

Chapter 192-800 WAC APPEALS AND PROCEDURE

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WAC

192-800-005	What is the standard the department will use to determine fraud?
192-800-010	How will the disqualification periods and penalties be assessed for an employee who is determined to have committed fraud?
192-800-015	When will the department change an occurrence of fraud?
192-800-020	How will the department differentiate between employers?
192-800-025	Adoption of model rules.
192-800-030	Definitions.
192-800-035	Who can appeal or submit a petition for review?
192-800-040	What are the timeliness requirements for submitting an appeal or a petition for review?
192-800-045	Can an appeal be withdrawn?
192-800-050	What happens after an appeal is submitted?
192-800-055	Who will be notified if an appeal is filed and what will it include?
192-800-060	What happens if an appeal or a petition has been filed and one of the parties has a change of contact information?
192-800-065	How does the time computation work for perfecting an appeal or petition for review?
192-800-070	Who can give testimony and examine witnesses during an appeal hearing?
192-800-075	Who can request a postponement of a hearing?
192-800-080	Will depositions and written discovery be permitted?
192-800-085	When will administrative law judges hear consolidated cases?
192-800-090	What is included in decisions issued by the office of administrative hearings?
192-800-095	Can a decision of the commissioner incorporate a decision under review?
192-800-100	What is the process for filing petition for review and any reply to the petition for review?
192-800-105	When and how can an administrative law judge dispose of an appeal?
192-800-110	What options are available for an aggrieved party who received an order of default?
192-800-115	What is the process for filing a petition for reconsideration to the commissioner's review office?
192-800-120	When would the commissioner not issue declaratory orders?
192-800-125	When is a petition for review considered delivered to the department?
192-800-150	Can an employee designate a representative to act on their behalf?
192-800-155	When are proceedings open to the public, and what information from a proceeding before the appeal tribunal or commissioner is publicly disclosable?

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

192-800-002	Untimely appeals. [Statutory Authority: RCW 50A.04.215. WSR 18-22-080, § 192-800-002, filed 11/2/18, effective 12/3/18.] Repealed by WSR 19-23-090, filed 11/19/19, effective 12/20/19. Statutory Authority: RCW 50A.04.215.
192-800-003	Designating an authorized representative. [Statutory Authority: RCW 50A.04.215. WSR 19-08-016, § 192-800-003, filed 3/22/19, effective 4/22/19.] Repealed by WSR 19-23-090, filed 11/19/19, effective 12/20/19. Statutory Authority: RCW 50A.04.215.

WAC 192-800-005 What is the standard the department will use to determine fraud? The department will determine if fraud has been committed under WAC 192-500-120 based on a showing of clear, cogent, and convincing evidence.

[Statutory Authority: RCW 50A.04.215. WSR 19-13-001, § 192-800-005, filed 6/5/19, effective 7/6/19.]

WAC 192-800-010 How will the disqualification periods and penalties be assessed for an employee who is determined to have committed fraud? (1) The department will assess disqualification periods and penalties for each fraud determination individually under RCW 50A.15.060.

(2) All disqualifications and penalties in RCW 50A.15.060 are in addition to the required repayment of any benefits paid as a result of fraud.

(3) The department will assess the fraud penalties established under RCW 50A.15.060 based on the percentage of benefits paid for those weeks in which the fraud occurred or that were paid as a result of fraud. The penalty will not apply to other weeks that may be included in the same eligibility decision.

(4) The penalty amount, if not a multiple of one dollar, is rounded up to the next higher dollar.

[Statutory Authority: RCW 50A.05.060. WSR 21-04-067, § 192-800-010, filed 1/29/21, effective 3/1/21. Statutory Authority: RCW 50A.04.215. WSR 19-13-001, § 192-800-010, filed 6/5/19, effective 7/6/19.]

WAC 192-800-015 When will the department change an occurrence of fraud? (1) Determinations of fraud are appealable. If an employee has been assessed with multiple determinations of fraud and any determination changes due to a redetermination or an appeal, the department will send a new fraud determination showing the corrected disqualification period and penalty under Title 50A RCW.

