

Title 192 WAC

EMPLOYMENT SECURITY DEPARTMENT

Chapters

192-100	General terms defined.
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Chapter 192-100 WAC GENERAL TERMS DEFINED

WAC

192-100-075 Domestic partner.

WAC 192-100-075 Domestic partner. For purposes of this title "domestic partner" or "state registered domestic partner" means two adults who meet the requirements of RCW 26.60.030 and have been issued a certificate of state registered domestic partnership by the Washington secretary of state.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 34.05.120. 10-01-156, § 192-100-075, filed 12/22/09, effective 1/22/10.]

Chapter 192-110 WAC APPLYING FOR UNEMPLOYMENT BENEFITS

WAC

192-110-010 Applications for benefits by interstate claimants.
192-110-112 Applying for a combined wage claim.

WAC 192-110-010 Applications for benefits by interstate claimants. (1) **What is an "interstate claimant"?** An "interstate claimant" is a person who files a claim for one state's unemployment benefits from another state. The state that pays your claim is called the "paying state." For example:

(a) You are an interstate claimant if you live outside of Washington and file a claim against Washington. Washington will be the paying state on your claim.

(b) You are an interstate claimant if you live in Washington and file a claim against another state. The other state will be the paying state on your claim.

(2) **Where can I apply for benefits?** You can apply for benefits from any state, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, or Canada. However, if you served in the military during the past two years, you must physically be in the state of Washington to apply for benefits against Washington.

(3) **How do I apply for benefits?**

(a) Call the unemployment claims telecenter in Washington. If you worked in any state other than Washington within the last two years, an agent will help you decide which state will pay your claim.

(i) If Washington will pay your claim, an agent will take your application for benefits over the telephone;

(ii) If another state will pay your claim, an agent will tell you how to file your claim with that state.

(b) If you worked only in Washington during the previous two years, you may apply for benefits on the internet.

(4) **Who decides if I am eligible for benefits?** Every state has its own laws which control eligibility for benefits. If you file a claim for Washington benefits, your eligibility for benefits will be decided by Washington state law even if you file from another state. If you file for benefits against another state, your eligibility for benefits will be decided under that state's laws.

(5) **When can I apply for benefits?** You can apply for benefits at any time, even if you are working. However, if you already have a valid claim in one state, you must continue with that claim as long as benefits are available before you can establish a new claim against another state. A "valid" claim is one that has not been denied, terminated, or the benefits exhausted (paid out).

(6) **How do I file an appeal?** If you wish to file an appeal about your claim, you must file it directly with the state that is paying your claim:

(a) If Washington is paying your claim, use one of the filing methods listed in WAC 192-04-060. If mailed, your appeal will be considered filed on the postmarked date.

(b) If another state is paying your claim, file your appeal directly with that state.

All appeal hearings will be conducted by the state that is paying your claim. The paying state will notify you of the date, time, and telephone number or location of the hearing.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 09-15-014, § 192-110-010, filed 7/2/09, effective 8/2/09; 07-22-055, § 192-110-010, filed 11/1/07, effective 12/2/07. Statutory Authority: RCW 50.20.010 and 50.12.-040. 99-15-069, § 192-110-010, filed 7/19/99, effective 8/19/99.]

WAC 192-110-112 Applying for a combined wage claim. (1) **What is a combined wage claim?** A combined wage claim is a claim based on wages earned in two or more states. For purposes of this section, "state" means the fifty states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands.

(2) **Where can I file a combined wage claim?** You can file a combined wage claim against any state in which you have base period wages and qualify for benefits based on combining those wages with wages from another state(s). The state against which you file your claim will be the paying state.

(3) **What is the paying state?** The "paying state" is the state against which you file your combined wage claim. You must have base period employment in that state and qualify for unemployment benefits under that state's laws using combined employment and wages.

(4) **Can I file a combined wage claim against Washington?** Yes. To file a combined wage claim against Washington, you must have base period wages in Washington which, combined with your wages from another state(s), establish a valid Washington claim. If you file your claim against Washington, Washington will be the paying state.

(5) **Do I have to reside or physically be in Washington to file a combined wage claim?** No. The state where you are a resident is not relevant in deciding the paying state.

(6) **Who decides which state is the paying state for a combined wage claim?** You are responsible for deciding which state will be the paying state. If you are potentially eligible for a combined wage claim and contact the department, an agent will provide you with:

(a) General information about the combined wage program;

(b) Your options for filing a regular or combined wage claim against Washington or another state(s); and

(c) Contact information for other state(s) in which you worked during your base period.

(7) **Am I required to file a combined wage claim?** No. Filing a combined wage claim is voluntary. You may choose to file a claim using only wages from a single state.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 09-15-014, § 192-110-112, filed 7/2/09, effective 8/2/09.]

Chapter 192-150 WAC

JOB SEPARATIONS

WAC

192-150-055	Leaving work because of illness or disability—General rules and definitions—RCW 50.20.050 (1)(b)(ii) and (2)(b)(ii).
192-150-110	Mandatory military transfers—RCW 50.20.050 (1)(b)(iii) and (2)(b)(iii).
192-150-112	Definitions—Domestic violence and stalking—RCW 50.20.050 (1)(b)(iv) and (2)(b)(iv).
192-150-160	Entering approved apprenticeship training—RCW 50.20.050 (2)(b)(xi).
192-150-180	Quitting part-time work—RCW 50.20.050(3).

