

## 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) General goals and specific objectives of the statute that the rule implements:

SHB 1570 (2023) incorporated transportation network companies (TNCs) and their drivers into the unemployment insurance system and provided more flexibility for employers who offer part-time work and are seeking relief of benefit charges. These changes require updates to the Department's rules.

This rulemaking amends the Department's rules on voluntarily quitting employment due to a reduction in hour or compensation of 25% or more and adds a new rule defining "substantially the same amount" for purposes of employers seeking relief of benefit charges when they are continuing to offer part-time work to claimants who have separated from other employment.

The Department's amendments to its 25% reduction in hours or wages rules state that the Department will use aggregate wage and hour data reported by TNCs by region per quarter to determine whether there has been a reduction in hours or wages of 25% or more for drivers in a region in a particular quarter. The approach of using aggregate data to determine a 25% or more in hours or compensation is necessary because, in general, TNC drivers may work as much or as little as they choose; TNCs do not offer a certain number of hours or a specific amount of compensation. Therefore, using an individual driver's data may not show whether the total hours or compensation available to them was reduced. Comparing aggregate data from comparable quarters will provide a better picture of whether the hours and compensation available to a driver were reduced in that driver's region such that the driver had good cause to voluntarily quit.

The new rule defining "substantially the same amount" states that employers will be deemed to continue to furnish part-time work in substantially the same amount if they continue to furnish hours equal to 90% or more of the individual's average part-time weekly base year hours. This rule will help define "substantially the same amount" as used in RCW 50.29.021(3)(a)(iv).

- b) Determination that the rule is needed to achieve the general goals and specific objectives stated under (a) of this subsection, and analysis of alternatives to rule making and the consequences of not adopting the rule:

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The new rule defining "substantially the same amount" states that employers will be deemed to continue to furnish part-time work in substantially the same amount if they continue to furnish hours equal to 90% or more of the individual's average part-time weekly base year hours. This rule will help define "substantially the same amount" as used in RCW 50.29.021(3)(a)(iv). If the rule were not adopted, it could be more difficult to determine what amount of hours are "substantially the same amount."

c) Notification of cost benefit analysis:

A cost-benefit analysis has been prepared by the Department. The cost-benefit analysis is available on the Department's webpage at:

<https://esd.wa.gov/about-us/who-we-are-and-what-we-do/rulemaking/unemployment-insurance-benefits-rules/transportation-network-companies>

d) Determination that the probable benefits of the rule are greater than its probable costs:

Under both the preliminary and final cost-benefit analysis, the Department determined the probable benefits of the rulemaking 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. Expected costs will be de minimus, and the benefits of the rules as outlined above outweigh those costs.

e) Determination, after considering alternative versions of the rule and the analysis required under (b), (c), and (d) of this subsection, that the rule being adopted is the least burdensome alternative for those required to comply with it that will achieve the general goals and specific objectives stated under (a) of this subsection:

The Department has determined that the rules being adopted are the least burdensome alternative based on the analyses conducted under (b), (c), and (d), above.

f) Determination that the rule does not require those to whom it applies to take an action that violates requirements of another federal or state law:

The Department has determined that the rules do not require employers or claimants to take any actions that violate any legal requirements.

g) Determination that the rule does not impose more stringent performance requirements on private entities than on public entities unless required to do so by federal or state law:

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The rules rely on reporting of aggregate data by TNCs due to the nature of their business. Because, in general, drivers can drive as many or as few hours as they choose, individual data may not reflect the hours or wages available to each driver. Thus the unique business model of TNCs requires reporting of aggregate data. This requirement is not a result of more stringent requirements for private versus public entities but is directly related to the nature of TNCs' business model.

- h) Determination if the rule differs from any federal regulation or statute applicable to the same activity or subject matter and, if so, determine that the difference is justified by the following:
- (i) A state statute that explicitly allows the agency to differ from federal standards; or
  - (ii) Substantial evidence that the difference is necessary to achieve the general goals and specific objectives stated under (a) of this subsection:

The rules do not differ from any federal or state regulation or statute.

- i) Coordinate the rule, to the maximum extent practicable, with other federal, state, and local laws applicable to the same activity or subject matter:

The rules coordinate, to the maximum extent practicable, with federal, state, and local laws applicable to the same subject matter.