individual was paid benefits in an amount greater than he or she was entitled to receive and he or she accepted and retained those benefits; and

(ii) The payment of these benefits was based on incorrect information or a failure to furnish information which the individual should have provided as outlined in the EMS 8139 - *Information for Claimant Booklet, The Presentation of Benefit Rights*, claimant directives and other reasonable written communications issued by the department; or information which the individual caused another to fail to disclose; and

(iii) The individual had sufficient notice that the information should have been reported.

(2) In accordance with WAC 192-23-900, an individual who is overpaid as the result of a conditional payment is liable for repayment.

(3) The individual will be considered to be without fault in situations where he or she provided the department with all material information prior to the issuance of an applicable benefit eligibility decision and the overpayment is:

(a) The result of agency error or omission, employer error or omission; or

(b) The result of the reversal of a lower level decision by the office of administrative hearings, the commissioner or a court; or

(c) Not a payment that the individual should have known was improper. Examples of nonfault situations where an individual would not reasonably have known that an overpayment of benefits had been made would include, but not be limited to, overpayments resulting from: Back pay awards, receipt of retroactive pensions, claims filed improperly against the state of Washington instead of against another state, or the receipt of extended benefits when the individual was entitled to regular benefits in this or another state.

(4) In determining whether or not an individual is at fault, the department shall also consider education, mental abilities, emotional state and other elements of the individual's personal situation which affect his or her knowledge and ability to comply with reporting all material information that is relevant to benefit eligibility. This includes information contained in the EMS 8139 – *Information for Claimant Booklet, The Presentation of Benefit Rights*, claimant directives and other reasonable written communications issued by the department. [Statutory Authority: RCW 50.20.190, 50.12.010 and 50.12.040. 85-21-024 (Order 6-85), § 192-28-110, filed 10/10/85.]

WAC 192-28-115 Recovery of benefit overpayment—Equity and good conscience provisions. (1) The department will grant waiver of an overpayment when it is found that the individual was without fault in the overpayment and when it is determined that to require repayment would be against equity and good conscience. It will be against equity and good conscience to deny waiver in situations where repayment of the overpayment would deprive the individual of income required for ordinary and necessary living expenses unless there are unusual circumstances which would militate against waiver.

(2) The individual will be required to provide financial information for the determination of waiver of the overpayment. Failure on the part of the individual to provide such information within 10 days from the request date will result in a denial of waiver. All such information is subject to verification by the department and, upon request, will be provided to interested employers as defined in WAC 192-28-125. Any overpayment amount waived which is later determined to be based on fraud, malfeasance or misrepresentation shall be restored to the overpayment balance.

(3) The financial information requested shall include:

(a) An account of the individual's income and to the extent available to the individual, other financially contributing members of the household's income, for the month preceding, the current month and the month following the date that the overpayment is assessed.

(b) An account of the individual's current and readily available liquid assets. Liquid assets may include, but are not limited to, checking and savings account balances, stocks, bonds and cash on hand.

(c) An account of the individual's expenses for the month preceding, the current month and the month following the date that the overpayment is assessed.

(4) If average monthly expenses equal or exceed average monthly income and there are no substantial liquid assets available, waiver of the overpayment will be considered. If average monthly income exceeds average monthly expenses and unemployment insurance is considered as projected income in this calculation, either in the current or the next month, then the department will recalculate average monthly income based on potential benefits that would be paid considering the 50% offset

provisions contained in WAC 192-28-120. If based on this recalculation, average monthly expenses exceed average monthly income, waiver of the overpayment will be considered. The presence of unusual circumstances may justify waiver on other than a financial basis when not to waive would be unconscionable.

(5) In cases where an individual has been denied waiver but at a later date there is a change in his or her financial situation, the individual may request the consideration of an offer in compromise pursuant to the provisions of RCW 50.24.020. Individuals who are found to be at fault, with the exception of those denied pursuant to RCW 50.20.060(2) or 50.20.070, may also request consideration of an offer in compromise, based on their financial situation. Prior to the acceptance of an offer in compromise all base year employers will be provided with a copy of the individual's completed offer in compromise form and will be allowed 10 days to provide information to the department regarding the offer in compromise request. The allowance or denial of a request for consideration of an offer in compromise will be in accordance with the financial criteria used by the department for the allowance or denial of waiver of an overpayment together with other factors deemed pertinent in the individual case. Any overpayment amount compromised which is later determined to have been based on fraud, malfeasance or misrepresentation shall be restored to the overpayment balance. [Statutory Authority: RCW 50.20.190, 50.12.010 and 50.12.040. 85-21-024 (Order 6-85), § 192-28-115, filed 10/10/85.]

