



PREPROPOSAL STATEMENT OF INQUIRY

CR-101 (October 2017) (Implements RCW 34.05.310)

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DATE: July 06, 2022

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WSR 22-15-002

Agency: Employment Security Department

Subject of possible rule making: The Employment Security Department is engaging in rulemaking regarding leaves of absence for unemployment claimants.

Statutes authorizing the agency to adopt rules on this subject: RCW 50.12.010 and RCW 50.12.040 provide general rulemaking authority to the Employment Security Department. RCW 50.04.310 defines when an individual is "unemployed" and not "unemployed."

Reasons why rules on this subject may be needed and what they might accomplish:

In May of 2022, the Department received a petition requesting that the Department amend WAC 192-170-080 to eliminate WAC 192-170-080(1)(a), which states, "If you are on a leave of absence, you are not unemployed and thus not eligible for benefits."

WAC 192-170-080(1)(a), which states that someone on a leave of absence is not "unemployed," was determined to be "invalid" by the Commissioner of the Employment Security Department in 2011 under *In re Ausburn*, Empl. Sec. Comm'r Dec.2d 971 (2011). In 2021, the U.S. Department of Labor issued guidance stating an individual should be considered "unemployed" when the individual incurs a reduction in work hours and their wages are less than their weekly benefit amount. Unemployment Insurance Program Letter No. 3-22 (Nov. 22, 2021). Rulemaking is therefore necessary to revisit whether individuals on a leave of absence should or should not be considered "unemployed."

Identify other federal and state agencies that regulate this subject and the process coordinating the rule with these agencies:

The U.S. Department of Labor reviews the state's administration of the unemployment insurance program to ensure conformity to federal statutes and regulations. The state has broad flexibility in the implementation of the unemployment insurance laws so long as conformity is maintained. The proposed regulations will be shared with USDOL prior to adoption.

Process for developing new rule (check all that apply):

- Negotiated rule making
- Pilot rule making
- Agency study

Other (describe) Draft rules will be shared with the public and stakeholders. The Department will solicit input from all parties and consider all comments in the development of final rules.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting:

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Additional comments:

Date: July 6, 2022	Signature: 
Name: Dan Zeitlin	
Title: Employment Security Policy Director	