



# PROPOSED RULE MAKING

## CR-102 (December 2017) (Implements RCW 34.05.320)

Do NOT use for expedited rule making

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STATE OF WASHINGTON  
FILED

DATE: November 06, 2019

TIME: 8:10 AM

WSR 19-22-081

**Agency:** Employment Security Department

**Original Notice**

**Supplemental Notice to WSR**

**Continuance of WSR** \_\_\_\_\_

**Preproposal Statement of Inquiry was filed as WSR** 19-07-041 ; or

**Expedited Rule Making--Proposed notice was filed as WSR** \_\_\_\_\_; or

**Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or**

**Proposal is exempt under RCW** \_\_\_\_\_.

**Title of rule and other identifying information:** (describe subject) WAC 192-170-010 – “Availability for work—RCW 50.20.010.” Setting requirements for when claimants are eligible for unemployment benefits while physically located outside of the United States

**Hearing location(s):**

**Date:**

**Time:**

**Location:** (be specific)

**Comment:**

December 12, 2019

9 am

Employment Security  
Department, 212 Maple Park  
Avenue, Olympia, WA 98501

Commissioner's Conference Room

**Date of intended adoption:** January 10, 2020 (Note: This is **NOT** the **effective** date)

**Submit written comments to:**

Name: Joshua Dye

Address: P.O. Box 9046, Olympia, WA 98507-9046

Email: [rules@esd.wa.gov](mailto:rules@esd.wa.gov)

Fax: 844-652-7096

Other:

By (date) December 11, 2019

**Assistance for persons with disabilities:**

Contact Teresa Eckstein

Phone: 360-507-9890

Fax: 360-586-4600

TTY: Relay 711

Email: [teckstein@esd.wa.gov](mailto:teckstein@esd.wa.gov)

Other:

By (date) December 5, 2019

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:**

The amended rule sets requirements for when claimants are eligible for unemployment benefits while physically located outside of the United States by amending WAC 192-170-010.

**Reasons supporting proposal:** The Commissioner issued a precedential decision (*In re McConnell*, Empl. Sec. Comm'r Dec.2d 1005 (2016)) that holds that claimants can still be eligible for unemployment benefits even when they are physically located outside of the United States. Rulemaking is needed to set clear standards for when claimants are or are not eligible for unemployment benefits while physically located in another country.

Amending rules regarding eligibility for benefits when physically located outside of the United States will provide benefits for certain claimants and expand options for claimants to look for opportunities to return to work in industries with trans global footprints. This supports the Department's mission to develop the nation's best and most future ready workforce with opportunities for all.

**Statutory authority for adoption:** RCW 50.12.010 and RCW 50.12.040 provide general rulemaking authority to the Employment Security Department. RCW 50.12.042 and RCW 50.20.010 provide specific rulemaking authority regarding the requirement that unemployment claimants register for work, be able to work, be available for work, and actively seek work.

**Statute being implemented:** RCW 50.20.010

**Is rule necessary because of a:**

- Federal Law?  Yes  No  
Federal Court Decision?  Yes  No  
State Court Decision?  Yes  No

If yes, CITATION: *In re McConnell*, Empl. Sec. Comm'r Dec.2d 1005 (2016)

**Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:** None.

**Name of proponent:** (person or organization) Employment Security Department  Private  
 Public  
 Governmental

**Name of agency personnel responsible for:**

	Name	Office Location	Phone
Drafting:	Scott Michael	Olympia	360-890-3448
Implementation:	Julie Lord	Olympia	360-890-9579
Enforcement:	Julie Lord	Olympia	360-890-9579

**Is a school district fiscal impact statement required under RCW 28A.305.135?**  Yes  No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

- Name:
- Address:
- Phone:
- Fax:
- TTY:
- Email:
- Other:

**Is a cost-benefit analysis required under RCW 34.05.328?**

- Yes: A preliminary cost-benefit analysis may be obtained by contacting:  
Name: Joshua Dye  
Address: P.O. Box 9046, Olympia, WA 98507-9046  
Phone: 360-890-3472  
Fax:  
TTY:  
Email: Rules@esd.wa.gov  
Other: <https://esd.wa.gov/newsroom/ui-rule-making/>

No: Please explain:

**Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:**

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by RCW 34.05.313 before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of RCW 15.65.570(2) because it was adopted by a referendum.

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(3). Check all that apply:

- |   |  |
|---|--|
| <input type="checkbox"/> RCW 34.05.310 (4)(b)<br>(Internal government operations) | <input type="checkbox"/> RCW 34.05.310 (4)(e)<br>(Dictated by statute)   |
| <input type="checkbox"/> RCW 34.05.310 (4)(c)<br>(Incorporation by reference)     | <input type="checkbox"/> RCW 34.05.310 (4)(f)<br>(Set or adjust fees)  |
| <input type="checkbox"/> RCW 34.05.310 (4)(d)<br>(Correct or clarify language)    | <input type="checkbox"/> RCW 34.05.310 (4)(g)<br>((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit) |

This rule proposal, or portions of the proposal, is exempt under RCW \_\_\_\_\_.

Explanation of exemptions, if necessary:

**COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES**

If the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

No Briefly summarize the agency's analysis showing how costs were calculated.

The following analysis assumes that all previous unemployment claims that were denied because the claimant was out of the country would instead be allowed. In reality, the proposed rule does not state that all persons who file unemployment claims from outside of the country are automatically eligible for unemployment benefits, and it is likely that at least some of the previous claims that were denied before would still be denied under the proposed rule. Therefore, the following analysis presents a "worst-case scenario" and likely overstates the potential economic impacts of the proposed rule.

From January 2017 through August 2019, there were 103 claims denied for being out of the country. With the proposed rule, the potential benefits paid during this time period would include an average weekly benefit amount of \$531 over 26 weeks. This average weekly benefit amount represents \$13,806 in additional charged benefits per claim.

When considering the total claims spread across the state-wide employer base, the proposed rule would have a negligible impact on total costs. The charged benefits from the 103 claims would increase each employers' average charged benefits by \$2.99 per year. An increase of this size is not likely to increase the tax liability for any employer.

Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

Name:  
Address:  
Phone:  
Fax:  
TTY:

Email:  
Other:

**Signature:**

**Date:** November 6, 2019

**Name:** Dan Zeitlin

**Title:** Employment Security Policy Director

A handwritten signature in blue ink, appearing to read "Dan Zeitlin", with a long horizontal stroke extending to the right.