

CONCISE EXPLANATORY STATEMENT

Job Search and Standby

REASONS FOR ADOPTING RULES

The rules amend and adopt rules related to conditions under which claimants may be placed on standby, and amending the rules related to the job search monitoring program required by RCW 50.20.240.

DIFFERENCES BETWEEN PROPOSED RULES AND ADOPTED RULES

The proposal to reduce the number of weeks during any standby period from eight weeks to four weeks has been withdrawn.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED

Comment: Limiting any period of standby to a maximum of four weeks places unnecessary job search requirements on workers who have a job to return to, for example, when their employer is retrofitting its machinery. The change also negatively impacts employers who want to retain their skilled workforce.

Incorporated in Final Rule: The proposal to reduce the number of weeks a claimant can be on standby to four weeks, rather than eight, is withdrawn.

Comment: Eliminate the word “extraordinary” when describing the circumstances under which an employer may be granted more than eight weeks for its employees during a standby period.

Reasons Not Incorporated in Final Rule: The term “extraordinary” is defined as “beyond what is usual, ordinary, regular, established or customary; very unusual or remarkable.” Since the department is retaining the ability of employers to have their employees on standby for eight consecutive weeks, the employer should demonstrate unusual and unique conditions that differ from similar businesses to justify more than eight weeks of standby. Note: The rule has been amended to permit more than eight weeks in cases of natural disaster.

Comment: Do not prospectively deny benefits when a claimant does not appear for a job search review interview.

Reasons Not Incorporated in Final Rule: Payments are stopped only after the claimant has missed two appointments and failed to respond to our written (or emailed) request for copies of their logs. RCW 50.20.240 requires the department to deny benefits for all weeks in which the claimant is not in compliance with the job search requirements. The department has no means of determining whether the claimant has complied with these requirements when the claimant

ignores the department's requests for information. If the claimant provides his or her logs, the prospective denial will end.

Comment: Modify the language in the rule that says a job search contact does not qualify if it is made with an employer the claimant knows is not hiring. Claimants who apply for jobs in industries, such as fishing, in which the normal method of job search is to keep checking back to see if there are new openings, may be denied under this rule.

Reasons Not Incorporated in Final Rule: This language in the rule has not been amended during this rule-making. It is intended to disallow job search contacts when the claimant appears to be avoiding the job search requirements. For example, a seasonal worker applies for work in the winter with an employer the claimant knows will not be hiring until the spring. In addition, RCW 50.20.010(1)(c)(ii) requires claimants to seek work according to customary trade practices.

Comment: WAC 192-180-030 is being amended to substitute the word "misrepresentation" for "nondisclosure." This moves the penalty closer to fraud.

Reasons Not Incorporated in Final Rule: RCW 50.20.240 requires that benefits be denied for any weeks in which the claimant does not meet the job search requirements. RCW 50.20.160 limits a redetermination of allowance of benefits for job search after 30 days except in the case of nondisclosure, misrepresentation, or fraud. However, a claimant may have disclosed their job search activities yet failed to meet the minimum requirements. When the claimant certifies each week that he or she has meet the requirements, but has not, this is misrepresentation. However, it is not necessarily fraud. Fraud will not be assessed unless all criteria in WAC 192-100-050(1) are met.

Comment: Have concerns about the striking of the reference to referral union members in WAC 192-180-005.

Incorporated in Final Rule: This change was not in the proposed rules heard on October 25, 2016, nor is it in the final rules.

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