

## WSR 22-05-060

## PROPOSED RULES

## EMPLOYMENT SECURITY DEPARTMENT

[Filed February 10, 2022, 3:25 p.m.]

Supplemental Notice to WSR 21-24-018.

Preproposal statement of inquiry was filed as WSR 21-17-059.

Title of Rule and Other Identifying Information: WAC 192-170-015 Verification requirement for an underlying health condition under RCW 50.20.010 (4)(b)(ii) and 192-150-155 Verification requirement for an underlying health condition under RCW 50.20.050 (2)(b)(xii)(C)(II).

Hearing Location(s): On March 24, 2022, at 9:00 a.m., Zoom, meeting ID 871 6119 4144, Passcode 299796, Call-in 253-215-8782. Join Zoom meeting <https://us02web.zoom.us/j/87161194144?pwd=bExzNkRndlRtWUJQZ1JiUWtFOU5wdz09>.

Date of Intended Adoption: March 31, 2022.

Submit Written Comments to: Joshua Dye, P.O. Box 9046, Olympia, WA 98507-9046, email [rules@esd.wa.gov](mailto:rules@esd.wa.gov), fax 844-652-7096, by March 24, 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](mailto:teckstein@esd.wa.gov), by March 24, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: ESSB 5061 (2021) provides, among other things, good cause to leave work when during a public health emergency, the claimant was unable to perform their work for the employer from the claimant's home; the claimant is able and available to perform, and can actively seek suitable work which can be performed for an employer from the claimant's home; and the claimant or another individual residing with the claimant is at higher risk of severe illness or death from the disease that is the subject of the public health emergency because the higher risk individual has an underlying health condition, verified as required by the department by rule, that is identified as a risk factor of a disease that is the subject of a public health emergency. ESSB 5061, section 10, chapter 2, Laws of 2021 (codified at RCW 50.20.050 (2)(b)(xii)(C)(II)). ESSB 5061 (2021) also provides that during the weeks of a public health emergency, an unemployed individual may meet the availability requirements of RCW 50.20.010 (1)(c) if they are able and available to perform, and [are] actively seeking suitable work which can be performed for an employer from the individual's home; and the unemployed individual or another individual residing with the unemployed individual is at higher risk of severe illness or death from the disease that is the subject of the public health emergency because the higher risk individual has an underlying condition, verified as required by the department by rule, that is identified as a risk factor for the disease that is the subject of the public health emergency. Section 8, chapter 2, Laws of 2021 (codified at RCW 50.20.010 (4)(b)(ii)). Sections 8 and 10 of ESSB 5061 direct the employment security department (ESD) to adopt rules specifying how it will verify a higher risk individual's underlying health condition. The proposed rules require a claiming individual to obtain a certification from a health care provider that includes the provider's qualifications and contact information as well as information sufficient to establish the underlying health condition. The rules also clarify that benefits will be denied if an individual fails to provide the certification.

This supplemental filing adds WAC 192-150-155 Verification requirement for an underlying health condition under RCW 50.20.050 (2)(b)(xii)(C)(II), which was omitted from the proposal filed as WSR 21-24-018.

Reasons Supporting Proposal: Pursuant to ESSB 5061 (2021), ESD is required to verify the underlying health condition of higher risk individuals under RCW 50.20.010 (4)(b)(ii) and 50.20.050 (2)(b)(xii)(C)(II). The proposed rules should be adopted because they explain how ESD will undertake the verification process.

Statutory Authority for Adoption: RCW 50.20.010 (4)(b)(ii) and 50.20.050 (2)(b)(xii)(C)(II) provide specific rule-making authority for verifying underlying health conditions. RCW 50.12.010 and 50.12.040 provide general rule-making authority to the ESD.

Statute Being Implemented: RCW 50.20.010 and 50.20.050.

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

Name of Proponent: ESD, governmental.

Name of Agency Personnel Responsible for Drafting: Josh Dye, Olympia, 360-890-3472; Implementation and Enforcement: Julie Lord, Olympia, 360-890-3635.

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, 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 proposed rules do not create additional tax burden on employers.

February 10, 2022

Dan Zeitlin

Employment Security Policy Director

## OTS-2974.1

### NEW SECTION

**WAC 192-150-155 Verification requirement for an underlying health condition under RCW 50.20.050 (2)(b)(xii)(C)(II).** (1)(a) An individual who asserts they have good cause to voluntarily quit employment because they or another individual living with them have an underlying health condition that is identified as a risk factor for a disease that is the subject of a public health emergency will need to provide certification from a health care provider.

(b) The certification must include:

(i) The name, address, telephone number, and contact information of the health care provider and type of medicine the health provider is licensed to practice; and

(ii) Information from a health care provider sufficient to establish that the individual or another individual living with them have

an underlying health condition that is identified as a risk factor for a disease that is the subject of a public health emergency.

(c) The department will deny benefits under WAC 192-140-105 if the individual fails to provide the certification.

(2) For purposes of this section, the term "health care provider" has the same meaning as in WAC 192-500-090.

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## OTS-2980.2

### NEW SECTION

**WAC 192-170-015 Verification requirement for an underlying health condition under RCW 50.20.010 (4) (b) (ii).** (1) (a) An individual who limits their availability for work because they or another individual living with them have an underlying health condition that is identified as a risk factor for a disease that is the subject of a public health emergency may need to provide certification from a health care provider.

(b) The certification must include:

(i) The name, address, telephone number, and contact information of the health care provider and type of medicine the health provider is licensed to practice; and

(ii) Information from a health care provider sufficient to establish that the individual or another individual living with them have an underlying health condition that is identified as a risk factor for a disease that is the subject of a public health emergency.

(c) The department may require the individual to provide additional documentation or certification to substantiate the underlying health condition if:

(i) Circumstances of the underlying health condition change;

(ii) Information is provided to the department that the employee may no longer have an underlying health condition; or

(iii) Other circumstances cause the department to question the existence or continued existence of the individual's underlying health condition.

(d) The department will deny benefits under WAC 192-140-070 if the individual fails to provide the certification when requested.

(2) For purposes of this section, the term "health care provider" has the same meaning as in WAC 192-500-090.

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