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**TO:** Joshua Dye, Employment Security Department  
**FR:** Washington Food Industry Association  
**RE:** Washington Food Industry Association Comments on WAC 192-320-066, COVID-19 Unemployment Account

On behalf of Washington Food Industry Association (WFIA), which includes our members in the grocery and convenience store industries, we offer the following comments on the proposed rules for WAC 192-320-066, the COVID-19 Unemployment Account.

The Washington State Legislature passed Engrossed House Bill 2965 (c. 7, Laws of 2020), which appropriates funds into the COVID-19 Unemployment Account for the purposes of reducing specified benefit charges to eligible employers. We appreciate the Department's updates to the proposed rules to account for state and federal executive orders that caused businesses to close or severely curtail operations.

Below are the recommendations and questions from WFIA regarding the proposed rules:

1. WAC 192-320-066(2)(c) regarding employer eligibility is potentially in conflict with current unemployment insurance laws:

(2)(c) states:

- “(i) Prior to September 26, 2020, worked at least four weeks with their employer in a suitable work with a rate of weekly pay at least ninety percent of the rate of weekly pay the employee had prior to becoming unemployed as described in (a) of this subsection.  
(ii) Worked less than four weeks with their employer if, after working at least one day, the employee:  
(A) Was discharged for misconduct; or  
(B) Voluntarily quit for reasons not attributable to the employer.”

This section could be read in two different ways, resulting in conflicting rules. This section could be read that an individual could be an approved employee if they worked at least 4 weeks OR if they worked less than 4 weeks and were discharged for misconduct or voluntarily left. OR, this section could be read that an individual is eligible for COVID-19 relief benefits even if they didn't work 4 weeks before 9/26/20 and was discharged for misconduct or voluntarily quit for reasons not attributable to the employer. They would still have to qualify with an event, it is just for the calculation of benefit quarter. Under regular unemployment rules, misconduct or voluntarily quits are reasons for the employee be denied unemployment insurance. WFIA requests that this section be clarified that if an employee is discharged for misconduct OR quit for reasons not attributable to the employer, they are NOT eligible for unemployment at all and

therefore those costs should not be paid by the employer or by the COVID-19 Unemployment Account.

2. WAC 192-320-066(5) appeal rights must be allowed.

5(b) states:

“[a]n employer may not appeal the denial of an application for relief of benefit charges from COVID-19 unemployment account.”

This is particularly troublesome as employers should have the right to appeal if ESD determines the employer should not receive benefits. If an unemployment claim is denied, the employee has the right to appeal. The last several months have made it explicitly clear that transparency is needed, and denials should not be automatic. We request that employers are given the opportunity to appeal.

3. Delay the deadline for the application.

Finally, we believe the September 30<sup>th</sup> date is too soon for most employers to react considering the scope of the problem and the time it might take for employers to review records of laid off workers. We think this date should be extended to give employers more time to ask for relief from benefit charges.

Thank you for the opportunity to present these comments, and we hope you take them into consideration for the final rules.



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## Dye, Joshua (ESD)

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**From:** Rose Gundersen <rgundersen@waretailservices.com>  
**Sent:** Wednesday, August 26, 2020 4:24 PM  
**To:** Dye, Joshua (ESD)  
**Cc:** Beckett, Bruce (TBG); Battles,Bob (ESD PArtner); DOR Mark Johnson  
**Subject:** benefit relief charge - simplify paperwork  
**Attachments:** Notice to Washington state employers who pay unemployment taxes

Hi Joshua:

I'm submitting comments for CR-102 of this rulemaking (attached). I highly recommend simplification of documents to minimize burden to employers as the benefit relief will likely be minimal. This will also save ESD time and tax dollars to sort through approving applications. Let me explain:

To date, \$2.3 billions were disbursed from the UI trust fund while the total benefit relief fund is \$25 million. This means employers who may be approved for benefit relief will receive about 1% relief to their UI rate in 2021. For this reason, I'd suggest not requiring the documents you currently require [per website](#). Since most employers who shut down have a huge stack of ESD documents to sort through to isolate the benefit statements. Instead, only ask employers to attest to the following:

- I was forced to shut down due to the Governor's order or my business was greatly diminished as a result. This is similar to the federal government's PPP loan forgiveness application. Doing so will greatly diminish the ESD's cost of sorting through applications and approval. ESD will only need to ensure that the type of business was actually one that was affected by the Governor's order.

Thank you and please acknowledge that you received this comment.

Stay healthy!

### Rose Gundersen

Vice President of Operations and Retail Services



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