



Concise Explanatory Statement

Leave of Absence

Introduction

Pursuant to RCW 34.05.325(6), the Employment Security Department (Department) hereby provides the Department’s reasons for adopting the rules, a description of the variances between the proposed rules and the final rules, and a summary of comments received regarding the proposed rules and responses to the comments

Reasons for adopting the rule

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)). The adopted rule is necessary to ensure consistency with the statutory definition of unemployed, the Commissioner’s decision in *In re Ausburn*, U.S. Department of Labor guidance, and current adjudication standards adopted by the Department in 2011.

Variance between proposed rule and final rule

There is no variance between the proposed and the final rule.

Summary of comments to proposed rules and agency response

Public Comment	Agency Response
<p>Molly Carson, Frontier Behavioral Health</p> <p>The proposed rule change will exacerbate current difficulties for employers to obtain and maintain an adequate workforce. Paid Family and Medical Leave (PFML) provides paid time off for employees and many employees are utilizing these benefits.</p> <p>Frontier Behavioral Health has received, and mostly approved, 365 leaves of absence requests. Many Frontier Behavioral Health employees utilize a combination of federal Family and Medical Leave Act (FMLA) authorized leave along with state funded PFML, providing up to thirty weeks or more.</p> <p>In addition to furthering the staffing crisis, there is concern about coordination and administration of leaves if this amendment is approved. Current</p>	<p>Under both the proposed rule and current adjudication standards adopted by the Department in 2011, a claimant who is on a leave of absence must still meet all other unemployment benefit eligibility requirements in order to receive unemployment benefits. With this, all claimants, regardless of being on a leave of absence or not, must:</p> <ul style="list-style-type: none"> • Be able to work, and available for work in any trade, occupation, profession, or business for which the claimant is reasonably fitted (RCW 50.20.010(1)(c)); • Be actively seeking work, unless the claimant is exempted from job search

<p>backlogs with PFML make it difficult for employers to know if employees who claim PFML benefits have been approved.</p> <p>Frontier Behavioral Health asks that the Department not adopt the proposed rule changes.</p>	<p>requirements under WAC 192-180-010(1) (RCW 50.20.010(1)(c));</p> <ul style="list-style-type: none"> • Have been on leave for a waiting period of one week (RCW 50.20.010(1)(d)); • Participate in reemployment services if the claimant is referred to reemployment services by the Commissioner (RCW 50.20.010(1)(e)); and <p>Additionally, a claimant is not eligible to receive unemployment insurance benefits and Paid Family and Medical benefits for the same weeks (RCW 50A.15.100).</p> <p>For claimants on a leave of absence using federal Family and Medical Leave Act authorized leave, the claimant would also have to be both able and available for work and actively seeking work. With this requirement, for a claimant to be on a leave of absence and still qualify for unemployment benefits, the claim would also require the employer’s consent to both the leave of absence and the eligibility of the claimant for unemployment benefits. If the employer is ready for the claimant to return to work, and the claimant either chooses not to do so or is unable to do so, the claimant would not be eligible because the claimant is not considered able (if the claimant is unable to return to work) or available (if the claimant chooses not to return to work) for work.</p>
<p>James Asmus</p> <p>The proposed rule change, “will block thousands of people from receiving these benefits.” The state has surplus funds, and this is not an appropriate way to save money. The rule change serves no purpose and could lead to additional hardship for claimants. The Department should not take away this aspect of the social safety net.</p> <p>Access to unemployment benefits while on leave is often negotiated in union contracts throughout the state and unions consider this in their wage negotiations. The proposed rule change is an attack on unions and union contracts. Washington is considered a pro-union state and the Department should stand as pro-union by not changing the rule.</p>	<p>The proposed rule removes a barrier to unemployment benefit eligibility and will not block claimants from receiving access to unemployment benefits.</p> <p>The Department does not anticipate an impact on negotiated contracts in the state.</p>

Kat Fox, All Ways Chiropractic

After reviewing the proposed rule change, All Ways Chiropractic is concerned. The state's deficit is enormous and the rule change will siphon additional money from an already depleted source. If we pay every person that chooses not to work, then employees would have little to no incentive to work.

A person that voluntarily quits does not qualify for unemployment benefits unless there was an extreme reason, so it is unclear why this idea would be requested when a leave of absence is voluntary.

Under both the proposed rule and current adjudication standards adopted by the Department in 2011, a claimant who is on a leave of absence must still meet all other unemployment benefit eligibility requirements. With this, all claimants, regardless of being on a leave of absence or not, must:

- Be able to work, and available for work in any trade, occupation, profession, or business for which the claimant is reasonably fitted (RCW 50.20.010(1)(c));
- Be actively seeking work, unless the claimant is exempted from job search requirements under WAC 192-180-010(1) (RCW 50.20.010(1)(c));
- Have been on leave for a waiting period of one week (RCW 50.20.010(1)(d));
- Participate in reemployment services if the claimant is referred to reemployment services by the Commissioner (RCW 50.20.010(1)(e)); and

Additionally, a claimant is not eligible to receive unemployment insurance benefits and Paid Family and Medical benefits for the same weeks (RCW 50A.15.100).

For claimants on a leave of absence using federal Family and Medical Leave Act authorized leave, the claimant would also have to be both able and available for work and actively seeking work. With this requirement, for a claimant to be on a leave of absence and still qualify for unemployment benefits, the claim would also require the employer's consent to both the leave of absence and the eligibility of the claimant for unemployment benefits. If the employer is ready for the claimant to return to work, and the claimant either chooses not to do so or is unable to do so, the claimant would not be eligible because the claimant is not considered **able** (if the claimant is unable to return to work) or **available** (if the claimant chooses not to return to work) for work.

Steve Mackey

Employees on a mutually agreed upon leave of absence should not be considered unemployed, and thus not be eligible for unemployment benefits.

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- Be actively seeking work, unless the claimant is exempted from job search requirements under WAC 192-180-010(1) (RCW 50.20.010(1)(c));
- Have been on leave for a waiting period of one week (RCW 50.20.010(1)(d));
- Participate in reemployment services if the claimant is referred to reemployment services by the Commissioner (RCW 50.20.010(1)(e)); and

Additionally, a claimant is not eligible to receive unemployment insurance benefits and Paid Family and Medical benefits for the same weeks (RCW 50A.15.100).

For claimants on a leave of absence using federal Family and Medical Leave Act authorized leave, the claimant would also have to be both able and available for work and actively seeking work. With this requirement, for a claimant to be on a leave of absence and still qualify for unemployment benefits, the claim would also require the employer's consent to both the leave of absence and the eligibility of the claimant for unemployment benefits. If the employer is ready for the claimant to return to work, and the claimant either chooses not to do so or is unable to do so, the claimant would not be eligible because the claimant is not considered **able** (if the claimant is unable to return to work) or **available** (if the claimant chooses not to return to work) for work.