WAC 192-150-055 Leaving work because of illness or disability—General rules and definitions—RCW 50.20.050 (1)(b)(ii) and (2)(b)(ii). (1) **General rule.** To establish good cause for leaving work voluntarily because of your illness or disability or the illness, disability, or death of a member of your immediate family, you must demonstrate that:

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

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

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

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

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

(2) For claims with an effective date of January 4, 2004, or later, you are not eligible for unemployment benefits unless, in addition to the requirements of subsections (1)(a)-(c) above, you terminate your employment and are not entitled to be reinstated in the same or similar position.

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

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

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

(i) Is medically recognizable or diagnosable;

(ii) Exists as a record or history; and

(iii) Substantially limits the proper performance of your job;

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

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

[Statutory Authority: RCW 50.12.010, 50.12.040, and 34.05.120. 10-01-156, § 192-150-055, filed 12/22/09, effective 1/22/10. Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. 05-01-076, § 192-150-055, filed 12/9/04, effective 1/9/05. Statutory Authority: RCW 50.12.010 and 50.12.-040. 02-14-035, § 192-150-055, filed 6/25/02, effective 7/26/02.]

WAC 192-150-110 Mandatory military transfers—RCW 50.20.050 (1)(b)(iii) and (2)(b)(iii). (1) Any military transfer is considered mandatory if your spouse or domestic partner receives orders from the military to relocate to a new duty station, regardless of whether the transfer is temporary or permanent.

(2) You may show good cause to quit work if you relocate for your spouse or domestic partner's employment that was due to a mandatory military transfer if:

(a) Your spouse or domestic partner's new duty station is outside your existing labor market. For claims with an effective date prior to July 2, 2006, the new duty station must be in Washington or another state (including the District of Columbia, Puerto Rico, and the U.S. Virgin Islands) that allows benefits to individuals who quit work to accompany their military spouse; and

(b) You continued to work for your previous employer for as long as was reasonable prior to the move.

(3) For purposes of this section, the term "military" includes the following: U.S. Navy, U.S. Army, U.S. Air Force, U.S. Marine Corps, U.S. Coast Guard, activated reserve members of any of these service branches, activated members of the National Guard, commissioned officers of the National Oceanographic and Atmospheric Administration, and commissioned officers of the regular or reserve corps of the U.S. Public Health Service.

(4) Good cause for quitting work is not established under this section if:

(a) You quit work to return to your home of record or to another location rather than accompanying your spouse or domestic partner to a new duty location; or

(b) Your spouse or domestic partner leaves military service and you elect to relocate to your home of record or elsewhere.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 34.05.120. 10-01-156, § 192-150-110, filed 12/22/09, effective 1/22/10. Statutory Authority: RCW 50.12.010 and 50.12.040. 07-22-055, § 192-150-110, filed 11/1/07, effective 12/2/07. Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.-042. 05-01-076, § 192-150-110, filed 12/9/04, effective 1/9/05.]

WAC 192-150-112 Definitions—Domestic violence and stalking—RCW 50.20.050 (1)(b)(iv) and (2)(b)(iv). To constitute good cause for leaving work, your job separation must have been necessary to protect yourself or a member of your immediate family from domestic violence or stalking.

(1) **Immediate family** is defined in WAC 192-150-055 and means your spouse, domestic partner, and [the] children (including your unborn children), siblings, stepchildren, foster children, or parents of either spouse or domestic partner, whether living with you or not, and other relatives who temporarily or permanently reside in your household.

(2)(a) **Domestic violence** is defined in RCW 26.50.010. It includes the following acts committed between family or household members:

(i) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault;

(ii) Sexual assault; or

(iii) Stalking.

(b) The perpetrator of domestic violence must be a family or household member, which means:

(i) Spouses, domestic partners, former spouses, and former domestic partners,

(ii) Persons who have a child in common regardless of whether they have been married or have lived together at any time,

(iii) Adult persons related by blood or marriage,

(iv) Adult persons who are presently residing together or who have resided together in the past,

(v) Persons sixteen years of age or older who are presently residing together or who have resided together in the past and who have or have had a dating relationship,

(vi) Persons sixteen years of age or older with whom a person sixteen years of age or older has or has had a dating relationship, and

(vii) Persons who have a biological or legal parent-child relationship, including stepparents, stepchildren, grandparents, and grandchildren.

(c) "Dating relationship" means a social relationship of a romantic nature.

(3) **Stalking** is defined by RCW 9A.46.110. It means:

(a) Intentionally and repeatedly harassing or following another person; and

(b) Placing the person being harassed or followed in fear of injury to self or property, or to another person or the property of another person; and

(c) Intending to frighten, intimidate, or harass the other person; or

(d) Knowing or having reason to know that the person is afraid, intimidated, or harassed even if the stalker did not intend to place the person in fear or intimidate or harass the person.

