

# Chapter 192-100 WAC

## GENERAL TERMS DEFINED

### WAC

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**WAC 192-100-010 Reasonably prudent person defined.** A reasonably prudent person is an individual who uses good judgment or common sense in handling practical matters. The actions of a person exercising common sense in a similar situation are the guide in determining whether an individual's actions were reasonable.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. WSR 05-01-076, § 192-100-010, filed 12/9/04, effective 1/9/05.]

**WAC 192-100-015 Equity and good conscience defined.** (1) For the purposes of chapters 192-230 and 192-330 WAC, "equity and good conscience" means fairness as applied to a given set of circumstances.

(2) When deciding if paying the full amount owing is against equity and good conscience the department may consider, but is not limited to, the following circumstances:

- (a) General health, including disability, competency, and mental or physical impairment;
- (b) Education level, including literacy;
- (c) Whether there is current income from work or a business;
- (d) History of unemployment;
- (e) Future earnings potential;
- (f) Business structure, if appropriate;
- (g) Marital status and number of dependents, including whether other household members are employed;
- (h) The costs of collection compared to the amount of the outstanding debt. The department may consider such factors as the age and amount of the outstanding debt, whether there were previous good faith efforts to pay the debt, the tools available to enforce collections and other information relevant to ability to pay;

(i) Whether there were previous negotiated settlements or negotiated settlement attempts on a debt with the department;

(j) Factors indicating that collection of the full amount would cause undue economic, physical, or mental hardship making the debtor unable to provide for basic necessities. Unless there are unusual circumstances which would argue otherwise, the department will presume repayment would

leave you unable to provide basic necessities if your total household resources in relation to household size do not exceed seventy percent of the Lower Living Standard Income Level (LLSIL) and circumstances are not expected to change within the next ninety days; and

(k) Other factors that bear a direct relationship to the ability to pay the debt. The decision to grant or deny a negotiated settlement will be based on the totality of circumstances rather than the presence of a single factor listed in this section, except for the presumption established under (j) of this subsection.

[Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 16-21-013, § 192-100-015, filed 10/7/16, effective 11/14/16; WSR 14-04-073, § 192-100-015, filed 1/30/14, effective 3/2/14.]

**WAC 192-100-020 Continued claim defined.** (1) You are a continued claim recipient if you:

- (a) Are monetarily entitled to benefits; and
- (b) Are nonmonetarily eligible for benefits; and
- (c) Have received credit for your waiting week or payment of benefits for one or more weeks in your benefit year and in the current continued claim series.

(2) Continued claim status will end following any combination of four or more consecutive weeks for which you do not file a claim or during which you are not an unemployed individual as defined in RCW 50.04.310.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. WSR 05-01-076, § 192-100-020, filed 12/9/04, effective 1/9/05.]

**WAC 192-100-030 Week defined.** The term "week" means a period of seven consecutive calendar days beginning on Sunday at 12:00 a.m. and ending at 11:59 p.m. the following Saturday.

[Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 16-21-013, § 192-100-030, filed 10/7/16, effective 11/14/16. Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. WSR 05-01-076, § 192-100-030, filed 12/9/04, effective 1/9/05.]

**WAC 192-100-035 Effective date of claim defined.** As provided in RCW 50.04.030, an unemployment claim will be effective on the Sunday of the calendar week in which the application for benefits is filed, or, when requested, backdated to a calendar week prior to the calendar week in which the application is filed as provided in WAC 192-110-095. This Sunday date is referred to as the "effective date of claim" or "claim effective date."

[Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 16-21-013, § 192-100-035, filed 10/7/16, effective 11/14/16. Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. WSR 05-01-076, § 192-100-035, filed 12/9/04, effective 1/9/05.]

**WAC 192-100-037 Mail.** (1) The term "mail" is interchangeable with the term "send," which means:

(a) To send or deliver by means of the postal service or other delivery service; or

(b) To transmit, deliver, or distribute by email or other electronic services.

(2) Subsection (1)(b) of this section does not apply to WAC 192-04-210, which requires mailing through the postal service or other delivery service if not personally served.

[Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 16-21-013, § 192-100-037, filed 10/7/16, effective 11/14/16.]

**WAC 192-100-040 Seasonal employment.** The term "seasonal employment" means work with regular periodic layoffs, showing a consistent pattern of employment and unemployment.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.60.901. WSR 06-22-004, § 192-100-040, filed 10/19/06, effective 11/19/06.]

**WAC 192-100-050 Fraud defined.** (1) For purposes of RCW 50.20.070, 50.20.190, and chapter 192-220 WAC, fraud means an action by an individual where all of the following elements are present:

(a) The individual has made a statement or provided information.

(b) The statement was false.

(c) The individual either knew the statement was false or did not know whether it was true or false when making it.

(d) The statement concerned a fact that was material to the individual's rights and benefits under Title 50 RCW.

(e) The individual made the statement with the intent that the department would rely on it when taking action.

(2) To decide whether an individual has committed fraud, the elements in subsection (1) must be shown by clear, cogent, and convincing evidence. Fraud cannot be presumed. Circumstantial evidence, rather than direct evidence, is enough to establish fraud if the evidence is clear, cogent, and convincing.