Example: The department issues a determination that an employee has committed a third occurrence of fraud. Through appeal, the second occurrence is overturned. The department will send a redetermination of the third occurrence indicating that it is now the second occurrence of fraud and the appropriate penalties will apply.

(2) Although the revised determination in subsection (1) of this section does not restart the appeal period included in the original decision, employees may appeal a change in the penalty amount or length of disqualification.

[Statutory Authority: RCW 50A.04.215. WSR 19-13-001, § 192-800-015, filed 6/5/19, effective 7/6/19.]

WAC 192-800-020 How will the department differentiate between employers? (1) The department will determine each entity in possession of its own unified business identifier number as assigned by the state's business licensing service to be an individual employer.

(2) If the department finds an employer acted in such a way to avoid paying the full amount of premiums when due under RCW 50A.20.030, the employer may be subject to penalties under RCW 50A.45.010.

(3) If the department finds under subsection (2) of this section that an employer acted in such a way to avoid paying the full amount of premiums when due, the department may require the employer to report under a single unified business identifier selected by the department. In such cases, the department will notify the employer of the determination. Notice will include the department's findings, the unified business identifier under which the employer must report, and the full amount of remaining premiums, if any, due by the responsible employer.

[Statutory Authority: RCW 50A.05.060. WSR 21-04-067, § 192-800-020, filed 1/29/21, effective 3/1/21. Statutory Authority: RCW 50A.04.215. WSR 19-16-081, § 192-800-020, filed 7/31/19, effective 8/31/19.]

WAC 192-800-025 Adoption of model rules. The model rules of procedure contained in chapter 10-08 WAC, are, to the extent they are not inconsistent with the rules contained in this chapter, adopted as the rules of procedure for Title 50A RCW. The rules contained in this title will, to the extent of any conflict with the model rules of pro-

cedure, be deemed to supersede the conflicting provisions of the model rules of procedure.

[Statutory Authority: RCW 50A.04.215. WSR 19-23-090, § 192-800-025, filed 11/19/19, effective 12/20/19.]

WAC 192-800-030 Definitions. Unless context clearly indicates otherwise, the following terms and phrases shall have these meanings for this chapter:

(1) "Appeal" means a request for a hearing before and decision by the office of administrative hearings in a matter involving paid family or medical leave premiums or penalty assessments or any determinations under Title 50A RCW.

(2) "Petition for review" means a request directed to the commissioner for a review of the proceedings held and decision issued by the office of administrative hearings.

(3) "Commissioner" means the commissioner's review office of the employment security department.

[Statutory Authority: RCW 50A.04.215. WSR 19-23-090, § 192-800-030, filed 11/19/19, effective 12/20/19.]

WAC 192-800-035 Who can appeal or submit a petition for review?

(1) An aggrieved party as defined in WAC 192-500-040 may file an appeal to the department by using the department's online services, or in another format approved by the department.

(2) Any aggrieved party who receives a decision from the office of administrative hearings, other than an order approving a withdrawal of appeal, a consent order, or an interim order, may file a written petition for review, including filing by using the department's online services, or in another format approved by the department.

[Statutory Authority: RCW 50A.05.060. WSR 20-20-073, § 192-800-035, filed 10/2/20, effective 11/2/20. Statutory Authority: RCW 50A.04.215. WSR 19-23-090, § 192-800-035, filed 11/19/19, effective 12/20/19.]

WAC 192-800-040 What are the timeliness requirements for submitting an appeal or a petition for review?

(1) An appeal or a petition for review from a determination, redetermination, order and notice of assessment of premiums or penalties, appeals decision, or commissioner's decision is deemed filed and received if the provisions within RCW 50A.50.040 are met.

(2) An appeal must be filed within thirty days of the date the notification or mailing, whichever is the earlier. The appeal must be filed in accordance with the provisions of RCW 50A.50.010.

(3) The petition for review must be filed within thirty days of the date of delivery or mailing of the decision of the office of administrative hearings, whichever is the earlier. The petition for review must be filed in accordance with the provisions of RCW 50A.50.080.

