

WSR 21-13-070

EMERGENCY RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed June 14, 2021, 1:10 p.m., effective June 14, 2021, 1:10 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: To allow the employment security department to process "blanket waivers" of overpayments of pandemic emergency unemployment compensation (PEUC) and pandemic unemployment assistance (PUA) benefits if a claimant was paid PEUC or PUA benefits when they should have been paid a different type of unemployment benefit, such as state unemployment insurance benefits, instead, and the weekly benefit amount on the PEUC or PUA claim was higher than the weekly benefit amount on the claim the claimant should have been paid.

In addition, the purpose to clarify the priority between PUA benefits, PEUC benefits, extended benefits and regular unemployment insurance benefits. Finally, the purpose is to clarify that PUA benefits will be deducted from the maximum benefits payable on an individual's new claim if the weekly benefit amount between the two claims is equal.

Citation of Rules Affected by this Order: Amending WAC 192-240-070.

Other Authority: Public Law No. 116-136, §§ 2102, 2107; Public Law No. 116-260, § 201; Unemployment Insurance Program Letter No. 20-21, Change 1 (May 5, 2021).

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 March 27, 2020, the employment security department signed an agreement with the United States Department of Labor to administer the PEUC and PUA programs. The PEUC program provides additional weeks of federally funded unemployment benefits to unemployed individuals who have exhausted their unemployment claim. The PUA program provides unemployment benefits for individuals who do not qualify for a regular unemployment claim, but are nonetheless unemployed or not available for work due to a COVID-19 reason.

Under previous guidance issued by the United States Department of Labor in Unemployment Insurance Program Letter No. 17-20, Change 1 (May 13, 2020) and Unemployment Insurance Program Letter No. 16-20, Change 4 (January 8, 2021), states were not allowed to waive any PEUC or PUA benefit overpayments on a "blanket" basis, but instead had to determine if a claimant was entitled to have their overpayment waived on an individual, case-by-case basis. The United States Department of Labor has since issued new guidance in Unemployment Insurance Program Letter No. 20-21 (May 5, 2021) that permits states to issue a "blanket waiver" of overpayments of PEUC and PUA benefits if a claimant was paid PUA or PEUC benefits by a state when they should have been paid a different type of unemployment benefit, such as state unemployment insurance benefits, instead, and the weekly benefit amount on the PEUC or PUA claim was higher than the weekly benefit amount on the claim the claimant should have received.

The employment security department has chosen to waive PEUC and PUA overpayments on a blanket basis under the limited circumstances permitted by the new federal guidance. Therefore, WAC 192-240-070 is

being amended to reflect this new blanket waiver authority. Immediate amendment of the rule is necessary to bring immediate economic relief to Washingtonians who were overpaid PEUC and PUA benefits by allowing them to keep those federal benefits, rather than pay those benefits back.

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, 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: June 14, 2021.

Daniel Zeitlin
Employment Security
Policy Director

OTS-2616.2

AMENDATORY SECTION (Amending WSR 09-24-011, 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 pandemic unemployment assistance established under Sec. 2102 of Public Law No. 116-136, as amended, emergency unemployment compensation (which includes pandemic emergency unemployment compensation under Sec. 2107 of Public Law No. 166-136, as amended), 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. If you were paid pandemic unemployment assistance, and it is later discovered that you were eligible for pandemic unemployment compensation or extended benefits, a claim for pandemic emergency unemployment compensation or extended benefits 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 pandemic unemployment assistance, 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 pan-
demic unemployment assistance, 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 pan-
demic unemployment assistance, 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. WSR 09-24-011, § 192-240-070, filed 11/20/09, effective 12/21/09.]