(i) "Harass" means a knowing and willful course of conduct directed at a specific person which seriously alarms, annoys, harasses, or is detrimental to such person, and which serves no legitimate or lawful purpose.

(ii) "Repeatedly" means on two or more separate occasions.

(iii) "Follows" means deliberately maintaining visual or physical proximity to a specific person over a period of time. A finding that the alleged stalker repeatedly and deliberately appears at the person's home, school, place of employment,

business, or any other location to maintain visual or physical proximity to the person is sufficient to find that the alleged stalker follows the person. It is not necessary to establish that the alleged stalker follows the person while in transit from one location to another.

(iv) "Contact" includes, in addition to any other form of contact or communication, the sending of an electronic communication to the person.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 34.05.120. 10-01-156, § 192-150-112, filed 12/22/09, effective 1/22/10. Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042, and 50.20.010. 05-13-156, § 192-150-112, filed 6/21/05, effective 7/22/05.]

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules, and deems ineffectual changes not filed by the agency in this manner. The bracketed material in the above section does not appear to conform to the statutory requirement.

WAC 192-150-160 Entering approved apprenticeship training—RCW 50.20.050 (2)(b)(xi). (1) **Effective date.** RCW 50.20.050 (2)(b)(xi) and this section apply to job separations that occur on or after June 12, 2008.

(2) **Application.** This section applies only if you quit work to enter into related/supplemental (classroom) instruction that is part of an apprenticeship program. If you quit work to begin employment for an employer who is a party to an apprenticeship agreement, the department will review the separation under RCW 50.20.050 (2)(b)(i) and WAC 192-150-050 to determine if you left work to accept a bona fide job offer.

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

(a) "To enter" means to begin participation in the apprenticeship program.

(i) The term "to enter" includes:

(A) Apprentices who accept temporary work with an employer who is not a party to the apprenticeship agreement and quit work to reenter training.

(B) Apprentices who quit work for a participating employer to enter a different apprenticeship program.

(ii) The term "to enter" does not include:

(A) Claimants applying for an apprenticeship program who at the time of quitting work are not enrolled in apprenticeship or preapprenticeship training. Their eligibility for benefits will be reviewed under RCW 50.20.050(2).

(B) Current apprentices who temporarily stop work for a participating employer to attend related/supplemental instruction that is a required component of their apprenticeship agreement. Claimants in this situation are considered to be on temporary layoff from work. Their eligibility for commissioner approved training will be reviewed under WAC 192-200-020(3).

(b) "Active participation" means attending classes, engaging in other activities that are part of the related/supplemental instruction, and working or seeking work in accordance with the apprenticeship agreement.

(c) The terms "apprentice," "apprenticeship agreement," "apprenticeship program," "approved," and "related/supplemental instruction" have the meanings described in WAC 296-05-003.

(4) **Establishing good cause.** If you quit work to enter an apprenticeship program, you will have good cause within

the meaning of RCW 50.20.050 (2)(b)(xi) if you satisfactorily demonstrate that:

(a) You have been accepted into and are entering an apprenticeship program approved by the Washington state apprenticeship training council;

(b) Prior to leaving work, you had a confirmed start date for related/supplemental instruction; and

(c) You continued in your employment for as long as was reasonably consistent with whatever arrangements were necessary to begin the related/supplemental instruction. In any event, you will not be eligible for benefits until the week prior to the week the related/supplemental instruction begins.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.20.010. 09-07-011, § 192-150-160, filed 3/5/09, effective 4/5/09.]

WAC 192-150-180 Quitting part-time work—RCW 50.20.050(3). (1) **Effective date.** RCW 50.20.050(3) and this section apply to job separations that occur on or after July 26, 2009.

(2) **Definitions.** For purposes of this section:

(a) "Part-time work" means fewer than 35 hours of work per week.

(b) "Full-time work" means work of 35 or more hours per week.

(3) If you are simultaneously employed in a part-time job and a full-time job, you will not be denied benefits for quitting the part-time job under the following circumstances:

(a) You quit the part-time job before losing your full-time job;

(b) You did not know in advance that your full-time job would be ending; and

(c) You are eligible for benefits based on the separation from your full-time job.

(4) If you are denied benefits under RCW 50.20.050(3), the period of denial is the same as that under RCW 50.20.050 (2)(a). This means you will be denied for a period of seven weeks and until you earn at least seven times your weekly benefit amount in covered employment.

(5) **Examples.** The following are examples only and do not mean that the department would rule the same in similar situations.

(a) *You quit a part-time job two weeks before being laid off from your full-time job.* Benefits are allowed because you meet the criteria of subsection (3).

(b) *You quit a part-time job before the hours at your full-time job were reduced.* Benefits are allowed because you meet the criteria of subsection (3).

(c) *You quit a part-time job two weeks before the end of a temporary full-time job.* You had prior knowledge that the full-time job was ending. Benefits would be denied unless you had good cause for quitting the part-time job under RCW 50.20.050(2).