WAC 192-28-120 Recovery of benefit overpayment—By repayment or offset against future benefits.

(1) An overpayment may be recovered either by offset or repayment by the individual. If not repaid by the individual, the amount assessed shall be deducted from benefits payable for any future week(s) claimed. If any recovery procedure is in conflict with federal regulations, the federal regulations shall apply.

(2) For overpayments assessed under RCW 50.20.070 for fraud, misrepresentation, or wilful nondisclosure, the amount to be deducted will be 100% of benefits payable for each future week(s) claimed. Such overpayments will be recouped before any other overpayment the individual may have.

(3) For all other overpayments that are not waived, the amount to be deducted will be 50% of benefits payable for each future week(s) claimed.

(4) For combined wage claims, the amount to be deducted for another state will be 100% of the benefits payable for each future week(s) claimed for fraud overpayments and 50% of the benefits payable for each future week(s) claimed for all other overpayments. The individual will be issued prior written notice that the overpayment will be offset.

(5) A repayment contract will be suspended whenever an individual is in current claim status and the overpayment is being offset from future week(s) payable in accordance with (2) or (3) above. When the individual is

no longer in offset status, the provisions of the repayment contract will become enforceable. [Statutory Authority: RCW 50.20.190, 50.12.010 and 50.12.040. 85-21-024 (Order 6-85), § 192-28-120, filed 10/10/85.]

WAC 192-28-125 Recovery of benefit overpayment--Notification of right to appeal. (1) The department shall ensure that all interested employers and the individual to whom the overpayment is assessed are notified in writing of the overpayment assessment and their right to appeal any or all of the following elements of the overpayment assessment:

- (a) The reason for the overpayment;
- (b) The amount of the overpayment;
- (c) The finding of fault or nonfault;
- (d) The reason for waiver or denial of waiver of the overpayment.

(2) For the purposes of this chapter, interested employer means any employer who provides information to the department which results in an overpayment assessment and in the case of an overpayment where waiver has been considered, whether allowed or denied, all base year employers on which the claim is based.

(3) The department shall also ensure that those individuals who have been denied waiver, as well as those individuals who were found to be at fault and waiver was not considered, are notified in writing of their right to apply for consideration of an offer in compromise. Offers in compromise will not be entertained from an individual whose overpayment was brought about by a final denial pursuant to RCW 50.20.060(2) or 50.20.070. All base year employers on which a claim is based will be notified in writing of the acceptance of an offer in compromise. [Statutory Authority: RCW 50.20.190, 50.12.010 and 50.12.040. 85-21-024 (Order 6-85), § 192-28-125, filed 10/10/85.]

Chapter 192-30 WAC

MARGINAL LABOR FORCE ATTACHMENT

WAC

192-30-010	Marginal labor force attachment definitions.
192-30-020	Responsibilities of the department in determining MLFA status.
192-30-030	Suspension of marginal labor force attachment requirements for claimants unemployed due to government action.
192-30-040	Suspension of marginal labor force attachment requirements for claimants unemployed due to economic distress.
192-30-100	Modification of marginal labor force attachment work search requirements for economic conditions within a labor market area.
192-30-200	Work search responsibilities for MLFA claimants.
192-30-210	Job service center work search activity plans for MLFA claimants.
192-30-220	Work search models--Purpose and description.
192-30-230	Work search model--Definition of terms.

WAC 192-30-010 Marginal labor force attachment definitions. For the purposes of this chapter and for the interpretation of RCW 50.20.015, 50.20.016 and 50.20.017, the following definitions apply:

(1) "MLFA" means marginal labor force attachment. The term is used to describe a pattern of employment and unemployment as defined in RCW 50.20.015(1) and is used to identify claimants who may be subject to special eligibility conditions as identified in RCW 50.20.015 and to provide benefit charging relief to employers as described in RCW 50.29.020. MLFA does not reflect on the quality of a claimant's work nor upon the claimant's long term or current attachment to the labor market but is simply the result of a mathematical calculation based on employment within a two year determination period.

(2) An "MLFA claimant" is a claimant who has filed an application for initial determination and who has been determined to have a marginal attachment to the labor force pursuant to RCW 50.20.015(1).

(3) "MLFA requirements" are the special eligibility requirements of RCW 50.20.015(2), which include special work search requirements and a revised definition of suitable work for MLFA claimants.

(4) "Economically distressed county" is a county for which the average total unemployment rate for the three calendar years preceding April 1st, of each year is twenty percent or more higher than the statewide average for the same period. The commissioner shall publish a list of economically distressed counties.

(5) "Labor market area" means a geographical area in which there are jobs deemed to be suitable work for the claimant. It encompasses the geographic area in which workers with similar occupational skills normally travel to obtain or perform suitable work.

(6) "Distressed industry" means, an industry within a labor market area which is experiencing employment sufficiently lower than historical levels to make application of the provisions of RCW 50.20.015(2) unreasonable.

(a) The commissioner will publish a list of industries which have been determined to be distressed industries and the counties affected by each distressed industry.

(b) The commissioner will determine that an industry is distressed if:

(i) The average annual employment of the industry in the county in the most recent calendar year for which data is available is twenty percent or more below the average annual employment of the industry in the county for the two highest years in the last five years for which data is available; or,

(ii) Other measures of employment or unemployment indicate that the industry is distressed.

(c) The commissioner shall determine the industry groups and labor market areas to be considered based on labor market information, employment patterns, and other available data.

(7) The commissioner may identify labor market areas which have suffered a sudden and severe loss of employment. Such determinations will be for the limited purpose of this chapter. A "sudden and severe loss of employment" is a decrease in a labor market area's employed population which has a significant impact on the labor market area's economic stability. Causes of a sudden and severe loss of employment may include, but are not limited to, plant closure, permanent layoffs,

industrywide declines, or natural disasters. [Statutory Authority: RCW 50.20.015, 50.20.016, 50.20.017, 50.12.010 and 50.12.040. 85-22-071 (Order 8-85), § 192-30-010, filed 11/6/85.]

WAC 192-30-020 Responsibilities of the department in determining MLFA status. (1) At the time of application for initial determination or prior to requiring the claimant to adhere to MLFA requirements, the department will explore exceptions, suspensions, and modifications to the MLFA provisions.

(2) At the time of application for initial determination or prior to requiring claimants to adhere to MLFA requirements and no less often than once every eight weeks, the MLFA status of claimants will be reviewed to determine whether suspension or modification of MLFA requirements is appropriate. [Statutory Authority: RCW 50.20.015, 50.20.016, 50.20.017, 50.12.010 and 50.12.040. 85-22-071 (Order 8-85), § 192-30-020, filed 11/6/85.]

WAC 192-30-030 Suspension of marginal labor force attachment requirements for claimants unemployed due to government action. RCW 50.20.016 provides that the MLFA requirements may be suspended for an MLFA claimant if government action prohibits normal activity in the claimant's occupation.

(1) The commissioner will publish a list of occupations in which government action has prohibited normal activity.

(2) If a claimant believes that his or her occupation should properly be on the list published pursuant to subsection (1) above, he or she may request a formal determination of whether government action has prohibited normal activity in the occupation. Such a request must be in writing, directed to the department, and provide evidence of the effect of government action on the occupation.

(3) When determining the impact that government action has on the normal activity in an occupation, the commissioner shall consider:

- (a) The nature of the government action,
- (b) Normal employment patterns in the occupation,
- (c) Seasonal factors,
- (d) The purpose of the government action or regulation, and,
- (e) Other pertinent factors relating to the occupation and the government action.

(4) No periodic review of suspension pursuant to WAC 192-30-030 will be required. [Statutory Authority: RCW 50.20.015, 50.20.016, 50.20.017, 50.12.010 and 50.12.040. 85-22-071 (Order 8-85), § 192-30-030, filed 11/6/85.]

WAC 192-30-040 Suspension of marginal labor force attachment requirements for claimants unemployed due to economic distress. RCW 50.20.016 provides that the MLFA requirements may be suspended for an MLFA claimant if the claimant is subject to a condition of economic distress. RCW 50.20.017 further defines conditions of economic distress.

(1) A claimant is subject to a condition of economic distress if:

(a) He or she resides in or customarily works in an economically distressed county; or,

(b) The labor market area in which the claimant customarily works has experienced a sudden and severe loss of employment; or,

(c) The labor market area in which the claimant works contains a distressed industry; or,

(d) The commissioner determines that circumstances of the individual claimant warrant a finding of economic distress.

(2) The MLFA requirements shall be suspended only if the MLFA claimant is subject to a condition of economic distress and the claimant's lack of employment is caused by the condition of economic distress or expected duration of unemployment is lengthened by the condition of economic distress.

(3) Any suspension of RCW 50.20.015(2) authorized by this section will be reviewed no less often than once every eight weeks to consider the reasonableness of continuing to suspend or modify the MLFA requirements. [Statutory Authority: RCW 50.20.015, 50.20.016, 50.20.017, 50.12.010 and 50.12.040. 85-22-071 (Order 8-85), § 192-30-040, filed 11/6/85.]

WAC 192-30-100 Modification of marginal labor force attachment work search requirements for economic conditions within a labor market area. (1) The number of work search contacts required by RCW 50.20.015(2) for an MLFA claimant may be modified to a number consistent with economic conditions within a labor market area and WAC 192-30-200.

(2) In determining whether to modify and to what extent to modify the number of work search contacts required, the following factors should be considered:

- (a) Size of the labor market;
- (b) Impact of job search contacts on employer community;
- (c) Employment patterns in the labor market;
- (d) Whether work search contacts would be a futile act;
- (e) Customary work search methods in the labor market;
- (f) Seasonal factors; and,
- (g) Other factors related to the economy, employment, and unemployment.

(3) Any determination to modify MLFA requirements based on this section shall be reviewed no less often than every eight weeks. [Statutory Authority: RCW 50.20.015, 50.20.016, 50.20.017, 50.12.010 and 50.12.040. 85-22-071 (Order 8-85), § 192-30-100, filed 11/6/85.]

WAC 192-30-200 Work search responsibilities for MLFA claimants. RCW 50.20.016 mandates that work search rules be adopted for claimants with marginal labor force attachment.

(1) The commissioner will consider customary trade practices and other reasonable work search methods in order to assist MLFA claimants in finding employment. As the length of time unemployed increases, so will work

search planning and work search activity. As requirements change, claimants must be advised in writing.

(2) Claimants will be exempt from MLFA eligibility requirements until they have received a monetary determination or redetermination, if requested, which considers special program wages or hours, e.g., state, federal, military and out-of-state wages or hours for the period falling within the claimant's determination period.

(3) Claimants will be exempt from MLFA eligibility requirements until they have been advised in writing of the eligibility requirements.

(4) The MLFA special eligibility requirements will only apply to those claimants who are claiming regular benefits. [Statutory Authority: RCW 50.20.015, 50.20.016, 50.20.017, 50.12.010 and 50.12.040. 85-22-071 (Order 8-85), § 192-30-200, filed 11/6/85.]

WAC 192-30-210 Job service center work search activity plans for MLFA claimants. To provide consistent application of law and regulation, accurate information to claimants and the general public each job service center (JSC) will be responsible for developing its own written work search activity plan for claimants with marginal labor force attachment. Job service centers will be responsible for completing this plan within 30 days of the adoption of this rule. Due to fluctuating labor market conditions, MLFA JSC work search activity plans will be reviewed at least yearly (or more often as necessary) to assure that they reflect seasonal and economic conditions. Copies of the MLFA JSC work search activity plan will be available for public examination in the job service center and a copy must be forwarded to the employment security public records officer. Each MLFA JSC work search activity plan will include the following:

- (1) Area labor market(s) information;
- (2) Minimum work search requirements for each MLFA claimant group, and JSC rationale for such requirements;
- (3) Eligibility review interview (ERI) selection criteria;
- (4) Job service center work registration policy;
- (5) Job service center list of industries and occupations in demand and decline in the area labor market(s);
- (6) Identification of MLFA claimants with training needs and procedures for informing MLFA claimants about job training opportunities;
- (7) Job service center coordination of unemployment insurance, employment service, training program service, and other functions. [Statutory Authority: RCW 50.20.015, 50.20.016, 50.20.017, 50.12.010 and 50.12.040. 85-22-071 (Order 8-85), § 192-30-210, filed 11/6/85.]

WAC 192-30-220 Work search models--Purpose and description. Work search models are plans of service designed to provide the public with an outline of requirements and services provided by the employment security department to claimants filing claims for unemployment insurance benefits. The models identify services that job service centers will offer or provide, advise claimants what will be expected of them in the way

of work search, and outline a progression of services, reviews, and requirements that will affect a claimant's eligibility for unemployment benefits.

(1) One of the primary purposes of a work search model is to ensure consistency throughout the state in administration of work search requirements.

(2) The commissioner will publish MLFA work search models which may be incorporated by reference into the MLFA JSC work search activity plans.

(3) All job service centers are required to use the models described unless another model is approved for use by the commissioner. [Statutory Authority: RCW 50.20.015, 50.20.016, 50.20.017, 50.12.010 and 50.12.040. 85-22-071 (Order 8-85), § 192-30-220, filed 11/6/85.]

WAC 192-30-230 Work search model--Definition of terms. For the purposes of work search models, the following definitions apply:

(1) "Length of unemployment" means the number of weeks that a claimant has claimed benefits since his or her last separation from employment, or since reopening a claim for benefits after a break in claim series exceeding two weeks without intervening employment.

(2) A "presentation of benefit rights" or "PBR" is a presentation to a claimant or a group of claimants outlining benefit rights, responsibilities, and procedures. A PBR is intended to provide a claimant with all the information necessary for claiming benefits and sources of additional information.

(3) A "presentation of benefit rights for claimants with a marginal labor force attachment" or "MLFA PBR" is a presentation to a claimant or a group of claimants outlining benefit rights, responsibilities, and procedures. An MLFA PBR is intended to provide a claimant with all the information necessary for claiming benefits and sources of additional information. In addition, an MLFA PBR will include information on how MLFA status is calculated, information on exceptions to MLFA status, information on MLFA work search, tangible evidence and suitable work requirements, and information on modification and suspension of the MLFA special eligibility requirements.

(4) An "X MLFA PBR" is the same as a "PBR" and is given to claimants who were MLFA claimants but are no longer in MLFA status. Former MLFA claimants are advised that they are no longer bound by the MLFA special eligibility requirements.

(5) A "PBR-2" is a special PBR given to claimants who are about to enter extended or shareable benefits. The PBR-2 is designed to provide claimants with information on the special eligibility requirements that must be met to continue eligibility.

(6) "Eligibility review interview" or "ERI" means an interview or workshop which results in the development of a claimant work search plan. A copy of the plan will be given to the claimant and a copy will be retained by the job service center. Included in the plan will be:

(a) Claimant's name, Social Security number, signature, JSC, date, and interviewer's signature;

(b) A list of occupations in which the claimant will seek work and the wage demand for each occupation;

(c) A definitive statement of what the claimant will do to improve or increase his or her reemployment effort;

(d) A statement describing how the claimant will record and report work search contacts;

(e) A review and reconsideration of possible suspension or modification of MLFA requirements; and

(f) Follow-up, by the JSC, to agreements made at the ERI. [Statutory Authority: RCW 50.20.015, 50.20.016, 50.20.017, 50.12.010 and 50.12.040. 85-22-071 (Order 8-85), § 192-30-230, filed 11/6/85.]

Title 194 WAC ENERGY OFFICE

Chapter

194-12 Washington State Environmental Policy Act rules.

