



# EXPEDITED RULE MAKING

## CR-105 (December 2017) (Implements RCW 34.05.353)

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER  
STATE OF WASHINGTON  
FILED

DATE: October 09, 2019

TIME: 9:53 AM

WSR 19-21-043

**Agency:** Employment Security Department

**Title of rule and other identifying information:** (describe subject) Leave of Absence – WAC 192-170-080(1)(a).

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** WAC 192-170-080(1)(a) was determined to be “invalid” by the Commissioner of the Employment Security Department under *In re Ausburn*, Empl. Sec. Comm’r Dec.2d 971 (2011). In that decision, the Commissioner determined the rule was in “direct conflict” with RCW 50.04.310. Consequently, the Department is repealing WAC 192-170-080(1)(a). The remainder of WAC 192-170-080 will remain in effect.

**Reasons supporting proposal:** WAC 192-170-080(1)(a) should be repealed so the public does not mistakenly rely on an invalid rule.

**Statutory authority for adoption:** RCW 50.12.010 and RCW 50.12.040 provide general rulemaking authority to the Employment Security Department, including the authority to repeal rules.

**Statute being implemented:** RCW 50.04.310(1)

**Is rule necessary because of a:**

- |                         |   |                             |
|-------------------------|---|-----------------------------|
| Federal Law?            | <input type="checkbox"/> Yes            | <input type="checkbox"/> No |
| Federal Court Decision? | <input type="checkbox"/> Yes            | <input type="checkbox"/> No |
| State Court Decision?   | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |

If yes, CITATION: *In re Ausburn*, Empl. Sec. Comm’r Dec.2d 971 (2011)

**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, WA	360-890-3448
Implementation:	Julie Lord	Olympia, WA	360-902-9579
Enforcement:	Julie Lord	Olympia, WA	360-902-9579

**Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:** The Employment Security Department already operates as if WAC 192-170-080(1)(a) has been repealed. This rulemaking will officially repeal the rule.

**Expedited Adoption - Which of the following criteria was used by the agency to file this notice:**

- Relates only to internal governmental operations that are not subject to violation by a person;
- Adopts or incorporates by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule;
- Corrects typographical errors, make address or name changes, or clarify language of a rule without changing its effect;
- Content is explicitly and specifically dictated by statute;
- Have been the subject of negotiated rule making, pilot rule making, or some other process that involved substantial participation by interested parties before the development of the proposed rule; or
- Is being amended after a review under RCW 34.05.328.

**Expedited Repeal - Which of the following criteria was used by the agency to file notice:**

- The statute on which the rule is based has been repealed and has not been replaced by another statute providing statutory authority for the rule;
- The statute on which the rule is based has been declared unconstitutional by a court with jurisdiction, there is a final judgment, and no statute has been enacted to replace the unconstitutional statute;
- The rule is no longer necessary because of changed circumstances; or
- Other rules of the agency or of another agency govern the same activity as the rule, making the rule redundant.

**Explanation of the reason the agency believes the expedited rule-making process is appropriate pursuant to RCW 34.05.353(4):** *In re Ausburn*, Empl. Sec. Comm'r Dec.2d 971 (2011) determined WAC 192-170-080(1)(a) was in direct conflict with RCW 50.04.310(1) and therefore, WAC 192-170-080(1)(a) is invalid.

**NOTICE**

**THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO**

Name: Joshua Dye

Agency: Employment Security Department

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

Phone: 360-8903472

Fax: 844-652-7096

Email: rules@esd.wa.gov

Other: TTD Relay 711

**AND RECEIVED BY** (date) December 23, 2019

**Date:** October 9, 2019

**Name:** Dan Zeitlin

**Title:** Employment System Policy Director

**Signature:**

