

WSR 24-21-052

PROPOSED RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed October 9, 2024, 1:54 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-12-044.

Title of Rule and Other Identifying Information: WAC 192-04-100 Appeals—Petitions for hearing or petitions for review—Withdrawal and reinstatement of.

Hearing Location(s): On December 3, 2024, at 9:00 a.m., Zoom, <https://esd-wa-gov.zoom.us/j/88220574283?pwd=KvBrFunp2AatAk3FoP-wUG9IPPFabQ8.1>, Meeting ID 882 2057 4283, Passcode 963967; or call in +16469313860,,88220574283#,,,,*963967# US.

Date of Intended Adoption: December 10, 2024.

Submit Written Comments to: Stephanie Frazee, P.O. Box 9046, Olympia, WA 98507-9046, email rules@esd.wa.gov, fax 844-652-7096, by December 3, 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 [Teresa.eckstein@esd.wa.gov], by November 26, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Claimants and employers who have appealed a determination of the employment security department (department) may request to withdraw their appeal before their hearing occurs. Sometimes a claimant or employer may change their mind for some reason, such as not understanding the impact of withdrawing their appeal, and they may request to rescind the withdrawal of their appeal so that they can have a hearing. Although parties are currently able to make these requests and the office of administrative hearings adjudicates these requests, the department's rules do not set out a process or a standard of review for evaluating these requests. The department is updating WAC 192-04-100 to set out a process and a standard of review for parties wishing to request to reinstate their appeal or petition for hearing after withdrawing it.

Reasons Supporting Proposal: This rule making will clarify the process and standard of review for a claimant or employer who wishes to request to reinstate their appeal or petition for hearing after withdrawing it.

Statutory Authority for Adoption: RCW 50.12.010, 50.12.040, 50.12.042, 50.32.060, 34.05.220.

Statute Being Implemented: RCW 50.32.060.

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, Washington 98507-9046, phone 425-465-0313, fax 844-652-7096, TTY relay 771 [711], email rules@esd.wa.gov, <https://esd.wa.gov/newsroom/rulemaking/>. This rule making is clarifying an appeal procedure that is already in place and

will not create any additional costs. This rule making concerns a procedure relating to agency hearings.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: This rule making clarifies an appeals process that already exists and does not impose any additional costs or requirements on small businesses or other parties.

Scope of exemption for rule proposal:

Is fully exempt.

October 9, 2024

Joy Adams, Director

Employment System Policy and Integrity

OTS-5543.2

AMENDATORY SECTION (Amending WSR 89-24-030, filed 11/30/89, effective 1/1/90)

WAC 192-04-100 Appeals—Petitions for hearing or petitions for review—Withdrawal and reinstatement of. (1) Any interested party may withdraw (~~(his or her)~~) their appeal, petition for hearing, or petition for review at any time prior to a decision thereon, in which case the previous determination, redetermination, denial, order and notice of assessment or decision shall be final in accordance with the provisions of the Employment Security Act. Such withdrawal shall, however, be subject to the approval of the office of administrative hearings in the case of an appeal or petition for hearing, or of the commissioner in the case of a petition for review.

(2) After an order granting withdrawal of an appeal or an order granting withdrawal of a petition for hearing has been issued by the office of administrative hearings, a party may file a motion to reinstate appeal or motion to reinstate petition for hearing. The motion shall be filed with the office of administrative hearings. The motion may be granted for good cause shown.

(3) The following factors shall be considered in determining whether good cause exists under subsection (2) of this section:

(a) The length of time between the request for withdrawal and the motion to reinstate appeal or motion to reinstate petition and the reason for any delay;

(b) Any physical, mental, educational, or linguistic limitations of the moving party, including any lack of facility with the English language;

(c) Any mistake, inadvertence, surprise, excusable neglect, newly discovered information or evidence, or irregularity that led to the request to withdraw the appeal;

(d) Whether granting the motion will result in prejudice to other interested parties, including the department; and

(e) Any other factors relevant to the determination.