

WSR 23-18-020

EMERGENCY RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed August 25, 2023, 1:08 p.m., effective August 25, 2023, 1:08 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The employment security department is adopting emergency rules to provide flexibility and relief to claimants and employers who are impacted by the wildfires in Washington and other disasters. These rules address the requirements that an unemployed individual be able and available for work and the requirement that individuals make satisfactory progress in their training to receive training benefits. These rules also address the circumstances when employers can receive relief of benefit charges for individuals who become unemployed due to a catastrophic occurrence.

Citation of Rules Affected by this Order: New WAC 192-100-600; and amending WAC 192-170-010, 192-270-065, and 192-320-078.

Statutory Authority for Adoption: RCW 50.12.010, 50.12.040, 50.20.010, 50.22.155, 50.29.021.

Other Authority: Governor's Emergency Proclamation 23-05.

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: Per Emergency Proclamation 23-05, Governor Inslee has declared a state of emergency due to "multiple ongoing wildfires in Western, Central and Eastern Washington, and significant wildfire potential is predicted to continue to through the remainder of August, September, and October due to the high risk of fuel conditions capable of producing multiple significant wildfires." Governor Inslee has directed all state agencies to "do everything reasonably possible to assist affected political subdivisions in an effort to respond to and recover from" these wildfires. Therefore, these rules are necessary to assist unemployed individuals and employers who are impacted by the wildfires and other natural disasters.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 3, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 3, 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: August 25, 2023.

Joy Adams, Acting Director
Employment System Policy and Integrity Division

OTS-4896.1

NEW SECTION

WAC 192-110-600 Disaster. "Disaster" means an event or set of circumstances which:

(1) Demands immediate action to preserve public health, protect life, protect public property, or to provide relief to any stricken community overtaken by such occurrences; or

(2) Reaches such a dimension or degree of destructiveness as to warrant the proclamation of a state of emergency by the president of the United States, the governor of Washington, or the governor or state executive of another state where the unemployed individual was working or living at the time of the proclamation.

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OTS-4897.1

AMENDATORY SECTION (Amending WSR 23-15-009, filed 7/6/23, effective 8/6/23)

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:

(i) You are actively seeking and willing to accept work outside your normal labor market; or

(ii) You are unable to be physically present in your normal labor market area due to a disaster.

(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 RCW 50.20.010 (1)(c) 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.

(7) (a) An individual who has been impacted by a disaster may be considered available for work if the individual is available for work that:

(i) Will commence after the individual is no longer impacted by the disaster; or

(ii) Can be performed from the individual's current location.

(b) An individual is impacted by a disaster when they have lost housing, transportation, or another resource critical for accessing employment.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. WSR 23-15-009, § 192-170-010, filed 7/6/23, effective 8/6/23. 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.]

OTS-4898.1

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

WAC 192-270-065 Certification of satisfactory progress. (1) In order to continue your eligibility for training benefits, the certification that you are making satisfactory progress in training must be signed by the registrar or an equivalent person designated by your educational institution. Except for dislocated workers eligible under RCW 50.22.155 (2)(a)(i), and disabled individuals as provided in RCW 50.22.155 (2)(c), training must be full-time as determined by the educational institution.

(2) Except as provided in subsection (3), for training benefits purposes the term "satisfactory progress" means:

(a) Your grade point average does not fall below 2.0 for two consecutive terms;

(b) You maintain a grade point average sufficient to graduate from, or receive certification in, your approved area of study; and

(c) You are completing sufficient credit hours to finish your approved course of study within the time frame established under your approved training plan.

(3) In the case of self-paced or ungraded learning programs, "satisfactory progress" means participating in classes and passing certification examinations within the time frame established under your approved training plan.

(4) Reasonable delays directly attributable to an infection from a disease that is the subject of a public health emergency or 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 emer-

gency will not prevent a certification that you are making satisfactory progress in training.

(5) Reasonable delays directly attributable to a disaster will not prevent a certification that you are making satisfactory progress in training.

[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, § 192-270-065, filed 6/2/22, effective 7/3/22. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.22.155(12). WSR 12-09-025, § 192-270-065, filed 4/6/12, effective 7/1/12. Statutory Authority: RCW 50.12.010, 50.20.010, and 50.22.150(10). WSR 01-11-085, § 192-270-065, filed 5/16/01, effective 6/16/01.]

OTS-4899.1

AMENDATORY SECTION (Amending WSR 23-15-009, filed 7/6/23, effective 8/6/23)

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

(1) "Catastrophic occurrence" includes the presence of any dangerous, contagious, or infectious disease that is the subject of a public health emergency at the employer's 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.

(2) "Employer's plant, building, worksite, or other facility" includes any building or worksite where the individual was working, even if that building or worksite is not owned by the employer.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. WSR 23-15-009, § 192-320-078, filed 7/6/23, effective 8/6/23. 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.]