(4) The following factors shall be considered in determining whether good cause exists under RCW 50A.50.120 for the late filing of an appeal or a petition for review:

(a) The length of the delay;

(b) The excusability of the delay; and

(c) Whether acceptance of the late filed appeal or petition for review will result in prejudice to other interested parties, including the department.

(5) In determining the excusability for the late filing of an appeal or petition for review, the office of administrative hearings or the commissioner's review office will consider:

(a) Whether any physical, mental, educational or linguistic limitations of the appealing or petitioning party exist, including any lack of facility with the English language; and

(b) The length of the delay in filing. Untimely appeals filed after the filing deadline require a more compelling reason commensurate with the length of the delay.

[Statutory Authority: RCW 50A.04.215. WSR 19-23-090, § 192-800-040, filed 11/19/19, effective 12/20/19.]

WAC 192-800-045 Can an appeal be withdrawn? (1) An aggrieved party may withdraw their appeal or petition for review upon approval by the office of administrative hearings or the commissioner's review office, respectively, at any time prior to the decision. When an appeal or petition for review is withdrawn, the determination, redetermination, order and notice of assessment of premiums or penalties, or other decision that was appealed, is final in accordance with the provisions of Title 50A RCW.

(2) If an appeal is filed and a determination or redetermination of the decision has been made in the aggrieved party's favor, the appeal will be considered withdrawn unless the aggrieved party contests the withdrawal of the appeal in writing within thirty days of the date of redetermination.

[Statutory Authority: RCW 50A.05.060 and 50A.25.030. WSR 21-11-009, § 192-800-045, filed 5/7/21, effective 6/7/21. Statutory Authority: RCW 50A.05.060. WSR 20-20-073, § 192-800-045, filed 10/2/20, effective 11/2/20. Statutory Authority: RCW 50A.04.215. WSR 19-23-090, § 192-800-045, filed 11/19/19, effective 12/20/19.]

WAC 192-800-050 What happens after an appeal is submitted? Upon receipt of a notice of appeal, the commissioner shall request the assignment of an administrative law judge under chapter 34.12 RCW to conduct a hearing in accordance with chapter 34.05 RCW and issue an initial order.

[Statutory Authority: RCW 50A.04.215. WSR 19-23-090, § 192-800-050, filed 11/19/19, effective 12/20/19.]

WAC 192-800-055 Who will be notified if an appeal is filed and what will it include? (1) All interested parties to an appeal will be notified when an appeal has been filed.

(2) The notice will contain information related to the determination or redetermination being appealed.

[Statutory Authority: RCW 50A.04.215. WSR 19-23-090, § 192-800-055, filed 11/19/19, effective 12/20/19.]

WAC 192-800-060 What happens if an appeal or a petition has been filed and one of the parties has a change of contact information? (1) Once an appeal has been filed, any interested party must notify the office of administrative hearings of any change of contact information.

(2) Once a petition for review has been filed, any interested party must notify the commissioner's review office of any change of contact information.

(3) Any interested party who fails to comply with this section will not have good cause for failure to appear at a hearing or for late filing of a petition for review or untimely submission of a reply or petition for reconsideration.

[Statutory Authority: RCW 50A.04.215. WSR 19-23-090, § 192-800-060, filed 11/19/19, effective 12/20/19.]

WAC 192-800-065 How does the time computation work for perfecting an appeal or petition for review? The time within which an appeal or a petition for review is to be perfected under Title 50A RCW is computed by excluding the day of delivery or mailing of the determination or redetermination, and by including the last day. If the last day is a Saturday or Sunday or a holiday, as defined in RCW 1.16.050, the appeal or petition for review must be perfected no later than the next business day.

[Statutory Authority: RCW 50A.04.215. WSR 19-23-090, § 192-800-065, filed 11/19/19, effective 12/20/19.]

WAC 192-800-070 Who can give testimony and examine witnesses during an appeal hearing? In an appeal hearing, any interested party, or legally authorized representative of an interested party, has the right to give testimony and to examine and cross-examine any other interested party or witnesses with respect to facts material and relevant to the issues involved.

[Statutory Authority: RCW 50A.04.215. WSR 19-23-090, § 192-800-070, filed 11/19/19, effective 12/20/19.]

