



RULE-MAKING ORDER EMERGENCY RULE ONLY

CR-103E (December 2017) (Implements RCW 34.05.350 and 34.05.360)

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STATE OF WASHINGTON
FILED

DATE: March 27, 2023

TIME: 8:28 AM

WSR 23-08-024

Agency: Employment Security Department

Effective date of rule:

Emergency Rules

- Immediately upon filing.
- Later (specify) March 29, 2023

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

- Yes
 - No
- If Yes, explain:

Purpose: The Employment Security Department is adopting emergency rules concerning blanket overpayment waivers for Pandemic Unemployment Assistance, Pandemic Emergency Unemployment Compensation, Federal Pandemic Unemployment Compensation, and Mixed Earner Unemployment Compensation. The Department is also adopting rules concerning waivers for conditional benefits paid for the week beginning February 2, 2020, through the week ending September 4, 2021, and the process for requesting overpayment waivers for overpaid benefits for the weeks ending February 2, 2020, through the week ending September 4, 2021 for all federal and state unemployment compensation programs. .

Citation of rules affected by this order:

- New: WAC 192-220-018
- Repealed:
- Amended: WAC 192-220-017; and 192-220-080
- Suspended:

Statutory authority for adoption: RCW 50.20.190, RCW 50.24.020, RCW 50.12.010 and RCW 50.12.040

Other authority: Unemployment Insurance Program Letter Number 20-21, Change 1 (February 7, 2022)

EMERGENCY RULE

Under RCW 34.05.350 the agency for good cause finds:

- That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
- That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding:

Due to the drastic rise in unemployment insurance claims during the COVID-19 pandemic, the Department has seen unprecedented overpayments for claimants. Currently, there are more than 137,000 claimants with overpayments accounting for more than \$1.2 billion that accrued from February 2, 2020, through September 4, 2021. These overpayments are comprised of both federally funded benefit programs and the state's regular unemployment benefits. Of those overpayments, more than 67,000 claimants, accounting for more than \$258 million, were conditionally paid and, under current rules, are not eligible for waivers. The ability to provide immediate relief of overpayments for claimants for overpayments accumulated during this specific time frame requires the use of the emergency rule making process.

In March 2020, the Employment Security Department signed an agreement with the United States Department of Labor (USDOL) to administer certain federally funded pandemic era benefit programs, including Pandemic Unemployment Assistance, Pandemic Emergency Unemployment Compensation, Federal Pandemic Unemployment Compensation, and Mixed Earner Unemployment Compensation. In Unemployment Insurance Program Letter Number 20-21, Change 1, the USDOL provided scenarios where certain overpayments may be waived on a blanket basis. This emergency rulemaking authorizes the use of these USDOL blanket waivers.

For overpayments of regular unemployment benefits, the emergency rule allows benefits that were paid conditionally to be potentially eligible for waiver, as Department backlogs during the pandemic period substantially increased the number of benefits that were paid conditionally. Given the volume of benefit overpayments and the increased complexity of state and federal unemployment programs during the pandemic period and as the Department expands consideration of whether the claimant is at fault and whether it would be against equity and good conscience for the claimant to repay the overpayment,

the Department is providing claimants an expanded opportunity to request and receive overpayment waivers from the pandemic period, even if a previous overpayment waiver request had been denied.

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	___	Amended	___	Repealed	___
Federal rules or standards:	New	___	Amended	___	Repealed	___
Recently enacted state statutes:	New	___	Amended	___	Repealed	___

The number of sections adopted at the request of a nongovernmental entity:

New	<u>1</u>	Amended	<u>2</u>	Repealed	___
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The number of sections adopted on the agency's own initiative:

New	___	Amended	___	Repealed	___
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	___	Amended	___	Repealed	___
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The number of sections adopted using:

Negotiated rule making:	New	___	Amended	___	Repealed	___
Pilot rule making:	New	___	Amended	___	Repealed	___
Other alternative rule making:	New	___	Amended	___	Repealed	___

Date Adopted: March 27, 2023

Name: Dan Zeitlin

Title: Employment Security Policy Director

Signature:

