

Significance Analysis Leave of Absence

Introduction

Pursuant to RCW 34.05.328, the Employment Security Department (Department) hereby places into the rulemaking file an analysis of the determinations required by RCW 34.05.328(1).

Analysis

- a) 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.” Rulemaking is needed to clarify that an individual on a leave of absence is eligible for unemployment benefits as long as the individual (1) meets the definition of “unemployed” per RCW 50.04.310; and (2) meets all other eligibility requirements provided in RCW 50.20.010.

- b) A cost-benefit analysis has been prepared by the Department. The cost-benefit analysis is available on the Department’s webpage. (<https://esd.wa.gov/newsroom/rulemaking/leave-of-absence>)
- c) Under both the preliminary and final cost-benefit analysis, the Department determined the probable benefits of the rule are greater than its probable costs, taking into account both the qualitative and quantitative benefits and costs and the specific directives of the statute being implemented.
- d) The amendments to WAC 192-170-080 represent the least burdensome alternative.
- e) The rule does not require those to whom it applies to take an action that violates the requirements of another federal or state law.
- f) The rule does not impose any performance requirements on public or private entities.
- g) This rule does not differ from any other federal regulation or statute.

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- h) The Department has coordinated this rule, to the maximum extent practicable, with other federal, state, and local laws applicable to the same activity or subject matter.