WAC 192-800-075 Who can request a postponement of a hearing? (1) Any party to a hearing may request a postponement of a hearing at any time prior to the actual convening of the hearing. The granting or denial of the request will be at the discretion of the presiding administrative law judge.

(2) The presiding administrative law judge may in the exercise of sound discretion grant a continuance of a hearing at any time at the request of any interested party or on the judge's own motion.

[Statutory Authority: RCW 50A.04.215. WSR 19-23-090, § 192-800-075, filed 11/19/19, effective 12/20/19.]

WAC 192-800-080 Will depositions and written discovery be permitted? The presiding administrative law judge has the discretion to allow taking of depositions and submission of interrogatories or re-

quests for production either on the judge's own motion or at the request of any interested party.

[Statutory Authority: RCW 50A.04.215. WSR 19-23-090, § 192-800-080, filed 11/19/19, effective 12/20/19.]

WAC 192-800-085 When will administrative law judges hear consolidated cases? The presiding administrative law judge may hear individual matters on a consolidated record if there is a substantial identity of issues and the rights of no interested party will be adversely affected. This procedure should provide for the hearing of additional or unique issues relating to individual cases.

[Statutory Authority: RCW 50A.04.215. WSR 19-23-090, § 192-800-085, filed 11/19/19, effective 12/20/19.]

WAC 192-800-090 What is included in decisions issued by the office of administrative hearings? Every decision issued by the office of administrative hearings, other than an order approving a withdrawal of appeal, a consent order, or an interim order, and every decision issued by the commissioner under RCW 50A.50.090, other than an interim order or an order granting or denying a motion for reconsideration or a stay, shall:

- (1) Be captioned and include the name of the agency and name of the proceeding;
- (2) Designate all parties and representatives participating in the proceeding;
- (3) Include a concise statement of the nature and background of the proceeding;
- (4) Contain appropriate numbered findings of fact meeting the requirements in RCW 34.05.461;
- (5) Contain appropriate numbered conclusions of law, including citations of statutes and rules relied upon;
- (6) Contain an initial or final order disposing of all contested issues; and
- (7) Be accompanied by or contain a statement of petition for review or petition for judicial review rights.

[Statutory Authority: RCW 50A.04.215. WSR 19-23-090, § 192-800-090, filed 11/19/19, effective 12/20/19.]

WAC 192-800-095 Can a decision of the commissioner incorporate a decision under review? A decision of the commissioner issued under RCW 50A.50.090 may incorporate by reference any portion of the decision under review. Such incorporation satisfies the requirements of WAC 192-800-090.

[Statutory Authority: RCW 50A.04.215. WSR 19-23-090, § 192-800-095, filed 11/19/19, effective 12/20/19.]

WAC 192-800-100 What is the process for filing petition for review and any reply to the petition for review? (1) The written petition for review must be filed by using the department's online serv-

ices or by mailing it to the Commissioner's Review Office, Employment Security Department, Post Office Box 9555, Olympia, WA 98507-9555, within thirty days of the date of mailing or delivery of the decision of the office of administrative hearings, whichever is earlier.

(2) Any written argument in support of the petition for review must be attached to the petition for review and be filed at the same time. The commissioner's review office will acknowledge receipt of the petition for review by assigning a review number to the case, entering the review number on the face of the petition for review, and setting forth the acknowledgment date on the petition for review. The commissioner's review office will also send copies of the acknowledged petition for review and attached argument in support thereof to the petitioning party, nonpetitioning party, and their representatives of record, if any.

(3) Any reply to the petition for review and any argument in support thereof by the nonpetitioning party must be filed by using the department's online services or by mailing it to the Commissioner's Review Office, Employment Security Department, Post Office Box 9555, Olympia, WA 98507-9555. The reply must be received by the commissioner's review office within fifteen days of the date of the acknowledged petition for review. An informational copy must be mailed by the nonpetitioning party to all other parties of record and their representatives, if any.