(3) This definition of fraud also applies to the term "misrepresentation" in RCW 50.20.190. A violation of RCW 50.20.070 must meet this definition of fraud.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. WSR 07-23-128, § 192-100-050, filed 11/21/07, effective 1/1/08.]

**WAC 192-100-055 Nondisclosure and willful nondisclosure—RCW 50.20.160.** (1) "Nondisclosure" is not a synonym for fraud or misrepresentation. It refers to situations in which you have information or knowledge which you fail to disclose to the department inadvertently or through oversight. The department may redetermine an allowance of benefits resulting from nondisclosure at any time within two years following the benefit year in which the allowance was made.

(2) "Willful nondisclosure" means you fail to disclose information when you knew or should have known that it was material. The department may redetermine an allowance of benefits resulting from willful nondisclosure at any time.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. WSR 10-11-046, § 192-100-055, filed 5/12/10, effective 6/12/10.]

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**WAC 192-100-060 Labor dispute.** A labor dispute means a deliberate action by two or more individuals or by an employer resulting in a strike or lockout where wages, hours, working conditions, or terms of employment are at issue.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. WSR 10-11-046, § 192-100-060, filed 5/12/10, effective 6/12/10.]

**WAC 192-100-065 Preponderance of evidence defined.** "Preponderance of evidence" is that evidence which, when fairly considered, produces the stronger impression, has the greater weight, and is the more convincing as to its truth when weighted against the evidence in opposition thereto.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. WSR 10-11-046, § 192-100-065, filed 5/12/10, effective 6/12/10.]

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

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

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

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

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

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

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

**WAC 192-100-075 Domestic partner.** For purposes of this title:

(1) "Domestic partner" means:

(a) Two adults who have registered as a domestic partnership with the Washington secretary of state; or

(b) A legal union of two persons of the same sex that was formed in and is legal in any state or jurisdiction.

(2) "Domestic partner" does not include partnerships formed by individuals of the opposite sex except as provided by RCW 26.60.030 or the equivalent law of another state.

[Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 16-21-013, § 192-100-075, filed 10/7/16, effective 11/14/16. Statutory Authority: RCW 50.12.010, 50.12.040, and 34.05.120. WSR 10-01-156, § 192-100-075, filed 12/22/09, effective 1/22/10.]

**WAC 192-100-500 General definitions—Relating to wages and taxes.** For purposes of unemployment insurance taxes only:

(1) **Wages.** Includes all payments for personal services performed by an employee for an employer including the cash value of all remuneration paid in any medium other than cash including salaries, commissions, vacation pay, dismissal wages, bonuses and reasonable value of board, rent, housing,

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lodging, payments in kind, tips, and any other similar advantage received from the individual's employer or directly with respect to work for the employer.

(2) **Wages paid.** Includes wages that are actually received by an individual and wages that are contractually due but are not paid because the employer refuses or is unable to make such payment. (See RCW 50.24.015).

(3) **Wages constructively paid.** Those wages set aside, by mutual agreement of both parties (employer and employee) to be paid at a later date. They are reported for tax purposes when actually paid to the employee. The wages set aside can have no substantial limitation or restriction as to the time or manner or condition upon which payment is to be made. In addition the ability to draw on the wages must be within the control and disposition of the employee.

(4) **Deductions.** The amount(s) any federal or state law requires an employer to deduct from the wages of an individual in its employ; and to pay the amount deducted to the federal or state government, or any of their political subdivisions. The amount deducted will be considered wages and to have been paid to the individual at the time of the deduction. Other amounts deducted from the wages of an individual by an employer also constitute wages paid to the individual at the time of the deduction.

(5) **Nominal stipends.** A stipend is considered nominal when it does not exceed six hundred dollars per year.

(6) **Contributions.** Title 50 RCW generally uses the term "contributions" to refer to unemployment taxes. Title 192 WAC generally uses the term "unemployment taxes" to refer to contributions. The two terms are treated interchangeably unless the context provides otherwise.

[Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 07-23-127, § 192-100-500, filed 11/21/07, effective 1/1/08. Statutory Authority: Chapters 34.05, 50.12 RCW and RCW 50.12.010. WSR 99-20-125, § 192-100-500, filed 10/6/99, effective 11/6/99.]

**WAC 192-100-510 Definitions relating to RCW 50.04.145 and 50.24.130.** For the purposes of RCW 50.04.-145 and 50.24.130.

Definitions:

(1) **Same work.** Means work performed in the same trade or craft (i.e. carpenters, electricians, etc.).

(2) **At the same time.** Means occurring concurrently as opposed to the case of one contractor replacing another in the same trade.

(3) **Project.** Means any work performed under a contract within the scope of a building permit; or, if a building permit is not required, work performed under a contract.

(4) **Separate set of books or records.** Means records other than those maintained by the contractor for which services are performed.

[Statutory Authority: Chapters 34.05, 50.12 RCW, RCW 50.04.145 and 50.24.130. WSR 99-20-126, § 192-100-510, filed 10/6/99, effective 11/6/99.]