(d) *You quit a part-time job two weeks before being discharged from the full-time job.*

(i) If the separation from the full-time job was for misconduct, benefits would be denied for quitting the part-time job because you are not eligible for benefits based on the separation from the full-time job.

(ii) If the separation from the full-time job was not misconduct, benefits would be allowed because you meet the criteria of subsection (3).

(e) *You quit the part-time job and the full-time job on the same day.* The department will determine if you had good cause to quit both jobs under RCW 50.20.050(2).

(f) *You quit a part-time job but are still employed full-time at your other job.* The department will determine if you had good cause to quit under RCW 50.20.050(2).

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. 09-24-008, § 192-150-180, filed 11/20/09, effective 12/21/09.]

Chapter 192-240 WAC EXTENDED BENEFITS

WAC

192-240-060	What is the priority of payments?
192-240-070	What happens if I am paid emergency or extended benefits when I am eligible for a new unemployment claim?
192-240-080	How much will I receive in extended benefits if my regular weekly benefit amount is increased?

WAC 192-240-060 What is the priority of payments?

Any emergency unemployment compensation or any similar federal compensation may be paid before the state extended benefits authorized under chapter 50.22 RCW at the discretion of the commissioner.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. 09-24-011, § 192-240-060, filed 11/20/09, effective 12/21/09.]

WAC 192-240-070 What happens if I am paid emergency or extended benefits when I am eligible for a new unemployment claim? If you are paid emergency unemployment compensation, state extended benefits, or any similar state or federal extension, and it is later discovered that you were eligible for a regular unemployment claim during all or part of the period in which you received such benefits, the regular unemployment claim takes priority. The balance on your new unemployment claim will be adjusted for any week(s) at issue, meaning those weeks in which you should have received regular unemployment benefits, subject to the following:

(1) Except as provided in subsection (4) of this section, you may not be paid twice for the same week

(2) If your new weekly benefit amount is equal to the amount you were paid for the weeks at issue, the amount you were paid in emergency unemployment compensation or extended benefits will be deducted from the maximum benefits payable on your new claim.

Example: Your previous weekly benefit amount was five hundred dollars. You received emergency unemployment compensation for eight weeks at this amount when it was discovered you were eligible for a new claim in the amount of five hundred dollars. The five hundred dollars paid for eight weeks will be deducted from the maximum benefits payable on your new claim.

(3) If your new weekly benefit amount is lower than the amount you were paid for the weeks at issue, the amount you were paid in emergency unemployment compensation or extended benefits that is equivalent to the weekly benefit amount on your new claim will be deducted from the maximum benefits payable on your new claim. The difference between the amounts paid in emergency unemployment compensation or extended benefits for the week(s) at issue and

the weekly benefit amount on your new claim will be waived as provided in RCW 50.20.190.

Example: Your previous weekly benefit amount was five hundred dollars. You received emergency unemployment compensation for eight weeks at this amount when it was discovered you were eligible for a new claim in the amount of three hundred-fifty dollars. The three hundred-fifty dollars for eight weeks will be deducted from the maximum benefits payable on your new claim. The one hundred-fifty dollar difference between your previous weekly benefit amount and your new weekly benefit amount will be waived.

(4) If your new weekly benefit amount is higher than the amount you were paid for the week(s) at issue, the amount you were paid in emergency unemployment compensation or extended benefits will be supplemented so that you receive your new weekly benefit amount for the weeks at issue and the total deducted from the maximum benefits payable on your new claim.

For example: Your previous weekly benefit amount was three hundred-fifty dollars. You received emergency unemployment compensation for eight weeks at this amount when it was discovered you were eligible for a new claim in the amount of five hundred dollars. You will be paid an additional one hundred-fifty dollars for each of the eight weeks at issue and the total deducted from the maximum benefits payable on your new claim.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. 09-24-011, § 192-240-070, filed 11/20/09, effective 12/21/09.]

WAC 192-240-080 How much will I receive in extended benefits if my regular weekly benefit amount is increased? (1)(a) If your weekly benefit amount for regular unemployment benefits is increased during your benefit year, the maximum amount of extended benefits payable will be the lesser of fifty percent of the total regular unemployment compensation paid to you for the benefit year or thirteen times the average weekly benefit amount paid during your benefit year.

Example: You receive regular unemployment benefits for twenty weeks at \$200 and \$245 for the remaining six weeks. The maximum benefits payable on your claim is \$5,470. Your weekly benefit amount for extended benefits will be \$245. The maximum extended benefits payable will be \$2,735 which is the lesser of fifty percent of \$5,470 or thirteen times \$222.5 (\$200 + \$245 divided by 2, the average of both weekly benefit amounts, or \$2,892).

(b) When the state is in a high unemployment period as defined in RCW 50.22.010(3), the maximum amount of extended benefits payable will be the lesser of eighty percent of the total regular unemployment compensation paid to you for the benefit year or twenty times the average weekly benefit amount paid during your benefit year.

(2) For purposes of this section, "average" means the average of the two weekly benefit amounts paid during your benefit year.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. 09-24-011, § 192-240-080, filed 11/20/09, effective 12/21/09.]