Chapter 194-12 WAC

WASHINGTON STATE ENVIRONMENTAL POLICY ACT RULES

WAC

194-12-010	Authority.
194-12-020	Statement of exemption.
194-12-030	Repealed.
194-12-040	Repealed.
194-12-050	Repealed.
194-12-060	Repealed.
194-12-070	Repealed.
194-12-080	Repealed.
194-12-090	Repealed.
194-12-100	Repealed.
194-12-110	Repealed.
194-12-120	Repealed.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

194-12-030	Scope and coverage. [Order 1, § 194-12-030, filed 1/18/77.] Repealed by 84-20-044 (Order 84-01), filed 9/28/84. Statutory Authority: RCW 43.21C.120.
194-12-040	Incorporation by reference. [Order 1, § 194-12-040, filed 1/18/77.] Repealed by 84-20-044 (Order 84-01), filed 9/28/84. Statutory Authority: RCW 43.21C.120.
194-12-050	Definitions. [Order 1, § 194-12-050, filed 1/18/77.] Repealed by 84-20-044 (Order 84-01), filed 9/28/84. Statutory Authority: RCW 43.21C.120.
194-12-060	Exemptions. [Statutory Authority: RCW 43.21F.045(12). 82-17-030 (Order 82-2), § 194-12-060, filed 8/11/82; Order 1, § 194-12-060, filed 1/18/77.] Repealed by 84-20-044 (Order 84-01), filed 9/28/84. Statutory Authority: RCW 43.21C.120.
194-12-070	Designation of responsible official. [Statutory Authority: RCW 43.21F.045(12). 82-17-030 (Order 82-2), § 194-12-070, filed 8/11/82; Order 1, § 194-12-070, filed 1/18/77.] Repealed by 84-20-044 (Order 84-01), filed 9/28/84. Statutory Authority: RCW 43.21C.120.
194-12-080	Copies of public information. [Statutory Authority: RCW 43.21F.045(12). 82-17-030 (Order 82-2), § 194-12-080, filed 8/11/82; Order 1, § 194-12-080, filed 1/18/77.] Repealed by 84-20-044 (Order 84-

	01), filed 9/28/84. Statutory Authority: RCW 43.21C.120.
194-12-090	Consultation request guidelines. [Order 1, § 194-12-090, filed 1/18/77.] Repealed by 84-20-044 (Order 84-01), filed 9/28/84. Statutory Authority: RCW 43.21C.120.
194-12-100	Involvement of private applicant in preparation of EIS. [Order 1, § 194-12-100, filed 1/18/77.] Repealed by 84-20-044 (Order 84-01), filed 9/28/84. Statutory Authority: RCW 43.21C.120.
194-12-110	Preparation of EIS by persons outside the office. [Order 1, § 194-12-110, filed 1/18/77.] Repealed by 84-20-044 (Order 84-01), filed 9/28/84. Statutory Authority: RCW 43.21C.120.
194-12-120	Severability. [Order 1, § 194-12-120, filed 1/18/77.] Repealed by 84-20-044 (Order 84-01), filed 9/28/84. Statutory Authority: RCW 43.21C.120.

WAC 194-12-010 Authority. This chapter is promulgated pursuant to the authority granted in RCW 43.21C.120, requiring each state agency to adopt rules implementing the State Environmental Policy Act.

This chapter is also promulgated to comply with WAC 197-11-904 (2) and (4). [Statutory Authority: RCW 43.21C.120. 84-20-044 (Order 84-01), § 194-12-010, filed 9/28/84. Statutory Authority: RCW 43.21F.045(12). 82-17-030 (Order 82-2), § 194-12-010, filed 8/11/82; Order 1, § 194-12-010, filed 1/18/77.]

WAC 194-12-020 Statement of exemption. The Washington state energy office has reviewed the activities it is authorized to undertake and finds them all to be exempt as provided in part nine - Categorical exemptions WAC 197-11-875(23). [Statutory Authority: RCW 43.21C.120. 84-20-044 (Order 84-01), § 194-12-020, filed 9/28/84; Order 1, § 194-12-020, filed 1/18/77.]

WAC 194-12-030 Repealed. See Disposition Table at beginning of this chapter.

WAC 194-12-040 Repealed. See Disposition Table at beginning of this chapter.

WAC 194-12-050 Repealed. See Disposition Table at beginning of this chapter.

WAC 194-12-060 Repealed. See Disposition Table at beginning of this chapter.

WAC 194-12-070 Repealed. See Disposition Table at beginning of this chapter.

WAC 194-12-080 Repealed. See Disposition Table at beginning of this chapter.

WAC 194-12-090 Repealed. See Disposition Table at beginning of this chapter.

WAC 194-12-100 Repealed. See Disposition Table at beginning of this chapter.

WAC 194-12-110 Repealed. See Disposition Table at beginning of this chapter.