



RULE-MAKING ORDER EMERGENCY RULE ONLY

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

CODE REVISER USE ONLY

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STATE OF WASHINGTON
FILED

DATE: July 21, 2022

TIME: 2:31 PM

WSR 22-16-012

Agency: Employment Security Department

Effective date of rule:

Emergency Rules

- Immediately upon filing.
- Later (specify)

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

- Yes
 - No
- If Yes, explain:

Purpose: Pursuant to RCW 34.05.410(1)(a), the Department hereby adopts the use of brief adjudicative proceedings for use in certain appeals while permanent rulemaking is conducted. This process is being adopted to reduce the wait time for appeals to be resolved in circumstances where a claimant appeals an unemployment insurance benefit decision, and no employer is an interested party.

Citation of rules affected by this order:

New: WAC 192-04-145
 Repealed:
 Amended:
 Suspended:

Statutory authority for adoption: RCW 34.05.410(1)(a); RCW 50.32.060; RCW 50.32.080; RCW 34.05.220; RCW 50.12.040; RCW 50.12.010)

Other authority:

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 unprecedented unemployment insurance claims during the COVID-19 pandemic, the Department and the Office of Administrative Hearings have a backlog of 40,947 pending appeals as of December 31, 2021. For comparison, there were 27,127 pending appeals at the end of 2020, and 2,470 at the end of 2019. This backlog has led to an average wait time of 167.3 days for appeals closed during December of 2021, compared to an average wait time of 31.58 days during December of 2019. The United States Department of Labor's performance metric calls for 60% of appeals to be resolved within 30 days and 80% of appeals to be resolved within 45 days. In December 2019, the Department closed 71% of cases within 30 days and 94% of cases within 45 days. In December 2021, only 2% of appeals were resolved within 30 days and 4% of appeals within 45 days.

Currently, the Department is referring between 400 and 500 cases per day (2,000 to 2,500 per week) to the Office of Administrative Hearings. This trend is expected to continue through the end of the year with continued unemployment insurance claims processing claims associated with federal pandemic programs, such as the Mixed Earner Unemployment Compensation program.

With the adoption of brief adjudicative proceedings, the Office of Administrative Hearings has eliminated between 30 to 60 minutes per case. Using a brief administrative proceeding, administrative law judges (ALJ) have the ability to organize cases around other full hearings and organize and resolve cases at their own pace.

Using the brief adjudicative proceedings authorized by emergency rule filed in WSR 22-08-045, ALJs were able to process between 60 and 75 proceedings each week, up from 24 per week for full hearings. From May 16, 2022, through June 24, 2022, the Office of Administrative Hearings processed 1,656 claims. The Department initiated permanent rulemaking

concerning Brief Adjudicative Proceedings with the Preproposal Statement of Inquiry filed as WSR 22-16-008. The Department adopts this emergency rule so that it can continue to use brief administrative proceedings to address the significant backlog of pending appeals while the Department adopts the rule as a permanent rule.

**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	___	Amended	___	Repealed	___
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The number of sections adopted on the agency's own initiative:

New	<u>1</u>	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: July 21, 2022

Name: Dan Zeitlin

Title: Employment System Policy and Integrity Director

Signature:

