

WSR 23-09-077

PROPOSED RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed April 19, 2023, 11:27 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-04-105.

Title of Rule and Other Identifying Information: Public health emergencies (PHE).

Hearing Location(s): On May 24, 2023, at 9:00 a.m. PST, Zoom <https://esd-wa-gov.zoom.us/j/86814370696?pwd=Y3RaNFhRL2ZYRjFQWGVFVkpqYW5Hdz09>, Meeting ID 868 1437 0696, Pass-code 956326; call in one-tap mobile +12532050468,,86814370696# US, +12532158782,,86814370696# US (Tacoma); dial by your location +1 253 205 0468 US, +1 253 215 8782 US (Tacoma), +1 346 248 7799 US (Houston), +1 305 224 1968 US.

Date of Intended Adoption: May 25, 2023.

Submit Written Comments to: Josh Dye, P.O. Box 9046, Olympia, WA 98507-9046, email rules@esd.wa.gov, fax 844-652-7096, by May 24, 2023.

Assistance for Persons with Disabilities: Contact Teresa Eckstein, phone 360-507-9890, fax 360-507-9890, TTY relay 711, email Teresa.eckstein@esd.wa.gov, by May 17, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal clarifies whether a claim for unemployment benefits is covered by a PHE declaration when the PHE is enacted or lifted during a particular week.

Reasons Supporting Proposal: Currently, multiple factors for determining a claimant's eligibility for unemployment benefits are impacted by a declaration of a PHE. On February 10, 2023, President Biden announced that federal Proclamation 9994, which declared the COVID-19 national PHE, would expire on May 11, 2023. On March 29, 2023, the United States Senate passed House Joint Resolution 7 to end the COVID-19 national PHE. The national PHE will end when President Biden signs the resolution. Benefit weeks run from Sunday to Saturday. The PHE may end in the middle of a benefit week, depending on with [when] the resolution is signed. This rule making will clarify how a declaration of a PHE that begins or ends during the middle of a benefit week impacts a claimant's eligibility for benefits and an employer's ability to get relief of benefit charges in certain situations.

Statutory Authority for Adoption: RCW 50.12.010 and 50.12.040 provide general rule-making authority to the employment security department. RCW 50.20.010 defines benefit eligibility conditions for unemployment benefits.

Statute Being Implemented: RCW 50.20.010.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

Name of Proponent: Public.

Name of Agency Personnel Responsible for Drafting: Josh Dye, Olympia, Washington, 360-890-3472; Implementation and Enforcement: JR Richards, Olympia, Washington, 360-463-1079.

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 Josh Dye,

P.O. Box 9046, Olympia, WA 98507-9046, phone 360-890-3472, fax 844-652-7096, TTY relay 771, email rules@esd.wa.gov, https://esd.wa.gov/newsroom/rulemaking/leave-of-absence.

Scope of exemption for rule proposal from Regulatory Fairness Act requirements:

Is not exempt.

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. [No further information supplied by agency.]

April 19, 2023

Dan Zeitlin

Employment System Policy Director

OTS-4427.1

AMENDATORY SECTION (Amending WSR 22-13-007, filed 6/2/22, effective 7/3/22)

WAC 192-150-055 Leaving work because of illness or disability—General rules and definitions—RCW 50.20.050 (1) (b) (ii) and (2) (b) (ii). (1) **General rule.** To establish good cause for leaving work voluntarily because of your illness or disability or the illness, disability, or death of a member of your immediate family, you must demonstrate that:

- (a) You left work primarily because of such illness, disability, or death; and
- (b) The illness, disability, or death made it necessary for you to leave work; and
- (c) You first exhausted all reasonable alternatives prior to leaving work, including:
 - (i) Notifying your employer of the reason(s) for the absence as provided in WAC 192-150-060; and
 - (ii) Asking to be reemployed when you are able to return to work. (You are not required to request reemployment after the job separation has occurred to establish good cause.)

(2) For claims with an effective date of January 4, 2004, or later, you are not eligible for unemployment benefits unless, in addition to the requirements of subsection ~~((s (1) (a) - (c) above))~~ (1) (a) through (c) of this section, you terminate your employment and are not entitled to be reinstated in the same or similar position.

(3) **Exception.** You may be excused from failure to exhaust reasonable alternatives prior to leaving work as required by subsection (1) (c) of this section if you can show that doing so would have been a futile act.

(4) **Definitions.** For purposes of this chapter:

- (a) "Disability" means a sensory, mental, or physical condition that:
 - (i) Is medically recognizable or diagnosable;
 - (ii) Exists as a record or history; and
 - (iii) Substantially limits the proper performance of your job;
- (b) "Immediate family" means your spouse, domestic partner, and the children (including unborn children), siblings, step-children,

foster children, or parents of either spouse or domestic partner, whether living with you or not, and other relatives who temporarily or permanently reside in your household;

(c) "Necessary" means the conditions are of such degree or severity in relation to your particular circumstances that they would cause a reasonably prudent person acting under similar circumstances to quit work;

(d) "Illness" includes a request from a medical professional, local health official, or the Secretary of Health to be isolated or quarantined as a consequence of an infection from a disease that is the subject of a public health emergency that is active on the date of the request to enter isolation or quarantine, even if you or your immediate family member have not been actually diagnosed with the disease that is the subject of a public health emergency.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.04.030, 50.20.010, 50.20.010 (1) (a), (1) (e) and (1) (c), 50.20.050 (1) (b) (ii) and (2) (b) (ii), and (3), 50.20.240, 50.20.044, 50.22.155 (2) (d), (2) (b) (iv), (2) (b) (i) and (ii), 50.12.220(6), 50.60.030, 50.29.021 (3) (a) (iii), and (5), 50.20.160, 50.20.170, 50.20.190, and 50.20.100. WSR 22-13-007, § 192-150-055, filed 6/2/22, effective 7/3/22. Statutory Authority: RCW 50.12.010, 50.12.040, and 34.05.120. WSR 10-01-156, § 192-150-055, filed 12/22/09, effective 1/22/10. Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. WSR 05-01-076, § 192-150-055, filed 12/9/04, effective 1/9/05. Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 02-14-035, § 192-150-055, filed 6/25/02, effective 7/26/02.]

NEW SECTION

WAC 192-150-165 Leaving work at a health care facility during a public health emergency. With respect to claims that occur on or after July 4, 2021, a claimant has good cause and is not disqualified from benefits under RCW 50.20.050 (2) (a) if the claimant worked at a health care facility as defined in RCW 9A.50.010, was directly involved in the delivery of health services, and left work on a day of an active public health emergency for a period of quarantine consistent with the recommended guidance from the United States Centers for Disease Control and Prevention or subject to the direction of the state or local health jurisdiction because of exposure to or contracting the disease that is the subject of the public health emergency.

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NEW SECTION

WAC 192-150-235 Health care workers and periods of quarantine.
(1) It is not misconduct for a health care worker to leave work for the period of quarantine consistent with the recommended guidance from the United States Centers for Disease Control and Prevention or subject to the direction of the state or local health jurisdiction because of exposure to or contracting the disease that is the subject of the declaration of the public health emergency.

(2) For purposes of this section, the public health emergency must be active on the date the health care worker leaves work.

(3) For purposes of this section, "health care worker" means an individual who worked at a health care facility as defined in RCW 9A.50.010 and was directly involved in the delivery of health services.

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OTS-4428.1

AMENDATORY SECTION (Amending WSR 22-21-093, filed 10/17/22, effective 11/17/22)

WAC 192-170-010 Availability for work—RCW 50.20.010. (1) In general, the department will consider you available for work if you:

- (a) Are willing to accept suitable full-time, part-time, and temporary work during the usual hours and days of the week customary for your occupation.
 - (i) You are not required to accept part-time or temporary work if it would substantially interfere with your return to your regular occupation.
 - (ii) The requirement to be willing to accept full-time work does not apply under the circumstances described in WAC 192-170-050 (1)(b) or 192-170-070;
- (b) Are capable of accepting and reporting for any suitable work within the labor market in which you are seeking work;
- (c) Do not impose conditions that substantially reduce or limit your opportunity to return to work at the earliest possible time;
- (d) Are available for work for at least 40 hours during the week during the hours customary for your trade or occupation; and
- (e) Are physically present in your normal labor market area, unless you are actively seeking and willing to accept work outside your normal labor market.

(2) You are considered available for work if you are an active registered electrical apprentice in an approved electrical apprenticeship program under chapter 49.04 RCW and chapter 296-05 WAC.

(3) You are not considered available for work if you fail or refuse to seek work as required in a directive issued by the department under WAC 192-180-010.

