



PROPOSED RULE MAKING

CR-102 (July 2022) (Implements RCW 34.05.320)

Do NOT use for expedited rule making

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STATE OF WASHINGTON
FILED

DATE: August 05, 2022

TIME: 10:41 AM

WSR 22-17-021

Agency: Employment Security Department

- Original Notice
- Supplemental Notice to WSR _____
- Continuance of WSR 22-14-049

- Preproposal Statement of Inquiry was filed as WSR 21-11-052 ; 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)

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
September 29, 2022	9:00 am	Zoom Meeting ID: 865 1049 4742 Passcode: 285303 Call in: (253) 215-8782	Join Zoom meeting: https://esd-wa-gov.zoom.us/j/86510494742?pwd=NUN0a0F2cWg5Q0U1cFlwTWRib1Vjdz09

Date of intended adoption: October 5, 2022 (Note: This is **NOT** the effective date)

Submit written comments to:

Name: Josh Dye
 Address: P.O. Box 9046, Olympia, WA 98507-9046
 Email: rules@esd.wa.gov
 Fax: 844-652-7096
 Other:

By (date) September 29, 2022

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

Other:

By (date) September 22, 2022

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

The proposed rules clarify that, during a public health emergency, benefits for claimants terminated from work due to entering quarantine because of an exposure to or contracting the disease that is the subject of the declaration of the public health emergency will be charged 100 percent to the claimant's last employer if: (a) the employer is a base-period employer; (b) the employer is a contribution-paying employer; (c) the employer is a health care facility as defined in RCW 9A.50.010; and (d) the claimant was directly involved in the delivery of health services. Additionally, the rules clarify that during the weeks of a declared public health emergency, an unemployed health care worker described in RCW 50.20.050(3) and RCW 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 will commence after the isolation or quarantine period ends; or which can be performed for an employer from the individual's home.

Reasons supporting proposal: Engrossed Substitute Senate Bill 5190 amended availability requirements and created a good cause basis to quit work for certain health care workers during a public health emergency. RCW 50.20.010; RCW 50.20.050. ESSB 5190 also clarified that when an eligible individual's separation employer is a covered contribution paying base year employer, benefits paid to the eligible individual shall be charged to the experience rating account of only the individual's separation employer if the individual qualifies for benefits because during a public health emergency, the claimant worked at a health care facility as defined in RCW 9A.50.010, was directly involved in the delivery of health services, and was terminated from work due to entering quarantine because of exposure to or contracting the disease that is the subject of the declaration of the public health emergency. RCW 50.29.021(1)(c)(iii). The proposed rules provide clear and usable guidance for the public regarding unemployment benefits for health care workers during a public health emergency

Statutory authority for adoption: RCW 50.12.010 and 50.12.040 provide general rulemaking authority to the Employment Security Department. RCW 50.20.010(5) and RCW 50.20.050(3) address the availability requirements and good cause basis to quit work for certain health care workers during a public health emergency. RCW 50.29.021(1)(c)(iii) states that when an eligible individual's separation employer is a covered contribution paying base year employer, benefits paid to the eligible individual shall be charged to the experience rating account of only the individual's separation employer if the individual qualifies for benefits because during a public health emergency, the claimant worked at a health care facility as defined in RCW 9A.50.010, was directly involved in the delivery of health services, and was terminated from work due to entering quarantine because of exposure to or contracting the disease that is the subject of the declaration of the public health emergency.

Statute being implemented: RCW 50.20.010; RCW 50.29.021

Is rule necessary because of a:

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

If yes, CITATION:

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:

Type of proponent: Private Public Governmental

Name of proponent: (person or organization)

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Josh Dye	Olympia	360-890-3472
Implementation:	JR Richards	Olympia	360-463-1079
Enforcement:	JR Richards	Olympia	360-463-1079

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: Josh Dye

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

Phone: 360-890-3472

Fax: 844-652-7096

TTY: Relay 771

Email: rules@esd.wa.gov

Other:

No: Please explain:

Regulatory Fairness Act and Small Business Economic Impact Statement

Note: The [Governor's Office for Regulatory Innovation and Assistance \(ORIA\)](#) provides support in completing this part.

(1) Identification of exemptions:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see [chapter 19.85 RCW](#)). For additional information on exemptions, consult the [exemption guide published by ORIA](#). 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:

[RCW 34.05.310](#) (4)(b)
(Internal government operations)

[RCW 34.05.310](#) (4)(e)
(Dictated by statute)

[RCW 34.05.310](#) (4)(c)
(Incorporation by reference)

[RCW 34.05.310](#) (4)(f)
(Set or adjust fees)

[RCW 34.05.310](#) (4)(d)
(Correct or clarify language)

[RCW 34.05.310](#) (4)(g)
(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 19.85.025\(4\)](#) (does not affect small businesses).

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

Explanation of how the above exemption(s) applies to the proposed rule:

(2) Scope of exemptions: *Check one.*

The rule proposal is fully exempt (*skip section 3*). Exemptions identified above apply to all portions of the rule proposal.

The rule proposal is partially exempt (*complete section 3*). The exemptions identified above apply to portions of the rule proposal, but less than the entire rule proposal. Provide details here (consider using [this template from ORIA](#)):

The rule proposal is not exempt (*complete section 3*). No exemptions were identified above.

(3) Small business economic impact statement: *Complete this section if any portion is not exempt.*

If any portion of 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 minor cost analysis and how the agency determined the proposed rule did not impose more-than-minor costs.

Due to the complexity of contribution calculations, the Department is unable to forecast the costs to individual businesses. The proposed rule will create additional benefit charges as employers charged under WAC 192-320-075(3) will be charged for 100% of certain claimant's benefits (though an unknown number of those benefit charges would have been charged 100% regardless of the proposed rule). However, the number of possible variables for claims precludes the Department from making a reliable forecast for individual businesses. When the possible increase is viewed across all employers, the Department anticipates a negligible increase in tax liability for employers

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

Date: August 5, 2022	Signature: 
Name: Dan Zeitlin	
Title: Employment Security Policy Director	