

WSR 22-15-002
PREPROPOSAL STATEMENT OF INQUIRY
EMPLOYMENT SECURITY DEPARTMENT

[Filed July 6, 2022, 12:59 p.m.]

Subject of Possible Rule Making: The employment security department (department) is engaging in rule making regarding leaves of absence for unemployment claimants.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 50.12.010 and 50.12.040 provide general rule-making authority to the department. RCW 50.04.310 defines when an individual is "unemployed" and "not unemployed."

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: In May of 2022, the department received a petition requesting that the department amend WAC 192-170-080 to eliminate WAC 192-170-080 (1)(a), which states, "If you are on a leave of absence, you are not unemployed and thus not eligible for benefits."

WAC 192-170-080 (1)(a), which states that someone on a leave of absence is not "unemployed," was determined to be "invalid" by the commissioner of the department in 2011 under *In re Ausburn*, Empl. Sec. Comm'r Dec.2d 971 (2011). In 2021, the United States Department of Labor (USDOL) issued guidance stating an individual should be considered "unemployed" when the individual incurs a reduction in work hours and their wages are less than their weekly benefit amount. Unemployment Insurance Program Letter No. 3-22 (Nov. 22, 2021). Rule making is therefore necessary to revisit whether individuals on a leave of absence should or should not be considered "unemployed."

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: USDOL reviews the state's administration of the unemployment insurance program to ensure conformity to federal statutes and regulations. The state has broad flexibility in the implementation of the unemployment insurance laws so long as conformity is maintained. The proposed regulations will be shared with USDOL prior to adoption.

Process for Developing New Rule: Draft rules will be shared with the public and stakeholders. The department will solicit input from all parties and consider all comments in the development of final rules.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Josh Dye, P.O. Box 9046, phone 360-890-3472, fax 844-652-7096, TTY relay 711, email Rules@esd.wa.gov, website <https://esd.wa.gov/newsroom/rulemaking/>.

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