

WSR 23-08-024

EMERGENCY RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed March 27, 2023, 8:28 a.m., effective March 29, 2023]

Effective Date of Rule: March 29, 2023.

Purpose: The employment security department (department) is adopting emergency rules concerning blanket overpayment waivers for pandemic unemployment assistance, pandemic emergency unemployment compensation, federal pandemic unemployment compensation, and mixed earner unemployment compensation. The department is also adopting rules concerning waivers for conditional benefits paid for the week beginning February 2, 2020, through the week ending September 4, 2021, and the process for requesting overpayment waivers for overpaid benefits for the week ending February 2, 2020, through the week ending September 4, 2021, for all federal and state unemployment compensation programs.

Citation of Rules Affected by this Order: New WAC 192-220-018; and amending WAC 192-220-017 and 192-220-080.

Statutory Authority for Adoption: RCW 50.20.190, 50.24.020, 50.12.010, and 50.12.040.

Other Authority: Unemployment Insurance Program Letter Number 20-21, Change 1 (February 7, 2022).

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: Due to the drastic rise in unemployment insurance claims during the COVID-19 pandemic, the department has seen unprecedented overpayments for claimants. Currently, there are more than 137,000 claimants with overpayments accounting for more than \$1.2 billion that accrued from February 2, 2020, through September 4, 2021. These overpayments comprised both federally funded benefit programs and the state's regular unemployment benefits. Of those overpayments, more than 67,000 claimants, accounting for more than \$258 million, were conditionally paid and, under current rules, are not eligible for waivers. The ability to provide immediate relief of overpayments to claimants for overpayments accumulated during this specific time frame requires the use of the emergency rule-making process.

In March 2020, the department signed an agreement with the United States Department of Labor (USDOL) to administer certain federally funded pandemic era benefit programs, including pandemic unemployment assistance, pandemic emergency unemployment compensation, federal pandemic unemployment compensation, and mixed earner unemployment compensation. In Unemployment Insurance Program Letter Number 20-21, Change 1, the USDOL provided scenarios where certain overpayments may be waived on a blanket basis. This emergency rule making authorizes the use of these USDOL blanket waivers.

For overpayments of regular unemployment benefits, the emergency rule allows benefits that were paid conditionally to be potentially eligible for waiver, as the department backlogs during the pandemic period substantially increased the number of benefits that were paid conditionally. Given the volume of benefit overpayments and the increased complexity of state and federal unemployment programs during the pandemic period and as the department expands consideration of

whether the claimant is at fault and whether it would be against equity and good conscience for the claimant to repay the overpayment, the department is providing claimants an expanded opportunity to request and receive overpayment waivers from the pandemic period, even if a previous overpayment waiver request had been denied.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, 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 1, Amended 2, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, 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: March 27, 2023.

Dan Zeitlin
Employment Security Policy Director

OTS-4233.2

AMENDATORY SECTION (Amending WSR 08-21-056, filed 10/9/08, effective 11/9/08)

WAC 192-220-017 Am I required to repay the overpayment? (1) You must repay the full amount of the overpayment, even if you are not at fault, unless you are granted a waiver. (See also WAC 192-230-110.) A waiver means you do not have to repay the overpayment.

(2) Except as provided in subsection (3), you are potentially eligible for a waiver of an overpayment when it would be against equity and good conscience for the department to require you to repay the full amount.

(3) You are not eligible for a waiver when:

(a) You are at fault for the overpayment;

(b) The overpayment is the result of a discharge for misconduct or gross misconduct (see RCW 50.20.066(5));

(c) The overpayment is the result of a conditional payment of benefits, except for benefits paid for the week beginning February 2, 2020, through the week ending September 4, 2021;

(d) The overpayment decision was issued by a state other than Washington; or

(e) The overpayment is for disaster unemployment assistance benefits paid under Section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

[Statutory Authority: RCW 50.12.010, 51.12.040, and 50.20.010. WSR 08-21-056, § 192-220-017, filed 10/9/08, effective 11/9/08.]