Chapter 192-250 WAC SHARED WORK PROGRAM

WAC

192-250-035	Information for employees participating in an approved shared work plan.
192-250-045	Who is not eligible for participation in the shared work program?

WAC 192-250-035 Information for employees participating in an approved shared work plan. (1) **What are the requirements for participating in my employer's plan?** You must have at least four hundred sixty hours of work with this employer in the calendar quarter before the quarter in which your employer's application is submitted.

(2) **When do I apply for benefits?** Your employer representative will tell you if you need to apply for benefits and how to do so. If you have a current valid claim, you do not need to apply again.

(3) **How do I file my weekly claim for benefits?** See WAC 192-140-005 for instructions on filing weekly claims. You must also report the number of hours you were paid for holidays, vacations, or sick leave. You must report hours and gross earnings for part-time and second jobs, plus your hours and net earnings from any self-employment. You can file weekly claims by telephone or over the internet.

(4) **What happens if the total number of hours worked is not a whole number?** If the total number of hours you worked in a week includes a fraction of an hour, the department will round the total down to the next whole number. This rounded number will be compared to your usual hours of work to calculate your shared work benefit payment for the week. For example: You work 28.5 hours of a normal 40 hour week. The 28.5 hours is rounded down to 28 hours and then divided by 40, meaning you worked 70 percent of the available hours. Your shared work payment would be 30 percent of your regular weekly benefit amount.

(5) **What happens if I don't work all scheduled hours for my shared work employer?**

(a) You are not eligible for shared work benefits for any week that you do not work all hours you have been scheduled by your shared work employer.

(b) You must be available for additional hours of work, up to full time, with the shared work employer. If your employer gives you at least twenty-four hours' notice that additional work is available and you do not work those additional hours, you are not eligible for shared work benefits for that week.

(c) When you are not eligible for shared work benefits in any week claimed, your claim will be processed as a regular unemployment claim.

(6) **Do I have to look for work while participating in the shared work program?** No. You are not required to look for work while participating in the shared work program.

(7) **Is there a minimum or maximum number of hours I can work in a week and still receive shared work benefits?** You must have twenty to thirty-six hours of paid time during a week to receive shared work benefits. In any week you are paid for fewer than twenty hours or more than thirty-six hours, your claim will be processed as a regular unemployment claim.

(8) How long can I receive shared work benefits?

You can receive shared work payments up to the maximum benefit entitlement established under Title 50 RCW, plus state or federal benefit extensions under chapter 50.22 RCW.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.60.901. 09-13-057, § 192-250-035, filed 6/12/09, effective 7/13/09; 06-22-004, § 192-250-035, filed 10/19/06, effective 11/19/06.]

WAC 192-250-045 Who is not eligible for participation in the shared work program? (1) The following employees are not eligible for participation in the shared work program:

(a) Employees paid on any basis other than hourly wage. This includes, but is not limited to, employees paid on a piece rate, mileage rate, job rate, salary, or commission basis. The commissioner may waive this provision for employees paid on a piece rate basis if an hourly rate of pay can be established.

(b) Officers of the corporation that is applying for participation.

(2) The following businesses are not eligible for participation in the shared work program:

(a) Businesses with a tax rate of more than 5.4 percent.

(b) Nonqualified employers, meaning employers who have reported no payroll for four consecutive quarters.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.60.901. 09-13-057, § 192-250-045, filed 6/12/09, effective 7/13/09; 06-22-004, § 192-250-045, filed 10/19/06, effective 11/19/06.]

Chapter 192-270 WAC

TRAINING BENEFITS FOR DISLOCATED WORKERS

WAC

192-270-005 Definitions.
192-270-035 Time frames.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

192-270-020 Employment in the aerospace industry. [Statutory Authority: RCW 50.12.010, 50.20.010, and 50.22.150(10). 01-11-085, § 192-270-020, filed 5/16/01, effective 6/16/01.] Repealed by 09-20-095, filed 10/7/09, effective 11/7/09. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010.

192-270-025 Employment in the forest products industry. [Statutory Authority: RCW 50.12.010, 50.20.010, and 50.22.150(10). 01-11-085, § 192-270-025, filed 5/16/01, effective 6/16/01.] Repealed by 09-20-095, filed 10/7/09, effective 11/7/09. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010.

192-270-030 Employment in the fishing industry. [Statutory Authority: RCW 50.12.010, 50.20.010, and 50.22.150(10). 01-11-085, § 192-270-030, filed 5/16/01, effective 6/16/01.] Repealed by 09-20-095, filed 10/7/09, effective 11/7/09. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010.

WAC 192-270-005 Definitions. The definitions below apply to this chapter, RCW 50.22.150, and 50.22.155:

(1) "Labor market" means the geographic area in which workers in your particular occupation or with your particular set of skills have customarily found work. For the purpose of determining whether you are a dislocated worker, "labor market" is based on your place of residence at the time you separated from employment. You will not be considered a dislo-

cated worker if, following your separation from work, you move from a labor market area where your skills are in demand to an area where they are declining.

