

WSR 22-05-095

PROPOSED RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed February 16, 2022, 9:09 a.m.]

Supplemental Notice to WSR 22-01-192.

Preproposal statement of inquiry was filed as WSR 21-17-029.

Title of Rule and Other Identifying Information: COVID-19 Phase 4 emergency rules, regarding waiving the week requirement when the first week of unemployment benefits are federally funded (WAC 192-110-006), and What happens if I am paid emergency or extended benefits when I am eligible for a new unemployment claim? (WAC 192-240-070).

Hearing Location(s): On March 24, 2022, at 9 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 30, 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 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, by March 17, 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 waiting week requirements and emergency and extended benefits. Specifically, proposed WAC 192-110-006 waives the one-week waiting period for unemployment insurance benefits when they are fully paid or reimbursed by the federal government. Amended WAC 192-240-070 clarifies what happens if a claimant is paid pandemic unemployment assistance and later is determined to have been eligible for regular unemployment benefits, pandemic unemployment compensation, or extended benefits.

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

The supplemental filing provides a second public hearing to allow for additional comments from the public.

Statutory Authority for Adoption: RCW 50.12.010 and 50.12.040 provide general rule-making authority to ESD. RCW 50.20.010, 50.20.190.

Statute Being Implemented: RCW 50.20.010, 50.20.190.

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

Name of Proponent: ESD, governmental.

Name of Agency Personnel Responsible for 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 4 rule making do not create an additional tax burden on employers of any size. The rule making provides flexibility for both employers and claimants.

February 16, 2022

Dan Zeitlin

Employment System Policy Director

OTS-2846.2

NEW SECTION

WAC 192-110-006 Waiving the week requirement when the first week of unemployment benefits are federally funded. Starting after the week ending March 7, 2020, through the week ending September 4, 2021, and any other week where the one week waiting period is fully paid or fully reimbursed by the federal government, you will not be required to serve an unpaid waiting week before you receive unemployment insurance benefits.

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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 pandemic 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 pandemic 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.]