(4) If you are physically located outside of the United States, Puerto Rico, or the U.S. Virgin Islands, the department will consider you available for work if you meet the requirements of subsections (1) and (2) of this section, and:

- (a) You are legally authorized to work in the country in which you are physically located;
- (b) You are immediately available for work in the United States;

or

- (c) You are a spouse or domestic partner of a member of the United States Armed Forces and you are legally authorized to work within the foreign military base where your spouse or domestic partner is stationed.

(5) (a) During the weeks of a declared public health emergency, an unemployed health care worker described in RCW 50.20.050(3) and 50.29.021 (1)(c)(iii) is considered available for work while isolated or under quarantine as directed by a medical professional, local health official, or the Secretary of Health, if the individual is available for work that:

- (i) Will commence after the isolation or quarantine period ends;
- or
- (ii) Can be performed from the individual's home.

(b) For the purposes of this section, a health care worker is defined as an individual who was directly involved in the delivery of health services at a health care facility as defined in RCW 9A.50.010.

(c) For the purposes of this subsection, a week of a declared public health emergency is a week during which a public health emergency has been declared for at least one day.

(6) During the weeks of a public health emergency, an unemployed individual may also meet the requirements of subsection (1)(c) of this section if:

(a) You are able to perform, available to perform, and actively seeking suitable work which can be performed for an employer from your home; and

(b) You or another individual residing with you 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:

(i) Was in an age category that is defined as high risk for the disease that is the subject of the public health emergency by:

(A) The federal Centers for Disease Control and Prevention;

(B) The department of health; or

(C) The equivalent agency in the state where the individual resides; or

(ii) Have an underlying health condition, verified pursuant to WAC 192-170-015, that is identified as a risk factor for the disease that is the subject of the public health emergency by:

(A) The federal Centers for Disease Control and Prevention;

(B) The department of health; or

(C) The equivalent agency in the state where the individual resides.

(c) For the purposes of this subsection, a week of a declared public health emergency is a week during which a public health emergency has been declared for at least one day.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.20.010(5), 50.20.050(3), 50.29.021 (1)(c)(iii), and 9A.50.010. WSR 22-21-093, § 192-170-010, filed 10/17/22, effective 11/17/22. Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042, 50.20.010 and 50.20.100. WSR 21-16-034, § 192-170-010, filed 7/26/21, effective 1/2/22. Statutory Authority: RCW 50.12.010, 50.12.040, 50.20.010, 50.20.230, 50.20.240, 50.29.021, 50.29.025 and 50.29.062. WSR 21-12-068, § 192-170-010, filed 5/28/21, effective 6/28/21. Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042 and 50.20.010. WSR 20-11-022, § 192-170-010, filed 5/13/20, effective 7/5/20. Statutory Authority: RCW 50.12.010, 50.20.010, 50.20.230, 50.20.240, and 50.12.040. WSR 20-10-056, § 192-170-010, filed 4/30/20, effective 7/5/20. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. WSR 10-11-046, § 192-170-010, filed 5/12/10, effective 6/12/10.]

NEW SECTION**WAC 192-170-055 Suitable work factors—Public health emergency.**

In determining whether work is suitable as defined by RCW 50.20.100 and 50.20.110, the department will consider the degree of risk to the health of those residing with the individual during a public health emergency. Work will only be considered unsuitable due to risks associated with a public health emergency on the days the public health emergency declaration is in effect.

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OTS-4429.1

AMENDATORY SECTION (Amending WSR 22-13-007, filed 6/2/22, effective 7/3/22)

WAC 192-320-078 Catastrophic occurrence. For the purposes of RCW 50.29.021 (3) (a) (iii) ~~((7))~~:

(1) "Catastrophic occurrence" includes ((an infection from a)) the presence of any dangerous, contagious, or infectious disease that is the subject of a public health emergency at the employer's ((place of business)) plant, building, worksite, or other facility that causes the employer to close or severely curtail operations.

(2) In order to qualify for relief of benefit charges, the disease must be the subject of a public health emergency at the time of the closure or curtailment of operations.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.04.030, 50.20.010, 50.20.010 (1) (a), (1) (e) and (1) (c), 50.20.050 (1) (b) (ii) and (2) (b) (ii), and (3), 50.20.240, 50.20.044, 50.22.155 (2) (d), (2) (b) (iv), (2) (b) (i) and (ii), 50.12.220(6), 50.60.030, 50.29.021 (3) (a) (iii), and (5), 50.20.160, 50.20.170, 50.20.190, and 50.20.100. WSR 22-13-007, § 192-320-078, filed 6/2/22, effective 7/3/22.]