(2) For claims with an effective date prior to April 5, 2009, "plurality of wages" means the largest proportion of wages earned within a particular occupation or skill set. These wages must be earned in:

(a) Your base year, and

(b) At least two of the four twelve-month periods preceding your base year.

(3) "Skill set" means the work-related knowledge and abilities needed to produce a particular product or provide a particular service.

(4) "Training benefits" means the additional benefits paid under RCW 50.22.150 and 50.22.155 to eligible dislocated workers enrolled in and making satisfactory progress in a training program approved by the commissioner.

(5) For purposes of RCW 50.22.155 (2)(b)(i) relating to low income workers, the term "total wages" means wages in employment covered under Title 50 RCW or comparable federal or state laws.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. 09-20-095, § 192-270-005, filed 10/7/09, effective 11/7/09. Statutory Authority: RCW 50.12.010, 50.20.010, and 50.22.150(10). 01-11-085, § 192-270-005, filed 5/16/01, effective 6/16/01.]

WAC 192-270-035 Time frames. Information about training benefits will be included in the claimant information booklet mailed to you at the time you file your application for unemployment benefits (see WAC 192-120-010). For purposes of this section, the claimant information booklet is considered your notification of the eligibility requirements for the training benefits program.

(1) Submitting a training plan.

(a) For claims with an effective date prior to April 5, 2009, you have 60 calendar days to submit a training plan to the department for approval, beginning on the date you are notified by the department about the eligibility requirements for training benefits. For new claims, the deadline will be 65 calendar days from the date your application for benefits is filed, which represents 60 days plus five days for the booklet to reach you by mail.

(b) For claims with an effective date on or after April 5, 2009, you have 90 calendar days to submit a training plan to the department for approval, beginning on the date you are notified by the department about the eligibility requirements for training benefits. For new claims, the deadline will be 95 calendar days from the date your application for benefits is filed, which represents 90 days plus five days for the booklet to reach you by mail.

(2) Enrollment in training.

(a) For claims with an effective date prior to April 5, 2009, you must be enrolled in training within 90 calendar days, beginning on the date you are notified by the department about the eligibility requirements for training benefits. For new claims, the deadline will be 95 calendar days from the date your application for benefits is filed, which represents 90 days plus five days for the booklet to reach you by mail.

(b) For claims with an effective date on or after April 5, 2009, you must be enrolled in training with [within] 120 cal-

endar days, beginning on the date you are notified about the eligibility requirements for training benefits. For new claims, the deadline will be 125 calendar days from the date your application for benefits is filed, which represents 120 days plus five days for the booklet to reach you by mail.

(3) For claims with an effective date on or after April 5, 2009, these timeframes may be waived for good cause. For purposes of this section, "good cause" includes but is not limited to situations where:

(a) You were employer attached, including being on standby or partially unemployed, when you filed your claim for unemployment benefits but your attachment to your employer subsequently ended;

(b) You acted or failed to act on authoritative advice directly from department or partner staff upon which a reasonable person would normally rely;

(c) You were incapacitated due to illness or injury or other factors of similar gravity; or

(d) Other factors which would effectively prevent a reasonably prudent person, as defined in WAC 192-100-010, facing similar circumstances, from meeting the timelines established under this section.

(4) If you return to work, and subsequently become unemployed, the time frames described in subsections (1) and (2) begin with the date you file your additional claim for benefits.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. 09-20-095, § 192-270-035, filed 10/7/09, effective 11/7/09. Statutory Authority: RCW 50.12.010, 50.20.010, and 50.22.150(10). 01-11-085, § 192-270-035, filed 5/16/01, effective 6/16/01.]

Chapter 192-310 WAC

REPORTING OF WAGES AND TAXES DUE

WAC

192-310-150	Are corporate officers covered for unemployment insurance?
192-310-160	How may corporations exempt corporate officers from unemployment insurance coverage?
192-310-190	When is a corporate officer with ten percent ownership considered unemployed?

WAC 192-310-150 Are corporate officers covered for unemployment insurance? (1) For purposes of WAC 192-310-150 through 192-310-190:

(a) "Bona fide officer" means any person empowered in good faith by stockholders or directors, in accordance with articles of incorporation or bylaws, to discharge the duties of a corporate officer;

(b) "Corporate officer" means an officer of a corporation as described or authorized in bylaws under RCW 23B.08.-400;

(c) "Exercise substantial control in the daily management of the corporation" means that the individual makes managerial decisions over a business function or functions that have some effect on the entire corporation.

(d) "Nonpublic company" means a corporation that does not meet the definition of a public company;

(e) "Public company" means a corporation that has a class of shares registered with the Federal Securities and Exchange Commission as defined in RCW 23B.01.400;

(f) "Related by blood within the third degree" means the degree of kinship as computed according to the rules of the civil law. For example, if measured for descendants, it would include a person and that person's children, grandchildren, great grandchildren, brothers and sisters, and nephews and nieces. Alternatively, if measured for ancestors, it would include a person and that person's parents, grandparents, great grandparents, brothers and sisters, and aunts and uncles. Cousins are not related by blood within the third degree under the rules of the civil law and are not included. Legal adoptions or step-relatives are considered as if genetically related.