NEW SECTION

WAC 192-220-018 Blanket overpayment waivers for federally funded pandemic era benefits. The department will waive overpayments for federally funded benefits when:

(1) The individual answered "no" to being able to work and available for work and:

(a) The state paid Pandemic Unemployment Assistance, Federal Pandemic Unemployment Compensation, or Pandemic Emergency Unemployment Compensation without adjudicating the eligibility issue;

(b) Upon requesting additional information from the individual, the individual either did not respond or the individual confirmed that they were not able to work nor available for work for the week in question; and

(c) The paid benefits resulted in an overpayment for that week.

(2) The individual answered "no" to being unemployed, partially unemployed, or unable or unavailable to work because of the approved COVID-19-related reasons provided in 15 U.S.C. § 9021 (a) (3) (A) (ii) (I) and:

(a) The state paid Pandemic Unemployment Assistance anyway;

(b) Following a request from the department for a new self-certification, the individual either did not respond or the individual confirmed that none of the approved COVID-19-related reasons were applicable; and

(c) The state's payment of these benefits resulted in an overpayment for that week.

(3) The individual complied with instructions from the department to submit proof of earnings to be used in calculating the individual's Pandemic Unemployment Assistance weekly benefit amount and:

(a) Through no fault of the individual, the department's instructions were either inadequate or the department incorrectly processed this calculation using self-employment gross income instead of net income or documents from an inapplicable tax year, resulting in an incorrect higher Pandemic Unemployment Assistance weekly benefit amount; and

(b) The department established an overpayment for the difference in the individual's Pandemic Unemployment Assistance weekly benefit amount.

(4) The individual complied with instructions from the department to submit proof of earnings to be used in calculating the individual's Mixed Earner Unemployment Compensation weekly benefit amount and:

(a) Through no fault of the individual, the department's instructions were either inadequate or the department incorrectly processed this calculation using self-employment gross income instead of net income or documents from an inapplicable tax year, resulting in an incorrect higher Mixed Earner Unemployment Compensation weekly benefit amount; and

(b) The department established an overpayment for the difference in the individual's Mixed Earner Unemployment Compensation weekly benefit amount.

[]

AMENDATORY SECTION (Amending WSR 17-04-090, filed 1/31/17, effective 3/3/17)

WAC 192-220-080 How do I obtain a waiver? (1) When a decision is issued that creates an overpayment, the department will send you an application for waiver if you are potentially eligible.

(2) The waiver application asks for information concerning your financial condition and other circumstances which will help the department determine if the overpayment should be waived.

(3) The financial information requested includes documentation for the previous month, current month, and following month of your:

(a) Income and, to the extent available, the income of other household members who contribute financially to the household;

(b) Expenses; and

(c) Readily available liquid assets including, but not limited to, checking and savings account balances, stocks, bonds, and cash on hand.

(4) The completed application and supporting documents must be returned to the department by the response deadline indicated in the notice, which will be no less than five working days plus reasonable mailing time, if any. If you do not provide the information by the deadline, the department will make a decision about your eligibility for waiver based on available information.

(5) A waiver cannot exceed the total amount of benefits available on your claim. The department will not waive the overpayment in such a way as to allow you to receive either a greater weekly benefit amount or a greater total benefit amount than you were originally eligible to receive. Any benefits waived are considered paid to you.

Example: You misplace a benefit check and request a replacement from the department. You subsequently cash both the original check and the replacement. Waiver will not be approved under these circumstances because you have been paid twice for the same week.

(6) If a waiver is approved based on information that is later found to be false or misleading, the amount waived will be restored to your overpayment balance.

(7) For benefits paid for the week beginning February 2, 2020, through the week ending September 4, 2021, the department will allow claimants to apply for a waiver of their overpayment for benefits, even if the individual previously had an overpayment waiver request denied or was previously deemed ineligible for an overpayment waiver.

[Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 17-04-090, § 192-220-080, filed 1/31/17, effective 3/3/17; WSR 16-21-013, § 192-220-080, filed 10/7/16, effective 11/14/16. Statutory Authority: RCW 50.12.010, 51.12.040, and 50.20.010. WSR 08-21-056, § 192-220-080, filed 10/9/08, effective 11/9/08.]