

WSR 21-24-018

PROPOSED RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed November 19, 2021, 11:00 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-07-059.

Title of Rule and Other Identifying Information: WAC 192-170-015
Verification requirement for an underlying health condition under RCW
50.20.010 (4) (b) (ii).

Hearing Location(s): On January 6, 2022, at 9:00 a.m., Zoom,
Meeting ID 828 9254 8635, Passcode 542603, Call-in 253-215-8782. Join
Zoom meeting [https://us02web.zoom.us/j/82892548635?](https://us02web.zoom.us/j/82892548635?pwd=WnY3V2l2Yk1QMkdYcU1BQ2hnb2lsZz09)
[pwd=WnY3V2l2Yk1QMkdYcU1BQ2hnb2lsZz09](https://us02web.zoom.us/j/82892548635?pwd=WnY3V2l2Yk1QMkdYcU1BQ2hnb2lsZz09).

Date of Intended Adoption: January 14, 2022.

Submit Written Comments to: Joshua Dye, P.O. Box 9046, Olympia,
WA 98507-9046, email rules@esd.wa.gov, fax 844-652-7096, by January 5,
2022.

Assistance for Persons with Disabilities: Contact Teresa Eck-
stein, phone 360-507-9890, fax 360-586-4600, TTY relay 711, email
teckstein@esd.wa.gov, by December 29, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including
Any Changes in Existing Rules: ESSB 5061 (2021) provides, among other
things, good cause to leave work when, during a public health emergen-
cy, the claimant was unable to perform their work for the employer
from the claimant's home; the claimant is able and available to per-
form, and can actively seek suitable work which can be performed for
an employer from the claimant's home; and the claimant or another in-
dividual residing with the claimant is at higher risk of severe ill-
ness or death from the disease that is the subject of the public
health emergency because the higher risk individual has an underlying
health condition, verified as required by the department by rule, that
is identified as a risk factor of a disease that is the subject of a
public health emergency. ESSB 5061, section 10, chapter 2, Laws of
2021 (codified at RCW 50.20.050 (2) (b) (xii) (C) (II)). ESSB 5061 (2021)
also provides that during the weeks of a public health emergency, an
unemployed individual may meet the availability requirements of RCW
50.20.010 (1) (c) if they are able and available to perform, and ac-
tively seeking suitable work which can be performed for an employer
from the individual's home; and if the unemployed individual or anothe-
r individual residing with the unemployed individual 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 has
an underlying condition, verified as required by the department by
rule, that is identified as a risk factor for the disease that is the
subject of the public health emergency. Section 8, chapter 2, Laws of
2021 (codified at RCW 50.20.010 (4) (b) (ii)). Both provisions of SB
5061 direct the employment security department to adopt rules specify-
ing how it will verify a higher risk individual's underlying health
condition. The proposed rules provide that a claiming individual ob-
tain a certification from a health care provider that includes the
provider's qualification and contact information as well as informa-
tion sufficient to establish the underlying health condition.

Reasons Supporting Proposal: Pursuant to ESSB 5061 (2021), the
department is required to verify the underlying health condition of
higher risk individuals under RCW 50.20.010 (4) (b) (ii) and 50.20.050
(2) (b) (xii) (C) (II). The proposed rules should be adopted because they

adequately explain how the department will undertake the verification process.

Statutory Authority for Adoption: RCW 50.20.010 (4)(b)(ii) and 50.20.050 (2)(b)(xii)(C)(II) provide specific rule-making authority for verifying underlying health conditions. RCW 50.12.010 and 50.12.040 provide general rule-making authority to the employment security department.

Statute Being Implemented: RCW 50.20.010 and 50.20.050.

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: Joshua Dye, Olympia, 360-890-3472; Implementation and Enforcement: Julie Lord, Olympia, 360-890-3635.

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 Joshua Dye, P.O. Box 9046, Olympia, WA 98507-9046, phone 360-890-3472, email Rules@esd.wa.gov, <https://esd.wa.gov/newsroom/ui-rule-making/>.

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 proposed rules do not create additional tax burden on employers.

November 19, 2021
Dan Zeitlin
Employment Security
Policy Director

OTS-2980.2

NEW SECTION

WAC 192-170-015 Verification requirement for an underlying health condition under RCW 50.20.010 (4)(b)(ii). (1)(a) An individual who limits their availability for work because they or another individual living with them have an underlying health condition that is identified as a risk factor for a disease that is the subject of a public health emergency may need to provide certification from a health care provider.

(b) The certification must include:

(i) The name, address, telephone number, and contact information of the health care provider and type of medicine the health provider is licensed to practice; and

(ii) Information from a health care provider sufficient to establish that the individual or another individual living with them have an underlying health condition that is identified as a risk factor for a disease that is the subject of a public health emergency.

(c) The department may require the individual to provide additional documentation or certification to substantiate the underlying health condition if:

(i) Circumstances of the underlying health condition change;

(ii) Information is provided to the department that the employee may no longer have an underlying health condition; or

(iii) Other circumstances cause the department to question the existence or continued existence of the individual's underlying health condition.

(d) The department will deny benefits under WAC 192-140-070 if the individual fails to provide the certification when requested.

(2) For purposes of this section, the term "health care provider" has the same meaning as in WAC 192-500-090.

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