

## CONCISE EXPLANATORY STATEMENT

### Petitions for Review and Benefit Notices

#### REASONS FOR ADOPTING RULES

The filing is intended to permit the department, in common with other interested parties, to petition the Commissioner's Review Office (CRO) for review of a decision issued by the Office of Administrative Hearings (OAH). The filing also amends several rules to clarify how certain benefit-related notices will be provided to claimants and employers.

#### DIFFERENCES BETWEEN PROPOSED RULES AND ADOPTED RULES

None.

#### SUMMARY AND RESPONSE TO COMMENTS RECEIVED

**Comment:** Allowing the department the right to file a petition for review of OAH decisions undermines the credibility of the department in trying to have a fair process. Currently, both sides can appeal to OAH. If ESD believes there is an extraordinary circumstance in a case, the Commissioner can step in but that is rare. The rule would say to the parties that, no matter what appeals process is established, ESD will eventually have the final say. This undermines ESD's appearance of fairness. Employers and claimants should not have to face the unlimited power of an agency.

**Reasons Not Incorporated in Final Rule:** The amendment to WAC 192-04-060 would permit the UI Division to file a Petition for Review with the CRO as an interested party where we believe OAH has made a clearly erroneous application of the law. This is a practice that several other agencies currently employ.

ESD sends in excess of 30,000 appeals to OAH per year. OAH does a very good job of managing this volume of appeals. However, the complexity of the law, and the fact that it is constantly evolving, result in a very small percentage of cases in which OAH clearly misapplies the law to a given set of facts.

Under current law, the CRO has the authority to resume jurisdiction and issue an order even if neither claimant nor employer appeal from OAH. The UI program may ask the CRO to take a case "under advisement." In this process, the UI Division is authorized to write to the CRO without copying any of the other interested parties. The CRO then has the discretion to determine whether they want to open the case up for further briefing. The proposed change in the rules would eliminate this inefficient and less than transparent process.

Instead, in the rare cases where ESD believes that OAH has misapplied the law, the UI program would brief the issue and serve all parties. Each party would have full opportunity to present the CRO with their written responses. The CRO would then issue a final decision. The UI program would have no say in that final decision and would only have the ability to advocate for a final decision in the briefs filed publicly with the other parties.

The change is not intended to re-litigate credibility or other “close call” issues in cases. The UI program has used the current “request for advisement” process very infrequently, and intends to petition for review only intermittently.

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