

WSR 22-16-008
PREPROPOSAL STATEMENT OF INQUIRY
EMPLOYMENT SECURITY DEPARTMENT

[Filed July 21, 2022, 12:28 p.m.]

Subject of Possible Rule Making: The employment security department is engaging in rule making regarding brief adjudicative proceedings.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 34.05.410 (1)(a), 50.32.060, 50.32.080, 34.05.220, 50.12.040, 50.12.010.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Due to unprecedented unemployment insurance claims during the COVID-19 pandemic, the department and the office of administrative hearings (OAH) have a backlog of 40,947 pending appeals as of December 31, 2021. For comparison, there were 27,127 pending appeals at the end of 2020, and 2,470 at the end of 2019. This backlog has led to an average wait time of 167.3 days for appeals closed during December of 2021, compared to an average wait time of 31.58 days during December of 2019. The United States Department of Labor's (USDOL) performance metric calls for 60 percent of appeals to be resolved within 30 days and 80 percent of appeals to be resolved within 45 days. In December 2019, the department closed 71 percent of cases within 30 days and 94 percent of cases within 45 days. In December 2021, only two percent of appeals were resolved within 30 days and four percent of appeals within 45 days.

Currently, the department is referring between 400 and 500 cases per day (2,000 to 2,500 per week) to OAH. This trend is expected to continue through the end of the year with continued unemployment insurance claims processing associated with federal pandemic programs, such as the mixed earner unemployment compensation program.

Using the brief adjudicative proceedings authorized by emergency rule filed in WSR 22-08-045, administrative law judges (ALJs) were able to process between 60 and 75 proceedings each week, up from 24 per week for full hearings. From May 16, through June 24, 2022, OAH processed 1,656 claims.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: USDOL reviews the state's administration of the unemployment insurance program to ensure conformity to federal statutes and regulations. The state has broad flexibility in the implementation of the unemployment insurance laws so long as conformity is maintained. The proposed regulations will be shared with USDOL prior to adoption.

Process for Developing New Rule: Draft rules will be shared with the public and stakeholders. The department will solicit input from all parties and consider all comments in the development of final rules.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Josh Dye, P.O. Box 9046, phone 360-890-3472, fax 844-652-7096, TTY relay [service] 711, email Rules@esd.wa.gov, website <https://esd.wa.gov/newsroom/rulemaking/>.

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