

## WSR 24-01-036

## PROPOSED RULES

## EMPLOYMENT SECURITY DEPARTMENT

[Filed December 11, 2023, 10:29 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-20-111.

Title of Rule and Other Identifying Information: New WAC 192-110-600 Disaster; and amending WAC 192-170-010 Availability for work—RCW 50.20.010, 192-270-065 Certification of satisfactory progress, and 192-320-078 Catastrophic occurrence.

Hearing Location(s): On January 23, 2023 [2024], at 9:00 a.m., via Zoom, Meeting ID 852 3670 6121, Passcode 533475; or call in +12532158782,,85236706121#,,,,\*533475# US (Tacoma), +12532050468,,85236706121#,,,,\*533475# US. Join Zoom meeting <https://esd-wa-gov.zoom.us/j/85236706121?pwd=bWpYQ29IRHlVOWVONXhJZE9HeTY1UT09>.

Date of Intended Adoption: January 24, 2023 [2024].

Submit Written Comments to: Stephanie Frazee, P.O. Box 9046, Olympia, WA 98507-9046, email [rules@esd.wa.gov](mailto:rules@esd.wa.gov), fax 844-652-7096, by January 23, 2023 [2024].

Assistance for Persons with Disabilities: Contact Teresa Eckstein, phone 360-507-9890, fax 360-586-4600, TTY relay 711, email [teresa.eckstein@esd.wa.gov](mailto:teresa.eckstein@esd.wa.gov), by January 16, 2023 [2024].

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to permanently adopt the department's emergency rules providing flexibility and relief to claimants and employers who are impacted by wildfires 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.

Reasons Supporting Proposal: This rule making is necessary to permanently adopt the department's emergency rules addressing wildfires and other disasters so the rules are already in place for when the next wildfire or other disaster occurs.

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

Statute Being Implemented: RCW 50.20.010, 50.22.155, and 50.29.021.

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

Name of Proponent: Employment security department, governmental.

Name of Agency Personnel Responsible for Drafting: Stephanie Frazee, Olympia, Washington, 425-465-0313; Implementation and Enforcement: J.R. 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 Stephanie Frazee, P.O. Box 9046, Olympia, WA 98507-9046, phone 425-465-0313, fax 844-652-7096, TTY relay 771 [711], email [rules@esd.wa.gov](mailto:rules@esd.wa.gov), <https://esd.wa.gov/newsroom/rulemaking/wildfires-and-other-disasters-permanent-rulemaking>.

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. The rule making is not expected to impose additional costs to businesses.

December 11, 2023  
Joy E. Adams, Director  
Employment System Policy and Integrity

## 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.

## 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.

### 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 emergency 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.

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.