

WSR 22-01-204
PROPOSED RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed December 21, 2021, 11:02 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-07-035.

Title of Rule and Other Identifying Information: COVID-19 Phase 3 emergency rules, regarding Petitions for judicial review—Service on agency (WAC 192-04-210), How do I reopen my claim? (WAC 192-110-050), and Charging non-Washington combined-wage claims under RCW 50.29.021 (2) (j) (WAC 192-320-072).

Hearing Location(s): On January 27, 2022, at 9 a.m., Zoom, Meeting ID 828 9254 8635, Passcode 542603, Call in 253-215-8782. Join Zoom meeting <https://us02web.zoom.us/j/82892548635?pwd=WnY3V212Yk1QMkdYcU1BQ2hnb2lsZz09>.

Date of Intended Adoption: January 31, 2022.

Submit Written Comments to: Joshua Dye, P.O. Box 9046, Olympia, WA 98507-9046, email rules@esd.wa.gov, fax 844-652-7096, by January 20, 2022.

Assistance for Persons with Disabilities: Contact Teresa Eckstein, phone 360-507-9890, fax 360-586-4600, TTY relay 711, email teckstein@esd.wa.gov, by January 20, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The employment security department (ESD) is engaging in rule making regarding whether the emergency rules adopted during the COVID-19 response should be made permanent. The emergency rules cover judicial review petitions, reopening claims, and combined-wage claims.

Reasons Supporting Proposal: In February of 2020, Governor Inslee proclaimed a State of Emergency in Washington in response to COVID-19. ESD filed a series of emergency rules to support the state's emergency response. ESD is now seeking input from the public regarding which of those emergency rules should be made permanent to continue supporting Washington workers and businesses.

Statutory Authority for Adoption: RCW 50.12.010 and 50.12.040 provide general rule-making authority to ESD. RCW 50.20.010, 50.20.140, 50.29.021 (2) (j), 34.05.220, 34.05.542(4), 50.32.090.

Statute Being Implemented: RCW 50.20.010, 50.20.140, 50.29.021 (2) (j), 34.05.220, 34.05.542, 50.32.090.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: ESD, governmental.

Name of Agency Personnel Responsible for Drafting: Scott Michael, Olympia, Washington, 360-890-3448; Implementation and Enforcement: Julie Lord, Olympia, Washington, 360-902-9579.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Joshua Dye, P.O. Box 9046, Olympia, WA 98507-9046, phone 360-890-3472, fax 844-652-7096, TTY relay 711, email rules@esd.wa.gov, <https://esd.wa.gov/newsroom/ui-rule-making/>.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The rules amended by the COVID-19 emergency rules - Phase 3 rule making do not create an additional tax burden on

employers of any size. The rule making provides flexibility for both employers and employees.

December 21, 2021

Dan Zeitlin

Employment System Policy Director

OTS-2767.2

AMENDATORY SECTION (Amending WSR 13-05-033, filed 2/12/13, effective 3/15/13)

WAC 192-04-210 Petitions for judicial review—Service on agency.

Delivery pursuant to RCW 34.05.542(4) shall be deemed to have been made when a copy of the petition for judicial review has been (~~received by the Commissioner's Office at 212 Maple Park Avenue S.E., Olympia, WA or~~) 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 50.12.010 and 50.12.040. WSR 13-05-033, § 192-04-210, filed 2/12/13, effective 3/15/13; WSR 89-24-030, § 192-04-210, filed 11/30/89, effective 1/1/90.]

OTS-2768.1

AMENDATORY SECTION (Amending WSR 16-21-013, filed 10/7/16, effective 11/14/16)

WAC 192-110-050 How do I reopen my claim? (1) If you have stopped claiming for more than four consecutive weeks for any reason, you must reopen your claim.

(a) You may reopen your claim:

- (i) By using the department's online services; or
- (ii) By calling the unemployment claims center.

(b) You must reopen your claim **before** the end of the week.

(2) (a) Your claim will be reopened effective on Sunday of the week in which you contact the department to reopen your claim, unless you ask the department to backdate your reopening date to a prior week.

(b) The department (~~will not~~) may backdate your reopening date (~~(unless you show good cause for not reopening your claim earlier, except)~~):

- (i) For "good cause," as that term is defined by WAC 192-110-095
- (2) (a);

(ii) For "the convenience of the department" as that term is defined by WAC 192-110-095 (2) (b); or
(iii) As provided in WAC 192-140-005.

[Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 16-21-013, § 192-110-050, filed 10/7/16, effective 11/14/16. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. WSR 10-12-026, § 192-110-050, filed 5/24/10, effective 6/24/10. Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 07-22-055, § 192-110-050, filed 11/1/07, effective 12/2/07. Statutory Authority: RCW 50.20.010 and 50.12.040. WSR 99-08-073, § 192-110-050, filed 4/5/99, effective 5/6/99.]

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).

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