(4) The petition for review and argument in support thereof, and the reply to the petition for review and argument in support thereof, must:

(a) Be captioned, and include the docket number of the decision of the office of administrative hearings, and be signed by the party submitting it or by a designated representative of that party; and

(b) Be legible, reproducible, and five pages or less.

(5) Arrangements for representation and requests for copies of the hearing record and exhibits will not extend the period for the filing of a petition for review, argument in support thereof, or a reply to the petition for review.

(6) Any argument in support of the petition for review or in reply thereto not submitted in accordance with the provisions of this regulation is not considered in the disposition of the case unless it is determined that the failure to comply with these provisions was beyond the reasonable control of the individual seeking relief.

[Statutory Authority: RCW 50A.04.215. WSR 19-23-090, § 192-800-100, filed 11/19/19, effective 12/20/19.]

WAC 192-800-105 When and how can an administrative law judge dispose of an appeal? (1) The presiding administrative law judge may dispose of any appeal through:

(a) An order approving a withdrawal of appeal;

(b) A consent order; or

(c) An order of default.

(2) There will be no petition for review rights from an order approving a withdrawal of appeal or a consent order.

[Statutory Authority: RCW 50A.04.215. WSR 19-23-090, § 192-800-105, filed 11/19/19, effective 12/20/19.]

WAC 192-800-110 What options are available for an aggrieved party who received an order of default? (1) Any party aggrieved by the entry of an order of default may:

(a) File a motion to vacate the order of default with the office of administrative hearings within ten days of the date of mailing of the order of default; or

(b) File a petition for review from such order by complying with the filing requirements set forth in WAC 192-800-100.

(2) The provisions in subsection (1)(a) of this section toll the appeal period for filing a timely petition for review with the commissioner's review office until the office of administrative hearings issues a ruling on the motion. However, should a petition for review be filed while a ruling on a motion to vacate is pending, the office of administrative hearings no longer has jurisdiction to vacate the default order.

(3) Under subsection (1)(a) of this section, an order of default will be vacated by the presiding officer only upon a showing of good cause for failure to appear or to request a postponement prior to the scheduled time for hearing. If the order of default is vacated, the presiding administrative law judge will conduct a hearing on the merits and issue a decision.

(4) Under subsection (1)(b) of this section, an order of default will be set aside by the commissioner's review office only upon a showing of good cause for failure to appear or to request a postponement prior to the scheduled time for hearing. In the event such an order of default is set aside, the commissioner will remand the matter to the office of administrative hearings for hearing and decision.

[Statutory Authority: RCW 50A.05.060. WSR 20-20-073, § 192-800-110, filed 10/2/20, effective 11/2/20. Statutory Authority: RCW 50A.04.215. WSR 19-23-090, § 192-800-110, filed 11/19/19, effective 12/20/19.]

WAC 192-800-115 What is the process for filing a petition for reconsideration to the commissioner's review office? (1) A written petition for reconsideration and argument in support thereof must be filed within ten days of the date of the decision of the commissioner. It must be filed by using the department's online services or by mailing it to the Employment Security Department, Post Office Box 9555, Olympia, WA 98507-9555.

(2) The petitioner must provide the petition for reconsideration in subsection (1) of this section to all interested parties.

(3) No matter will be reconsidered by the commissioner unless it clearly appears from the face of the petition for reconsideration and the argument submitted in support thereof that:

(a) There is obvious material, clerical error in the decision; or

(b) The petitioner, through no fault of the petitioner, was denied a reasonable opportunity to present argument or respond to argument under WAC 192-800-100.

(4) A petition for reconsideration is deemed to have been denied if, within twenty days from the date the petition for reconsideration is filed, the commissioner does not either:

(a) Dispose of the petition for reconsideration; or

(b) Mail or deliver to the parties a written notice specifying the date by which the parties will act on the petition for reconsideration. If no action is taken by the date specified in such written notice, the petition will be deemed to have been denied.

(5) A petition for reconsideration does not stay the effectiveness of the decision of the commissioner. The filing of a petition for reconsideration is not a prerequisite for filing a petition for judicial review. An order denying reconsideration or a written notice specifying the date upon which action will be taken on the petition for reconsideration is not subject to judicial review.