(g) "Related by marriage" means the union subject to legal recognition under the domestic relations laws of this state. For purposes of this section, it includes state registered domestic partnerships authorized under chapter 26.60 RCW.

(2) Unless specifically exempted under WAC 192-310-160 or 192-310-180, services performed by corporate officers are considered services in employment and are covered for purposes of unemployment insurance to the same extent other employment is covered.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 34.05.120. 10-01-156, § 192-310-150, filed 12/22/09, effective 1/22/10. Statutory Authority: RCW 50.12.010 and 50.12.040. 07-23-127, § 192-310-150, filed 11/21/07, effective 1/1/09.]

WAC 192-310-160 How may corporations exempt corporate officers from unemployment insurance coverage? (1) Subject to RCW 50.04.165 and the other requirements of this section, a corporation may exempt one or more corporate officers from coverage by notifying the department on a form approved by the department. The form must be signed by each exempted officer. Unless the corporate officer exempted is the only officer of the corporation, the form must also be signed by another corporate officer verifying the decision to be exempt from coverage.

(2) The election to exempt corporate officers is effective immediately if made when the corporation first registers with the department as an employer under RCW 50.12.070. If the election to exempt corporate officers is made after that, the exemption is effective on January 1 of the following calendar year. The corporation must send written notice to the department by January 15 for the exemption to be effective on January 1 of that year. The exemption is not effective until filed with the department and will not be applied retroactively, except for the period from January 1 to January 15 if the notice is sent by January 15. A corporation is not eligible for refund or credit for periods before the effective date of the exemption.

(3) A public company as defined in RCW 23B.01.400 may exempt any bona fide corporate officer:

(a) Who is voluntarily elected or voluntarily appointed under the articles of incorporation or bylaws of the corporation;

(b) Who is a shareholder of the corporation;

(c) Who exercises substantial control in the daily management of the corporation; and

(d) Whose primary responsibilities do not include the performance of manual labor.

(4) A corporation that is not a public company may exempt eight or fewer bona fide corporate officers who voluntarily agree to be exempted from coverage and sign a form

approved by the department verifying this. These corporate officers must be voluntarily elected or voluntarily appointed under the articles of incorporation or bylaws of the corporation and must exercise substantial control in the daily management of the corporation.

(5) A corporation that is not a public company may exempt any number of corporate officers if all exempted officers of the corporation are related by blood within the third degree or by marriage to a person related by blood within the third degree. If any of the corporate officers fail to qualify for this exemption because they are not related by blood or marriage as required, then none of the corporate officers may qualify under this subsection, although they may still qualify under subsection (4) of this section. This is an alternative and not an addition to exemptions under subsection (4) of this section.

For example, a husband and wife or a domestic partner, their biological or adopted children or stepchildren, grandchildren, and great grandchildren, their brothers and sisters, their nephews and nieces, and the spouses or domestic partners of any of these people could qualify for exemption as corporate officers under this section without being limited to eight individuals. However, if any of the corporate officers exempted do not meet this test, then this subsection does not apply.

(6) This section does not apply to officers of a corporation covered by chapter 50.44 RCW (some nonprofit or government organizations) or chapter 50.50 RCW (Indian tribes).

[Statutory Authority: RCW 50.12.010, 50.12.040, and 34.05.120. 10-01-156, § 192-310-160, filed 12/22/09, effective 1/22/10. Statutory Authority: RCW 50.12.010 and 50.12.040. 09-07-010, § 192-310-160, filed 3/5/09, effective 4/5/09; 07-23-127, § 192-310-160, filed 11/21/07, effective 1/1/09.]

WAC 192-310-190 When is a corporate officer with ten percent ownership considered unemployed? (1) This section applies to:

(a) A corporate officer who owns ten percent or more of the outstanding stock of the corporation; or

(b) A corporate officer who is a family member of another corporate officer who owns ten percent or more of the outstanding stock of the corporation. For purposes of this section, a "family member" is a person related by blood or marriage or domestic partnership as parent, stepparent, grandparent, spouse or domestic partner, child, brother, sister, stepchild, adopted child, or grandchild.

(2) A corporate officer whose claim for benefits is based on any wages with that corporation is not considered unemployed in any week during the individual's term of office, even if wages are not being paid at the time. The corporate officer is considered unemployed and potentially eligible for benefits if the corporation dissolves or if the officer permanently resigns or is permanently removed as a corporate officer under the articles of incorporation or bylaws.

(3) For purposes of this section, "permanently" means for a period of indefinite duration, but expected to extend at least through the claimant's benefit year end date. If at any time during the benefit year the claimant resumes his or her position as an officer with the corporation, all benefits paid

during that benefit year will be considered an overpayment and the claimant will be liable for repayment.

(4) A corporation must provide notice to the department in a format approved by the department when the ownership of the percentage of stock increases to become ten percent or more or decreases to become less than ten percent. The notice is due by the time the next quarterly tax and wage report is due from the corporation.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 34.05.120. 10-01-156, § 192-310-190, filed 12/22/09, effective 1/22/10. Statutory Authority: RCW 50.12.010 and 50.12.040. 07-23-127, § 192-310-190, filed 11/21/07, effective 1/1/08.]

