

## WSR 21-05-034

## EMERGENCY RULES

## EMPLOYMENT SECURITY DEPARTMENT

[Filed February 11, 2021, 9:00 a.m., effective February 11, 2021, 9:00 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: This rule making is proposed to address the charging of unemployment benefits under RCW 50.29.021 (2)(j) for non-Washington combined-wage claims. RCW 50.29.021 (2)(j) relieves all employers of benefit charges for benefits paid during all weeks starting with the week ending March 28, 2020, and ending with the week ending May 30, 2020. However, for combined-wage claims filed in states other than Washington, where Washington is the transferring state, Washington is only given notice of benefits charges by the other states on a quarterly basis, not a weekly basis. Therefore, rule making is required to address the employment security department's (ESD) inability to calculate benefit charges on a weekly basis for this specific type of unemployment claim. Therefore, for purposes of RCW 50.29.021 (2)(j), and for the purposes of this specific type of unemployment claim, ESD will not charge the employer for benefits paid during the second quarter of the combined-wage claim, and all other benefits paid under the combined-wage claim will be charged to the employer, unless the employer qualifies for relief of charges under a different law.

Citation of Rules Affected by this Order: New WAC 192-320-072.

Statutory Authority for Adoption: RCW 50.12.040.

Other Authority: RCW 50.12.050; 20 C.F.R. Part 616.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: On February 8, 2021, Governor Inslee signed ESSB 5061, which requires ESD to make numerous changes to how it calculates the 2021 tax rates of Washington employers. The changes and recalculations must be completed in less than one month so that employers may take advantage of the updated voluntary contribution program under RCW 50.29.026, for which applications and payments are due by March 30, 2021, and so that employers can adequately prepare to accurately pay their unemployment taxes for the first quarter of 2021, which are due by April 30, 2021.

Section 16 of ESSB 5061 amends RCW 50.29.021 by adding new subsection (2)(j), which relieves all employers of benefit charges for benefits paid during all weeks starting with the week ending March 28, 2020, and ending with the week ending May 30, 2020. However, for purposes of combined-wage claims filed in other states, ESD does not have access to benefit charges broken down on a weekly basis. A combined-wage claim is where an unemployment claimant combines wages they earned in two or more different states into one unemployment claim filed in one state. If the combined-wage claim is filed in Washington, Washington is known as the paying state, as Washington is the state actually paying the benefits. If the combined-wage claim is filed in another state, and the combined-wage claim uses wages earned working in Washington for a Washington employer, then Washington is known as the transferring state. When Washington is the transferring state, ESD receives notices from the other state regarding how much money in unemployment benefits was paid by the other state, and then ESD charges

the Washington employers proportionately for the benefits paid by the other state. Pursuant to 20 C.F.R. § 616.8(f), the other state is only required to notify ESD about the benefits it paid on a quarterly basis.

ESD must balance the need to timely calculate the 2021 tax rates for Washington employers, against the command to relieve Washington employers of benefit charges for all weeks starting with the week ending March 28, 2020, through the week ending May 30, 2020, against the reality that ESD only has quarterly benefit charging information for combined-wage claims filed in other states. Therefore, ESD will relieve benefit charges for the second quarter of 2020 on combined-wage claims filed in other states where Washington is the transferring state, since of the ten weeks of benefit charge relief mandated by RCW 50.29.021 (2)(j), nine of those weeks are in the second quarter of 2020. While ESD could request that other states provide the benefit charge information on a weekly basis, such other states are not required to fulfill that request. Further, making such a request would delay tax rate calculations for Washington employers. ESD also considered dividing the quarterly benefit charges on a pro-rata basis, but doing so would require extensive technological changes, which would also delay tax rate calculations for Washington employers.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: February 11, 2021.

Dan Zeitlin  
Policy Director

## OTS-2917.1

### NEW SECTION

**WAC 192-320-072 Charging non-Washington combined-wage claims under RCW 50.29.021 (2)(j).** For purposes of RCW 50.29.021 (2)(j), the benefits paid under a combined-wage claim, as that term is defined by 20 C.F.R. Sec. 616.6, filed in a state other than Washington, and Washington is the transferring state, as that term is defined by 20 C.F.R. Sec. 616.6, will be charged as follows:

(1) All benefits paid under the combined-wage claim in the second quarter of 2020 will not be charged to the claimant's base year employer;

(2) All other benefits paid under the combined-wage claim in all other quarters will be charged to the claimant's base year employer, unless the employer is eligible for relief of benefit charges for reasons other than RCW 50.29.021 (2)(j).

[]