[Statutory Authority: RCW 50A.04.215. WSR 19-23-090, § 192-800-115, filed 11/19/19, effective 12/20/19.]

WAC 192-800-120 When would the commissioner not issue declaratory orders? The commissioner will not issue a declaratory order on any matter that may be adjudicated under any statute, regulation, or other provision of law. No declaratory order will be issued that is merely an advisory opinion.

[Statutory Authority: RCW 50A.04.215. WSR 19-23-090, § 192-800-120, filed 11/19/19, effective 12/20/19.]

WAC 192-800-125 When is a petition for review considered delivered to the department? Delivery under RCW 34.05.542 is made when a copy of the petition for judicial review is received by:

- (1) Delivery to the Commissioner's Office at 212 Maple Park Avenue S.E., Olympia, WA;
- (2) Mail at the Commissioner's Review Office, Post Office Box 9555, Olympia, WA 98507-9555; or
- (3) Email at the commissioner's review office at cro@esd.wa.gov.

[Statutory Authority: RCW 50A.05.060 and 50A.15.020. WSR 22-10-031, § 192-800-125, filed 4/26/22, effective 6/9/22. Statutory Authority: RCW 50A.05.060. WSR 21-04-067, § 192-800-125, filed 1/29/21, effective 3/1/21. Statutory Authority: RCW 50A.04.215. WSR 19-23-090, § 192-800-125, filed 11/19/19, effective 12/20/19.]

WAC 192-800-150 Can an employee designate a representative to act on their behalf? (1) The department may authorize another individual to act on the employee's behalf for the purposes of paid family and medical leave benefits if:

(a) An employee designates an authorized representative by submitting written documentation as required by the department;

(b) A court-appointed legal guardian with authority to make decisions on a person's behalf submits documentation as required by the department;

(c) An individual designated as an attorney-in-fact under a power of attorney submits documentation satisfactory to the department to act on the employee's behalf; or

(d) If an employee is unable to designate an authorized representative due to a serious health condition, an individual may represent the employee by submitting a complete and signed authorized representative designation form made available by the department, which must include:

(i) Documentation from the employee's health care provider certifying that the employee is incapable of completing the administrative requirements necessary for receiving paid family and medical leave

benefits and is unable to designate an authorized representative to act on the employee's behalf; and

(ii) An affidavit or declaration authorized by chapter 5.50 RCW attesting to the responsibility to act in the employee's best interest.

(2) A person meeting the requirements under subsection (1) of this section may file an initial application and weekly claims up to and including the week in which the employee died subject to WAC 192-620-010.

(3) If an employee has been approved for benefit payments and the employee dies, an estate executor or administrator may file weekly claims for any weeks in which the employee was unable to file a weekly claim up to and including the week in which they died, subject to WAC 192-620-010.

(4) The department will terminate the authority given to the authorized representative:

(a) When the employee or authorized representative notifies the department verbally or in writing; or

(b) At the department's discretion.

(5) For the purposes of paid family and medical leave the term employee is used for both employee and authorized representative.

[Statutory Authority: RCW 50A.05.060 and 50A.10.010. WSR 23-11-083, § 192-800-150, filed 5/17/23, effective 7/1/23. Statutory Authority: RCW 50A.05.060. WSR 20-11-036, § 192-800-150, filed 5/14/20, effective 6/14/20. Statutory Authority: RCW 50A.04.215. WSR 19-23-090, § 192-800-150, filed 11/19/19, effective 12/20/19.]

WAC 192-800-155 When are proceedings open to the public, and what information from a proceeding before the appeal tribunal or commissioner is publicly disclosable? To maintain confidentiality of records under chapter 50A.25 RCW:

(1) All proceedings will be closed to the public unless otherwise agreed upon by all parties appearing for hearing;

(2) All proceeding records will be sealed for hearings closed to the public and are not publicly disclosable; and

(3) All personal identifying information concerning an individual or employer will be redacted from the record if the hearing is open to the public.

[Statutory Authority: RCW 50A.05.060 and 50A.25.030. WSR 21-11-009, § 192-800-155, filed 5/7/21, effective 6/7/21.]