Chapter 192-320 WAC

EXPERIENCE RATING AND BENEFIT CHARGING

WAC

192-320-035

How are unemployment insurance tax rates determined for employers who are delinquent on taxes or reports?

WAC 192-320-035 How are unemployment insurance tax rates determined for employers who are delinquent on taxes or reports? (1) An employer that has not submitted by September 30 all reports, taxes, interest, and penalties required under Title 50 RCW for the period preceding July 1 of any year is not a "qualified employer."

(2) For purposes of this section, the department will disregard unpaid taxes, interest, and penalties if they constitute less than either one hundred dollars or one-half of one percent of the employer's total tax reported for the twelve-month period immediately preceding July 1. These minimum amounts only apply to taxes, interest, and penalties, not to failure to submit required reports.

(3)(a) This section does not apply if the otherwise qualified employer shows to the satisfaction of the commissioner that he or she acted in good faith and that application of the rate for delinquent taxes would be inequitable. This exception is to be narrowly construed to apply at the sole discretion of the commissioner, recognizing that the delinquent tax rate only applies after the employer has already received a grace period of not less than two months beyond the normal due date for reports and taxes due. The commissioner's decision shall be subject to review only under the arbitrary and capricious standard and shall be reversed in administrative proceedings only for manifest injustice based on clear and convincing evidence.

(b) Except for services under RCW 50.04.160 performed in domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, the commissioner will not find in the usual course of business that application of the rate for delinquent taxes would be inequitable:

(i) If the employer has been late with filing or with payment in more than one of the last eight consecutive quarters immediately preceding the applicable period;

(ii) If the delinquency was due to absences of key personnel and the absences were because of business trips, vacations, personnel turnover, or terminations;

(iii) If the delinquency was due to adjusting by more than two quarters the liable date when the employer first had employees; or

(iv) If the employer is a successor, the rate for delinquent taxes is based on the predecessor, and the successor could or should have determined the predecessor's tax status at the time of the transfer.

(c) Examples of when the commissioner may find that application of the rate for delinquent taxes would be inequitable include if the delinquency results from:

(i) An employer reducing its tax payment by the amount specified as a credit on the most recent account statement from the department, when the credit amount is later determined to be inaccurate;

(ii) Taxes due which are determined as the result of a voluntary audit;

(iii) Resolution of a pending appeal and any amounts due are paid within thirty days of the final resolution of the amount due or the department approves a deferred payment contract within thirty days of the final resolution of the amount due;

(iv) The serious illness or death of key personnel or their family that extends throughout the period in which the tax could have been paid prior to September 30 and no reasonable alternative personnel were available and any amounts due are paid no later than December 31 of such year; or

(v) An employee or other contracted person committing fraud, embezzlement, theft, or conversion, the employer could not immediately detect or prevent the wrongful act, the employer had reasonable safeguards or internal controls in place, the employer filed a police report, and any amounts due are paid within thirty days of when the employer could reasonably have discovered the illegal act.

(d) When determining whether an employer acted in good faith and that application of the rate for delinquent taxes would be inequitable, the following factors are considered neutral and neither support nor preclude waiver of the rate for delinquent taxes:

(i) The harshness of the burden on the employer caused by application of the rate for delinquent taxes;

(ii) Lack of knowledge by the employer, bookkeepers, accountants, or other financial advisors about application of the law or the potential harshness of the rate;

(iii) Delay by the employer or its representative in opening mail or receiving other notice from the department; or

(iv) Error by a payroll, bookkeeping, or accounting service on behalf of an employer.

(4) The department shall provide notice to the employer or employer's agent that the employer may be subject to the higher rate for delinquent taxes if the employer does not comply with this section. Notice may be in the form of an insert or statement in July, August, or September billing statements or in a letter or notice of assessment. Evidence of the routine practice of the department in mailing notice in billing statements or in a notice of assessment shall be sufficient to establish that the department provided this notice. No notice need be provided to an employer that is not currently registered and active.

(5) An employer that is not a "qualified employer" because of failure to pay contributions when due shall be assigned an array calculation factor rate two-tenths higher than that in rate class 40, unless the department approves a deferred payment contract with the employer by September 30 of the previous rate year. If an employer with an approved

deferred payment contract fails to make any one of the payments or fails to submit any tax report and payment in a timely manner, the employer's tax rate shall immediately revert to an array calculation factor rate two-tenths higher than in rate class 40.

(6) An employer that is not a "qualified employer" because of failure to pay contributions when due shall be assigned a social cost factor rate in rate class 40.

(7) Assignment of the rate for delinquent taxes is not considered a penalty which is subject to waiver under WAC 192-310-030.

(8) The amendments to this section effective July 26, 2009, apply only to tax rates assigned after that date.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.29.010. 09-24-009, § 192-320-035, filed 11/20/09, effective 12/21/09. Statutory Authority: RCW 50.12.010 and 50.12.040. 07-23-127, § 192-320-035, filed 11/21/07, effective 1/1/08.]